

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 6

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2023

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# A Critical Analysis of Gender Pay Parity Laws in India and Its Relation with Gender Queerness

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AMAN KARAN<sup>1</sup> AND AKANSHA SETHI<sup>2</sup>

## ABSTRACT

*Gender pay disparity continues to be a pervasive issue in workplaces worldwide, and India, as a rapidly developing nation, faces its own set of challenges in addressing this problem. The study navigates through the intricate web of legislation, including the Equal Remuneration Act of 1976, and assesses their effectiveness in combating wage discrimination. The Equal Remuneration Act, 1976 is a Indian labor law enacted to provide for the payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on the grounds of gender in matters relating to employment and the conditions of service. The primary objective of this act is to promote gender equality in the workplace by ensuring that men and women receive equal pay for equal work. However, it has been more than 50 years that any new legislations has been enacted or amended in India dealing with such an issue. This research will discuss whether such an old legislation is effective for an issue that is dynamic and prevalent, taking into account different problems like occupational segregation, gender discrimination and the such. This paper also introduces another angle of analysis by understanding the implication of gender queer people in the Equal Remuneration Act, and in the principle of equal pay for equal work as whole. Drawing upon an extensive review of existing literature, case studies, and statistical data, the paper delves into the historical evolution of gender pay parity laws in India, critical analysis of pay parity laws of India, gender ambiguity and wage gap, etc. It scrutinizes the legal definitions of "equal work" and "remuneration" while considering their real-world application.*

## I. INTRODUCTION

Gender pay disparity remains a pervasive and contentious issue in societies worldwide, reflecting deeply entrenched inequalities that persist despite advancements in gender equality and women's rights. In India, a nation known for its rich cultural tapestry and diverse economic landscape, the issue of gender-based wage discrimination is particularly salient. Over the years,

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<sup>1</sup> Author is an LL.M. Student at National Law University, Jodhpur, India.

<sup>2</sup> Author is an LL.M. Student at Symbiosis Law School, Noida, India.

India has taken significant steps to address this problem through legislative measures aimed at achieving gender pay parity. These laws and policies form the crux of our research in this comprehensive study titled "A Critical Analysis of Gender Pay Parity Laws in India."

India, with its burgeoning economy and rapidly changing social dynamics, has made significant strides in promoting gender equality, culminating in the introduction of various legal instruments and policies, such as Equal Remuneration Act, 1976, Maternity Benefit Act, 1961, Gender budgeting, etc to bridge the gender pay gap.<sup>3</sup> This research endeavor delves into the intricate labyrinth of Indian labor laws and policies, seeking to unravel their effectiveness, identify inherent challenges, and propose pragmatic solutions for achieving true wage equity between genders.

Our examination of India's gender pay disparity landscape extends beyond a mere enumeration of legal provisions. We scrutinize the historical evolution of gender pay parity laws in the form of judgements by the Courts, their impact on the workforce, and the socio-cultural underpinnings that contribute to the persistence of wage discrimination. Moreover, we explore the experiences of women across different sectors and regions of India, taking into account the interplay between legislation and ground realities. Furthermore, an analysis of the the reality of gender pay parity and to what extent does it exist is also made to understand its actual implications in rural and urban areas.

This research paper employs a multidisciplinary approach, drawing from the fields of law, sociology, economics, and gender studies to provide a holistic assessment of the gender pay gap in India. We aim to critically analyze the effectiveness of existing laws, identify areas where reform is required, and try to offer recommendations that can guide policy-makers, employers, and civil society in their efforts to create a more equitable workforce.

### **(A) Development of Gender Pay Parity Laws in India**

The Equal Remuneration Act enacted in 1976 is the primary legislation that works around gender pay parity in India. The act is a fairly small legislations containing only 18 sections divided into 3 chapters. The Equal Remuneration Act ensures that there is no pay discrimination for people doing the same kind of work in an establishment. For instance, Section 4 of the Act puts the responsibility of providing same remuneration for men and women for the same kind of work. It says:

*“(1) No employer shall pay to any worker, employed by him in an establishment or employment,*

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<sup>3</sup> *Tackling the Issue of Gender Pay Gap*, DRISHTI IAS (Sept. 06, 2023, 7:35 PM)

<https://www.drishtias.com/daily-updates/daily-news-editorials/tackling-the-issue-of-gender-pay-gap>

*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.*”<sup>4</sup>

Further, clause 2 of section 4 reads that the employer cannot reduce the remuneration rate just to achieve the goal of equal pay.

