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2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

GENDER PAY PARITY - A DISTANT DREAM

By: Mausam Parikh

Chapter 1: Introduction

STATEMENT OF PROBLEM

Each individual, who does any work, anticipates and merits a remuneration which ought to be in standard with the work and it ought to be equivalent for every one of the individuals who are doing likewise work. It is sufficiently reasonable that if there are two individuals doing likewise work, they ought to get a similar sort of reward for it. But gender inequality in paying remuneration, i.e., gender pay parity exists on a large scale and women are being paid unequal wages for equal work just because of their gender.

REVIEW OF LITERATURE

(1) Somrita Ghosh, *Equal pay for equal work still a distant dream for Indian women*, BUSINESS STANDARD (March 8, 2018, 3:15 PM), https://www.business-standard.com/article/news-ians/equal-pay-for-equal-work-still-a-distant-dream-for-indian-women-march-8-is-international-women-s-day-118030800572_1.html

The article talks about findings of one of the surveys conducted by International Labour Organisation (ILO) in 2017 regarding gender pay parity.

(2) MJ Antony, *Pay parity in retreat*, BUSINESS STANDARD (January 29, 2013, 2:54 AM), https://www.business-standard.com/article/opinion/m-j-antony-pay-parity-in-retreat-108112601078_1.html

The article talks about the judgement in the case of Randhir Singh V. Union of India.

(3) Sulekha Nair, *From crèches to equal pay for equal work :India Inc shows how to make workplaces friendlier for woman*, FIRSTPOST (March 10, 2016, 10:49 AM), <https://www.firstpost.com/business/living-business/from-creches-to-equal-pay-for-equal-work-india-inc-shows-how-to-make-workplaces-friendlier-for-women-2663100.html>

The article includes suggestions and steps towards reducing gender pay parity.

(4) Aimee Picchi, *Equal Pay Day: 5 key points about the gender wage gap*, CBS NEWS (April 4, 2017, 8:32 AM), <https://www.cbsnews.com/news/equal-pay-day-5-key-points-about-the-gender-wage-gap/>

This article, through key points, talks about how the problem is much bigger than what deeper we would have anticipated.

(5) Lotika Sarkar, "Status of women and law as an instrument of Social change", K.L.T. 1982, p.262.

It talks about the mentioning of gender equality in the preamble of the charter of the United

Nations Organization (UNO).

(6) Vol.4, D.C.Jain: "Equal Pay for Equal Work: Constitutional Ramification", Award Digest, Journal of Labour Legislation, 1986, p. 109.

It talks about the Article 39 of the Constitution.

OBJECTIVES

- To analyze the judicial approach towards gender pay parity
- To know the causes behind the existing unequal scenario
- To list suggestions for reducing gender pay parity

HYPOTHESIS

1. Equal pay for equal work leads to the realization of equality among females in the spheres of economic life.
2. Equal pay for equal work must be applied for the equal work of equal value.
3. The notion- women are considered to be naturally inferior and henceforth, incapacitated from getting equally remunerated, needs to be changed.
4. The constitution in its basic structure annihilates bias.
5. There is a need for enforcing stricter applicability of laws regarding equal remuneration for equal work to reduce the existing pay gap between men and women doing equal work.

RESEARCH QUESTIONS

1. Whether the judiciary plays a pivotal role in enforcing equalism in reducing gender pay parity or not?
2. Whether the huge pay gap among males and females creates a serious impact in financial growth of the country?
3. Whether women are subjected to discrimination because of causes, apart from socio-cultural causes?

METHODOLOGY

Law is a normative science that is, a science which lays down norms and standards for human behaviour in a specified situation or situation enforceable through the sanction of the state. What distinguishes law from other social science is its normative character. This fact along with the fact that stability and certainty of law are desirable goals and social values to be pursued, make doctrinal research to be of primary concern to a legal researcher.¹

The study conducted here is doctrinal. It is based on analytical research. It is an explanatory kind of research as the sub-topics have been analyzed in a genuine manner. Secondary sources of data have been used as various news articles, books etc have been referred.

