

Equal Remuneration Act, 1976: Bridging Gender Pay Gap in India

Bhuvana Bojamma

Undergraduate Student, Research Methodology, School of Law, Christ University

Abstract: *Sexism or gender - based discrimination is widespread and pervasive in the employment global market, and it is highly susceptible among workers in industries where employment rules are difficult to execute. Because of their weak negotiating power, women's labour involvement has influenced compensation and returns, resulting in salary discrepancies between men and women. Women's employment generating engagement has been historically low, with the majority of women working in lower - paying jobs. Equal pay for equal labour is a progressive idea in representative democracy cultures where people are treated equally in the workplace. The frequency of females and males, as well as their compensation levels, are closely related. In principle, both in the employment market and in corporations, the lowest - paid professions are those in which women dominate, whereas the highest - paid professions are those in which males predominate.*

Keywords: Gender based discrimination, Equal Remuneration Act, 1976, equal remuneration, women's employment.

1. Statement of Problem

Women empowerment has been a basic course of discussion over the years, and with consistent and rising focus on the same, specific provisions have been drafted and set forth publicly to resolve these particular issues. It is important to note that these issues arise from centuries of gender discrimination where mistreatment of women is still hitting an all - time high. Slowly but surely, provisions are being imputed to bridge the gap between men and women. One such issue that is most talked of these days is the equal pay for all genders. Gender pay gap is quite a relevant concern to make light of owing to changing societal standards. In simple terms, gender pay gap refers to circumstances where there is a difference in income earned between men and women in paid employment and the labour market.

Accordingly, the Equal Remuneration Act, 1976 was passed to ensure equal pay for all. The Act resolved to solve concerns regarding equal pay for both men and women with respect to the magnitude of the work assigned to the genders. It accommodates equal income for all kinds of people, along with the understanding of the fact that this specific Act will not abrogate any exceptional treatment given to ladies in the country. There was a period in India when women were faced with heavy impartiality with weighty segregation in pay. However, after the passing of this Act, women have had the option to sue for already existing incompetencies in their working environment.

In layman terms, remuneration explains the basic salary paid along with an additional fee or stipend provided to the employee irrespective of whether the wage is in money or in kind. The salary is financed to the person employed by the employer if and only if the conditions of the employment contract were fulfilled either explicitly or implicitly.

2. Research Methodology

The researcher has proceeded to adopt both doctrinal as well as analytical forms of research. Specifically, the researcher has proceeded to adopt the descriptive research method with

respect to understanding the implications of the Equal Remuneration Act, 1976 for modern working women in the society. An analytical research method was favoured for in order to look into different aspects of implementation and the premise of how the Act was established. The primary source of information that the researcher has employed deals with prominent case laws, sections of the Act and precise legislation. The secondary sources will incorporate research articles, websites, books and law commission reports.

The following keywords were used by the researcher to look for information regarding the research:

- 1) Establishment of Equal Remuneration Act, 1976.
- 2) Equal pay for equal work.
- 3) Gender pay gap in India.
- 4) Flawed implementation of Equal Remuneration Act, 1976.
- 5) Statistical analysis of unequal pay around the world.
- 6) Provisions of Equal Remuneration Act, 1976.
- 7) Flaws in the Equal Remuneration Act, 1976.

3. Literature Review

The Act defines "pay" as any contractual advantages an employee receives from their employer in connection with their work, even if those benefits are acquired inadvertently. Because men and women engage in the workforce in different ways, there is typically a gender wage difference. Research has demonstrated that while there are indeed a variety of objective factors that contribute to the gender wage gap, they fail to entirely clarify it. There may be unidentified or unexplained - for variables, but there may also be a sex - based aspect of inequality, where a job performed by a woman is viewed as having less value than a job performed by a male.

When deciding on wage levels for men and women, bigotry on gender can readily develop in due to the absence of impartial job assessment methodologies and practises.

It's critical for businesses looking to improve gender diversity throughout their workforce to assess gender

disparities, notably disparities in pay gaps, which could have become ingrained in organisational culture. Businesses can take a variety of actions to assist close the gender wage gap in their workplace.

4. Introduction

Equal pay for equal work is perceived as gender pay gap all around the world, and not just in India. This generic term is more understood everywhere. Equal pay for equal work is a work environment concept of giving equal wages and facilities to a man and a woman doing the same work with the same amount of responsibilities and duties. By encouraging more women to participate in the workforce, closing the gender wage gap can advance equality between men and women and foster a positive feedback loop.

