

Equal Pay – Core of Gender Equality

Priyanshi Singhal

5th Year, B.Com. LLB (Corp. Hons.)
Institute of law Nirma University, Ahmedabad
Gujarat, India

Udit Rao

5th Year, B.Com. LLB (Corp. Hons.)
Institute of law Nirma University, Ahmedabad
Gujarat, India

ABSTRACT:

The right, which is now turned into an issue, to equivalent pay for equal work amongst men and women is subject of major distress to any economy concern globally and also at an individual level. Long perceived stereotype that women are physically weaker than men is yet persisting in Indian society and thereby regardless of criminalising the discriminatory practice, the mentality of paying less to women for the same work poses a huge economic hurdle. Only after modernization, women though in relatively small number have transpired from the era where they articulated and prepared to agree on lower pay for same employment as that of men. The persistent discrimination is not only limited to backward or developing nations, but they exist in most economically and socially developed nations who have marked a notable progress internationally.

I. INTERNATIONAL PAY EQUITY STANDARDS

International labour Organisation through Equal Remuneration Convention, aims on establishing and sustaining equal pay for both women and men workers for their work of equal value.¹ Article 2 of the Convention enumerates on every member state by necessary measures to determine pay rates as operational, endorse and warrant the application of the aim and also ensure the implementation through domestic law legislations, legally identified mechanism for pay valuation, joint agreement between employers and employees and blend of these different mechanisms.² According to the discrimination (employment occupation) Convention, states shall endorse equal prospects for employment and curb discrimination based on race, sex, religion, colour, politics, social factor etc.³ Further, the workers with family responsibilities Convention mandates the state to grant people with family responsibilities exercise their right to employment without hindrance of discrimination and attempt to not clash with employment and family accountabilities.⁴ Moreover, it elucidates on providing mechanism to develop reasonable childcare, house help, house care services or other such services as required.⁵

¹Justice ManjuGoel, Gender Equality- Application of International Covenants in Domestic Spheres, (2004) 7 SCC J-23.

²Equal Remuneration Convention, 1951, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_84_en.pdf.

³Discrimination (employment occupation) Convention, 1958, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111.

⁴Workers with family responsibilities Convention, 1981, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C156.

⁵Economic and Social Policy Brief: The gender Wage Gap, International Trade Union Confederation, https://www.ituc-csi.org/IMG/pdf/the_gender_wage_gap_en.pdf.

The maternity protection convention renders that states have to ensure that women post maternity have right to re-join at same position with same pay and that pregnancy or maternity cannot be a ground to refuse employment.⁶

II. THERE LEGISLATION ADDRESSING PAY INEQUALITY

Globally, developed nations have strived to battle against the issue of inequality in pay using different schemes. There are legislations that are relatively new to assess the effectiveness adequately.

- **U.K**

In 2017, the government of UK enacted a legislation that mandated every organisation having more than 250 employees to report yearly about the gender pay practice in their organisation where they would be specifying the difference in average pay of men and women, expressed relatively to that of men's pay.⁷ This legislation primarily centres on transparency regime and objectify to make companies prepare a self-report on difference in pay based on gender. Equality and human rights commission is authorized to take action in case of any failure to adhere to the regulation.⁸ Notwithstanding the general public pressure that might force companies to curb huge gender pay gaps, there is yet no legal sanction to close the gap.

- **USA**

Since 1963, unequal pay is prohibited in US-under Equal pay Act 1963 and Civil Rights Act, however the legislative Code has yet not been implemented⁹ and then it was an initiative towards equal pay taken by the Barak Obama that was to be implemented in 2018, according to which organisations would have been mandated to categorise employees based on gender, race, background and ethnic but in 2017 Donald Trump has put an halt on the initiative.¹⁰

- **Europe**

Equal pay has been adopted as a fundamental principle of European Union during its foundation as European Economic Community in 1957 wherein under Article 141 of European treaty every member state has to ensure the application of principle of equal pay for both men and women workers for equal work or for work attributable for equal value.¹¹ Further, member states have to safeguard employees from abuse of employers by

⁶Maternity protection convention, 2000, https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C183.

