

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 6

2022

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Equal Remuneration to Lawyers Testing through Gender Lens

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ABSTRACT

Remuneration to junior lawyers is a widely discussed issue these days. Serious concerns have been raised on training and remuneration aspects for young lawyers. However, one of the most pressing and unspoken issues that remain in the legal industry is that of Gender Pay Disparity. As the years pass by, participation of women in the profession is rising, however, women talent attrition is higher in the legal profession.

There are various judgments of the Hon'ble Supreme Court of India laying down the law and interpreting the doctrine of Equal Remuneration. It is a much-propounded concept in theory and yet does not find its place in today's practical world. The saddening reality is that Lawyers, well versed in constitutional ethics, legal rights, and remedies, are also a part of the employer community who deny equal remuneration to their employees based on their gender.

There are numerous studies about the ongoing Covid-19 pandemic being one of the reasons to broaden Gender Pay Disparity. The same trends have been mirrored in the legal profession, however, not been talked about. The present research focuses on Gender Pay Disparity amongst lawyers in India and how to overcome the same.

Keywords: Gender Pay Disparity, Law, Lawyers, Equal Remuneration

I. INTRODUCTION TO GENDER PAY DISPARITY

Gender and Society share an entangled relationship, to the extent that individual perspectives just happen to fade away somewhere in the ocean of perspectives. However, one common wave in this ocean of perspectives is that Gender Disparity has a direct impact on work environment and human development. The most common and unspoken facet of Gender Disparity is Gender Pay Disparity (“GPD”). In a layman’s term, GPD is the difference between payment to men and women at same stature of the organisation having same merits. It is also referred as raw or unadjusted wage gap, because it is simple measure and does not consider the differences between men and women in their skills, endowments and labour market characteristics that directly affect the level of pay. For a better understanding, one needs to understand that there are two distinct concepts: the unadjusted pay gap and the adjusted pay gap. The former simply

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differentiates between mean and median wages of the two genders while the latter considers differences in factors such as occupation, education, and job experience. So, the difference is starker if you consider the unadjusted figure.

The Indian economy has witnessed a rise of women participation in professional and technical roles, yet it is ranked at 147 when it comes to ranking the South Asian economies. Women in male-dominated industries may earn more than those in female-dominated industries, but the gender pay gap persists across all sectors, as per the Global Gender Gap Report of 2022². For such scenarios, the well-known jurist Amartya Sen coined the term 'professional inequality'. According to him, professional inequality refers to discrimination in terms of employment, remuneration, promotion at work and even occupation.³ Undoubtedly, history is replete with examples where women have been denied their just entitlements under law and the right to fair and equal treatment in the workplace. There have been various specious reasons for women being denied their own rights, even when they ask for it. The range of reasons start from physiology, motherhood, and physical attributes to the male dominated hierarchies.

However, as pointed by Hon'ble Supreme Court, a hundred and one excuses are no answer to the constitutional entitlement to dignity, which attaches to every individual irrespective of gender, to fair and equal conditions of work and to a level playing field. A level playing field ensures that women have the opportunity to overcome their histories of discrimination with the surest of responses based on their competence, ability and performance.⁴ For creating a level playing field, it is imperative that the workforce and employers acknowledge the need of the same and start paying men and women according to their contribution in work irrespective of their gender.

At this juncture, it is noteworthy that gender pay gap exists whereby women in India earn 57 per cent of what men earn. Yet of these 57 per cent, only 31 per cent business stated that businesses and government should work in conjunction with each other in the domain of bridging gender gap.⁵ Women working part time have been able to earn only till 59 per cent of what their counterparts earn. The gap has hardly been filled since 1975. In most major occupational groups and industrial sectors, average hourly earnings were higher for men and women. But the width of the gender pay gap has been wider. Amongst professionals, it is widest

² WORLD ECONOMIC FORUM (2022, July), *Global Gender Gap Report 2022* https://www3.weforum.org/docs/WEF_GGGR_2022.pdf

³ A.K. NIGAM, RAVINDRA SRIVASTAVA, A.C. KULSHRESHTHA, KULDEEP KUMAR (2020), *Female Empowerment: A Life-Cycle Analysis*, <https://www.cambridgescholars.com/resources/pdfs/978-1-5275-4773-5-sample.pdf>

⁴ *Union of India & Ors. v. Lt. Cdr. Annie Nagaraja & Co.*, 2020 SCC OnLine SC 326 (India)