The development of this aspect of equity viz. equal pay for equal work has been a continuous work for the Courts of India. Various decisions by the court has interpreted how should this goal of equity be achieved. In the case of *People’s Union for Democratic Rights vs. Union of India*, the petitioners alleged in their petition that the Equal Remuneration Act, 1976 was violated women were being paid Rs. 7/- a day as opposed to men who were being paid Rs. 8.25/-. The Court while dealing with this, and other violations of labor laws in the case, stated that whenever a project of such nature is being carried out, there should be a government authority who look after such violations and make sure to prevent them. The Court said:

*“We may add that whenever any construction work is being carried out either departmentally or through contractors, the government or any other governmental authority including a public sector corporation which is carrying out such work must take great care to see that the provisions of the labour laws are being strictly observed...they should institute an effective system of periodic inspections coupled with occasional surprise inspections by the higher officers in order to ensure that there are no violations of the provisions of labour laws and the workmen are not denied the rights and benefits to which they are entitled under such provisions.”*<sup>5</sup>

In the case of *A.K. Behra vs. Union of India*<sup>6</sup>, the court discussed equal pay for equal work and interpreted the Equal Remuneration Act, 1976. The court observed, *“The Equal Remuneration Act, 1976 and in particular its preamble declares the Act to provide for payment of equal remuneration and prevention of any kind of discrimination on the ground of sex or otherwise in the matter of employment. The Equal Remuneration Act, 1976 extends to the whole of India by virtue of Section 1(2) and there cannot be different pay scales for different employees carrying out exactly same work”*. The Court, thereafter summed up its decision in concluding points, which were:

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<sup>4</sup> The Equal Remuneration Act, 1976, No. 25, Acts of Parliament, 1976.

<sup>5</sup> *People’s Union for Democratic Rights vs. Union of India* AIR 1982 SC 1473

<sup>6</sup> *A.K. Behra vs. Union of India* 2010 (5) AWC 4488

1. All the members of the Tribunal appointed by rules are **entitled to get uniform pay scales.**
2. All the members of the Tribunal would have a uniform age for retirement
3. The post of Vice-Chairman in the Central Administrative Tribunal is restored from 01.06.2010

Therefore, the court upheld the principle of uniform pay scale for work of same nature. The court also highlighted the underlying constitutional principle and Directive Principles Of State Policy in relation to the Equal Remuneration Act, 1976 and explained how these principles fixed and evolved the government pay policy.

## **II. A CRITICAL ANALYSIS OF GENDER PAY PARITY LAWS IN INDIA**

The principle of equal pay for equal work has been enshrined in the Constitution of India in article 39(d) and article 42. The Equal Remuneration Act, 1976 (hereinafter referred to as “Act”), is a significant piece of legislation in India aimed at ensuring equal pay for equal work regardless of gender. However, no law is complete and perfect in itself, The dynamic nature of law requires that it be revised and amended from time to time to fit the changing needs of the society. The Equal Remuneration Act of 1976 is no exception to this rule. Due to the volatility of a social conception, gender in this case, certain shortcomings or flaws can be culled out from the Act. For instance, primarily, the scope of the act is limited. It excludes a substantial section of the workforce in the informal sector like landless farmers, traditional artisans, workers in brick-kilns, etc. and smaller firms because it only applies to employers in certain industries and institutions that are registered with the local governing authorities. Many workers are treated unfairly as a result of its narrow applicability. Further, the implementation of the Act has always been a major problem. The Act doesn't have reliable enforcement methods. Even though it requires equal compensation for equal effort, it doesn't include any specific instructions or processes for handling pay discrimination. But in recent times, the government has taken initiatives to make the implementation more widespread and meticulous.

