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EQUAL PAY FOR EQUAL WORK: A NECESSITY FOR COMBATTING ECONOMIC DISCRIMINATION

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ABSTRACT

One of the main instruments used in perpetuating gender and class inequality has been the existence of the differential wages in between employees, employed in jobs, which require equal amount of work. The employer in various industries, cite various arbitrary reasons for such type of unequal pay and due to the prior lack of legal framework, unequal pay for equal work as a form of discrimination was not recognized properly. However, international recognition of the principle of equal pay for equal work led to the Constitution makers to integrate this principle into the fundamental rights and other constitutional rights. The legislature keeping this in mind provided statutory remedies in cases of wage discrimination in between male and female employees, on the basis of sex. Moreover, the judiciary recognized these principles by reading them into the fundamental rights and directive principles of the Constitution, and did not limit themselves to gender wage discrimination, but widened the scope to discrimination on the basis of class, caste and arbitrary classification. In the ensuing discussion in the paper, the author will critically examine the constitutional and statutory framework for the integration of the principle of ‘equal pay for equal work’ into existing and newly enacted statutes. Further, the author would emphasize on the important role played by judicial activism, which helped in further recognition of the principle. The role played by the various international covenants and obligations in the enactment of the statutes shall also be discussed. This paper examines the viability of the statutory and judicial framework, and argues that despite the existence of such a comprehensive framework, the issue of unequal pay continues to exist in the unorganized sectors and even in the elite sectors, due to ineffective implementation and general ignorance, as according to national and international reports.

Keywords - Wage, Discrimination, Gender, Unorganised, Fundamental Rights

I. INTRODUCTION

The principle of ‘*equal pay for equal work*’ means that persons involved in work, that requires equal amounts of effort and skill, should be given equal remuneration. However, since it is difficult to quantify the efforts and skill utilized, a difference in pay for identical jobs exists. Wages to be given depend on variety of factors such as experience, training, skill and expertise, mental and physical requirements, etc. The employers often misuse their power to create differential rates of

wages in between classes of people, upon arbitrary reasons. Such discrimination can be based on various factors such as sex, caste, religion etc. However, this principle of equal pay is invoked commonly in the context of discrimination in pay on the basis of sex. The continued entrenchment of patriarchal societal norms in India, has led to inequality for women in different spheres of life. One of the major instruments of perpetuating inequality has been the wage gap that exists between male and female workers employed in the same jobs.

The post-independence era has opened a new chapter for the social recognition and economic upliftment of women in the country. Due to the advancements in our country and promotion of education, women as well as other oppressed classes of the society, have taken up ‘equal pay for equal work’ as a slogan for their movement against inequality. The first Prime Minister of India, Jawahar Lal Nehru once stated that the aim to be achieved is a classless society with equal economic justice and opportunity to all and if anything comes in the way of achieving that aim, it should be removed gently, and if necessary, by force¹. The Preamble to the Constitution guarantees to all citizens, regardless of gender and caste, equality of status and opportunity. The socialist nature of our Constitution further encourages the principle of ‘equal pay for equal work’. Part III of the Constitution, especially right to equality under Article 14, the prohibition of discrimination on the basis of sex, caste etc. under Article 15, the right to opportunity under Article 16 and the Directive Principle of State Policies under Part IV, together have made this principle, a constitutional goal that India should aim to achieve. Further obligations are placed on India to achieve this goal due to it being a member to many conventions and signatories to covenants which aim to reduce the wage gap all over the world. The Legislature in this regard has taken great steps to enact legislations dealing with the issue of unequal pay, by incorporating the obligation on employers for equal pay in existing legislations as well as enacting new legislations made for that very purpose. The judiciary as well, has been instrumental in further developing the principle, by relying on the constitutional provisions and the legislations.

¹ Bipin Chandra, *Jawaharlal Nehru and the Capitalist Class, 1936*, Economic and Political Weekly, (August 1975), p.1308, https://www.epw.in/system/files/pdf/2014_49/35/study_in_political_leadership_jawaharlal_nehru_and_the_capitalist_class_1936_ed.pdf, accessed 22nd June 2020.