CHAPTERISATION

Introduction

Chapter 2-Introduction to gender pay parity and meaning of

equalism Chapter 3-Findings under ILO 2017 survey

Chapter 4- Aid under Equal Remuneration Act, 1976 and Constitutional aspects to gender pay parity

Chapter 5- Causes leading to gender pay

parity Chapter 6- Impacts of gender pay

parity

Chapter 7-Suggestions to reduce gender pay parity

FOOTNOTES/ENDNOTES

1. S.N. Jain “Doctrinal and Non-Doctrinal Legal Research”, 17th Journal of Indian Law Institute(1975) 519.

Chapter 2: Introduction to gender pay parity and meaning of equalism

The term ‘equal pay for equal work for both men and women’ means equal pay for equal work for everyone and as between the sexes. Black Dictionary of law, fifth edition defined the word equal means alike, uniform on the same place or level with respect to efficiency, worth, value, amount or rights.¹

Equal pay principle whereby, given a specific occupation, the rate of pay should be the same for both sexes out being the same,² Shorter Oxford English Dictionary Sixth Edition define equal pay means (the policy of giving) the same rate of pay for a particular job irrespective of the sex of a person doing it.³

Equalism is a practice, policy and a belief that all human beings should be regarded as absolutely and completely equal; regardless of gender, race, age, ethnic origin or any other factor that defines our individual differences. Equalism may also be referred to as Egalitarianism which is concerned with establishing sexual, racial, class etc, as equal. Additionally, it is also described as a political doctrine which holds a view that all people in a society should have equal rights from birth.⁴

Due to labour surplus the unemployment and underemployment problems, many men are available, hence, the problem of participation of women, economic activity become serious. Secondly, technological changes, fixation of minimum work load and standardization of wages, rationalization and mechanization of schemes and certain occupations being found hazardous, they have necessitated retrenchment of women workers. The economic reasons involving additional cost is an impediment to women employment. Some employers recruit unmarried women only, on condition to resign their post on getting married. This has been discriminatory, unfair and unjust.⁵

Even in the economically and socially advanced countries while remarkable progress has been made, discrimination still exist. The principle of equal value has not been always fully implemented. In India, in the initial stages when legislation for the protection of workers was

hardly thought of, factory owner taking advantage of the backwardness and social handicaps of the poor classes, recruited women on a large scale at lower wages and made them work under inhuman condition. Unequal pay for similar work is rampant. And, in general, it is not a bad thing for women to stand up and ask for more if they think they deserve it. It is probably true that those who prefer to suffer in silence will get less justice than those who do not. In a more gender-balanced world, pay skew would be far lower not only between the sexes, but even within the same gender. If we accept the basic premise that women build networks of communication while men build rigid hierarchies, pay structures will (or should) follow a different logic from what they do now.⁶

Chapter 3: Findings under ILO 2017 survey

There have been quite a few significant surveys in the recent past that have attempted to throw light on the existing difference between men and women in pay scales. The findings of one such survey conducted by the ILO in 2017, for instance, point to the extreme levels of disparity in wages for women in India. The survey, quite clearly, reflected that men earn more than their women counterparts for similar jobs. The gap in many cases is as staggering as 30 per cent. Data from

the Monster Salary Index (2016) suggests that gender pay gap in India is still thriving. According to the Index, the median gross hourly salary for men was Rs 345.8 whereas it was only Rs 259.8 for women. "The gender pay gap on average was 25 per cent in 2016. This figure varies across industries, however. In the manufacturing sector, the gender pay gap was 29.9 per cent whereas in the IT sector it was a whopping 38.2 per cent," the Index said. And to say that the gap is only in wages is quite inappropriate as another recent survey conducted by ILO shows that the gender gap in the labour force has increased in recent years. The data revealed that India's FLFP rate has remained visibly low and it ranks at 121 out of 131 countries, one of the lowest in the world. India had the lowest FLFP rate in South Asia, with the exception of Pakistan. Globally, only parts of the Arab world had lower FLFP rates than India. The largest number of women is in the unorganised sector and the problem with gender wage gap is in sectors like garments and agricultural industries. In the organised sector, there is less chance of a wage gap, but there are no social securities and no laws which govern the unorganised sector. That is why the wage gap is alarming. There are no women in certain fields like chemical or civil engineering, we still find less women choosing this.