Moving on to more specific flaws in the Act, the definition of “work of similar nature” is ambiguous: The term "work of similar nature," which is used in Section 4 of the Act, is ambiguous. This ambiguity may be used by employers to justify compensation differences between male and female employees performing the same duties.<sup>7</sup> Another major problem in

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<sup>7</sup> Dhruv Kumar, Amish Gupta, *All you need to know about equal remuneration enforcement*, BLOG IPLEADERS (Sept. 7, 2023, 3:00 PM) <https://blog.ipleaders.in/all-you-need-to-know-about-equal-remuneration-enforcement/>

the act is that it does not directly address the broader issue of “occupational segregation”, where women are often concentrated in lower-paying jobs and sectors. It focuses on equal pay within the same job but may not address the systemic factors that contribute to occupational segregation. Finally, the Act was enacted in 1976 and has not undergone significant updates to address evolving workplace dynamics, such as remote work, gig employment, and the gig economy. It may not adequately cover contemporary forms of work.

Therefore, it is evident that the Equal Remuneration Act, 1976 suffer from some discrepancies and shortcomings. Amongst the above mentioned gaps in the Act, it is important to discuss the gap of occupational segregation and a need for modernization of the clauses as they are relevant for the purposes of this research. Occupational segregation is a phenomenon that explains that women tend to go for jobs that pay less and hence a gap in wages between both gender is maintained. Concerning modernization of the laws, the Equal Remuneration Act was enacted in 1976, almost 50 years ago. There is a need to revise the clauses to fit the current notion of gender, with all its ambiguity and complexity.

### **(A) Occupational Segregation**

The phenomena where men and women are disproportionately concentrated in different types of employment and occupations and this segregation contributes to the gender pay gap is referred to as occupational segregation with respect to gender pay parity in India.<sup>8</sup> Like many other nations, India has traditionally linked specific professions and businesses with one gender, and these professions frequently pay differentially. India exhibits significant gender-based occupational segregation.<sup>9</sup> Many occupations are considered traditionally "male" or "female" roles due to cultural and societal norms. For example, teaching and nursing are often seen as female-dominated professions, while engineering, construction, and some technical roles are male-dominated.<sup>10</sup> This segregation limits women's access to higher-paying positions and industries, leading to disparities in earnings.

Male-dominated professions in India often offer higher wages compared to female-dominated ones. This wage disparity is partly due to the perceived value and prestige associated with certain occupations. For example, engineering and IT jobs are often considered more prestigious

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<sup>8</sup> Marina Zhavoronkova, Rose Khattar, Mathew Brady, *Occupational Segregation in America*, CENTER FOR AMERICAN PROGRESS (Sept. 7, 2023, 8:47 pm) <https://www.americanprogress.org/article/occupational-segregation-in-america/> (last visited on

<sup>9</sup> Rammohan, Anu and Goli, Srinivas and Reddy, Bheemeshwar, *Occupational Segregation by Caste and Gender in India*, MPRE, 1 (2017)

<sup>10</sup> *These occupations are dominated by women*, INTERNATIONAL LABOUR ORGANIZATION (Sept. 7, 2023, 9:12 PM) <https://ilostat.ilo.org/these-occupations-are-dominated-by-women/>

and are compensated at a higher rate than teaching or nursing roles. As a result, men tend to earn more than women on average. Gender-based occupational segregation not only affects pay at the entry level but also limits women's access to leadership and decision-making roles. Men are more likely to hold high-ranking positions, which generally come with higher salaries and benefits. Women's underrepresentation in leadership roles further exacerbates the gender pay gap.

Occupational segregation can hinder women's career advancement opportunities. When certain industries or roles are predominantly male-dominated, women may face challenges in breaking into these fields or advancing within them. This can limit their earning potential over the course of their careers. Traditional gender roles and expectations in Indian society can reinforce occupational segregation. These norms influence educational and career choices from an early age, leading to disparities in the types of degrees and qualifications pursued by men and women. These disparities can result in different career trajectories and earning potentials.