⁵ GC Magazine (Summer, 2019) *Redefining the old boys club*, <https://www.legal500.com/gc-magazine/feature/redefining-the-old-boys-club/>

for the 'male dominated' jobs such as managers, administrators and among industries, bankers, and insurance. Not only this, but the gap is also wider for married/co-habiting people than for single people and for those who have dependent children than for those without them. There is wider gap at every qualification level.⁶ The researcher also surveyed professionals from various professional backgrounds and asked them about the frequency of equal remuneration to men and women. Below is the depiction of the responses received:

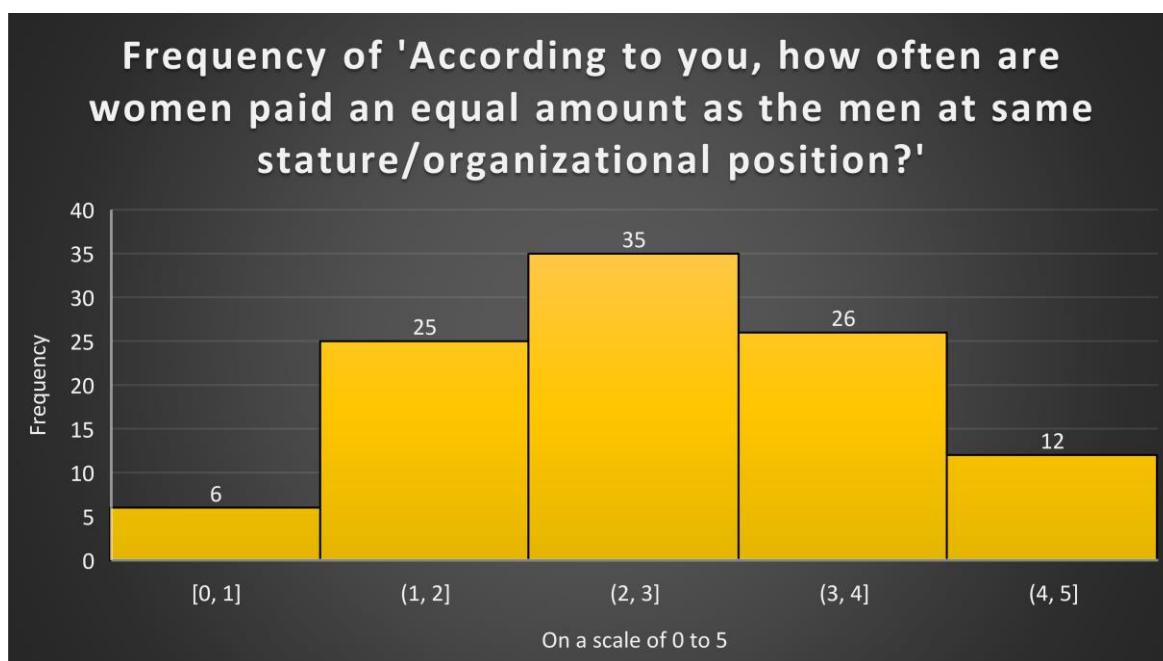


Chart No.1: Frequency of women receiving equal remuneration

II. PARTICIPATION OF WOMEN IN THE LEGAL INDUSTRY

Life of women has been confined to the certified areas for women, i.e., domestic and family duties. The ongoing Covid-19 pandemic made it even harsher for women. While at first place, courts were reluctant to hear matters virtually, lawyers had a hard time seeking reliefs for their clients. However, it was only after strong urge of lawyers that the courts adopted virtual hearing same as the usual ones and started hearing all the matters.

This gave rise to the observations that virtual hearing system increases efficiency of women lawyers in litigation; which nothing but an example of deeply embedded stereotypes as to how they are supposed to manage domestic and professional activities. In fact, the reality is that many women lawyers struggle to work in the said scenario.