⁷The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, <https://www.legislation.gov.uk/ukdsi/2017/9780111152010>.

⁸Equality and Human Rights Commission, Closing the gap: Enforcing the gender pay gap regulations, 23 March 2018, <https://www.equalityhumanrights.com/en/publication-download/closing-gap-enforcing-gender-pay-gap-regulations>.

⁹Michael D. Freeborn, Equal Work, Equal Pay, Gone Astray, 3 Compleat Law. 22 (1986).

¹⁰Suzu Khimm, Trump Halted Obama's Equal Pay Rule. What it Mean for Working Women, NBC news, 1 September 2017, <https://www.nbcnews.com/politics/white-house/trump-killed-obama-s-equal-pay-rule-what-it-means-n797941>.

¹¹European community treaty, Article 141, <https://minorityrights.org/law-and-legal-cases/ec-treaty-article-141/>.

taking necessary action towards enforcement of the principle.¹² In accordance to the Equal pay Act 1970, there has to be an implied equality clause in the service contract and to invoke the clause, a female would have to prove that the work is same, equivalent or of equal value to that of male.¹³ In 2017, European Commission introduced an action plan to curb gender pay gap that focused on areas including enhancing the implementation of principle of equal pay, curbing apartheid system in occupations, methods to curb vertical apartheid, dealing with care penalties, improving women's skills and responsibilities, curb inequalities and stereotypes, education about gender pay gap issue and improving organisations to deal with gender pay gap.¹⁴ Also, Commission would strive to maintain transparency in pay system and build an evaluation report for pay transparency recommendations.¹⁵ However, effective implementation by EU member states is yet not observed.¹⁶

- **India**

Historically, during the time when India lacked the intellect to even consider legislating for protection of workers, owners of the organisations were taking benefit of backwardness and poverty by recruiting women workers on a huge scale at negligible wages and made them work under harsh inhuman conditions. Ratification or in principle acceptance of ILO Conventions, that aim to protect working women, by India changed the working conditions for Indian women as post ratification India incorporated Article 39 in the Constitution that directs the state to ensure equal pay for equal work amongst both male and female workers as a consequence of which parliament enacted the Equal Remuneration Act, 1975.¹⁷ Pursuant to the Act, every men and women are to be provided equal remuneration for the same or similar kind of work, no discrimination is permitted during recruitment and employment conditions unless employment is prohibited by law and the enforcement mechanism is supervised by the Ministry of Labour and Central Advisory Committee.¹⁸ Adjudication of Mackinnon Mackenzie & co ltd. Vs Audrey D'Costa,¹⁹ is pertinent in the history of equal remuneration regime in India wherein the court observed that financial incapacity of the employer cannot be a ground for exemption from application of the Act.

¹²European treaty, Article 141, Article 5, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>.

¹³Peter Jones, Equal Pay, 11 Trent L.J. 37 (1987).

¹⁴Commission steps up efforts to tackle the gender pay gap, Justice and Consumers, 20 November 2017, https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=607452.

¹⁵Mina Andreeva, Natasha Bertaud, International Women's Day: Commission takes action to close the gender pay gap, European commission, 7 March 2014, http://europa.eu/rapid/press-release_IP-14-222_en.htm.

¹⁶Petra Foubert, The enforcement of the principle of equal pay for equal work or work of equal value: A legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway, European equality law network-European Commission, July 2017, <https://ssrn.com/abstract=3123854>.

¹⁷Justice Dipak Mishra, Women Empowerment and Gender Justice, (2013) 3 LW (JS) 45.

¹⁸Equal Remuneration Act, 1975.

¹⁹Mackinnon Mackenzie & co ltd. Vs Audrey D'Costa, (1987) 2 SCC 469.