Simultaneously, there are certain professions where the gender balance is the other way, like in the professions of nursing and domestic work. So, creating a different work field for men and women is not a solution. Hence, although the laws for protecting equal wage rights are not sufficient in India, the existing ones have to be put to use.⁷

Chapter 4: Aid under Equal Remuneration Act, 1976 and Constitutional aspects to gender pay parity

The object of the Equal Remuneration Act 1976 is to provide for the payment of Equal Remuneration to men and women workers and for the prevention of the discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. Under section 4 of the Act, the employer is under legal duty to pay equal remuneration to men and women workers for the work or work of a similar nature. There shall be no discrimination while recruiting men and women workers. However, there have been multiple laws to protect the right of equal pay for both the genders, such as the "Equal Remuneration Act of 1976", which was passed with the aim of providing equal remuneration to men and women workers and to prevent discrimination on the basis of gender in all matters relating to employment and employment opportunities. This legislation not only provides

women with a right to demand equal pay, but any inequality with respect to recruitment processes, job training, promotions and transfers within the organisation can also be challenged under this Act.⁸

The principle of equal pay for equal work for men and women embodied in Article 39(d) of the Constitution was first considered in *Kishori Mohanlal Bakshi vs. Union of India* in 1962. The Supreme Court then said that it was not capable of being enforced in a court of law. In 1982, when the affirmative action began to flow in the Supreme Court, the thinking changed and in *Randhir Singh vs. Union of India* it was unequivocally ruled that the principle was not an abstract doctrine and could be enforced by reading into it the equality precepts enshrined in Articles 14 and 16.

However, the Supreme Court took another turn by 1988 and veered round to the view that the principle cannot be enforced and it should remain only as a guiding star for the law makers and judiciary.⁹

The principle of "equal pay for equal work" is not expressly declared by our constitution to be a fundamental right, but it certainly is a constitutional goal. The directive principle under Article 39(d) of the constitution proclaims "equal pay for equal work" for both men and women means equal pay for equal work for everyone and as between the sexes. Directive Principles have to be read into the fundamental rights as a matter of interpretation. Article 14 enjoins the state not to deny to any person equality before the law or the equal protection of laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.¹⁰

Article 39 deals with certain principles of policies to be followed by the state. It has been laid down that "equal pay should be given to men and women doing equal work". This article, which apparently envisages equality of pay for men and women, has been applied to enforce equality of pay generally.¹¹

In *Randhir Singh vs. Union of India*, the Supreme Court held that the principle of "equal pay for equal work" though not a fundamental right is certainly a constitutional goal and, therefore, capable

of enforcement through constitutional remedies under article 32 of the constitution. The doctrine of equal pay for equal work is equally applicable to persons employed on daily wage basis. They are entitled to the same wages as other permanent employees in the department employed to do the identical work.¹²

Besides, the principle of gender equality in the matter specifically embodied in the Article 39(d), the Supreme Court has extracted the general principle of equal pay for equal work by reading Article 14, 16 of the Constitution of India. The Supreme Court has emphasized in *Randhir Singh*, referring to Article 39(d), that the principle of "equal pay for equal work" is not an abstract doctrine but one of substance. Though, the principle is not expressly declared by the constitution to be a fundamental right yet it may be deduced by construing Article 14 and 16 in the light of Article 39(d).¹³

Equal pay for men and women for the equal work is a vital subject of great concern to society in general and employees in particular, a disparity in wage payment leads to unrest and discontent.¹⁴

Chapter 5-Causes leading to gender pay parity

Why does a gender pay gap still persist? Much of the gap has been explained by measurable factors such as educational attainment, occupational segregation and work experience. The narrowing of the gap is attributable in large part to gains women have made in each of these dimensions. But other factors that are difficult to measure, including gender discrimination, may contribute to the ongoing wage discrepancy. Family care giving responsibilities, particularly motherhood, can lead to interruptions in career paths for women and can have an impact on long-term earnings. Even though women have increased their presence in higher-paying jobs traditionally dominated by men, such as professional and managerial positions, women as a whole continue to be overrepresented in lower-paying occupations. This may also contribute to gender differences in pay.¹⁵

Overall, marriage has a positive link to labour force participation for men, but not a clear link for women. Married men are more likely than unmarried men to be in the workforce. Among women, unmarried women are slightly more likely to be working. A major factor in reducing the gender gap in earnings is that women have upgraded their educational attainment, and younger women have surpassed men in college graduation rates.¹⁶ There are also socio-cultural biases that men can be better team leaders and will be able to contribute more in a profession.¹⁷

Another reason is the confidentiality which applies in most countries on wage conditions, and the lack of legislation on transparency of remuneration, make it hard to reveal inequalities in the wages for equal work or work of equal value between men and women. Victims or potential victims of discrimination in relation to pay may not be aware of discrepancies in their salaries or benefits due to confidentiality and thus they may not be aware of potential discrimination.¹⁸

Sometimes, pay gaps don't result from overt discrimination. They result from years of unintentional bias that can creep into an organization over time.