II. CONSTITUTIONAL GUARANTEES

Equal pay for equal work is not mentioned explicitly in Part III of the Constitution of India. It is guaranteed neither as a fundamental right nor a constitutional right. However, as the scope of fundamental rights is wide, this concept of equal pay for equal work can be read into the fundamental rights, by interpretation of the articles.

a) Article 14

This concept first ties into Article 14, which guarantees equality before law and equal protection of law². It is the grundnorm for forbidding inequality, arbitrariness and unfairness. It is enumerated as a general negative right for an individual's right against discrimination. However, the inclusion of Articles 15 to Article 18 show the intention of the constitution makers that this article in itself is not sufficient, and in a country like India, it is necessary that the existing inequalities in public and private affairs need to be abolished in an explicit manner. Hence, due to the wide language of Article 14, it must be read along with the other articles dealing with equality i.e. from Article 15 to Article 18³. Furthermore, the right to equality has been declared to be a basic feature of the Constitution and any constitutional amendment which affects such a fundamental right shall be invalid⁴. This principle has been emphasized in the Preamble as well, which states "equality of status and of opportunity"⁵.

Article 14 draws its character from Article 7 of the Universal Charter of Human Rights 1948⁶, which provides that "*all are equal before the law and are entitled without any discrimination to the equal protection of laws.*"⁷

Firstly, Article 14 talks about equality before law, which does not mean absolute equality amongst all persons; instead it talks about the absence of any special privilege in favour of an individual on the basis of a ground such as sex. This principle is considered to be the rule of law according to the jurist A.V. Dicey and even in India has been recognized that "*no person shall be subjected to*

² Art. 14, the Constitution of India, 1950.

³ V.N. Shukla, *Constitution of India*, (10th edn, 2006), 37.

⁴ M.P. Jain, *Indian Constitutional Law*, (5th edn, 2004), 856.

⁵ Preamble, the Constitution of India, 1950.

⁶ *ibid.*

⁷ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art. 7

harsh, uncivilised or discriminatory treatment even when the subject is the securing of the paramount exigencies of law and order.”⁸ Hence, the state is to treat all individuals equally and shall not make any discrimination between them, based on unreasonable classifications.

Secondly, equal protection of law guaranteed under Article 14 that all persons shall be treated the same in the hands of law, without any discrimination such as on the grounds of sex, caste etc. Hence, Article 14 has been interpreted to mean that all persons are guaranteed equal rights and opportunities, and if any classification is made as to unequal pay for equal work, between these individuals which has no nexus to the object sought to be achieved, then such an unreasonable classification would be considered as discrimination and would come under the ambit of Article 14⁹. This guarantee is considered to be a positive obligation for the State to bring in necessary economic and social changes that ensure equal protection, and if the State allows such inequalities to exist, then the State fails in its duty to provide equal protection to all its citizens.¹⁰

b) Article 15

The main provision against the discrimination that exists in the form of gender pay gap, would be Article 15. Article 15 prohibits discrimination between citizens by the State, on the grounds of sex, caste etc¹¹. Hence, any discrimination made between a male employee and a female employee performing the same work in terms of pay, on the basis of gender, would violate this fundamental right. However, an exception to this principle is provided in Article 15 (3), which provides that the State can make affirmative action in favor of women¹². This empowers the State to make special provisions for the protection of the interests of women. For example, maternity relief provided for women workers will not violate Article 15 (1), due to this exception provided in Article 15 (3). Hence, Article 15 as a whole not only prevents any discrimination on the basis of sex, it also helps in protecting the interests of the discriminated class.

⁸ Rubinder Singh v. Union of India, AIR 1983 SC 65.

⁹ State of J & K v. Triloki Nath, (1974) I, SCJ 366.

¹⁰ St. Stephen's College v. University of Delhi, AIR 1992 SC 1630, p.1662.

¹¹ Art. 15, the Constitution of India, 1950.

¹² *ibid.* Art. 15(3).

c) Article 16

Article 16 (1) and Article 16 (2) provide that there shall be equality of opportunity for employment or appointment to any office of the State for all citizens¹³ and that no discrimination on the grounds of sex, caste, religion etc. against any citizen when it comes to such appointment or employment under an office of the State¹⁴. The guarantee against discrimination in Article 16 is limited to ‘employment’ and ‘appointment’ under an office of the State, hence, limiting the principles enshrined under Article 14 and Article 15, to the matters mentioned above. However, under this Article, the State is still empowered to prescribe necessary qualifications. Where the appointment requires technical knowledge, technical qualifications can be prescribed¹⁵.

d) Directive Principles of State Policies

The concept of ‘equal pay for equal work’ has extensively been dealt with under the DPSPs in the Constitution. Although DPSPs are not enforceable by law, they have been considered to be an integral part of the constitution¹⁶ and have to be kept in mind, while enacting laws.