### **(B) A Need for Modernization?**

Modernization of Indian gender pay parity laws is crucial for several reasons. While India has made progress in addressing gender-based discrimination and promoting gender equality with government policies and acts like the Equal Remuneration Act, there are still significant disparities in pay and workplace opportunities that have come about due to an outdated legislation. The workforce in India is undergoing significant changes, with more women entering the formal job market. Modernization of laws can account for these evolving dynamics, ensuring that women are not disadvantaged as they participate in a wider range of occupations and industries. An example of this modernization is the Vishaka Guidelines, devised by the Supreme Court to tackle sexual harassment at workplace. To this regard the Court observed:

*“In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein... Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.”<sup>11</sup>*

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<sup>11</sup> Vishaka and Ors. vs. State of Rajasthan and Ors. AIR 1997 SC 3011

Another way in which modernization of gender pay parity laws might be necessary is due to technological reasons. Some of the aspects that should be included for consideration are remote work arrangements, the gig economy, and flexible work options. Ensuring gender pay parity in these contexts is essential. Though, the Equal Remuneration Act considers organization that come under such sectors and as its provisions are applicable and implemented in these areas also. Modernization may mandate increased pay transparency from businesses. Reporting on gender wage disparities inside organizations is one example of this. Access to such information can make it easier to spot inequalities and hold employers responsible. The Equal Remuneration Act, however, does not have any such provision for transparency. Even though India has a number of anti-discrimination laws, such as the Equal Remuneration Act, modernisation can make them more effective

The modernization of Indian gender pay parity laws is essential to promote fairness, equality, and inclusivity in the workplace. It can help address longstanding disparities, adapt to changing workforce dynamics, and contribute to India's economic and social progress. Modernized laws should reflect the complexities of the modern workplace and consider the diverse experiences of women across the country.

### **III. GENDER PAY GAP IN INDIA**

India holds a significant position in the global economic growth and structural transformation narrative. However, it's not surprising that within a country as vast and diverse as India, disparities persist in the labor market. In many of the world's largest and most developed economies, women continue to earn less than men, even when performing the same job within the same company. According to the World Economic Forum, India ranks 108th out of 153 countries in terms of the gender pay gap, with women earning only 71% of what men earn. This inequality is not only unjust but also exerts a substantial impact on the country's economic stability and growth.<sup>12</sup>

As of 2023, the International Labour Organization (ILO) reports that the gender pay gap in India stands at 27%. This means that, on average, women in India earn 73% of what men earn for performing identical roles. In certain sectors, like the technology industry, this gap is even wider, with women earning just 60% of their male counterparts' wages. India ranks among the countries with one of the most substantial gender wage disparities globally. According to the Global Gender Gap Report 2021, women in India earn approximately 21% less than men on

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<sup>12</sup> Aradra, *In 2023 gender-pay gap in India stands at appalling 27%*, *Women's Web*, WOMEN'S WEB (Oct. 18, 2023, 11:11 AM), <https://www.womensweb.in/2023/01/in-2023-gender-pay-gap-in-india-stands-at-appalling-27/>



average, further illustrated in the World Inequality Report 2022, where men constitute 82% of the labor force, while women contribute only about 18% of the income.<sup>13</sup>

India's global position in gender parity, as assessed by the World Economic Forum (WEF), has plummeted to 135th out of 146 countries. This places India just 11 positions ahead of Afghanistan, where women are prohibited from attending schools under Taliban rule. In contrast, neighboring countries such as Nepal, Bangladesh, Myanmar, Bhutan, China, and Sri Lanka fare much better in these rankings. This is particularly concerning since in 2016, India held the 87th position globally.

The widening gender gap in India is primarily attributed to its global rank in terms of women's political empowerment, currently at 48th place. While this may seem positive, it's worth noting that in 2016, India was ranked ninth globally in this regard. However, the ranking dropped to 15th in 2017, 19th in 2018, and 51st in 2021. The latest report attributes this decline in political empowerment to the decreasing proportion of years women have served as heads of state over the past five decades.<sup>14</sup>

In an ideal world without gender disparities, women would earn 50% of all labor incomes. Nevertheless, progress toward closing the global gender pay gap has been disappointingly slow over the past three decades. In India, the situation regarding the gender gap appears even bleaker due to the increasing wage disparity between genders.