Despite all the efforts, opportunities and trust lack in women lawyers. One of the sitting judges

⁶ SANGITA LAHA (2011) Professional Hazards of Women Lawyers, *Study of Women and Legal Profession- A Feminist Approach* 161-209. https://shodhganga.inflibnet.ac.in/bitstream/10603/175292/14/14_chapter%204.pdf

of the Hon'ble Supreme Court pointed out that our system is hierarchical patriarchy, which also tends to put women at the back end. First, it allows confinement of women in domestic realm where they are assigned the toil of domestic labour. Second, women are more likely to be relegated to feminine work roles and deprived of leadership positions, leading to discrimination in workplace. Third, it makes women vulnerable to violence, sexual or otherwise, because of power structure that exists in the society. Fourth, the rigid gender roles which arise from sexual division of labour privileges the heterosexual family unit.⁷

To combat the prevailing patriarchal structure, young lawyers have acknowledged the inherent need to bring about a change. Therefore, with this idea in mind, number of women joining to study law has witnessed a rise in recent years. It is, undoubtedly, one of the most remarkable social changes in the recent years. Following are numbers of women and men joining the profession⁸:

Year	Number of women pursuing law per 100 men
2010-11	46.2
2011-12	47.0
2012-13	46.9
2013-14	47.8
2014-15	45.4
2015-16	45.9
2016-17	48.4
2017-18	49.6
2018-19	50.6

⁷ MEHAL JAIN (2021, October 31) *Awareness About The Rights Of Women Can Be Truly Meaningful If That Awareness Is Created Amongst The Younger Generation Of Men In Our Society: Justice Chandrachud*, <https://www.livelaw.in/top-stories/justice-dy-chandrachud-empowerment-of-women-legal-awareness-nalsa-ncw-intersectionality-sexual-division-of-labour-184737>

⁸ MINISTRY OF STATISTICS AND PROGRAM IMPLEMENTATION, GOVERNMENT OF INDIA report on *Women and Men in India, 2020* (2021) <https://mospi.gov.in/documents/213904/959690/latestmen1626945980421.pdf/758be5d1-76df-ee23-54f8-4746ce2aac9e>

In the year 2019-20, the participation of women rose to 197 which is more than the participation of men. Today, the number of women graduating as lawyers and those as young advocates are more than ever.

However, contrary to the rising number of women graduating, women working in the field, as compared to men, even today, comprise of a very small segment of the legal profession. The great growth in participation of women in law has been able to match the growth in demand for all kinds of legal services, particularly from business community. With lesser number of women in the higher positions, it is difficult to ascertain and answer a question as to how bright their future would be, if the gender stereotypes continue to exist. The influx of women has prompted a great speculation among academicians and political activists with regards to the changes that women would bring about in the nature and administration of substantive law as well as the way in which the profession has been practiced.⁹

III. PERSISTING DISPARITY IN THE LEGAL INDUSTRY

The Indian legal industry has witnessed an unprecedented growth specially in law firms, after liberalisation. In last decade, the legal sector is said to be transformed from kinship-based partnership model to an industry that is based on meritocracy. The adoption of 'professional' hierarchical structure in law firms, international clients and an emphasis on rankings and branding has reinforced this assertion. However, the women working in this profession confront a lot of gender challenges. In fact, many organisations are unwilling to invest in the women's talent. Similarly, as far as the scenario in law firms is concerned, the average percentage of women making up the partnership at 30 top Indian law firms, for which data was available, currently stands at 30 per cent. At only 23 per cent out of those 30 firms is that senior gender ratio above 40 per cent at a third of firms it's below 20 per cent. Amongst the Top 100 Corporate Dealmakers, only around 25 per cent are women.¹⁰ The reality at some point remains that the ratio of promotion places heavy reliance on the gender. While women working in the junior position of law firm is more than that of working in the senior position. The legislative benefits attributed to women, such as, maternity leave, are considered as drain in the firm's resources.

Women in litigation face it even harder, given the structure of court practice. They are constantly seen as misfits in the world of litigation and there have been various instances of

⁹ SAURABH KUMAR MISHRA (2015, December 18). *Women in Indian Courts of Law: A study of Women Legal Professionals in District Court of Lucknow, Uttar Pradesh, India*. <https://journals.openedition.org/eces/1976>

¹⁰ Legally India, (2019, June 1) *Women in Indian Law Firm: In a growing minority*, <https://www.legallyindia.com/india-unleashed-editorial/women-in-indian-law-firms-in-a-growing-minority-20190601-11000>

women are harassed verbally, not just by the opposing counsels, but also by the ‘respectable’ judge of the court. Hence, this perpetuates a strong sense of gender disparity in the legal profession, when the judge of the court becomes the person who discriminates based on Gender. It is this mindset which makes Litigation the last choice of women who pursue careers in the Legal Industry.

In the given scenario it is even more important to stick to the ground realities and remember what Justice V. Gopala Gowda once said; *“In a gender-justice society, providing economic and political equality is important.”*¹¹ However, to become a gender-justice society, it is imperative that the flaws, as discussed hereinbelow are acknowledged.

