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CONCEPTUAL ANALYSIS OF EQUAL PAY AND GENDER JUSTICE IN INDIA: LAW VS WORKPLACE REALITY

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ABSTRACT

While India's constitution and laws are quite strong, the gender pay gap stands out as one of the most persistent indicators of structural inequities in the labour market. This project aims to carry out a conceptual exploration of the intersection between equal pay laws on the paper vs. in practice. It analyses constitutional principles of principle of equal pay, as enshrined in Articles 14, 15 and 39(d), the growth of the law on this subject from the inception of the Equal Remuneration Act, 1976, to the Code of Wages, 2019, and the evolution of the judicial principles of the concept through some key judicial decisions, like the observations made in the cases of Randhir Singh v. Union of India, State of Madhya Pradesh v. Pramod Bhartiya, and State of Punjab v. Jagjit Singh. In this normative context, the project surveys empirical evidence of the continuance of the wage gap, using data from the Periodic Labour Force Survey (PLFS), and outlines structural drivers that perpetuate the wage gap namely, occupational segregation, unpaid burden of care on women, the high prevalence of informality among women and weak enforcement mechanisms. The project comes to the conclusion that the legal framework in India is progressive in terms of aspiration but has not been matched by the corresponding wage outcomes, and suggests concrete suggestions based on the principle of “equal pay for equal work” which include equal pay for equal work, pay transparency in employment and better enforcement.

Keywords - Equal pay, gender pay gap, wage discrimination, Article 39(d), Code on Wages 2019, gender justice, labour law, informal sector.

RESEARCH QUESTION

1. How well does the Indian constitutional and statutory provisions (Articles 14, 15 and 39(d), Code on Wages, 2019) provide a normative guarantee of gender pay equity?
2. Explain the impact of judicial interpretation since the case of Randhir Singh v. Union of India on the scope and enforcement of equal pay doctrine in India.
3. Why has the gender pay gap in India workplaces remained unchanged despite this

legislation?

4. What legislative and institutional changes are needed to bridge the existing gap between the law and actual implementation of equal pay for women workers, as well as for women in the informal sector?

RESEARCH METHODOLOGY

This project is a doctrinal and analytical research. Primarily based on the secondary sources such as the constitution, statutes and reported judgments delivered by the Supreme Court of India, it follows the legal framework related to equal pay. To analyse the gap between the law and the status quo at work, an analytical review of secondary empirical data (based on government surveys as well as reports of international organizations, such as the International Labour Organisation and the World Economic Forum), and existing literature on gender and labour economics has been conducted. This study is not of an empirical and field work type, because it does not collect primary data directly by field work, survey, interview, etc., but is of a qualitative type that synthesises all the legal materials and the results of the empirical studies that have already been published. A comparative reference is also provided to international standards which support the reform suggestions put forward in the final chapter, notably the ILO's Equal Remuneration Convention, 1951 (No. 100) and the European Union's measures on pay transparency.

INTRODUCTION

Gender wage inequality is among the most persistent manifestations of structural discrimination in modern labour markets. Across the globe, women continue to earn less than men for work of comparable value, skill, and responsibility. India is no exception. According to data compiled by the International Labour Organization, India's gender pay gap has persistently hovered between 20 to 30 percent in recent years, with considerable variation across sectors and states.¹ In concrete terms, this means that millions of women workers whether labouring in urban factories, tending to agricultural fields in rural districts, or working in the vast informal economy take home measurably less than their male counterparts, often for the very same work.

The Constitution of India, particularly through Articles 14, 15, and 39(d), ensures equality by

¹International Labour Organization. (2018). *Global wage report 2018/19: What lies behind gender pay gaps*. International Labour Office.

prohibiting wage discrimination based on sex and promoting the principle of equal pay for equal work. These constitutional guarantees have been further supported by legislative measures such as the Equal Remuneration Act, 1976 and the Code on Wages, 2019. Judicial pronouncements from the Supreme Court of India have elaborated the doctrine of equal pay for equal work as a fundamental right. Yet despite this robust normative framework, workplace reality tells a different story one of entrenched discrimination, enforcement failures, occupational segregation, and cultural norms that combine to keep women's wages below those of men.

The present project undertakes a conceptual analysis of this troubling tension between the law as it stands on paper and the law as it actually operates in practice. It examines the legislative history, constitutional foundations, and judicial development of equal pay law in India, before turning to the empirical evidence of wage discrimination and the structural barriers that frustrate legal remedies. The project does not merely seek to describe this gap it seeks to diagnose its root causes and propose concrete directions for meaningful reform.