- (i) **Article 39 (d)** provides that the State should direct its policy towards securing that there is equal pay for equal work for both men and women¹⁷. A strict reading of the provision does not provide that there should be pay parity as between two male employees or two female employees; instead it only provides that there should be no discrimination in between male and female employees, when it comes to pay.
- (ii) **Article 42** although does not directly talk about the concept of equal pay, it helps in encouraging better working conditions for female employees¹⁸ so that they are eligible to perform the same work as male employees. It provides that provisions for securing just and humane conditions of work and for maternity relief have to be made by the State. This has been kept in mind by the legislature whilst enacting legislations such as the Maternity Benefit Act 1961.

¹³ Art. 16 (1), the Constitution of India, 1950.

¹⁴ *ibid.* Art, 16 (2).

¹⁵ *Banarsidas v. State of U.P.*, AIR 1956 SC 520.

¹⁶ *Air India Statutory Corporation v. United Labor Union*, AIR 1997 SC 645.

¹⁷ Art. 39 (d), the Constitution of India, 1950.

¹⁸ Art. 42, the Constitution of India, 1950.

(iii) **Article 51 A (e)** further provides that it shall be the duty of each citizen of India to renounce practices that are derogatory to the dignity of women¹⁹. To further impose such a duty on the citizens, the legislature has enacted legislations such as The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

III. INTERNATIONAL OBLIGATIONS AND THEIR EFFECT ON INDIAN LEGISLATION

a) International Obligations

The principle of ‘equal pay for equal work’ has extensively been dealt by various international conventions and covenants.

On 10th December 1948, the General Assembly of the United Nations adopted the *Universal Declaration of Human Rights*, of which India is a signatory, whose Article 23 (2) provides that “Everyone without any discrimination, has a right to equal pay for equal work.”²⁰ Later in 1966, the United Nations General Assembly adopted the *International Covenant on Economic and Political Rights*, which was ratified by India on 10th April 1979, whose Article 7 (a) (1) provided that:

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular to remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”²¹

¹⁹ Art. 51 (a) (e), the Constitution of India, 1950.

²⁰ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art. 23 (2).

²¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 7.

India ratified the *Convention on the Elimination of All Forms of Discrimination against Women* on 9th July 1993, in which Article 11 (d) provides “The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.”²²

The body responsible majorly for the promotion and development of the principle of ‘equal pay for equal work’ was the International Labour Organization (ILO). One of the essential elements recognized in the Preamble to the Constitution of the ILO is the “recognition for the principle of equal remuneration for work of equal value”.²³ The ILO introduced the *Equal Remuneration Convention (C100)* in 1951, which was ratified by India on 25th September 1958. Article 1 of the Convention provides that each member state has to promote and determine rates of remuneration for work of equal value for men and women, not only for their minimum wages, but also any additional benefits²⁴. Article 2 provides that each member state by appropriate means shall determine the rates of remuneration, then promote and ensure the application of such rates to men and women for work of equal value, by means of: national laws or regulations, legally established or recognized machinery for wage determination, collective agreements, between employers and workers, or a combination of these various means²⁵. Article 3 encourages objective appraisal and does not prohibit differential rates on the basis of such appraisal, without regard to sex²⁶. Article 4 provides that each member has to cooperate with the worker’s and employer’s organisation for giving effect to this convention²⁷.

b) Equal pay for equal work in Indian Legislation

Due to the various international conventions and covenants which have been ratified by India, the Indian legislature whilst passing legislation concerned with the subject matter of wages or

²² Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979 UNGA Res 34/180 (CEDAW) art. 11 (d).

²³ Constitution of the International Labour Organisation (ILO) (adopted 1st April 1919 (ILO) preamble.

²⁴ Equal Remuneration Convention C100 (adopted 29 June 1951 (ILO) preamble.

²⁵ *ibid*, Art. 2.

²⁶ *ibid*, Art. 3.

²⁷ *ibid*, Art. 4.

compensation, have kept the principle of ‘equal pay for equal work’ in mind, and have passed the following enactments:

i. Workmen’s Compensation Act, 1923:

Section 3 of the Act provides that compensation shall be paid by the employer to the employee who has suffered any personal injury by accident, out of and in course of their employment²⁸. Due to prevalent discrimination, women employees are known to have less bargaining power, and this provision aims to remove such a situation, by making it compulsory for an employer to compensate an employee who has suffered an accident, without distinguishing between the sexes. Further, Section 8 which deals with the proportion of compensation aims at providing compensation in the proportion decided by the Commissioner to the employee’s dependents²⁹, whether male or female.

ii. Minimum Wages Act, 1948:

