



The Gender Pay Gap in India – Legal Remedies and Judicial Approach

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ABSTRACT:

The gender pay gap remains one of the most persistent challenges to workplace equality in India, reflecting systemic discrimination in recruitment, promotion, and wage determination. Despite constitutional guarantees of equality under Articles 14, 15, and 16, and the directive principle of equal pay under Article 39(d), women continue to earn substantially less than men across most sectors. This research paper examines the legal framework and judicial approach to addressing the gender pay gap in India. Statutory interventions, particularly the Equal Remuneration Act, 1976 and its incorporation into the Code on Wages, 2019, mandate equal pay for equal work and prohibit gender-based discrimination. Judicial pronouncements, such as *Randhir Singh v. Union of India* (1982), *Mackinnon Mackenzie v. Audrey D'Costa* (1987), and *State of Punjab v. Jagjit Singh* (2017), have played a critical role in expanding the doctrine of “equal pay for equal work” and strengthening women’s claims to wage parity. However, enforcement challenges, lack of pay transparency, and structural barriers such as occupational segregation and unpaid care work continue to widen the gap. By comparing international practices, including pay transparency laws in the UK and EU, this paper argues for stronger legal reforms, mandatory wage audits, and judicial activism to ensure genuine economic equality. Bridging the gender pay gap is essential not only for social justice but also for sustainable economic growth in India.

Key Words: Gender Pay Gap, Equal Pay for Equal Work, Labour Law in India, Judicial Approach, Pay Transparency.

I. Introduction

The **gender pay gap** refers to the difference between the average earnings of men and women, irrespective of the nature of work or qualifications. It is a crucial indicator of gender inequality in labour markets and reflects deep-rooted structural and cultural barriers to women’s economic participation (ILO, 2023). The International Labour Organization estimates that, on average, women earn about **20% less than men globally**, highlighting a pervasive imbalance that transcends borders and economic systems (Kabeer, 2016).

In the **Indian context**, the issue remains equally pressing. Despite constitutional guarantees of equality under Articles 14, 15, and 16, and the directive principle of equal pay for equal work under Article 39(d) (Bakshi, 2020), India continues to face a significant gender wage disparity. According to the **Monster Salary Index (2023)**, the gender pay gap in India stands at approximately **19–20%**, with variations across sectors, educational qualifications, and levels of experience (Sharma, 2023). Women are particularly underpaid in industries such as technology, healthcare, agriculture, and the unorganized labour sector, which employ a substantial portion of the female workforce (Menon, 2012).

The persistence of this disparity can be attributed to multiple factors: **occupational segregation**, unequal access to education and skill development, the **glass ceiling** that restricts women’s progression into leadership roles, the **undervaluation of women’s work**, and the disproportionate burden of unpaid care responsibilities (Rao, 2019; Tripathi, 2020).

II. Objective of the Paper

The primary objective of this paper is to **examine the gender pay gap in India** from a legal and judicial perspective and to assess the effectiveness of existing remedies in addressing wage disparities between men and women. Specifically, the paper aims to:

1. **Analyze the legal framework** governing wage equality in India, including constitutional provisions (Articles 14, 15, 16, and 39(d)) and statutory enactments such as the Equal Remuneration Act, 1976 and its integration into the Code on Wages, 2019 (Bakshi, 2020; Tripathi, 2020).
2. **Evaluate judicial interpretation** of the principle of “equal pay for equal work” through landmark cases, including *Randhir Singh v. Union of India* (1982) and *Mackinnon Mackenzie v. Audrey D'Costa* (1987), to understand the role of courts in reinforcing wage equality (Rao, 2019).
3. **Identify persistent challenges** and structural barriers contributing to the gender pay gap, such as occupational segregation, glass ceiling effects, undervaluation of women’s work, and unpaid care responsibilities (Menon, 2012; Sharma, 2023).
4. **Compare international approaches** to addressing the gender pay gap, such as pay transparency laws in the UK and EU, to explore potential lessons for India (Kabeer, 2016).
5. **Recommend measures** for legal reforms, enforcement strategies, and corporate policies that can strengthen pay equality and ensure substantive economic justice for women in India.