One argument is that the pay gap reflects professional choices: Women tend to gravitate toward lower-paid fields like education, the thinking goes, and therefore will earn lower wages. Well, yes and no. While occupational choice is an important issue, it's not the whole story. When men enter a woman-dominated field like teaching or nursing, they actually earn more than women. It's not only that men earn more for doing the same work, but they're more likely to dominate high-paying fields.¹⁹

Chapter 6-Impacts of gender pay parity

The difference in pay not only affects women's spending power, but it also hurts women's retirement plans. Over the course of a woman's lifetime, this pay gap will cost her and her family lost wages, reduced pensions and diminished social security.

Creating equal pay for everyone will increase the amount of national productivity and enhance the ability of companies to gain employees with the promise of a fair work environment, free of discrimination.

We must create equal pay for everyone in order to look forward to a more prosperous future.²⁰

⁸ Ibid

⁹ MJ Antony, *Pay parity in retreat*, BUSINESS STANDARD (January 29, 2013, 2:54 AM), https://www.business-standard.com/article/opinion/m-j-antony-pay-parity-in-retreat-108112601078_1.html

Chapter 7-Suggestions to reduce gender pay parity

To make the workplace a friendly place for women, an organization can come up with the following suggestions:

- (1) More representation of women in workforce-If the number of women is much less than men in an organization, then no matter how many women-friendly policies are introduced, not much can be achieved.
- (2)Flexibility at workplace- Personal exigencies for women are different from those of male employees. Facilities such as satellite offices for expecting or new mothers, telecommuting foremployees on a need basis, work from home options on temporary basis, etc. are some of the interventions which can be provided by an organization.
- (3) Mentoring men to accept women bosses- At times, male employees are not open to working with women bosses. Mentoring should be provided to men to be more accepting of women bosses at the workplace.
- (4) Ingraining women with a sense of self- The home is the first place a girl child gets a sense of self. A girl child is supposed to receive equal treatment at home. Parents should raise children with a strong sense of gender equality. It will ensure that at home and at workplace women would not need to fight for their empowerment.
- (5) Implementing a work from home policy- If more companies adopt the work from home policy, women can utilise their capabilities to seek economic independence and prove their mettle.
- (6) Engaging with women employees- Women tend to feel undervalued compared to their male counterparts, feeling that the sort of work they do was not contributing to the overall success of the organization. It is therefore vital for organisations to focus on engaging and coaching with their female employees and showing them a clear growth path that will convince them that there is no glass ceiling.²¹

Companies could be encouraged to develop a strategic approach to tackling the gender pay gap by considering the following points:

Highlight the issue of equal pay in a context of social responsibility – involving enterprises in self-regulation agreements;

- Provide Certificates or Labels to companies ensuring a monitoring of equal pay or participating in projects for the promotion of equal pay.
- Highlight to employers that promoting equal pay in workplaces will indeed lead to the recruitment of the best and the most talented staff.²²

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¹⁴ Suresh C. Srivastava, *Equal Remuneration for Men and Women*, JILI, 82 (1990).

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¹⁶ *Trends from Government Data*, PEW RESEARCH CENTRE (Dec. 11, 2013), <http://www.pewsocialtrends.org/2013/12/11/chapter-1-trends-from-government-data/>

¹⁷ Somrita Ghosh, *Equal pay for equal work still a distant dream for Indian women*, BUSINESS STANDARD (March 8, 2018, 03:15 PM), https://www.business-standard.com/article/news-ians/equal-pay-for-equal-work-still-a-distant-dream-for-indian-women-march-8-is-international-women-s-day-118030800572_1.html

¹⁸ *Equal Pay for Equal Work and Work of Equal Value: the Experience of Equality Bodies*, EQUINET-THEEUROPEAN NETWORK OF EQUALITY BODIES, (Dec. 2013), http://www.equineteurope.org/IMG/pdf/equal_pay_report_publication_.pdf

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