Lack of Adherence to Equal Pay for Equal Work

The pay disparity has been consistent across different professions and so is not unique to lawyers. While this can vary depending upon the industry and the size of the organisation, a truth that remains unchanged is that the number of women in leadership roles are way lesser than that of men. It is in the light of such realities that the Hon’ble Supreme Court of India promotes the principle of Equal Pay for Equal Work, as enshrined in Article 39(d) of the Indian Constitution. It has been observed that Equal Pay for Equal Work is to bridge the gap between pay of men vis-a-vis pay of women in same work, performing same task. The gender of the individual is rather a vein reason to attribute to such disparity.

The Supreme Court in **Randhir Singh v. Union of India**¹² observed that:

“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. 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. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the

¹¹ Staff Reporter (2015, March 8) *Gender Equality is still a distant concept in India*, <http://www.thehindu.com/news/cities/Hyderabad/gender-equality-still-a-distant-concept-in-india/article6970916.ece>

¹² (1982) 1 SCC 618

equality clauses will have some substance if equal work means equal pay.”

It is known for a fact that even if the right to equal pay for equal work in the expressly said to be fundamental right. The Supreme Court held to be a fundamental right in the case of *Federation of All India Customs and Excise Stenographers v. Union of India*¹³. The court observed:

“It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right.”

The principle of Equal Pay for Equal Work remains fundamentally related to the dignity and personal liberty of the person. It is an accepted proposition that every person has a fundamental right to live with dignity and personal liberty, as per Article 21 of the Indian Constitution. The Supreme Court in *Francis Coralie v. Union Territory of India*¹⁴ held that right to life is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with outside world, but it also includes “right to live with human dignity.” Needless to mention, these rights are recognised by the Constitution as inhering in everyone as an intrinsic and inseparable part of human element which dwells within. There is an inseparable relationship between protection of life and liberty, with dignity. Further, the constitutional vision seeks the realisation of justice (social, economic, and political); liberty (of thought, expression, belief, faith, and worship); equality (as guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is the realisation of the individual rights that the collective well-being of the community is determined. Human dignity is an integral part of the Constitution.¹⁵

The focal point of the doctrine of Equal Pay for Equal Work, as propagated by the Hon’ble Supreme Court is that the employer must not discriminate based on the gender of the employee especially when they are doing same work or work of similar nature.¹⁶ The Hon’ble Supreme Court of India has also held that it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state, such actions

¹³ (1988) 3 SCC 91

¹⁴ AIR 1981 SC 746

¹⁵ *KS Puttuswamy v. Union of India* (2017) 10 SCC 1 (India)

¹⁶ *M/s Mackinon Mackenzie & Co Ltd v. Andrey D’Costa* 1987 AIR 1281 (India)

besides being demeaning, strike the very foundation of human dignity.¹⁷ An act of paying less remuneration is the act of exploitative enslavement, emerging out of dominating individual subjecting the victim to involuntary subjugation. All of it add on to less chances of women getting promotion at work and hence, the growth in the professional space seems to be difficult.

Impact of Lack of Judicial Infrastructure

Another widely discussed aspect is the Lack of Judicial Infrastructure, which adds on the discomfort for women in the profession, both at the bar and at the bench. Not long ago, the then Chief Justice of India raised this concern and said:

“The total sanctioned strength of judicial officers in the country is 24,280 and the number of court halls available is 20,143 (including 620 rented halls); 26% of court complexes do not have separate ladies’ toilets and 16% do not have gents’ toilets; only 54% of court complexes have purified drinking water facility; only 5% of court complexes have basic medical facilities; only 32% of court rooms have separate record rooms; only 51% of court complexes have a library; only 27% of courtrooms have computer placed on the Judge’s dais with video-conferencing facility. According to international research published in 2018, failure to deliver timely justice cost the country as much as 9% of annual GDP.”¹⁸

The infrastructural differences impact the appointments and opportunities in the legal profession. The appointments and opportunities have never been free of a gender lens. Additionally, different socio-economic positioning makes some of them less susceptible to situations of discrimination than others; making them unequally placed in terms of their opportunities. For instance, women coming from an urban, higher caste, higher class, educated and legal backgrounds would be less susceptible to bias than a woman coming from rural, lower caste, class, uneducated and non-legal background.¹⁹

