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# An Analysis of Gender Pay Gap in India

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## ABSTRACT

*In this 21st century, every nation is aiming towards development. Women compose nearly half of the population and hence their contribution in the nation's progress is invaluable, then only our economy can prosper. If there is a difference between the pay of men and women for the same or similar work then this act as a hindrance to the development as women will feel discriminated against because of the said difference merely on the basis of their sex.*

*In this article, we will look at the meaning of the gender pay gap, its related statistics in India, and India's position in the world in the Global Gender Index. We will also look at the reasons for this pay gap, along with the legislation that has been made for correcting this situation with some cases in which our Honorable courts have also ruled that these differences need to be resolved so that the concept of equality can prevail in our democratic country, and some steps have been discussed that can help to reduce this gap.*

**Keywords:** *Gender Pay Gap, Discrimination, Women Employees, Payment of Wages, Wage Difference.*

## I. INTRODUCTION

It is often said that all humans in society are equal, regardless of their age, sex, birth status, etc., but as we study society in depth, we see there is discrimination based on these criteria. We live in a patriarchal society where men are the head of the family and women are bound to obey them. In this society the men work outside and the women are confined to do the household chores. They are expected to bear and raise children and take care of the family. And this belief is followed from the very beginning of the civilization. With the change in time, women are now demanding equal status in relation to men. Now they are taking significant occupational roles and have excelled as much as men, if not, more than men. However, they also have to face workplace discrimination like the pay gap that demotivates them and restricts them to grow.

## II. GENDER PAY GAP

The Gender Pay Gap is defined as the difference between the average wages of men and that of women. This gap is generally in favor of men and discriminatory against that of women

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workers.

The first treaty that stipulated equal rights for men and women was the United Nations Charter. **Article 23 of the Universal Declaration of Human Rights** also states that everyone has a right to equal pay for equal work without any discrimination. **Article 7 of the ICESCR (International Covenant on Economic, Social, and Cultural Rights)** also upholds the same viewpoint. It also states that the working conditions of men and women should be equal.

According to the World Economic Forum's Global Gender Gap Index 2022<sup>2</sup> India holds a rank of 135 out of 146 countries. However, the overall score has improved to 0.629 from 0.625 in the year 2021. India is one of the five countries along with China, Qatar, Pakistan, and Azerbaijan where this gender gap is larger than 5%. This shows how much work is needed to improve India's status in this specific area.

According to the India Discrimination Report for the year 2022<sup>3</sup> published by Oxfam India, an NGO the average monthly wage for men doing casual work was 9,017 INR in 2020 which is 58% higher than the 5,709 INR earned by their female counterparts. In regular jobs, there is a difference of 27%, where men earned an average of 19,779 INR as against 15,578 INR earned on an average by women.

Rural areas are witnessing a rise in the gender pay gap. This gap is reducing in the urban areas as compared to the NSSO's 68th report published for the year July 2011- June 2012. But this reduction is not so significant. According to the March 2019 Monster Salary Index (MSI), the gender pay gap is there in key industries too. IT services indicated a sharp pay gap of 26% in favor of men, while in the manufacturing sector, men earn 24% more than women<sup>4</sup>. So, still, the situation needs to be improved in both areas as the situation is not satisfying in urban regions too.

In today's era, some employers did not wish to employ female employees on the pretext that they would have to give them maternity breaks, and now menstruation leaves too.

### **III. REASONS FOR THIS PAY GAP**

#### **(A) Lack of education among female**

From the very beginning, it is believed that education is only for men and women does not need

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<sup>2</sup>World Economic Forum, Global Gender Report 2022

<sup>3</sup>Oxfam India, India Discrimination Report 2022 Summary Edition

<sup>4</sup>Nilanjana Chakraborty, What is a gender pay gap and why is it so wide in India?, LIVEMINT, Dec. 3, 2019, 2:20 PM), <https://www.livemint.com/money/personal-finance/what-is-gender-pay-gap-and-why-is-it-so-wide-in-india-11575356633900.html>

to be educated as they are at last to become a housewife and take care of the household. And because of this patriarchal thought a smaller number of families educate their daughters. According to 2021 data, the literacy rate of women is 71.5% as against 84.4% of men. The situation has improved significantly but this ratio should be made equal as all are equal in the eyes of the law. Also, less investment in training is done for women than the men with the same expectation of them being the homemaker and not the wage earner.

