GENDER-PAY-GAP: EQUALITY A MYTH

Pragya Gandhi[1] and Saniya Zia[2]

1. Introduction:

In almost all countries across the globe discrimination between the two genders has always existed, almost always putting women in an inferior position. In recent times there have been efforts to establish equality between men and women but these efforts were merely legal rather than existential. Therefore, it is no exaggeration to say that women consisting of one-half of the population live in perpetual subordination to the other half. With the advent of the 21st century, the world witnessed a massive societal change as the percentage of women working in various sectors drastically increased as a result of the feminist movement, economic necessity and increased literacy rates amongst women. The women started making contribution towards the economy.

The increased female workforce, on the surface is considered a major measure of development among various societies. But the ground reality still remains very different from the pictures beautifully painted as a part of political and corporate propagandas. There are laws present in almost all the countries to provide equal treatment to women. But gender pay gap is increasing with time especially in labour market.

The participation of women primarily remains in the agricultural sector. Their share in services and industry is still less than 20 per cent as found in the India Development report by World Bank, which ranked India 120th out of 131 countries in women workforce, making India a country with one of the lowest female participation.

Even when women are employed in these sectors, they face various obstacles, such as lack of incentives, unsafe working environment and one of the biggest issues being unequal pay for same work. Gender pay gap is the gap between what men and women are paid. Most commonly, it refers to the median annual pay of all women who work full time and year-round, compared to the pay of a similar cohort of men.[3]

[1] Student, Jagran Lakecity University, Bhopal
[2] Student, Jagran Lakecity University, Bhopal
[3]Deborah J. Vagins, The Simple Truth about the Gender Pay Gap, AAUW, (Jan. 25, 2019, 10:40 PM), https://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/.

A recent Glassdoor study found that even when men and women with similar work experience and education levels were working at the same company with the exact same job title, women, on average, were still paid less. Despite the assumption things would be equal, and despite federal law requiring men and women to be paid the same for equal work, researchers found that men made 5.4% more in base pay than female counterparts, and 7.4% more in overall compensation.[4]

2. History and Evolution:

The discrimination in income has its cause far rooted in the history of unequal treatment of women in various communities and religions.

The Pre-Aryan indigenous religion seems to have treated women with equality and dignity, this can also be witnessed in the tribal communities that have kept the tradition alive. But as these communities got introduced to Hinduism, Islam and Christianity, and got modernised, one witnessed a gradual erosion of the status of women.

The majority religion in India i.e. Hinduism, did not give equal rights to men and women. The ancient holy text, Manu says, 'A woman must never be independent'. In Hindus the practice of Sati was prevalent where the wife was burned with the husband on his death. Islam provides a sense of social equality between the two genders, but bars equal participation of women in the religious realms. Muslim women are secluded from social spheres and made to observe purdah. Classical Christianity also did not concede equality among men and women.

When the holy texts of various religions across the globe seeded the idea inside the brains of people, that men and women are unequal, it became a task for women to work or earn equal wages.

Majorly women were employed in factories during the Industrial revolution. But this employment was not made to promote social equality, it was made because factory owners had to pay less to women which ultimately helped them to increase their profits.

The practices established almost a century ago, are still haunting the women workforce today, as even in the 21st century, women are hardly ever paid the same as men without putting up a fight for what should be a very basic right for them.

[4] Madeline Farber, 3 Reasons Why the Gender Pay Gap Still Exists, Fortune (Jan. 25, 2019, 10:50 PM), http://fortune.com/2017/04/03/equal-pay-day-2017-wage-gap/.

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The workplace culture is a reflection of the society we live in. If the society considers men and women unequal, then there is hardly any chance for the workplace to treat them equally.

3. Global Scenario:

Universal Declaration of Human Rights is document which is adopted by the United Nations General Assembly on 10 December 1948. This document has 30 Articles and lays down the human rights of every person. Human rights are the basic rights of a person which one acquires on his/her birth. Article 1 provides that all humans equal in rights and dignity and further Article 2 states that no distinction should be made on the basis of race, color, sex, language, etc. Article 7 states that everyone is equal in the eyes of law and are entitled to protection in case of any discrimination. Article 23(2) provides that everyone should be paid equally for the same work.Article 7(a) of the International Covenant on Economic, Social and Cultural Rights mandates all signatories to ensure fair and equal wages for similar work. But even after the presence of this international document and various other laws, there still exist gap between the payscale of men and women. There exists discrimination between both the gender even when they are performing the same task.