In India, the factors contributing to the gender pay gap are multifaceted, encompassing socioeconomic and structural issues. Girl children are sometimes denied access to education or forced to drop out prematurely. Even if educated, many women are not permitted to work by their families. Women who do enter the workforce often face extended leaves for maternity and childcare responsibilities, as well as caring for other family members. All these factors collectively result in women lagging significantly behind men in terms of their earnings over time

#### **IV. REACH AND SCOPE OF EQUAL REMUNERATION ACT, 1976**

Article 39 of the Indian Constitution provides for certain principles of policy that are to be followed by the State and elucidates 6 such principles. Clause (d) of the Article states that the

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<sup>13</sup> Sonali, *Understanding the Widening Gender Pay Gap in India*, INHUNT WORLD (Oct. 20, 2023, 7:57 AM) <https://inhuntworld.com/understanding-the-widening-gender-pay-gap-in-india/>

<sup>14</sup> Parvathi Benu, *Why is Gender Gap Widening in India?* THE HINDU BUSINESS LINE (Nov. 1, 2023 4:33 PM) <https://www.thehindubusinessline.com/blexplainer/why-is-gender-parity-widening-in-india/article65651519.ece>

principle of equal pay for equal work for both men and women shall be followed by the State.<sup>15</sup> To pursue this directive principle, the Equal Remuneration Act, 1976 came into force. Even after the implementation of the Act, the gender pay parity gap still persisted (and even persists today). Therefore, the Court took an active role in establishing the principle of equal pay for equal work by setting precedents. One such precedent is the decision of the Court in the case of *Randhir Singh vs. Union of India*, where the issue arose whether the pay scale of the petitioner, who was a driver-constable in the Delhi Police Force, should be same as the pay scale of other drivers of the Delhi Administration. The Apex Court held that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. The Petition was allowed and it was directed that the respondents should fix the scale of pay of the petitioner and the driverconstables of the Delhi Police Force atleast on a par with that of the drivers of the Railway Protection Force. In this case, the pay gap based on gender was not expressly talked about. However, addressing the pay gap in general, and regarding the principle of equal pay for equal work, Court observed

*“Equal pay for equal work' is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies by the enforcement of constitutional rights... It is true that the principle of 'equal pay for equal work' 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, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation... Construing Articles 14 and 16 in the light of the Preamble and Article 39(d) we are of the view that the principle 'Equal pay for Equal work' is 'deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though these drawing the different scales of pay do identical work under the same employer.’”<sup>16</sup>*

The Equal Remuneration Act, 1976 was passed in order to put into practice the directive principle of equal pay for equal work for men and women as stated in Article 39 of the Indian Constitution. In accordance with the Act, men and women must get equal compensation for doing the same or substantially equivalent job, and sex-based discrimination against women in the workplace is prohibited. To close the pay disparity between male and female workers, the

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<sup>15</sup> Constitution of India; art. 39.

<sup>16</sup> *Randhir Singh vs. Union of India* (1982) 1 SCC 618

Indian government approved the Equal Remuneration Act in 1976. The goals of this Act were to guarantee equal pay for men and women based on the nature of the work, equal opportunity in the workplace, protection from employment or occupational discrimination, and the prohibition of sex-based discrimination in the workplace. This Act promotes and upholds gender equality for both sexes, whether they be male or female. Let us look at some of the prominent aspects of the Act.

Section 2 (h) of this Act states that ‘same work or work of a similar nature’ means work in respect of which their 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 practical importance in relation to the terms and conditions of employment.

According to Section 4 of this Act, no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or 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 similar nature. No employer shall for the purpose of complying with the provisions of this Section reduce the rate of remuneration of any worker.