Under this Act, as per Section 12, the employer has to pay wages at a rate not less than the minimum rate of wages fixed by notification for that class of employees in that employment, without any deduction, to the employee engaged in such scheduled employment³⁰. Further, Section 3 provides that the appropriate government can decide different minimum rates on the basis of different scheduled employments, different classes of work in the scheduled employment, between adults and adolescents, and different localities³¹. Hence, we see that there is no provision which allows the government for setting differential rate of minimum wages in between employees performing equal/ same work in the scheduled employments, on the basis of sex, caste etc.

iii. Equal Remuneration Act, 1976:

After the introduction of the I.L.O. Equal Remuneration Convention in 1951, and India ratifying it in 1958, the first step of for giving effect to the same was taken. In 1975, the Equal Remuneration Ordinance was promulgated. Finally, in 1976, the ordinance was replaced by the enactment of

²⁸ s. 3, The Workmen’s Compensation Act, 1923 (Act 8 of 1923).

²⁹ *ibid*, s. 8.

³⁰ s.12, The Minimum Wages Act, 1948 (Act 11 of 1948).

³¹ *ibid* s. 3 (3) (a).

Equal Remuneration Act of 1976. The main aim of the Act was to emphasize equal remuneration between male and female employees and to remove any discrimination to that effect. The preamble to the Act provides:

“An act 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.”³²

The most important definition under Section 2 of the Act lies under Section 2 (h) which defines ‘same work or work of similar nature’ as “work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of a practical importance in relation to the terms and conditions of employment.”³³

Section 4 imposes a duty on the employer, that he cannot pay to any worker, employed by him/her in an establishment, a remuneration at rates less favourable than those at which remuneration is paid by him/ her to the workers of the opposite sex in such establishment for performing the same work or work of a similar nature³⁴. Further, the employer cannot reduce the rate of remuneration of any worker as well.

Section 5 provides that “the employer, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, shall not make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.”³⁵

Section 10 (2) provides that “if any employer:- (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination

³² Preamble, Equal Remuneration Act, 1976 (Act 25 of 1976).

³³ *ibid* s. 2 (h).

³⁴ *ibid* s. 4.

³⁵ *ibid* s. 5.

between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/ she shall be punishable with fine or with imprisonment or with both.”³⁶

Other important provisions include Section 6 which prescribes that the Central Government can constitute an Advisory Committee to advise it regarding the extent of women to be employed in the establishments specified by the Central Government, the nature and hours of work, the suitability of women for the employment³⁷ etc.; Section 9 which gives power to the Central Government to appoint inspectors to inspect whether the provisions and rules under the Act have been complied with by the employer³⁸ or not; and various other provisions which deal with punishment for non-compliance with the provisions of this Act.

iv. The Code on Wages 2019:

The Code of Wages was notified on 8th August 2019 by the Government. The objective of this enactment was to amend and subsume the provisions of enactments dealing with wages such as the Minimum Wages Act 1948, Equal Remuneration Act 1976 and other enactments.

When it comes to equal remuneration, it has subsumed majority of the provisions under the previous enactment of the Equal Remuneration Act, however, there have been some major changes.

Section 3 of the Code on Wages provides that “there shall be no discrimination in an establishment or any unit thereof among employees on the ground of *gender* in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee”³⁹. Hence, we see that the main distinction between this provision and Section 4 of the Equal Remuneration Act, which limited the duty of the employer to provide equal remuneration to the binary of ‘men’ and ‘women’ workers⁴⁰. Such a change helps in extending the benefits under this newer Act to other oppressed genders such as transgenders.

The definition of ‘remuneration’ under Section 2 (g) of the previous enactment is vague in nature, defining it as “basic wage or salary, and any additional emoluments whatsoever payable, either in

³⁶ *ibid* s. 10 (2).

³⁷ *ibid* s. 6.

³⁸ *ibid* s. 9.

³⁹ s. 3, Code on Wages, 2019 (Act 29 of 2019).

⁴⁰ s. 4, Equal Remuneration Act, 1976 (Act 25 of 1956).

cash or in kind, to a person employed”⁴¹, whereas Section 2 (y) of the latter enactment is extensive in nature providing the different components that would be included under the definition of ‘wages’⁴² and which components do not.

Further, Section 16 of the Equal Remuneration Act which allowed unchecked power to the Government to give a declaration that there is no contravention of the Act, where it is satisfied that any difference in pay between male and female workers under employment is not based on a factor other than sex, was done away with in the Code on Wages as the prior provision did not require reasons to be given, which lead to misuse and that “such a declaration under Section 16 was a ‘presumptive proof’ of the fact that there was no gender discrimination”⁴³.