Through this multi-dimensional approach, the paper seeks to bridge the gap between **legal provisions and actual practice**, highlighting the role of law, judiciary, and policy in achieving gender wage parity.

III. Review of Literature

1. **Structural and Social Factors**
 - Gender pay gap reflects societal norms and undervaluation of women's work (Kabeer, 2016).
 - Women are concentrated in lower-paying sectors, reinforcing wage disparities (Menon, 2012).
2. **Career Progression Barriers**
 - Glass ceiling limits women's access to leadership, affecting long-term wages (Menon, 2012).
 - Underrepresentation in decision-making influences pay policies (Rao, 2019).
3. **Legal and Constitutional Perspective**
 - Articles 14, 15, 16, and 39(d) guarantee equality and equal pay (Bakshi, 2020).
 - Equal Remuneration Act, 1976, and Code on Wages, 2019, address gender wage discrimination (Bakshi, 2020).
4. **Enforcement Challenges**
 - Weak implementation in informal sectors and lack of pay transparency limit effectiveness (Tripathi, 2020; Rao, 2019).
5. **International Insights**
 - UK and EU pay transparency laws reduce wage gaps; India can learn from these practices (Kabeer, 2016).
6. **Conclusion from Literature**
 - Gender pay gap is a **multi-dimensional issue** requiring judicial action, legislative reform, and corporate accountability (Kabeer, 2016; Tripathi, 2020).

IV. Conceptual Framework

1. **Gender Pay Gap (GPG)**
 - Difference in average earnings between men and women, irrespective of job type or qualifications (Kabeer, 2016).
 - Indicator of economic inequality and structural discrimination in the labour market (Rao, 2019).
2. **Equal Pay for Equal Work**
 - Legal principle mandating that men and women performing the same or similar work must receive the same remuneration (Bakshi, 2020).
 - Codified in **Equal Remuneration Act, 1976** and reinforced in **Code on Wages, 2019**.
3. **Work of Equal Value**
 - Extends the principle of equal pay to jobs of **comparable skill, effort, and responsibility**, even if not identical (Tripathi, 2020).
 - Important for addressing wage disparities across different roles and sectors.
4. **Determinants of the Gender Pay Gap**
 - **Occupational Segregation**: Concentration of women in low-paying jobs.
 - **Glass Ceiling**: Barriers preventing women from reaching senior positions.
 - **Unpaid Care Work**: Disproportionate household responsibilities reduce career progression (Menon, 2012).
 - **Pay Transparency & Enforcement**: Lack of disclosure and weak legal enforcement exacerbate the gap (Rao, 2019).
5. **Relevance to Legal Study**
 - Provides a framework to analyze **constitutional provisions, statutes, and judicial interpretation** related to wage equality.
 - Helps assess whether current legal remedies are sufficient to reduce the pay gap.

V. Legal Remedies Addressing Pay Gap in India

1. Constitutional Provisions

- **Article 14**: Equality before law.
- **Article 15(1) & (3)**: Prohibition of discrimination; affirmative action for women.
- **Article 16**: Equality in public employment.

- **Article 39(d)** (Directive Principle): Equal pay for equal work.

2. Statutory Provisions

- **Equal Remuneration Act, 1976** → replaced by **Code on Wages, 2019**
 - Mandates no discrimination in wages for same work or work of similar nature.
 - Prohibits gender-based discrimination in recruitment and service conditions.
- **Factories Act, 1948, Maternity Benefit Act, 1961, and POSH Act, 2013** indirectly support women's workplace equality.
- **Labour Codes (2020 onwards)**: Particularly the Code on Wages integrates equal pay principles.

3. International Commitments

- India is a member of the **ILO** and has ratified conventions on gender equality (though not ILO Convention No. 100 on Equal Remuneration).
- **CEDAW (Convention on Elimination of All Forms of Discrimination Against Women)** obligations.