STATUTORY FRAMEWORK

CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

Constitutional Guarantees

The Constitution of India provides multiple and overlapping layers of protection against gender-based wage discrimination. Article 14 guarantees equality before the law and equal protection of laws to all persons without distinction. Article 15(1) explicitly prohibits the State from discriminating against any citizen on grounds of sex, while Article 15(3) and this is a provision often underappreciated actually empowers the State to make special provisions in favour of women and children, recognising that formal equality alone is insufficient to address historical disadvantage. Most directly on point, Article 39(d) directs the State to ensure equal pay for equal work for both men and women.²

The Supreme Court of India gave transformative constitutional significance to Article 39(d) in the landmark case of *Randhir Singh v. Union of India* (1982), where it held and it is humbly submitted that this was a watershed moment in Indian labour jurisprudence that the directive principle of equal pay for equal work, though not itself a fundamental right, is fully capable of being enforced through Articles 14 and 16 when wage discrimination is established.³

²Basu, D. D. (2020). *Introduction to the constitution of India* (23rd ed., pp. 312–318). LexisNexis India.

³*Randhir Singh v. Union of India*, AIR 1982 SC 879 (India).

Subsequent decisions have built steadily upon this foundation, holding that workers performing identical duties under different designations cannot be paid unequally merely on account of the label attached to their posts.

The Equal Remuneration Act, 1976

For over four decades, India's primary statutory instrument for combating gender-based wage discrimination was the Equal Remuneration Act, 1976. The ERA imposed a clear and non-negotiable duty upon employers to pay equal remuneration to men and women workers for the same work or work of a similar nature, and also prohibited discrimination in recruitment, training, transfers, and promotions on the basis of sex.⁴ Employers were further required to maintain records of worker pay rates, thereby in theory enabling enforcement bodies to detect discrepancies.

The Code on Wages, 2019

The Code on Wages, 2019 subsumed and repealed the ERA along with three other wage-related statutes as part of India's broader labour law consolidation initiative. The Code retains the core principle of equal remuneration and prohibits an employer from paying wages to any employee at a rate less favorable than that paid to employees of a different gender in the same establishment for the same work or work of a similar nature.⁵ It also strengthens the definition of 'wages' to cover a broader range of remuneration components, which reduces though does not eliminate the scope for employers to circumvent equality obligations through clever structuring of pay packages.

While the Code does represent a legislative improvement in certain respects for instance, by strengthening inspection mechanisms and raising penalties scholars and labour rights practitioners have rightly pointed out that it does not substantively deepen the equal pay framework beyond what the ERA provided. Crucially, and this is a point that deserves serious attention, the Code like its predecessor focuses narrowly on identical or similar work rather than adopting the far more meaningful and internationally recognised concept of equal pay for work of equal value, which is the standard mandated by the ILO's Equal Remuneration Convention, 1951 (No. 100).

⁴Equal Remuneration Act, 1976, s. 4, No. 25, Acts of Parliament, 1976 (India). Ministry of Law and Justice, Government of India.

⁵Code on Wages, 2019, s. 3(1), No. 29, Acts of Parliament, 2019 (India). Ministry of Law and Justice, Government of India.

JUDICIAL ANALYSIS

JUDICIAL INTERPRETATION AND DEVELOPMENT

Indian courts have played a significant though at times uneven role in developing the jurisprudence of equal pay. Beyond the foundational decision in *Randhir Singh*, it is pertinent to note the Supreme Court's ruling in *State of Madhya Pradesh v. Pramod Bhartiya* (1993), where the Court reiterated with some force that persons doing identical work must receive identical pay, and that differential treatment based merely on mode of appointment or service classification cannot be sustained.⁶ This decision, in my respectful submission, correctly identified that the arbitrary use of service categories to maintain discriminatory wage structures is wholly inconsistent with the constitutional guarantee of equality.

The position of law was further clarified and strengthened in *Punjab & Sind Bank v. Darbara Singh Dhaliwal* (2018), where the Court elaborated that the doctrine of equal pay for equal work applies not only in cases of direct wage discrimination but also where differential pay structures are maintained through arbitrary classification that has no rational nexus with the work actually performed.⁷ These judgments demonstrate that Indian constitutional law has, gradually but perceptibly, broadened the scope of equal pay principles. However and this must be stated plainly access to judicial remedies remains deeply and structurally unequal. Litigation is expensive, protracted, and practically inaccessible to the vast majority of women workers, particularly those in the informal sector, domestic work, or agricultural labour. The benefits of progressive court decisions have, by and large, accrued to organised sector workers with sufficient resources and union support to pursue claims.⁸