However, one of the major drawbacks in the newer enactment of Code on Wages 2019 is that instead of merely limiting the prohibition of discrimination when it comes to equal pay on the basis of genders, it could have been extended to discrimination in equal pay on the grounds of caste as well. Such an extension would have helped in eradicating the caste discrimination which exists in the form of undervaluing of equal work done by people belonging to such oppressed classes of castes.

IV. JUDICIAL ACTIVISM

As there was a lack of effective legislation dealing with the principle of ‘equal pay for equal work’, it was the judiciary which undertook an active role in enforcing the constitutional provisions and in developing the principle. It is through judicial interpretation, a clear picture as to the principle was developed in India, before the introduction of the various legislations discussed above.

The first case to deal with ‘equal pay for equal work’ was in the year 1962 in the case of *Kishori Mohanlal Bakshi v. Union of India*, where the Supreme Court unfortunately held that such a principle was not enforceable in a court of law⁴⁴.

After the Equal Remuneration Act was enacted, in the case of *People’s Union for Democratic Rights v. Union of India*, the Court recognized that the principle of equality that is given under

⁴¹ *ibid* s. 2 (g).

⁴² s. 2 (y), Code on Wages, 2019 (Act 29 of 2019).

⁴³ *Air India v. Nergesh Meerza & Ors.*, 1981 AIR 1829.

⁴⁴ *Kishori Lal Mohan Lal Bakshi v. Union of India*, A.I.R. 1962 S.C. 1139.

Article 14 of the Constitution, finds expression in the provisions of the Equal Remuneration Act, 1976⁴⁵.

In the year 1986, came the case of *Randhir Singh v. Union of India*, where the petitioner, a constable as well as a driver in the Delhi Police Force, contended that as he was discharging the same duties as other drivers in the Delhi administration, and there should be no discrimination in his pay and the other drivers who had a greater pay, regardless of him being a constable in the Police Force. In this landmark judgment, the Court, by extending the principle of equality under Article 14 and the Right to Equal Opportunity under Article 16, held that, although the principle of ‘equal pay for equal work’ was not expressly a Fundamental Right, but it is a constitutional goal as envisioned under Article 14, Article 16 and Article 39 (d)⁴⁶. Hence, the Court declared that there should not be any discrimination in the nature of pay between persons at identical posts, even if they are in different departments.

In the year 1987, came the landmark judgment of *Mackinnon Mackenzie & Co. Ltd. V. Audrey D’Casta*, which was instrumental in providing the test for the criteria of ‘same work or work of similar nature’⁴⁷ under Section 4 of the Equal Remuneration Act 1976. In this case, an SLP was brought by a lady stenographer working under the company of M. Mackenzie & Co. Ltd. Her services had been terminated by the company and she contended that as her remuneration was less than the male stenographers, she was entitled to the difference between her actual remuneration that was paid and what she should have been paid. The case had first been filed with the authority established under the Equal Remuneration Act, where the authority held that although both female and male stenographers were involved in ‘same or similar work’, as there was a prior settlement made between the company and the union, where such differential rates of remuneration between the male and female employees had been agreed upon, and hence, there was no discrimination. This judgment was upheld by the High Court as well. Once the SLP was filed in the Supreme Court, the company contended that the differential pay was on the basis of the settlement, that there was no discrimination as the female and male stenographers were not involved in ‘same

⁴⁵ People’s Union for Democratic Rights v. Union of India (1982) 2 LLJ 454 (SC).

⁴⁶ Randhir Singh v. Union of India, AIR 1982 SC 879.

⁴⁷ *Equal Remuneration* (n 40).

work or work of similar nature’ and that the company was not in a financial position to provide equal remuneration. The Court for deciding on the matter enumerated a test for determining this criteria, where it said that in determining such cases, the authority as well as the Court should take ‘the broad view’ and this broad approach should be in such a manner that the claim is not defeated on trivial grounds and furthermore, the authority should also look various interests involved⁴⁸. After applying the tests, the Supreme Court held that the Equal Remuneration Act is attracted in all cases where disparity in pay at same levels is observed and that the applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it⁴⁹. Hence, the Court concluded that both the male and female stenographers were engaged in ‘same work or work of similar nature’ and that the Act would have an overriding effect over any such settlement which was against the principle enshrined under Article 39 (d) of the Constitution⁵⁰.