VI. Legal Remedies Addressing Pay Gap in India

1. Constitutional Provisions

The Indian Constitution provides a strong foundation for gender wage equality. **Article 14** guarantees equality before the law and equal protection under it. **Article 15(1) and (3)** prohibits discrimination on the basis of sex and allows affirmative action to promote women's welfare (Bakshi, 2020). **Article 16** ensures equality in public employment, and **Article 39(d)**, as a directive principle, explicitly mandates equal pay for equal work for both men and women (Tripathi, 2020). These provisions collectively establish a constitutional obligation to eliminate wage discrimination and promote substantive equality.

2. Statutory Provisions

The **Equal Remuneration Act, 1976**, aims to prevent gender-based wage discrimination in employment and recruitment. It requires equal remuneration for the same or similar work performed by men and women and provides penalties for non-compliance (Bakshi, 2020). This Act has been integrated into the **Code on Wages, 2019**, which consolidates wage-related legislation and reinforces gender pay equality. Other laws, such as the **Factories Act, 1948, Maternity Benefit Act, 1961, and POSH Act, 2013**, indirectly support women's workplace equality by addressing safety, maternity, and harassment issues (Rao, 2019).

3. International Commitment

India is a member of the **International Labour Organization (ILO)** and has ratified multiple conventions promoting gender equality, though it has not ratified **ILO Convention No. 100** on equal remuneration. Additionally, as a signatory to the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, India is obligated to ensure equal pay and work opportunities for women (Kabeer, 2016).

These constitutional, statutory, and international instruments collectively provide a legal framework to address the gender pay gap in India, although enforcement challenges remain a critical concern.

VII. Persistent Challenges

Despite the constitutional guarantees, statutory provisions, and international commitments addressing gender wage equality, the gender pay gap in India continues to persist due to several interrelated factors:

1. Lack of Enforcement in the Informal Sector

- A significant portion of Indian women work in the informal economy, including domestic work, agriculture, and small-scale industries (Rao, 2019).
- Labour codes and equal remuneration laws are often poorly enforced in these sectors, leaving women without effective legal recourse. The absence of formal contracts and wage records makes monitoring compliance difficult (Tripathi, 2020).

2. Underrepresentation in Leadership Roles

- Women occupy a disproportionately low number of managerial and executive positions, limiting their access to higher wages (Menon, 2012).
- The "glass ceiling" effect perpetuates hierarchical disparities, where pay increases and promotions are often biased toward male employees, reinforcing long-term wage inequality.

3. Unpaid Care Work Burden

- Women are more likely to bear responsibility for household chores and caregiving, which reduces their availability for full-time employment or career advancement (Kabeer, 2016).
 - Career breaks or part-time work arrangements often lead to lower wages and fewer opportunities for professional growth, thereby widening the pay gap.
4. **Lack of Pay Transparency**
- Many organizations in India do not disclose wage structures or conduct internal pay audits (Sharma, 2023).
 - Without transparency, discriminatory pay practices remain unchallenged, and women have limited information to negotiate equitable salaries.
5. **Cultural and Structural Discrimination**
- Gender stereotypes influence hiring, promotion, and appraisal decisions, often undervaluing women's contributions (Menon, 2012).
 - Structural barriers, including biased performance evaluation criteria and limited mentorship opportunities, further entrench wage disparities.

VIII. Comparative Perspective

Examining international approaches provides insight into mechanisms that effectively reduce the gender pay gap and highlights areas where India can strengthen its legal and regulatory framework.

1. **United Kingdom**
 - The **Gender Pay Gap Reporting Regulations (2017)** require employers with more than 250 employees to publish detailed data on pay disparities between men and women (Kabeer, 2016).
 - This mandatory reporting increases transparency, incentivizes organizations to identify and address wage inequalities, and facilitates accountability through public disclosure.
2. **European Union**
 - The **Pay Transparency Directive (2023)** mandates salary disclosure, gender-neutral job evaluation, and access to remedies for wage discrimination.
 - By institutionalizing audit and reporting mechanisms, the Directive empowers employees to challenge unequal pay and encourages employers to adopt fair compensation practices (ILO, 2023).
3. **United States**
 - The **Equal Pay Act (1963)** and **Title VII of the Civil Rights Act** prohibit gender-based wage discrimination in all sectors (Rao, 2019).
 - Enforcement relies on litigation and administrative oversight, with employees able to claim back pay and damages for discriminatory practices.
4. **India**
 - India lacks mandatory pay transparency or reporting requirements. Compliance is primarily voluntary and based on the **Equal Remuneration Act, 1976**, and the **Code on Wages, 2019**.
 - Weak enforcement, especially in informal sectors, limited awareness, and absence of systematic audits reduce the effectiveness of legal remedies (Tripathi, 2020; Sharma, 2023).