In Canada, in the general population of adults working full time, the women make 83 cents for every dollar men make. The gap further increases among top executives where the women make 68 cents for every dollar their men colleagues make and make around $950,000 less a year.[5] This gap not only exist in payscale but also exist in case of bonus pay. In America half of workforce constitute of women who are the sole or co-breadwinner of the families with children. But still women on an average earn less than men and there exist around 20 percent wage gap. A report by Institute for Women's Policy Research on Sex and Race Discrimination reveals that there is blatant discrimination in pay, hiring or promotions and is still a part of work culture. In Britain there exist Equal Pay Act since 1970. This Act mentions that women are entitled to receive equal payment as men for doing similar work. The legislation was further strengthened by Equality Act in 2006 which mandated all public bodies to take active role in remove discrimination and prejudice against women. This Act was replaced by an Equality Act of 2010 which led to the creation of equality and human rights commission.

[5]David Macdonald, The Double-Pane Glass Ceiling- The Gender Pay Gap at the Top of Corporate Canada, CCPA 1, 12 (2019).

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The laws show a merry picture but the reality remains completely different as there are numerous instances where women are paid far less than men. In HSBC bank the gap in the payscale of men and women is around an alarming 61 percent which has widened as compared to last year's 59 percent. The gap was recorded around 31.5 percent in Lloyds Banking Group PLC and was a 28 percent in Nationwide Building Society.[6] In the Airline industry it can easily by observed that the majority of pilots are men while the women remain confined to the cabin crew. Airline such as EasyJet, TUI, Thomson and Jet2.com all have around 45 percent of pay gap. Ryanair had one of the largest pay gaps in the industry with an appalling 71.8 percent, recorded last year. Amongst the major global banks, JP Morgan has one of the largest pay gaps of 54 percent and only one out of ten highest paid employees are women.[7]

In the case of McLaughlin v. SPD Technologies[8], the issue of gender pay gap was brought into light by Jean McLaughlin in 1988. In this case, the plaintiff was hired as a purchasing secretary by SPD Technologies, a company producing electric power delivery systems. During the course of ten years while she was working with them she was repeatedly promoted. But despite her excellent performance and promotion she was paid less than her male colleagues. When she complained about this discrimination to one of her superior, she was told that she must not expect the same pay as her male colleagues. She complained to another superior who told her that her salary was not increased because it was supplementary to her husband's salary. Even at the time of promotion for Purchasing Manager she was not promoted by giving a fake excuse that she required a letter whereas a less qualified male was appointed without giving any such letter. She was also made to train the newly hired male senior buyers who were than paid more than her despite her long tenure and experience. In 2005 she filed an EEOC complaint, after years of frustration and injustice.

The class action suit of Beck v. Boeing[9] alleged and raised the issue of discriminatory treatment to women in relation to compensation and promotions. The case was filed in 2000 which brought into light an instance of large sex discrimination. In this case, a large number of women

[6] HSBC reveals gender pay gap for U.K. employees widened to 61%, American Banker, (Jan. 25, 2019, 10:50 PM), https://www.americanbanker.com/articles/hsbc-reveals-gender-pay-gap-for-uk-employees-widened-to-61.

[7] Clara Guibourg, Gender pay gap: Six things we've learnt, BBC News, (Jan. 25, 2019, 10:50 PM), https://www.bbc.com/news/business-43668187.

[8] McLaughlin v. SPD Technologies, Third Party Complaint, (Jan. 25, 2019, 10:50 PM), https://www.clearinghouse.net/chDocs/public/EE-PA-0152-0002.pdf.

[9] Beck v. Boeing, 203 F.R.D. 459 (2011).

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disclosed about the discrimination faced by them relating to payscale, bonus and promotions. The matter was settled in 2004 for $72.5 million for a class of 29,000 women. This case showed that how neutral policies may import into the company pre-existing pay gender inequality and lead to further growth in a wage inequality over time. The consent decree passed which illustrated the act which may be done to put an end to such discriminatory practices.

4. Indian Scenario:

The Constitution of India gives a woman the right to receive equal pay for her work. Right to equality in opportunity and employment also includes the right to receive equal payment. The Constitution on India ensures the right to receive equal pay and the right to work under Article 39(d) and Article 41, respectively, by way of directive principles of state policy making it necessary for the state to keep these provisions in mind while making laws.

Even though the doctrine of 'Equal pay for equal work' is not explicitly enshrined anywhere other than the Directive Principle of the State Policy, it still forms a part of the fundamental rights of a citizen impliedly. This has been discussed by the apex court in great detail in various cases.