Section 6 talks about formation of an Advisory Committee as follows:

1. For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more advisory committee to advise it with regard to the extent to which may be employment in such establishment or employment as the central govt. may, be notification, specify in this behalf.
2. Every advisory committee shall consist of not less than 10 person nominated by appropriate govt. of which one half shall be women.
3. In tendering in advance, the advisory committee shall have regard to the number of women employed in the concerned establishment of employment. The nature of work, hours of work, suitability of women for employment as the case may be need for providing increasing employment opportunities for women included part time employment and such committee may this fit.
4. The advisory committee shall regular its own procedure.
5. The appropriate govt. may after considering the advice tendered to it by the advisory committee and after giving to the person concerned in the establishment an opportunity

to make representation issue such direction in respect of employment of women worker, as the appropriate Government may think fit.

According to Section 8, it is the duty of the employers to maintain registers and other documents in relation to the workers employed by him as may be prescribed. Regarding offenses and penalties, the table given below enlists them.<sup>17</sup>

**Table 1: Offenses and Penalties in The Equal Remuneration Act**

OFFENSES	PENALTY
Employer omits : 1. Fails to maintain register. 2. Produce the register and other relevant documents. 3. Give evidence. 4. Give any information.	<ul style="list-style-type: none"> <li>● Maximum fine Rs 10,000; or</li> <li>● Maximum Imprisonment: 1 month; or</li> <li>● Both</li> </ul>
Employer Makes: 1. Any recruitment in contravention of provision of The Equal Remuneration Act, 1976. 2. Any payment of remuneration of unequal rates for same work or work of similar nature. 3. Any discrimination between men and women. 4. An omission to carry out directions made by the appropriate Government.	<ul style="list-style-type: none"> <li>● Minimum fine : Rs 10,000</li> <li>● Maximum fine : Rs, 20,000</li> <li>● Minimum Imprisonment : 3 Months</li> <li>● Maximum Imprisonment : 1 year; or</li> <li>● Both</li> </ul> (Note : Maximum period of 1 year shall be replaced by 2 years for the 2nd, 3rd& 4th offence)
Failure to produce the register or any other documents or to give any information to the Labour Inspector.	Maximum Fine : Rs 500

The awareness of about the Act amongst the employees plays a big factor in widening or restricting its implementation. A data was presented by V.V. Giri National Labour Institute in a book in 2020 which shows the awareness of the Equal Remuneration Act, 1976 within different industries. It posited that, for instance, in the beauty industry, out of 54% of total employees are women, out of which only 14% are aware about the Equal Remuneration Act. In

<sup>17</sup> Dr. Shashi Bala, IMPLEMENTATION OF THE EQUAL REMUNERATION ACT, 1976; 24 (V.V. Giri National Labour Institute, 142 2020)

the construction industry, 23% of total employees are women, out of which a drastic only 4% of women are aware about the Act and its implications. In the education industry, the condition was relatively good where 33% of total employees were women out of which 24% were aware about the Act.<sup>18</sup>

Another significant factor that affects the reach and scope of the Act is whether information regarding it is being spread by the officials in any organization, such as employers for the most part. The same data presented by V.V. Giri National Labor Institute in the book also covers about the information being provided by the employers to the employees regarding the Equal Remuneration Act. In the data it was shown that in the education industry, a 33.3% of the employees were women out of which 18.2% said that they were being provided with the information about the Equal Remuneration Act and 15.2% had no clue about the same, since their employers did not provided them with the requisite information. Similarly, in the construction industry, 23.9% of the people employed were female out of which 21.7% were not provided any information about the Act.

This data can be a mark to state that the reach and scope of the Equal Remuneration Act is not up to its potential. Like in the construction industry, 21.7% of the 23.9% femal employees were not aware of the Act as no information was provided to them and only 2.2% did know. Moreover, in the beauty industry, where 54.3% of the total employees were women, only 14% were aware about the Act. This also limits the reach of the Act. Therefore, based on these datas and observation, it is suffice to say that the scope and reach of Equal Remuneration Act is not what it was ought to be as large section of employees in different types of industry either are not aware about it or are not being provided the requisite information.