III. REASONS FOR THE GENDER PAY GAP

Varying statistics pertaining to women employment in developing country like India base itself on varying reasons as a consequence it is complex to measure the precise reason for gender pay gap. Pursuant to patriarchy dominance along with surplus availability of labour force, unemployment and underemployment issues, men make themselves available and thereby the issue of lack of women participation in economic activity is yet persisting seriously. A simple straight reason is the unconscious biasness- due to family history, stereotypes, experience etc., which shape decisions and judgments. Moreover, implicit biasness where women perceive their undervalued worth due to taboos. A quintessential impediment to women employment is the economic factor of extra cost pursuant to the statutory obligation of the employer to provide maternity benefits, which is burdensome for them and thereby affecting the women employment. In fear of incurring extra cost and resignation by women, often employers are observed to be recruiting only married women and if they hire an unmarried women it might be on the condition to resign from employment on getting marries. Employers are also reluctant towards women employment because of the restriction of later work hours for women. Also, comparatively more men are available or ready to work for part time than women and it's one of the reason include that for mothers part time might not be as progressive wage earning factor which widens the gender pay gap. Also, employers tend to side-line mother employees by categorising them as second class employees as father employees would get increased pay as it is perceived that they would have additional responsibilities. Notion of use of pay backgrounds as a mechanism to decipher payrolls affects gender pay gaps that include impact on employees re-joining the market post break where it might not be even proved that the preceding employer's pay was equal and justified. Such behaviour is discriminatory, unjust and unfair.

IV. FACTORS SUPPORTING EQUAL PAY

There are numerous factors in modern independent India that promotes and essential the need for high representation of women and achieve equal pay for women and men workers in full time employment at an organizational level. First, gender equality is historically, economically, socially, biologically, intellectually and other level part and true essence of natural existence of human kind. Role model or initiative taken by women in leadership would help not only in retaining and recruiting women but also develop a culture where women accept women as leaders and women are more confident, creating a cyclical impact on gender justice and inclusion. The concept of role model have an impact when women are at leadership position are well represented equally to the extent that women at lower ranks would also be perceived as better counterparts in terms of representation and pay.

V. RECOMMENDATIONS

Raise Wage Floor

Overall inequality in pay directly affects the penal consequences of low paying structure. To uplift women that concentrate majorly in the lowest pay employments, the minimum floor wage should be fixed at a reasonable standard accommodating both living cost and median wage. A reasonable minimum wage implementation would develop the pay level. Minimum wages also standardizes pressure group and trade union to objectify towards improving conditions.

Improve valuation of women's work

Valuation of women's work can support in recognizing practices used in pay mechanism that are alarming for sustenance of gender justice. Action plan should be taken up in association with trade union to restrict use of discretionary and biases towards gender based employment and pay practices.

Improve access to employment

Women should have modernized and developed outreach to employment prospects such that it decreases the gender based employment segregation. More prospects should be opened towards progression in the sectors where involvement of women is dominated. Also, women exploring flexible or non-linear employment should be endorsed and supported. Congruent to this can be improving the pay currently provided for the work where women are involved so that they do not have to face any financial penalties merely because of the low categorized job. Work hours should be made more flexible or right to reduce hours should be provided to mothers in order to help them retain their position.

VI. CONCLUSION

It is well acknowledged that the gap in gender pay is comparatively narrow but yet the continued progress should not be inevitable. Thereby, the battle should be eliminate all the dimensions of the gap in gender pay along with exploring additional prospects towards progression. Inequality in gender pay is naturally higher where the general level of gender justice is low and therefore, mechanism to curb gender pay injustice can be resolved in parlance with legislation to curb general injustice in pay system and establishing gender justice in true sense. An appropriate mechanism in furtherance of legislative action is required not only to diminish the effect of legacy of gender injustice and historical discrimination but also to restrain gender injustice developing in emerging employment contexts. Various legislations are explicitly dependent on the government perception, action and enforcement but it cannot be effectively implemented in reality until supported by employers, trade union and the society. Conclusively, gender justice and reduction in gender pay gap are part of a vicious circle and coextensively interdependent in an economy.