

**Labour and Fundamental Human Rights:  
Is 'Equal Remuneration Law' doing the job it is supposed to do to eliminate the  
'Gender Pay Gap' in India?**

**Prof. S. Shanthakumar<sup>1</sup>**

International Women's Day (IWD), celebrated annually on March 8, reflects on women's political, economic and social accomplishments. It must be said that women have indeed made very significant process in all of these areas since the first IWD in 1911. Around the world, more women than ever now have access to higher education, greater equality in legislative rights and more rewarding opportunities in the labour market. Also, a greater proportion of women than ever before hold high positions in politics, trade unions, business and academia. This does not mean, however, that true gender equality has been achieved. Women are still oppressed in many parts of the world, and are often not enjoying equal pay for work of equal value, or equal rights. Furthermore, women's access to education, health care and paid work has still not reached the same level that men enjoy. This has consequences for their career opportunities because, even though the number of women in high-level positions has increased, there is still a long way to go before true equality is obtained.

The existence of a differential payment for labour market services between men and women is taken as a universal phenomenon in almost all countries regardless of the nature and structure of the economic system. In addition, the gap in wages and earnings between men and women remains entrenched in many countries. In the EU Member States the gender gap in pay was 15 per cent in 2003.<sup>2</sup> In many countries in Asia and the Middle East and North Africa, the gap was upwards of 40 per cent in some sectors.<sup>3</sup> Even within the same occupations the wages and earnings of women tend to be less than those of their male counterparts.

In the last two decades many countries have undertaken liberalization programmes and have opened up their economies to the forces of globalization. India was one of a number of countries that embraced significant market-based reforms in the latter part of the last century. The early 1990s witnessed a radical change in Indian economic policy with rapid liberalization of the trade and industrial policy regimes. Given the structural change ushered in by these economic reforms, an important policy question is the extent to which these have impacted on women.

---

<sup>1</sup> Director, MATS Law School, MATS University, Raipur, Chhattisgarh, India. The author can be contacted through [sk.hnlu@gmail.com](mailto:sk.hnlu@gmail.com) or [director@matslawschool.ac.in](mailto:director@matslawschool.ac.in)

<sup>2</sup> Eurostat estimate 2003 (European Commission, 2005)

<sup>3</sup> Marva Corley, Yves Perardel and Kalina Popova, Wage inequality by gender and occupation: A cross-country analysis, Employment Strategy Papers, Employment Trends Unit, Employment Strategy Department, ILO, 2005/20

The employment situation in India, as revealed by the study of available data, suggests the presence of discrimination against women at all levels. Labour Force Participation Rates (LFPRs) are lower for women than for men, the disparity being particularly high in urban areas.<sup>4</sup> This disparity is a source of some concern, for high labour participation rates for women have been shown to raise nutrition levels for their children, lower mortality rates and raise sex ratios by combating traditional male biases.<sup>5</sup> Many have argued that the labour participation of women is one of the most important indicators of women's empowerment, access to resources, and decision-making ability and thus must be made a central focus of policy.

The broad trend observed in India and perhaps the rest of South Asia and sub-Saharan Africa is that women, out of sheer economic necessity and to meet the high cost of living, cutting across caste, community and religious lines, enter the labour market in a thousand ways which are still to be recognized as economic activity by their governments.

For instance, there are millions of women employed in home-based work, doing piece-rate jobs where they are paid unimaginably low rates. They are quite invisible as they are unregistered workers, without any legislative or social entitlement. Likewise, there are hordes of women employed as domestic workers, who again lack any wage structure or protective legislative system.