The scarcity of women in litigation practice also leads to lesser number of judges at the bench. Appointments of judges and lack of practice is nothing less of a vicious cycle. In fact, one of sitting judges of the High Court in India, while delivering a speech pointed out that there exists an unsaid criterion of income which is used to gauge success of a person as an Advocate and

¹⁷ *State of Punjab and Ors v. Jagjit Singh and Ors*, (2017) 1 SCC 148 (India)

¹⁸ Special Correspondent (2021, October 23), *Judicial Infrastructure key for improving access to justice, says CJI* <https://www.thehindu.com/news/national/other-states/cji-ramana-rues-ad-hoc-unplannedimprovement-and-maintenance-of-judicial-infrastructure/article37136774.ece>

¹⁹ AISHWARYA CHAOUHAN (2019, December 4) *Structural and Discretionary Bias: Appointment of Women Judges in India* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3482483

suitability of the person as a judge.²⁰ This raises serious concerns about the appointment of women as judges, who have been paid lesser than their male counterparts.

Deeply embedded Gender Stereotypes

Another factor is that the women face strongest struggles in bringing about the change in the workplace mindset. The culture of law firms comes from the big lawyers who have turned old in the profession. Even the young male lawyers become an extension of this mindset and rather help in propagating the same. Lawyers who are more resistant to the partnership and other flexible arrangements that are often needed to find arrangements that are often needed to find a place for women, as a senior in the law office. Hence, lack of equal opportunity leads women in the disadvantaged position. Gaining equal opportunity will require a new balance between professional work and personal lives. Any change will confront deep seated work practice in law. All sorts of the unconvincing excuses have been offered throughout the years of practice. Women shorter in stature might not be seen in higher pedestal in the profession, because of these notions pulling them down. They have high pitched voices that did not carry in courtrooms.²¹

Discrimination occurs, not merely because women are actively excluded from senior positions but because of various social pressures and pre-conceived notions about women and how legal profession operates. Till date, little has been done and recognised to develop methods and assist profession to identify and eliminate practice which promote discrimination against a gender. But while this can vary depending upon the industry and the size of the organisation, a truth that remains unchanged is that the number of women in leadership roles are way lesser than that of men.

As far as Litigation is concerned, pay gap between junior women lawyers and junior male lawyers performing the same job is also a serious concern. The practice of deciding the remuneration of lawyers based on extrinsic factors like the necessity of junior lawyer to financially support one's family, his/her lifestyle and background, unwarranted assumptions as to monetary requirements, stressing that paying inadequate salary is a tradition which has to be protected etc. should be discouraged. Juniors are not paid based on their skills, the hours of work they put in and their efficiency. It is utopian to expect everyone to survive just on passion; most lawyers need reasonable as well as for sustenance. This is especially true for many women

²⁰ Bar and Bench (2018, December 28) *Shattering Glass Ceiling on the Bar and the Bench: Justice Gautam Patel*. <https://www.barandbench.com/columns/shattering-glass-ceilings-on-the-bar-and-the-bench-justice-gautam-patel>

²¹ The Hon Justice Michael Kirby AC CMG, Justice of High Court of Australia (2001, August 20) *Women in the law- What Next?* https://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_vicwomen.htm

because being deprived of financial independence entails that she will be expected to obey the person in the family who financially supports her. Consequently, for women, financial independence is more or less equivalent to personal autonomy.²²

Negotiation process through Gender Lens

A large part of disparity is the negotiation power that women are said to lack. Negotiation remains a vital part of any candidate negotiating for their remuneration. The common perceptions as mentioned above, among other reasons give rise to downward graph for women to negotiate and demand salary according to their full calibre. Additionally, there are many factors which give rise to gender pay disparity but the most important factor which largely remain intact is that men actually don't know the capabilities of women and hence they tend to expect less from them. That's why they don't trust their opinion because men feel women doesn't have good decision-making power and that's why women are being less preferred in high post or leadership roles due to which the problem of gender pay disparity begin.

As far as the women workforce is concerned, a vital change is required in the attitude for negotiation of the remuneration. A large section of women, while being hired feel that they are being suppressed in the negotiation process or maybe it their own mindset that asks them to take a backseat in the negotiation process.

Following is the depiction of success of the negotiation process, which is looked upon from the gender lens. The results have been derived from the online survey conducted by the researcher.