## **V. GENDER AMBIGUITY AND THE WAGE GAP**

The impact of gender ambiguity, a concept that has become more prevalent in the last decade, on the wage gap is an important area to tread on. Gender ambiguity is a social concept that relates to when a person's gender identity or presentation does not fit into the standard binary classifications of male or female. It frequently entails a non-binary or genderqueer identity, in which a person may not identify as entirely male or exclusively female or may switch between gender identities. This can include non-binary, genderqueer, or gender non-conforming identities. A close, but not perfect example, of this would be transgenders. The relationship between gender ambiguity and the wage gap is a complex and multifaceted issue.

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<sup>18</sup> *Ibid*

The inequality in salary between men and women is referred to as the gender pay gap. It is a well-known fact that women typically make less money than males do for equivalent or similar jobs, as is also can be observed in the above sections of this paper. Numerous things, such as occupational segregation, discrepancies in job experience, discrimination, and societal expectations, contribute in the phenomenon of this pay discrepancy. There is a lack of data on this relationship between gender ambiguity and gender wage gap. However, we are going to attempt to understand the relationship based on other factors such as discrimination based on gender in workplace, occupation chosen by non-binary people, reading into statutes and other on other such basis.

The stigma that attaches itself to people who do not conform to standard gender identities makes them vulnerable and a victim to the discrimination in the workplace. This discrimination also prevents non-binary people to enter into workplace or if they enter, such discrimination prevents them from performing at their full potential. A national survey by UNDP in 2019 found that although Thailand has a global reputation for tolerance, the lives of lesbian, gay, bisexual and transgender (LGBT) persons are negatively affected by stigma and discrimination, which prevents them from reaching their full potential as workers.<sup>19</sup> Consequently, there emerges a wage gap between these genderqueer people and other workers who do not face such discrimination.

In 2018, a UNDP and ILO survey found that 21 per cent of respondents in China, 30 per cent in the Philippines, and 23 per cent in Thailand reported being harassed, bullied or discriminated against while at work because of their sexual orientation, gender identity, gender expression or sex characteristics. Many individuals believed they were denied a job due to their sexual orientation, or gender identity or expression, and more than two thirds said they had seen job advertisements that explicitly excluded LGBTI persons in the job requirement.<sup>20</sup> This also contributes to the pay parity adversely for genderqueer persons.

In the Indian approximately 92% of transgender individuals are denied the ability to engage in any kind of economic activity, according to a National Human Rights Commission research. Even qualified transgender people are denied jobs, which forces them to beg or engage in sex work. Ninety-six percent of transgender people are reportedly compelled to engage in low-wage or degrading occupations like begging or sex work, where they are physically and verbally mistreated by clients. Even the most competent transgender persons, according to 89% of those

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<sup>19</sup> INCLUSION OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, INTERSEX AND QUEER (LGBTIQ+) PERSONS IN THE WORK; A LEARNING GUIDE; 27 (International Labor Organisation, 2022).

<sup>20</sup> *Id* at 28

surveyed by researchers, cannot obtain employment, and over 23% are coerced into doing sex work, which has serious health risks.<sup>21</sup>

The fundamental understanding, derived from the above observations, is that since genderqueer people face discrimination, abuse and harassment at workplace, the opportunities that they get to earn a livelihood is not used to its full potential because it becomes difficult for them to work in such a hostile environment. Subsequently, their performance in the workplace is also affected adversely which affects their salaries and wages. This creates a gap between the pay scale of genderqueer persons and other workers who are employed at the same position for the same work. The principle of equal pay for equal work is violated more often than not regarding people who do not conform to standard gender identities. It can also be deduced that occupational segregation plays a role here. Transgender and gender non-conforming individuals may be more likely to work in occupations that are undervalued or face discrimination, contributing to economic disparities. This can be understood by contrasting occupational segregation with regards to genderqueer people to the fact that most pay parity laws around the world are based on standard binary gender identities, that is, male and female. Due to this, people who fall out of this binary standardization are not included in the laws that embraces the principle of equal pay for equal work.