Wage differentials have been extensively documented in all sectors of the Indian economy. Within the workforce, two kinds of wage differentials have been found to exist. In the informal sector—where most women are employed—there is evidence of women directly being paid lower wages than men, especially in the agricultural labour sector and the urban informal labour sectors where little effective legislation exists as a disincentive for this practice.<sup>6</sup>

Despite some progress made over the last few decades in increasing women's labour force participation and narrowing gender gaps in wages, gender equality in the world of work still remains an elusive goal. While millions of women have become successful entrepreneurs, women are still grossly underrepresented in the world's board rooms. In particular, in the developing world, women continue to form a large majority of the world's working poor, earn less income, and are more often affected by long-term unemployment than men. This is due to women's socio-economic disadvantages caused by gender-based discrimination and their double roles of being a worker and a care taker for the society. Women often have less access to productive resources, education, and skills development

---

<sup>4</sup> Deshpande, S. and Deshpande, L., 'Gender-based discrimination in the urban labour market', in T. Papola and A. Sharma (eds), *Gender and Employment in India*, New Delhi: Vikas Publishing, 1999

<sup>5</sup> Agnihotri, S., Workforce participation, kinship and sex ratio variations in India in *Gender, Technology, and Development*, Vol. 1 (1), 1997

<sup>6</sup> Gautam Bhan, India Gender Profile, *Report No 62*, Report Commissioned for Sida, BRIDGE (development - gender) Institute of Development Studies University of Sussex, August 2001

and labour market opportunities than men in many societies. Largely, this is because of persistent social norms ascribing gender roles, which are often, slow to change. Furthermore, women continue to undertake most of unpaid care work, which has become an increasing challenge in their efforts to engage in productive work, both in subsistence agriculture and market economy, especially in countries which are negatively affected by environmental change and HIV and AIDS.

‘Pay Gap’ or unequal pay is an issue which has become a matter of concern these days due to an increase in the instances of discriminatory pay scales for the same type of work. India still lacks a comprehensive and transparent wage policy for all the sectors of the economy. This makes the issue of potential demand for equal pay a matter of concern in recent times. Equal pay here relates not only to basic pay but includes other benefits and allowances too.

A study<sup>7</sup> found that increasing trade openness in more-concentrated industries is associated with growing residual wage gaps between men and women employed in India’s manufacturing industries. According to this study’s identification strategy, competition from international trade is associated with an increase in wage discrepancies between men and women. These results support the prediction of the theoretical model that under the condition of an increasing discrimination parameter, international trade can lead to wider wage gaps between men and women. In a scenario with declining rents in the more-concentrated sector post-liberalization, firms appear to have favored male workers over female workers in the wage bargaining process. Rather than competition from international trade putting pressure on firms to eliminate costly discrimination against women, pressures to cut costs due to international competition are hurting women’s relative pay in the manufacturing sector of India. Lack of enforcement of labor standards that prohibit sex-based discrimination, combined with employer and union practices that favour male workers, leaves women with less bargaining power and limited wage gains compared to men.

The Indian Constitution recognized the principle of ‘Equal Pay for Equal Work’ for both men and women, and ‘Right to Work’ through Article 39(d) and 41. Article 39(d) of the Constitution of India provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. These Articles are inserted as Directive Principles of State Policy. This means that, they will serve as guidelines to the Central and State governments of India, which are to be kept in mind while framing laws and policies.

The Convention Concerning Equal Remuneration for Men and Women Workers for work of Equal Value (for short, Equal Remuneration Convention, 1951) was adopted by the General Conference of the International Labour Organization on June 29, 1951. India is one of the parties to the said Convention. Article 2 of that Convention provides that each

---

<sup>7</sup> Nidhiya Menon, Brandeis University & Yana van der Meulen Rodgers, Rutgers University, International Trade and the Gender Wage Gap: New Evidence from India’s Manufacturing Sector, September 2008

member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value and that this principle may be applied by means of (a) national laws or regulations, (b) legally established or recognized machinery for wage determination, (c) collective agreements between employers and workers, and (d) a combination of these various means. Article 3 of the Convention provides that where such action will assist in giving effect to the provisions of the Convention, measures shall be taken to promote appraisal of jobs on the basis of the work to be performed. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or where such rates are determined by collective agreements, by the parties thereto.