The Court has propounded various judgments where it was held that even temporary employees are entitled to the right to ‘equal pay for equal work’. In the case of *Dhirendra Chamoli v. State of U.P.*, the Court held that as casual workers working on a daily basis were performing the same work as regular employees employed in Nehru Yuwak Kendra and hence, were entitled to equal pay⁵¹. Similarly, in the case of *Jalplal v. State of Haryana*, it was held that a temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee and that the difference in mode of selection will not affect the application of the doctrine, if both the classes of persons perform similar functions and duties under the same employer⁵².

The most recent judgment is the landmark judgment of *Punjab and Ors. v. Jagjit Singh and Ors*, once again held that daily wagers, casual workers and contractual employees who perform the same duties as regular employees, are entitled to the right of ‘equal pay for equal work’ and denial of such right would be equivalent to "exploitative enslavement", and would be "oppressive,

⁴⁸ Mackinnon Mackenzie and Co. Ltd. vs. Audrey D'Costa and Others (1987) 2 SCC 469.

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ *Dhirendra Chamoli v State of UP*, (1986) 1 SCC 637.

⁵² *Jalplal v. State of Haryana*, (1988) 3 SCC 354.

suppressive" and "coercive" in nature⁵³. The bench presiding over the case consisting of Justice J. S. Khehar and S. A. Bobde opined that “*An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly in a welfare state, such an action besides being demeaning, strikes at the very foundation of human dignity.*”⁵⁴

However, the Court does not uphold the principle of ‘equal pay for equal work’ in all types of cases. There are some exceptions to the principle. Supreme Court in the case of in the case of *F.A.I.C and C.E.S. v. Union of India*, opined that on the basis of difference in degree of responsibility, reliability and confidentiality, different pay scales can be fixed for stenographers grade 1 of the Central Secretariat and those who work under heads of subordinate offices, as responsibilities of grade I stenographers was much higher than that of the stenographers attached to the subordinate office. The Court also held that equal pay depends on the nature of work done and not mere volume of work⁵⁵. This was also held in the case of *Federation of A. I. Custom and Central Excise Stenographers (Recog.) v. Union of India* and the case of *State of U.P. vs. J.P. Chaurasia*, as the functions may be the same but the responsibilities involved may be different⁵⁶. Similarly, in the case of *Mewa Ram v. AIIMS*, the Court upheld the different salaries given to Hearing Therapists and Audiologists in A.I.I.M.S, as the educational qualifications and responsibilities involved for both the positions were different⁵⁷. Further, in the case of *Associated Bank Officers Association vs. State Bank of India*, the Court opined that the officer of State Bank and subsidiary banks are not in a comparable position, as the responsibilities of State Bank officers are more and hence, the same benefits in form of equal pay and allowances cannot be made available to the officers of subsidiary banks⁵⁸.

Hence, we can see that the judiciary has been instrumental in the development of the principle of ‘equal pay for equal work’, in consonance with the various legislations. Furthermore, unlike the various legislations, instead of limiting the principle only to the discrimination in pay on the basis of ‘sex’, it has expanded it to include discrimination in pay amongst different positions as well

⁵³ Jagjit Singh and ors v. State of Punjab, (2017) 1 SCC 148.

⁵⁴ *ibid.*

⁵⁵ *F.A.I.C. and C.E.S. v. Union of India* (1988) 3 SCC 91.

⁵⁶ *Federation of A. I. Custom and Central Excise Stenographers (Recog.) v. Union of India*, AIR 1988 SC 1291; *State of U.P. v. J.P. Chaurasia*, AIR 1989 SC 19.

⁵⁷ *Mewa Ram v. A.I.I.M.S*, AIR 1989 SC 1256.

⁵⁸ *Associated Bank Officers Association v. State Bank of India*, AIR 1998 SC 32.

where the persons employed are performing ‘same work or work of similar nature’, yet there is a difference in the pay given.

V. CONTINUED EXISTENCE OF UNEQUAL PAY FOR EQUAL WORK

Despite ‘equal pay for equal work’ being recognized in Article 39 (d) of the Constitution, it being read into the fundamental rights by the judiciary, the steps being taken for its inclusion in various legislations, and India being a party to various international conventions and covenants, the existence of unequal pay for equal work continues. A Wage Indicator Report in 2013 provided the data that the gender pay gap in India for that year was 24.81%⁵⁹. It also provided that the gender pay gap continues to increase with age, with women in the age group below 30 years (18 to 30 years) earning 23.07% less than men, and women in the age group of above 30-40 years earning 30.24% less than men⁶⁰. Further, it was seen that the gender pay gap instead of decreasing with occupational hierarchy, increases, with women working as trainees earning 11.35% less than men, whereas women higher up in hierarchy, in positions of heads, earned 38.59% less than men⁶¹. Another more recent report by the International Labour Organisation (I.L.O.) in the year 2018-19 provided that on an average, women are paid 34 per cent less than men and it was found to be the highest wage gap amongst the 73 countries studied in the report⁶².