Women who earn equally to males gain from having more purchasing power, which in turn boosts spending by consumers and the economy as a whole. Because of professional gender stereotypes, some jobs are held primarily by women, which devalues "female jobs" for the purpose of determining wage rates. Because feminine professions and sectors usually compensate less than those dominated by men, this lowers overall salaries for women relative to men.

What has been attributed to unequal pay in India ?

This disparity is defined as the variation in revenue amongst men and women who do the same job with the same labour and obligations. The pay difference between men and women was 24.82 per cent in 2013. India had also been discovered to be among the bottom ten countries in terms of female involvement. This demonstrates that not only are women paid lesser, but they continue to be still undervalued and underrepresented in the workplace.

The primary facts that contribute to gender pay gap are as follows:

- 1) Cultural limitations
- 2) Differentiation
- 3) Professional boundaries
- 4) Lack of Education and training
- 5) Complete downplay of women's abilities.

Female labour market participation is extremely low, particularly for the rural and agricultural activities. In rural places, employment and labour are firmly separated by gender. India's sociocultural standards are likewise seen as unfavourable to women. Parenting is seen as a woman's principal occupation. Many businesses and organizations refuse to hire married women with children because they believe they would be unable to perform to their full ability due to their family and responsibilities. Women's advancement rates are also not very high. Given that they had been on unpaid leave for four months, women are paid less when they return to work. Female Employees are seen as a liability since they are perceived as future mothers who may quit the company once they are wedded. The gendered wage discrepancy also reflects the biased division of domestic responsibilities, with women assumed to be in

charge of people who are ill and aged, rearing kids, and household chores.

Although domestic labour is not distributed equally between genders, women have taken more periodic professional gaps, primarily to raise the kids and care for ageing relatives. This, in turn, has a detrimental impact on their professional lives. Women's literacy in India is extremely poor, which explains why a large number of girls residing in substandard living conditions are forced to marry. Also because male is the caregiver, literacy is not seen as a need to have for girls. Agricultural production utilises 60 % of India's workforce, however the majority of the women who work in this industry are not recognised or formally acknowledged. Unsalaries employment is cited as a major component to the wage disparity. Women, in particular, spent two - thirds of their professional lifetime performing unpaid labour in the mistaken prospect of being compensated, per the current Human Development Report.

5. Statistical Analysis

According to the International Labour Organization (ILO), gender pay gap alludes to the distinction in regular wages between men and women occupied with paid employment. With respect to this examination, gender pay gap is utilized as a typical sign of sex disparity in the realm of work and is likewise used to screen progress towards sex equity either nationally or internationally.

Women continue to earn almost 20% less than men, according to the ILO's landmark Global Wage Report 2018/19, which is issued every two years. The gender pay gap has propagated its vengeance over the world, with some differences between the Republic of Korea, which has a significant gender pay disparity of 32%, and Belgium, which has an income gap of only 3%. According to the survey, pay disparity is more prominent in low - income nations such as Namibia than in high - income countries such as Sweden.

Elsewhere in the 2018 World Economic Forum (WEF) gender pay gap assessment, India has been ranked 108, the same as in 2017. With the exception of the pay differences between the sexes, India already has a significant pay imbalance between the developed and developing sectors, various socio - economic regions, and regular and casual workers.

Constitutional Remedies:

The Indian Constitution does not explicitly concede this right as essential or established; however, different arrangements in the Constitution of India point towards the execution of equal pay for equal work. Article 14¹, 15 (1) ²& (3) ³, 16⁴, 39⁵, 42⁶ and 51 (A) (e) ⁷ are specific provisions

¹ Men and women attaining equal rights politically, socially and economically.

² Prohibition of discrimination on grounds of sex or caste.

³ Provisions for positive discrimination towards women.

⁴ Provisions in support for women and children.

⁵ State policies concerning equal pay for all genders.

that contribute to validating equal pay for equal work. However, the Equal Remuneration Act, 1976 not only grants women the right to seek equal wages, but it also permits them to contest any discrimination in recruiting, job training, promotions, and transfers within the company.

The Equal Remuneration Act of 1976 (ERA) forbids both men and women from being paid differently for accomplishing the 'same work or work of similar nature' and defines 'same work or work of similar nature' to mean "*work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment.*"

Through the case of *Kishori Mohanlal Bakshi v. Union of India* (1962)⁸, the concept of equal pay for equal work came to light. However, the same was rejected by the Supreme Court's judgement due to its complex nature, which made incorporating the principle in the Court of Law difficult. Albeit the initial disagreement, the Supreme Court ruled that the concept of equal pay for equal work would be recognized as constitutionally valid instead of being established and administered as a fundamental right. It was through the case of *Randhir Singh v. Union of India* (1982)⁹ that the central Court came to this landmark decision.