### **(B) Less participation of women in the workforce**

Even though women are imparted education, still their participation in the labor workforce is low. Out of the educated ones, the women who take up the job are very less, others are just married off after their education is completed. In informal sectors also women are mainly engaged in agriculture as they are not regarded to have the required qualification for other jobs. There is a clear division of labor among the laborers. So, there is less participation of women in the workforce both in formal and informal sectors.

### **(C) Discrimination in the workplace**

There is discrimination against women workers by not giving them higher job profiles, tasks that involve more responsibilities, representation in senior management, promotions, etc. It is generally believed that women employees would be less productive than their male counterparts. And it has been found in various studies that are conducted that 60% of the reason for the gender pay gap in India is because of the outright discrimination in the workplace.

### **(D) Maternity Breaks**

Women who are employed have to take a break from their job because of pregnancy and post-natal care of the child. They sometimes have to quit their job or take long breaks as child care is seen as a women's responsibility. Even when a women employee returns to her job after maternity breaks, she is usually considered less efficient than her male counterparts due to this break and so is paid less for the same work.

### **(E) Unpaid Labour**

It is estimated that women in India work per week 21 hours more than men do. Over two-thirds of all jobs in India are currently in agriculture, but most of the work that women do in this industry is not accounted for or formally documented. And so, they are engaged in unpaid labor too.<sup>5</sup>

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<sup>5</sup>Sai Aasheerwa Gudla, Gender Pay Gap at Workplaces: Indian Aspect, Legal Bites (5 Dec 2022 1:35 PM), <https://www.legalbites.in/topics/articles/gender-pay-gap-at-workplaces-indian-aspect-359106>

#### **IV. CONSTITUTIONAL PROVISIONS RELATED TO EQUAL PAY FOR EQUAL WORK**

As per our Indian Constitution, there should be equality among the masses. All are equal irrespective of their caste, creed, sex, etc. There are various provisions in the Indian Constitution that aim towards equality between men and women and women are not to be discriminated against in their wages for the equal work that they had done.

**Article 14:** Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth<sup>6</sup>

**Article 15:** Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.<sup>7</sup>

**Article 16:** Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.<sup>8</sup>

**Article 19:** All citizens shall have the right

(g) to practise any profession, or to carry on any occupation, trade, or business<sup>9</sup>

**Article 39:** Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

(d) that there is equal pay for equal work for both men and women;<sup>10</sup>

These all provisions aim that there should be equal opportunities to work for all, and equal pay for the equal work done by both men and women.

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<sup>6</sup>The Constitution of India: Article 14

<sup>7</sup>The Constitution of India: Article 15(1)

<sup>8</sup>The Constitution of India: Article 16

<sup>9</sup> The Constitution of India: Article 19(g)

<sup>10</sup> The Constitution of India: Article 39(d)

**(A) Legislations passed to curb the situation of Gender Pay Gap****a. Equal Remuneration Act 1976**

This act was passed in 1976 to eradicate discrimination in pay on the basis of gender. This act aims to provide equal remuneration to both men and women employees for equal work., to make women aware of their rights and duties, to enhance the standard of their working conditions, and to bring female empowerment in the workplace.

Discrimination can be in promotion, bonuses, gratuity, provident fund and pension amount, hike in salary, leaves, etc.

**Section 4** of the act states that it is the duty of the employer to pay equally to all employees, male and female. He must not make discrimination on the basis of sex for paying remuneration for the same work or work of a similar nature.

**Section 5** of the act states that it is mandatory that no discrimination takes between men and female while recruitment. No such discrimination should be towards women in recruitment unless the employment of women is prohibited by any law for the time being in force. This provision also applies to promotion, training, or transfer. The proviso to this section states that the provisions of the section will not affect the reservation given in recruitment to the scheduled castes, scheduled tribes, ex-servicemen, retrenched employees, or any other class or category of persons.

**Section 6** of the act states that it is mandatory to form an advisory committee consisting of 10 members out of which half must be women. The aim of the committee shall be on providing advice for increasing job opportunities for women in the establishment, nature, and hours of their work and other alike matters.

**Section 7** states that the appropriate government has the authority to appoint authorities, not below the rank of labor officers for hearing and deciding the claims and complaints regarding the claims regarding payment of wages at unequal rates to men and women and contravention of the provisions of this act. If any complaint arises, then the employer should take necessary steps so that there is no contravention of any provision of this Act.