Despite having the prior Equal Remuneration Act 1976 in place, there has been a continued existence of gender wage gap in the country. The act prohibits discrimination on the grounds of sex⁶³, in recruitment⁶⁴ and in other matters incidental to employment. Yet there have been drawbacks in the Act which has made its implementation ineffective and insufficient. The glaring drawback that is present in the enactment is that it provides equal remuneration between men and

⁵⁹ Biju Varkkey and Rupa Korde, *Gender Pay Gap in the Formal Sector: 2006 – 2013*, WageIndicator Data Report (September 2013), <https://wageindicator.org/documents/publicationslist/publications-2013/gender-pay-gap-in-formal-sector-in-india-2006-2013>, accessed 21st June 2020.

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² International Labour Organisation, *Global Wage Report 2018/19: What lies behind gender pay gaps*, (2018), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/publ/documents/publication/wcms_650553.pdf, accessed 21st June 2020.

⁶³ s. 4, Equal Remuneration Act 1976, (Act 25 of 1956).

⁶⁴ s. 5, Equal Remuneration Act 1976, (Act 25 of 1956).

women only if they perform same or similar work. This criteria of ‘similar work’ is difficult to determine. For example, in the labour sector, men labourers who carry the cement bags, prepare the mix and put it in the bondli earn Rs 25 per day, whereas female labourers who carry brick bags, cement mortar and supply them for use in the construction sites, earn only Rs 20 per day⁶⁵. This difference in the pay of Rs 5 is inexplicable as it cannot be argued that carrying bricks is less strenuous than carrying cement. However, here as well the argument as to same or similar work can be put up, and it becomes difficult to determine the similarity. The only main advantage that is gained from the superseding enactment of the Code on Wages 2019, is that the government can no longer make a declaration to the effect that difference in rates of remuneration between male and female workers on factor other than sex is permissible, as it often led to misuse by the companies.

The effect of the Equal Remuneration Act 1976 and the Code on Wages 2019 has been felt to some extent in the public sector jobs, however, its effectiveness and implementation in the private sector and the unorganized sector has been less, as is seen from the data mentioned above.

However, this issue of gender wage gap in India is prevalent even in one of its most elite and comparatively progressive industries i.e. the Bollywood film industry. Various reports and articles have proved that there exists a huge gender pay gap between the Bollywood actors and actresses. In 2017, according to the Forbes list on the highest-paid celebrities of Bollywood, famous actresses such as Deepika Padukone with earnings of \$11 million in a year and Priyanka Chopra with earnings of \$10 million in a year were the highest paid actresses in Bollywood. However, both ranked 6th and 7th respectively on the list, whereas the top contenders such as Shah Rukh Khan at 1st had earnings of \$38 million a year, Salman Khan at 2nd had earnings of 37\$ million and Akshay Kumar at 3rd had \$35.5 million yearly earnings⁶⁶. In the 2019 Forbes list on the highest-paid celebrities of Bollywood, actress Alia Bhatt ranked at 8th and had yearly earnings of Rs 59.21 Crore, and Deepika Padukone ranked 10th with yearly earnings of Rs 48 Crore⁶⁷. However, actors like Akshay Kumar earned Rs 293.25 Crore, Salman Khan earned Rs 229.25 Crore and Shah Rukh

⁶⁵ S.N. Tripathy, *Unorganised Women Labour in India*, (1 January 1998, Discovery Publishing Pvt. Ltd).

⁶⁶ Natalie Robehmad, *Bollywood's Highest-Paid 2017, Meet 10 Indian Actors Making Bank*, Forbes, <https://www.forbes.com/sites/natalierobehmed/2017/08/30/bollywoods-highest-paid-2017-meet-10-indian-actors-making-bank/#6db5f538a0d5>, accessed 20th June 2020.

⁶⁷ *2019 Celebrities 100*, Forbes India, <https://www.forbesindia.com/lists/2019-celebrity-100/1819/all>, accessed 20th June 2020.

Khan earned 124.38 Crore⁶⁸. Furthermore, all three of the abovementioned actors were in the Forbes Celebrity 100 which is a list of the world's highest-paid entertainers, at 65th, 71st and 80th ranks⁶⁹. In the 2019 list as well, actor Akshay Kumar stands at the 33rd rank with earnings of \$65 million. In all these years, none of the Indian actresses have been able to crack this list⁷⁰.