Perhaps the most far-reaching judicial intervention in recent times came in *State of Punjab v. Jagjit Singh* (2017), where a Constitution Bench of the Supreme Court unanimously held that temporary and contractual workers performing the same duties as regular employees are entitled to the same wages. The Court firmly rejected the practice of maintaining dual wage structures based solely on employment status, grounding its reasoning in the constitutional guarantee of dignity and the prohibition on exploitative labour practices.⁹ The Court's unambiguous signal that wage parity is not a discretionary benefit but an enforceable constitutional right deserves to be welcomed though, as the empirical evidence discussed in the next chapter makes clear, the gap between judicial pronouncement and workplace reality

⁶State of Madhya Pradesh v. Pramod Bhartiya, (1993) 1 SCC 539 (India).

⁷Punjab & Sind Bank v. Darbara Singh Dhaliwal, (2018) 11 SCC 596 (India).

⁸Galanter, M. (1984). *Competing Equalities: Law and the Backward Classes in India* (pp. 42-58). Berkeley: University of California Press.

⁹State of Punjab v. Jagjit Singh, 3 SCC 39 (Supreme Court of India 2017).

remains alarmingly wide.

This structural access deficit the inability of the most vulnerable workers to reach the courts underscores an urgent need for proactive enforcement mechanisms that do not depend upon individual workers initiating legal proceedings. It also highlights the need for dedicated legal aid infrastructure specifically designed to support women in wage discrimination claims.¹⁰

COMPARATIVE PERSPECTIVES

A comparative examination of equal pay regulation in other major jurisdictions offers valuable perspective on the strengths and limitations of India's own framework, and helps to identify reform pathways that have proven workable elsewhere.

United States

The United States adopted early legislative recognition of the equal pay principle through the Equal Pay Act, 1963, which prohibits wage discrimination on the basis of sex for jobs requiring substantially equal skill, effort, and responsibility performed under similar working conditions.¹¹ Enforcement was significantly strengthened through the Lilly Ledbetter Fair Pay Act of 2009, enacted after the Supreme Court's restrictive ruling in *Ledbetter v. Goodyear Tire & Rubber Co.*, which reset the limitation period for pay discrimination claims with each discriminatory paycheck rather than confining it to the original discriminatory pay decision.¹² Despite this comparatively long legislative history, empirical research continues to document a persistent gender wage gap in the American labour market, with women earning substantially less than men on average, a gap that widens considerably along racial and ethnic lines.¹³ The American experience is revealing for India, as it has shown that even when there is enduring legislative security wage gaps can persist without a strong enforcement mechanism, pay transparency, and adequate remedies for the cumulative and continuing impact of wage discrimination.

United Kingdom

The United Kingdom's approach is anchored in the Equality Act 2010, which consolidates earlier equal pay legislation and implies an equality clause into every contract of employment,

¹⁰Jain, M. P. (2018). *Indian constitutional law* (8th ed., pp. 901–912). LexisNexis India.

¹¹ Equal Pay Act, 1963, 29 U.S.C. § 206(d) (United States).

¹² Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (United States).

¹³ Blau, F. D., & Kahn, L. M. (2017). The gender wage gap: Extent, trends, and explanations. *Journal of Economic Literature*, 55(3), 789–865. <https://doi.org/10.1257/jel.20160995>

entitling employees to the same contractual terms as a comparator of the opposite sex engaged in like work, work rated as equivalent, or work of equal value.¹⁴ A significant innovation came with the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, which require private and voluntary sector employers with 250 or more employees to publish annual gender pay gap data, including mean and median pay gaps and the distribution of men and women across pay quartiles.¹⁵ The measure of compulsory disclosure has given rise to significant shareholder and public demands upon employers to address the pay gap, highlighting the role disclosure-based regulation is intended to play as a complement rather than a replacement to substantive equal pay guarantees. India's lack of a similar reporting requirement is striking, however, and one of the most easily achievable of policy changes that can be made.

European Union

The European Union has moved furthest among major jurisdictions in operationalising the principle of equal pay for work of equal value. Directive (EU) 2023/970 obliges member states to require employers to disclose pay levels to job applicants, prohibits employers from asking about pay history, and mandates joint pay assessments where reported gender pay gaps exceed five percent and cannot be justified by objective, gender-neutral factors.¹⁶ The fundamental change in the burden of proof with the introduction of the prima facie case of pay discrimination in equal pay litigation in the Directive strikes at the evidentiary imbalance faced by the claim in India, where the absence of pay data is pervasive. The European model has a logical regulatory apparatus that includes transparency, audit requirements, and litigation reform and serves as a blueprint for India's more limited reform measures.