Efforts are employed even on legislative fronts - Equal Remuneration Act, 1976 being the prime one amongst them. In order to implement Article 39(d) of the Constitution of India and the Equal Remuneration Convention, 1951, referred to above, the President promulgated on September 26, 1975 the Equal Remuneration Ordinance, 1975 so that the provisions of Article 39(d) of the Constitution of India might be implemented in the year which was being celebrated as the International Women's Year. The said Ordinance provided for payment of equal remuneration to men and women workers for the same work or the work of a similar nature and for the prevention of discrimination on account of sex. The Ordinance also ensured that there was no discrimination against recruitment of women and provided for the setting up of Advisory Committees to promote employment opportunities for women. The above Ordinance was replaced by the Act which received the assent of the President on February 11, 1976. The long title of the Act states that it is intended to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex against women in the matter of employment and for matters connected therewith or incidental thereto. Sub-section (3) of Section 1 of the Act provides that the Act shall come into force on such date, not being later than three years from the passing of the Act, as the Central Government may, by notification, appoint and different dates may be appointed for different establishments or employments.

Section 3 of the Act has given overriding effect to the provisions of the Act. It provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act, or in any instrument having effect under any law for the time being in force. Section 4 of the Act imposes a duty on the employer to pay equal remuneration to men and women workers for same work or work of a similar nature. It provides that: (1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature; (2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker; (3) Where, in

an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers; Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act

Section 5 of the Act prohibits any kind of discrimination being made while recruiting men and women workers. Section 6 of the Act provides for the appointment of an Advisory Committee to advise the appropriate government with regard to the extent to which women may be employed in such establishments or the employments as the Central Government may, by notification, specify in that behalf. Section 7 of the Act provides for the appointment of the adjudicating Authority whenever a dispute arises between the management and the employees as also an appellate authority which can hear an appeal against the decision of the Authority.

The Act by means of Section 4 not only emphasizes on equal pay for equal work but even bars the employer from reversing the pay scales in order to attain equilibrium.

The principle of Equal Pay for Equal Work was first considered in *Kishori Mohanlal Bakshi v. Union of India*<sup>8</sup> in the year 1962 where the Supreme Court declared it incapable of being enforced in the court of law. However, it received due recognition only in 1987 through *Mackinnon Mackenzie's case*<sup>9</sup>. Here the issue of concern was a claim for equal remuneration for Lady Stenographers and Male Stenographers. This was ruled in favour of lady stenographers as the Court was in favour of equal pay.

Although, times have passed but crisis still remain. The report published by International Trade Union Confederation (ITUC) in March 2009, reveals existence of gender pay gap to the extent of 30 percent in India in 2008.

A life-cycle and rights-based approach is promoted in promoting decent and productive employment and income opportunities equally for women and men. Girl child who faces discrimination in her early stages of life tends to accumulate socio-economic disadvantages, which can lead to reduced employability and higher poverty in her later life. Ensuring full human resources development, through equal access to education and skills development opportunities for youth could enhance their chances of higher employability, in particular, for young women. In adulthood, increasing employability of women and men through equal access to life-long learning and productive resources can also enhance their chances of obtaining decent and productive employment and income opportunities

---

<sup>8</sup> A.I.R. 1962 SC 1139

<sup>9</sup> (1987) 2 SCC 469

throughout their adult lives. This can also lead to better economic security in their old age. Creating inclusive labour markets adaptable to changing economic realities, but with equity and minimum employment and income security, can create more conducive environment for women's enhanced labour participation and better income security, especially for older workers and persons with disability.

In spite of having made endless efforts still there is lack of a subsequent and meaningful legislation. Also factors like ignorance and uniform interpretation of law act as barriers in demolishing pay gap. In order to resolve this issue, it is important to not only create awareness for, but also effectively implement the legislative enactments.

-----