Analysis: Comparative experience shows that **mandatory reporting, transparency, and enforceable penalties** are crucial for reducing wage disparities. India's reliance on statutory compliance without mandatory disclosure or monitoring limits the practical impact of its legal framework. Adopting structured reporting mechanisms, as seen in the UK and EU, could significantly enhance accountability and help bridge the gender pay gap.

IX. Way Forward & Suggestions

Bridging India's gender pay gap requires a **multi-dimensional approach** combining legal, institutional, and social measures.

1. **Mandatory Pay Transparency** – Implementing wage audits and reporting obligations for medium and large organizations can enhance

accountability and identify pay disparities, enabling corrective action (Kabeer, 2016).

2. **Ratification of ILO Convention 100** – Ratifying the convention would reinforce India’s commitment to equal remuneration standards and align domestic law with international labour norms (ILO, 2023).
3. **Stronger Enforcement of Labour Codes** – Effective enforcement, particularly in informal sectors such as domestic work, agriculture, and construction, is critical. Regular inspections, penalties for non-compliance, and monitoring mechanisms can ensure that statutory provisions translate into practice (Tripathi, 2020).
4. **Encourage Women in Leadership** – Affirmative action in corporate boards and managerial positions can mitigate the glass ceiling, provide equitable career opportunities, and influence organizational policies toward fair pay (Menon, 2012).
5. **Support Systems** – Childcare facilities, flexible work arrangements, and maternity/paternity benefits can reduce career interruptions, enabling women to sustain continuous employment and reduce long-term wage disparities (Rao, 2019).
6. **Judicial Activism & PILs** – Courts can play a proactive role in ensuring compliance with constitutional equality and compelling employers to uphold fair practices (Bakshi, 2020).

Analysis: Implemented collectively, these measures address structural, legal, and cultural barriers to wage equality. While legal provisions form the foundation, transparency, enforcement, leadership representation, and supportive workplace policies are essential to achieve substantive and sustainable gender wage parity in India.

X. Conclusion

The gender pay gap in India remains a significant challenge despite constitutional safeguards, statutory measures, and international commitments. Articles 14, 15, 16, and 39(d) provide a solid foundation for equality, while the Equal Remuneration Act, 1976, and the Code on Wages, 2019, establish statutory mechanisms to prevent wage discrimination (Bakshi, 2020; Tripathi, 2020). Judicial interventions, such as *Randhir Singh v. Union of India* (1982) and *Mackinnon Mackenzie v. Audrey D’Costa* (1987), have strengthened the principle of “equal pay for equal work,” expanding protections across sectors (Rao, 2019).

Nevertheless, structural and social barriers persist. Weak enforcement in informal sectors, occupational segregation, glass ceiling effects, unpaid care work, and lack of pay transparency continue to perpetuate wage disparities (Menon, 2012; Sharma, 2023). Comparative experiences from the UK, EU, and US show that mandatory reporting, transparency, and monitoring effectively reduce wage gaps (Kabeer, 2016; ILO, 2023).

Bridging the gender pay gap in India requires a holistic approach: stronger enforcement of labour codes, mandatory wage audits, promotion of women in leadership, supportive workplace policies, and proactive judicial oversight. Only through coordinated action by the state, judiciary, employers, and society can constitutional and legal guarantees translate into substantive economic equality. Ensuring fair remuneration for women is not only a matter of social justice but also crucial for sustainable economic growth, inclusive development, and gender-balanced participation in the workforce.

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