CRITICAL ANALYSIS

WORKPLACE REALITY: THE PERSISTENCE OF THE GENDER PAY GAP

Empirical Evidence

The empirical evidence on India's gender pay gap is, frankly, striking in its consistency and its gravity. Periodic Labour Force Survey data year after year shows that women earn significantly less than men across nearly all occupational categories not as an occasional aberration but as a

¹⁴ Equality Act 2010, c. 15, s. 66 (United Kingdom).

¹⁵ UK Government Equalities Office. (2023). Gender pay gap reporting: Guidance for employers. HM Government.

¹⁶ European Parliament and Council. (2023). Directive (EU) 2023/970 on strengthening the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. Official Journal of the European Union.

structural feature of India's labour market. In the manufacturing sector, women's average daily wages are approximately 65 to 70 percent of men's wages. In agriculture which employs the single largest share of India's female workforce women typically earn only 70 to 80 percent of the wages paid to male agricultural labourers for comparable tasks.¹⁷ According to the Periodic Labour Force Survey 2021–22, women's average wages across regular salaried employment remain approximately 76 percent of men's wages at comparable levels.¹⁸

What is particularly important to understand and what is often missed in popular discourse is that these disparities are not merely artefacts of women working in lower-paid occupations or sectors. Even after rigorously controlling for education, experience, occupation, and working hours, a significant unexplained wage gap persists. This 'adjusted' gap directly reflects wage discrimination in its most basic sense. It is therefore no surprise that India ranks 127th out of 146 countries in the World Economic Forum's Global Gender Gap Report 2023, with its dismal ranking driven substantially by its poor performance on economic participation and opportunity indicators, including wage parity.¹⁹

Structural Causes of the Pay Gap

The gender pay gap in India persists due to several deeply rooted structural factors, and it would be an error a serious one to attribute the problem solely to individual employer prejudice or inadequate legislation, though both certainly play their part. The first and perhaps most fundamental structural factor is occupational segregation, which channels women into lower-paid, labour intensive, or care-oriented roles that are systematically undervalued relative to male-dominated occupations requiring comparable skill or effort. The social devaluation of women's labour rooted in patriarchal assumptions about gender roles that remain remarkably persistent in Indian society is directly reflected in wage structures that disadvantage feminised occupations.²⁰

Second, the disproportionate and largely invisible burden of unpaid care and domestic work borne by women severely constrains their labour market participation and earning capacity. Women who take career interruptions for caregiving responsibilities tend to face steep wage penalties upon return to work, and many women are compelled to accept lower-paid or part-

¹⁷Ministry of Statistics and Programme Implementation. (2022). *Periodic labour force survey annual report 2021–22*. Government of India. <https://www.mospi.gov.in>

¹⁸Ministry of Statistics and Programme Implementation. (2022). *Periodic labour force survey annual report 2021–22*. Government of India. <https://www.mospi.gov.in>

¹⁹World Economic Forum. (2023). *Global gender gap report 2023*. World Economic Forum.

²⁰Anker, R. (1998). *Gender and jobs: Sex segregation of occupations in the world* (pp. 3–38). International Labour Organization.

time positions in order to balance paid employment with household duties. This 'motherhood penalty' is well-documented in Indian data and reflects among other things the woeful inadequacy of state support for childcare, eldercare, and family leave in this country.²¹

Third, and perhaps most consequential from a legal enforcement perspective, is the informality of a large share of women's employment, which renders them effectively invisible to legal regulation. Approximately 95 percent of India's female workforce is in informal or unorganised employment a staggering proportion where labour laws are poorly enforced, written contracts are absent, and workers have little practical ability to assert rights or challenge wage disparities. Domestic workers, home-based workers, and casual agricultural labourers predominantly women fall entirely outside effective legal protection, and the law as it stands today offers them almost nothing.²²

Enforcement Gaps and Institutional Failures

The enforcement infrastructure for equal pay law in India is, to put it bluntly, critically inadequate for the task it is supposed to perform. Labour inspectorates are chronically understaffed: with a ratio of inspectors to workers that falls far below ILO-recommended standards, proactive detection of wage discrimination is practically impossible in most states. Complaint-driven enforcement mechanisms are frustrated by workers' lack of awareness of their rights, fear of employer retaliation, social and cultural pressures to silently accept prevailing wage norms, and the practical inability of women in informal employment to afford any form of legal representation.²³