In the case of Randhir Singh v. Union of India[10] court held that 'equal pay for equal work'. It is true that this principle is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive Principles have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 15(1) prohibits the discrimination on the basis of race, caste, religion, sex, etc among the citizens.

Similar view was reiterated in the case of State of Madhya Pradesh v. Pramod Bhartiya[11]. The Hon'ble court said that equal pay for equal work, is self evident, is implicit in the doctrine of

[10] Randhir Singh v. Union of India, AIR 879 (1982).
[11] State of Madhya Pradesh v. Pramod Bhartiya, AIR SC 286 (1993).

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equality enshrined in Article 14, it flows from it. Because Clause (d) of Article 39 spoke of "equal pay for equal work for both men and women" it did not cease to be a part of Article 14. To say that the said rule having been stated as a directive principle of State policy is not enforceable in a Court of Law is to indulge in sophistry. Parts IV and of III the Constitution are not supposed to be exclusionary of each other. They are complementary to each other. The rule is as much a part of Article 14 as it is of Clause (1) of Article 16. Equality of opportunity guaranteed by Article 16(1) necessarily means and involves equal pay for equal work. It means equally that it is neither a mechanical rule nor does it mean geometrical equality. The concept of reasonable classification and all other Rules evolved with respect to Articles 14 and 16(1) come into play wherever, complaint of infraction of this Rule falls for consideration.

There also exists an Equal Remuneration Act of 1976, the section 5 of which says, 'no employer shall while making recruitment for the same work or work of a similar nature or any condition of service subsequent to recruitment, such as, promotions, training or transfer, 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'.

The section 10 of the same act prescribes a fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months, but which may extend to one year, or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

So there exists law mandating employers to provide equal pay for equal work, and the court has also been legislating on this issue, still as per the Monster Salary Index, women in India earn 20% less than the men. The report says, men earned a median gross hourly salary of Rs 231, compared to women, who earned only Rs 184.8.

There are various causes which lead to gender pay gap even after the presence of these many laws in the country. The women are still not preferred in top executive positions and have to make countless efforts to reach at such position. But their struggle does not end here; they are further discriminated while giving promotions and pay. One of the reasons of this gap is traditional beliefs which still exist in the society due which women and men are treated unequally. Some other factors are requirement of maternity leave, marital status of the women and less negotiation which creates this gap.

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Gender pay gap is a reality and an issue which is not being properly addressed by the corporates and the law makers. There is a lack of awareness among women workforce in regards to their right to receive equal payment. Often salaries of other male colleagues are not disclosed to them. And even if they are aware, they do not have access to a proper a redressal system within the industry. Another factor that contributes to such blatant violation of the rights of female employees is the absence of a proper codified law prescribing strict punishment to any discriminatory employer. The absence of fear among the employers contributes majorly in the discrimination.

5. Conclusion:

As we have completed almost two decades in the 21st century, the large economies across the globe take pride in claiming that they have progressed immensely in the past 50 years. It is considered a sign of development that more and more women are working in large organisations and holding important positions across all corporations.

No doubt we have come a long way, as earlier women were not even allowed to get a formal education, but now a large proportion of them are graduating and working in various sectors and contributing to the economy. But when we look closely and deeply into this, we realise that the inherent prejudice of discrimination against women still exists in the workplace to a large extent.

Even if women are equally qualified or in some cases even more qualified and experienced than the men in the same position, they do not receive the same salary as them and are not promoted easily. Many factors contribute to this blazing discrimination.

There is a hesitation on the part of the employers to employ women and give them equal pay especially if they are mothers because they believe that mothers would not be able to devote as much time as needed. Another reason is the fact that women may not be flexible with working at odd hours of the day because of unsafe working environment. But both these reasons have no fault at the part of the women. Inherently the biological role of a woman requires her to take care of her family. This responsibility is more on women rather than men. But this in no way means that it reduces their capabilities of being an important asset to the company.

Despite these reasons, there are many instances where women work and devote equal or more time as men but are still denied equal pay because of the inherent prejudice in the society that

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women are in some way inferior. Women also fall short in awareness of their rights and their fear of losing their jobs outweighs their desire to raise voices against the discrimination.

No country can progress with 50 percent of its human resource being devalued and discriminated Even though there are legislations providing for equal remuneration, its execution needs to be more stringent. The law must aim to create awareness and a sense of security amongst women and a sense of fear among the discriminators.

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