On the other hand, it cannot be denied that this genderqueerness affects the application of pay parity adversely and becomes a societal obstruct in the application of principle of equal pay for equal work. The ambiguity surrounding the concept of gender makes it difficult for data collection for the purposes of pay parity. Studies on gender wage parity frequently divides gender into binary categories (male and female) while analyzing data. Because of this, it may be difficult to adequately document the earnings and professional experiences of gender-ambiguous people. As a result, in pay gap reports, their particular difficulties and discrepancies can be missed. The severity of impact of gender ambiguity on pay parity can, however, differ based on the broader societal environment, workplace regulations, and personal circumstances. In order to achieve gender pay parity, efforts should concentrate on resolving inequities faced by those who identify as either male or female as well as fostering inclusive, equitable workplaces for all gender identities.

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<sup>21</sup> Swakshadip Sarkar, *Transgender People And Employment in the Era of Diversity and Inclusion*, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (Nov. 29, 2023, 12:45 AM) <https://www.ohchr.org/sites/default/files/documents/cfi-subm/2308/subm-colonialism-sexual-orientation-oth-sarkar-input-6.pdf>

## **VI. CONCLUSION/SUGGESTIONS**

Wage discrimination based on gender is as old as industrialization itself, if not older. What has changed over time is only that now to address the issue, laws and statutes have come into existence so that this problem of wage gap can be tackled. For the most part, these laws prove to be effective and works like a clockwork. The main obstruction that comes into play is its implementation, especially to the section that is unaware on such labor laws. One such law is the Equal Remuneration Act of 1976 in India. But this has also fell short of addressing the issue of wage gap extensively.

The gender-based salary discrepancies in India have several facets, which have been highlighted by our critical examination of gender pay parity laws in India, with a focus on gender ambiguity and the wage gap within the context of the Equal Remuneration Act, 1976. The study has revealed a number of significant findings that should be taken into account. As observed above, many pay parity legislation' traditional binary structure, which serves as their foundation, is unable to adequately account for gender diversity. In order to ensure that salary discrepancies do not continue as a result of discrimination, it is essential that future legislative initiatives recognize and safeguard the rights of all people, regardless of their gender identity or expression.

Further, despite the existence of the Equal Remuneration Act, 1976, the wage gap is still a significant problem in India. Although the Equal Remuneration Act has unquestionably been an important step toward achieving gender pay parity, the implementation and enforcement of this legislation continue to face difficulties such spreading its awareness amongst the workers and unwillingness of the employers to provided information to their employees regarding such labor laws. There need to be a strict compliance regulatory system to make sure that the businesses follow the law's requirements and actively try to close the wage gap.

Another important step to ensure gender pay parity, considerably in recent times, is to effectively address the issue of occupational segregation. This can be done by eliminating bias in hiring and promotion, relaxing work policies and making it flexible to accomodate individuals, making salary structures more transparent, accentuating corporate accountability. The approach to tackling this gender wage gap can also be interdisciplinary by including corporate governance. The principles of corporate governance, such as fairness, transparency, accountability and responsibility can assist in eradicating the wage discrimination at corporate levels. For example, by giving importance to the principle of fairness, companies can indulge in the practice of treating every employee, regardless of their gender, caset, religion, etc. fairly



and equally by ensuring equal pay for equal work. Further, the practicing the principle of transparency, the corporations can make salary structure more transparent. Also, the workings of the Internal Complaint Committee, that is a mandatory body to be constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 to address sexual harrassment complaints in the workplace, is to be made more transparent. Regarding accountability and responsibility, the stakeholders of the company should hold the company accountable in case any such discrimination is found and it will be the responsibility of the company to rectify any such misdemeanours.

In conclusion, the in-depth examination highlighted the significance of legislation for gender pay parity as well as regularly modifying and modernizing these laws to promote greater inclusivity and fairness in the workplace. A comprehensive strategy that acknowledges the intersectionality of gender, addresses the wage gap, and guarantees that the Equal Remuneration Act's guiding principles are enforced is necessary to achieve real gender pay parity in India. We can only expect to build a more just and equitable society where people of all genders are compensated equally for their contributions to the labor via such coordinated efforts.

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