Employer compliance is further and significantly undermined by the complete absence of pay transparency obligations in Indian law. In the absence of any legal requirement for employers to disclose wage data broken down by gender, workers and regulators alike are deprived of the very information they would need to identify and challenge discriminatory pay practices. This stands in sharp and unflattering contrast to the approach taken in several European jurisdictions, where mandatory pay reporting and pay audits are now legally required of large employers a reform that has demonstrably improved wage equity outcomes.²⁴

²¹Budig, M. J., & England, P. (2001). The wage penalty for motherhood. *American Sociological Review*, 66(2), 204–225. <https://doi.org/10.2307/2657415>

²²National Commission for Enterprises in the Unorganised Sector. (2009). *The challenge of employment in India: An informal economy perspective* (Vol. 1, pp. 67–89). Government of India.

²³International Labour Organization. (2006). *Labour Inspection: A Guide to the Profession* (Labour Administration and Labour Inspection Programme Working Paper No. 1). Geneva: International Labour Organization.

²⁴Rubery, J., & Grimshaw, D. (2015). The 40-year pursuit of equal pay: A case of constantly moving goalposts. *Cambridge Journal of Economics*, 39(2), 319–343. <https://doi.org/10.1093/cje/beu053>

CONCLUSION AND SUGGESTIONS

CONCLUSION

The analysis presented in this project reveals a deep, persistent, and frankly troubling disjunction between the aspirational norms of India's equal pay framework and the wage realities experienced daily by women workers across the country. India's constitutional commitments and legislative architecture provide a formally progressive foundation for gender pay justice, and judicial interpretation has progressively expanded the doctrinal reach of equal pay principles. Yet and this cannot be overstated these legal instruments have conspicuously failed to produce commensurate change in the wage outcomes of the majority of India's female workforce. The law on the books and the law in action remain worlds apart.

The root causes of this failure are structural, institutional, and cultural all at once. The factors that sustain the wage gap between men and women are not limited to any single domain: they include occupational segregation, the crushing unpaid burden of care work, the pervasive informality of women's employment, the failure to enforce existing laws, the tenacious role of patriarchal norms in shaping workplace culture, and the intersectionality between caste and gender that compounds disadvantage for the most marginalised women workers.

In order for India to have a genuine opportunity to achieve true gender pay equity, the State must go beyond formal legal commitments and invest in the institutional, financial, and normative conditions needed to transform legal entitlement into actual economic reality. Equal pay is not merely a matter of legal compliance it is, at its core, a matter of recognising women's dignity, autonomy, and right to full and equal participation in the economic and social life of the nation.

SUGGESTIONS FOR REFORM

Closing the gap between India's equal pay law and workplace reality demands coordinated action on multiple front simultaneously piecemeal reform will not suffice. First, and most fundamentally, the legislative framework must be strengthened to adopt the internationally recognised principle of equal pay for work of equal value, consistent with ILO Convention No. 100.²⁵ This would require the development of gender-neutral job evaluation methodologies that assess the value of work based on objective criteria such as skill, responsibility, effort, and working conditions rather than simply accepting market rates that already embed and reflect existing occupational segregation.

²⁵International Labour Organization. (1951). *Equal remuneration convention, 1951* (No. 100). International Labour Organization.

Second, pay transparency must be mandated through legal requirements for employers above a specified size threshold to report and publish disaggregated wage data by gender and occupational category. Transparency requirements create accountability, enable workers and their representatives to identify and challenge pay discrimination, and provide employers with clear incentives to audit and address pay disparities proactively. Such obligations should be accompanied by mechanisms for joint review and remediation by employer and worker representatives, drawing on the lessons of the European Union's recent legislative initiatives in this area.²⁶

Third, enforcement capacity must be substantially strengthened and this is, in my submission, the reform that would make the greatest immediate difference on the ground. This requires a significant increase in the number of trained labour inspectors, their equipping with modern data analytics tools to proactively identify wage disparities, and the establishment of dedicated equal pay enforcement units within state labour departments. Penalties for non-compliance must be set at levels that genuinely deter violations rather than being treated by employers as a routine cost of doing business. Fast-track adjudication mechanisms for equal pay claims should be established, so that a woman worker earning ₹300 a day does not have to wait years and spend money she does not have to access a remedy that is supposed to be her right.²⁷

²⁶European Commission. (2021). *Proposal for a directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms* (COM (2021) 93 final). European Commission.

²⁷Sankaran, K. (2007). Protecting the worker in the informal economy: The role of labour law. In G. Davidov & B. Langille (Eds.), *Boundaries and frontiers of labour law* (pp. 205–220). Hart Publishing.