**Section 8** states that it is the duty of the employer to maintain the register and other documents regarding the workers employed by him in such manner as may be prescribed.

**Section 10(1)** states that if the employer fails to maintain the register regarding the workers employed by him, or refuses to produce the evidence, or prevents his agent, servant, or another person who is in charge of the establishment to produce the evidence when called upon to do

so or refuses to provide any information when requested then he will be punished with simple imprisonment that may extend to one month or with fine up to ten thousand rupees or with both.

**Section 10(2)** states that if, after the commencement of this Act, any employer makes any recruitment in contrary to the provisions of this Act or pays remuneration at different rates for the same or similar work to men and women employees or makes any discrimination between them then he will be punishable with a simple imprisonment which may extend up to one month or with fine which may extend to ten thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

### **b. Code on Wages 2019**

This code was introduced in the year 2019 in the Lok Sabha by Mr. Santosh Gangwar, the then Minister of Labour. This Code repeals the Equal Remuneration Act of 1976, the Minimum Wage Act of 1948, the Payment of Wages Act of 1936, and the Payment of Bonus Act of 1965.

This Code aims to remove discrimination in recruiting new employees for the same or similar type of work and payment of salaries on the basis of their gender. Discrimination is only allowed where the law prohibits the employment of women. This code also covers transgender people.

But this code is not implemented yet and awaits its implementation after the 2024 Lok Sabha elections.

## **V. CASES**

### **1. M/s. Mackinnon Mackenzie & Co. Ltd. vs. Audrey D'Costa and Others<sup>11</sup>**

In this case, the issue was whether equal pay should be paid to male and female stenographers. The Apex Court stated that different pay to men and women is in contravention of the Equal Remuneration Act and it also violated Article 14 and Article 39(d) of the constitution states that there should be equal pay for equal work. And gave judgment in favor of women stenographers.

### **2. Randhir Singh v Union of India<sup>12</sup>**

In this case, the Supreme Court held that Part IV of the Constitution i.e., the DPSP contains the principle of 'Equal Pay for Equal Work.' It is not a fundamental right but surely a constitutional goal that can be invoked by Article 32 of the Constitution. However, the principle can be

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<sup>11</sup> (1987) 2 SCC 469

<sup>12</sup> 1982 AIR 879, 1982 SCR (3) 298

enforced only if the nature of work is similar and it requires similar qualifications.

### **3. Arindam Chattopadhyay & Others vs State of West Bengal & Others<sup>13</sup>**

In this case, also the Supreme Court held that the principle of 'Equal Pay for Equal Work' is not a fundamental right but a DPSP, it is surely a constitutional goal mentioned under Article 39(d).

## **VI. STEPS TO CURB THIS GENDER PAY GAP**

### **1. Transparency in payment of wages**

There must be transparency in wages in the organization. Women employees should be able to know about the salary of their male colleagues. This would make it difficult for the employer to pay different wages to male employees and female employees thus helping to reduce the gender pay gap.

### **2. Healthy Promotion**

There must be transparency in the promotion process. All must be given equal opportunity to become a part of the top management in the organization.

### **3. Male parental leave**

Male parental leave must be encouraged. This will help their partner to continue their job and would also help them to maintain their work efficiency. This will ultimately help to correct this pay gap in the long run.

### **4. Work from home**

This will help a woman employee to effectively manage her work along with household duties and childcare. This would in the end help them to maintain their effectiveness and income level. This step will be beneficial to reduce the pay gap among the genders.

We have seen the provisions that lay down the principle of equal pay for equal work and the cases in which the hon'ble court also states the same but still, the situation has to be improved. Though our country has come a long way down and the situation has improved still more is needed to be done, especially among the casual workers. The Government needs to formalize the unorganized sector so that the workers are benefited from these laws. They need to be made aware of their rights by making them to know the legislations that are made for their interest. Further, there is a need for the strict implementation of these laws so that this wage difference is covered.

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<sup>13</sup> CIVIL APPEAL NO. 2521 OF 2013



Today's women contribute to the income of the family. Women are also capable of doing work other than taking care of their house and the family. They can manage both, their household as well as their job. So, we should recognize their hard work and dedication towards their work. Paying them less simply because of their gender is unacceptable. They are discouraged by this discrimination which ultimately will affect our nation's growth because their contribution also matters in the economy as being the earning group of the society. Hence this discrimination must be eradicated so that the concept of EQUALITY prevails in the true sense.

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