Separate Acts that contribute to equal pay:

- 1) Factories Act, 1948: This Act aimed to control and regulate the working conditions of workers who were recruited in labour induced workplaces such as factories and industries.
- 2) Workmen's Compensation Act, 1923: Seeks to provide financial security to the labourer's family in the event of an accident by payment of compensation by providing money. This specific act brought forth provisions only for a specific worker category. However, This act gave leeway for extreme exposure to exploitation.
- 3) Minimum Wages Act, 1948: The employed workforce in India were underpaid and had no say in their salary negotiations. This act brought such an issue into the limelight and resolved to solve the same by fixing minimum wages for all.
- 4) Contract Labour (Regulation and Abolition) Act, 1970: By primarily focusing on better working conditions for women, this Act aimed to provide and establish specific provisions for the benefit of women. This included fixed working hours and particular utilities.
- 5) Code of Wages 2019: The Code of Wages' initial series of principles tackles anti - discrimination, outlawing prejudice against workers on the basis of sexuality in pay rate matters. Except in circumstances where recruitment

of women in certain work is banned or restricted by law, the Code on Wages bans discrimination in the hiring of any employee and in the employment contracts.

Flaws in the amended Act (Code of Wages, 2019):

In August 2019, the Equal Remuneration Act 1976 ('ERA'), which addressed equal pay for equal labour for genders, was abolished and replaced with the Code on Wages 2019. This may have been a chance to remedy fundamental inadequacies in India's legal and regulatory framework with respect to wage equality. Consequently, the possibility has been blown. By steering away from the paradigm of males and females and addressing the necessity of equal pay for all genders, the Code makes steps and advances toward extending the law's provisions to other marginalized genders, including transgendered individuals. The Code of Wages Act also advances by eliminating Section 16 of the Equal Remuneration Act, which authorized the State to declare that the income gap amongst men and women in any institution or profession was attributable to a criterion other than gender. The Act also replicates the Equal Remuneration Act shortcomings, such as forcing companies to give employees equal earnings for the same task or employment of similar type.

Courts have interpreted the phrase "same work or work of similar nature" quite stringently. Female employees performing the same work as males, such as transcription, sweeping, and packaging, have filed legitimate ERA petitions. Courts have not established a more fundamental parallel. This is perplexing, given that the ERA defined "same work or work of similar nature" as jobs that require the same degree of proficiency, commitment, and accountability. Raising children, like operating equipment, demands tremendous ability, work, and commitment, and so both professions deserve better salaries. The phrase 'same work or work of comparable character' has, however, constrained the tribunals' inventiveness in terms of plausible analogies.

By maintaining the same terminology as the Equal Remuneration Act, 1976 the Code of the Wages Act reproduces this constrained inventiveness. It may have used the terminology of 'equal compensation for equal work' instead. In the end, gender based remuneration mirrors the patriarchal world's unequal valuation of women's labour. Equal pay for "job that is the same or identical in nature" can only get us so far in a society where employment discrimination is frequent and women are entrenched in low - paying, moderate jobs. Wage equality for equitable labour might assist reduce the sexist discounting of employment predominantly undertaken by women by mandating women to be compensated more now for work that is similar in skill, knowledge, labour, and responsibility to work predominantly handled by males.

6. Conclusion

Notwithstanding these legislative, governmental, and administrative initiatives, India's dilemma of wage discrimination for balanced work prevails. To resolve this concern, the government has developed separate regulations, and numerous judicial decisions across India ultimately have

⁶ Provisions passed down by the State for proper working conditions for women.

⁷ Prohibition of derogatory practises towards women.

⁸ *Kishori Mohanlal Bakshi v. Union of India* (1962) 1961 - LL - 0411 - 1

⁹ *Randhir Singh v. Union of India* 1982 AIR 879, 1982 SCR (3) 298

contributed to the acknowledgment of equal pay as a constitutional provision for equality in the workplace. This has already resulted in significant enhancements in the situation. Workers are now stepping up and defending out for their privileges, and that there are indicators and claims of a reduction in gender based discrimination in the workplace. The above is putting enormous pressure on the State to strengthen labour standards and regulation.

It's indeed vital that ongoing efforts are made to sensitize and enlighten the working class about their claims to equitable remuneration. Actions should be adopted to establish organizations that will travel to remote regions and educate the women living there that they have the very same right to receive equal wages as male employees performing the same job. These female workers should be educated on the various provisions relating under various acts, as well as the agencies to which they can turn if they are subjected to discrimination. Corporations should also have an anti - discrimination policy and procedures that outlines the company's right to delivering compensation for equal labour and specifies a process for resolving any allegations to the contrary.