Even in movies such as 'Ae Dil Hai Mushkil', where both the lead male and female actors had equal screen presence, Ranbir Kapoor was paid more than the lead actress Anushka Sharma, their salaries being Rs 20 Crore and Rs 6.5 Crore respectively⁷¹. In a female driven film such as 'Dear Zindagi', Alia Bhatt despite being the lead, had an average salary of Rs 5 Crore, whereas actor Shah Rukh Khan who made a cameo in the movie, had an average salary of Rs 45 Crore⁷².

Hence, the abovementioned data clearly shows the huge pay gap exists even between actors and actresses of the Bollywood film industry, which is considered to be one of the most progressive and highest paying industries in India.

Therefore, we see that the equal remuneration is not achieved effectively in any of the industries of public, private and unorganized sector and the problem of unequal pay for equal work persists to this day.

VI. CONCLUSION

Although the existence of the constitutional safeguards, the equal pay legislations, the judicial activism and the various international obligations, have helped India in establishing a framework for providing right of pay parity and right against discrimination on the basis of sex, caste etc. to the persons who are getting unequal pay for equal work, the pay gap still exists, even in elite industries such as the Bollywood film industry. India has a long way to go in achieving pay parity

⁶⁸ *ibid.*

⁶⁹ Rob Cain, 3 Indian Celebrities Make Forbes 100 Highest-Paid List, *Forbes*, <https://www.forbes.com/sites/robcaain/2017/06/13/3-indian-celebrities-make-forbes-100-highest-paid-list/#48ce025a63bf>, accessed 20th June 2020.

⁷⁰ *The World's Highest Paid Celebrities*, *Forbes*, <https://www.forbes.com/celebrities/list/#tab:overall>, accessed 20th June 2020.

⁷¹ Sushant Mehta and Siddarth Husain, *Superstar salaries: Akshay Kumar to Deepika Padukone, who earns what*, <https://www.indiatoday.in/movies/celebrities/story/superstar-salaries-akshay-kumar-to-deepika-padukone-who-earns-what-1278820-2018-07-06>, accessed 20th June 2020.

⁷² *ibid.*

amongst all classes of people involved in same or similar work, especially amongst male and female workers. The World Economic Forum Global Gender Gap Report of 2020 revealed that India is still at the 112nd position out of 153 countries in the Global Gender Gap Index 2020⁷³. Economic opportunities for women are extremely limited in India, standing at 35.54%. Furthermore, India ranks at 117th in terms of wage inequality for similar work and 149th for economic participation and opportunity⁷⁴. Compared to the major countries such as UK at 76th and 58th respectively and USA at 47th and 26th respectively⁷⁵, the low position of a developing nation like India in terms of global gender gap is an area of concern. It has been 34 years since the Equal Remuneration Act has been passed, which has now been subsumed by the Code on Wages in 2019, yet the wage gap continues to exist due to the drawbacks present in the acts, as has been discussed. Despite the extensive mechanism provided and the offences enumerated under the enactments, employers continue to misuse their dominant power to pay less to classes of persons, on the basis of arbitrary reasons. Hence, it is necessary that steps should be taken for its proper implementation. Further steps should be taken by the Government for effective implementation of the provisions of the equal pay legislations such as the step that was taken on September 4, 2019, where the Department of Personnel and Training through an office memorandum had asked the ministries/departments to follow the law declared in the case of *State of Punjab v. Jagjit Singh*⁷⁶, and that ministries/department/PSUs have to submit a report on that matter⁷⁷. Furthermore, the Government should also take steps for the proper implementation of the legislations in the private sector and the unorganized sector, as those sectors suffer the most from unequal pay. Lastly, it is necessary for the Government to publicize the equal pay legislations, so that the people aware as to their right to equal pay for equal work.

⁷³World Economic Forum, *Global Gender Gap Report 2020* [2020], http://www3.weforum.org/docs/WEF_GGGR_2020.pdf, accessed 16th June 2020.

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *Jagjit Singh* (n 51).

⁷⁷ Ministry of Personnel, PG & Pensions Department of Personnel & Training, Office Memorandum, 'Equal pay for Equal Work' for Casual workers: Compliance with earlier instructions and Hon'ble Court's Judgements thereon', (14th September 2019), <http://documents.doptirculars.nic.in/D2/D02est/49014%201%202017%20Pt%207%2010%202019%20sumangd8vR.pdf>, accessed 20th June 2020.