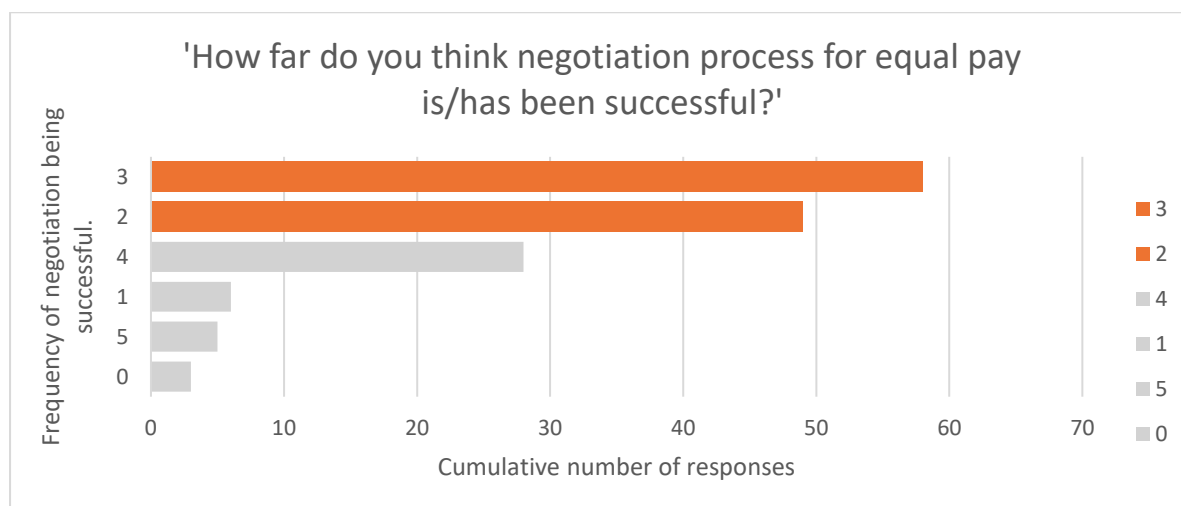


Chart No.2: Success of negotiation process

²² ARUNA A (2022, May 22) *Women Leaving Law: What Is the Way Ahead?* https://www.livelaw.in/columns/women-leaving-law-what-is-the-way-ahead-199781?infinite_scroll=1

It is pertinent to point out that young women joining the profession are well acquainted with the market trends and are taking a more affirmative stand when it comes to negotiating about reimbursement, as compared to the older trends wherein women tend to be more passive about talking about payments.²³ However, the gender gap on the higher position is one of the most vital factor of the GPD. To overcome this gap, the legislature has also made the efforts to improve the conditions for women in the profession and have also made attempts to provide opportunities to women to grow in their career.

IV. A GLANCE OVER THE LEGISLATIVE INITIATIVES

The Equal Remuneration Act, 1976 to the Code of Wages, 2019

The Equal Remuneration Act, 1976 required the payment of equal remuneration to both male and female workers. The present legislation in place is the Code of Wages, 2019. The Code of Wages, while not changing the provisions of the law themselves substantially has certainly reduced the ambiguity and multiplicity of definitions and compliances as well as broadened the scope of the beneficiaries under the existing laws thus providing benefits to around 50 crore employees. The Code comprises 9 chapters, with minimum wages, payment of wages, equal remuneration and bonus being covered under different chapters.²⁴ The provision which the Code that prohibits gender discrimination by the employer under Section 3.²⁵

However, eliminating discrimination against gender is difficult task in practice. Legislation cannot be a lone force headway, and organisations committed to genuine change and development concerning diversity within the workplace has aligned their policies with a genuine belief that diversity is essential for advancement of society.²⁶

Even though the Hon'ble Supreme Court of India has continuously and consistently increased the purview of the doctrine of Equal pay for Equal work has gone far off to make new

²³ A The Law Society of England and Wales (2019, June) *Advocating for Change: Transforming the future of legal profession through greater gender equality by The Law Society of England and Wales*. https://www.law.ox.ac.uk/sites/files/oxlaw/advocating_for_change_-_international_women_in_law_report.pdf

²⁴ KAAMYA RAMANAN (2019, September 9) *A New Era of Labour Laws Beginning With The Code of Wages, 2019* <https://www.foxmandal.in/a-new-era-of-labour-laws-beginning-with-the-code-of-wages-2019/>

²⁵ "Section 3- Prohibition of Discrimination on ground of gender:

- (1) *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.*
- (2) *No employer shall:*
 - (i) *For the purpose of complying with the provisions of Sub-section (1), reduce the rate of wages of any employee; and*
 - (ii) *Make any discrimination on the ground of sex while recruiting any conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being force."*

²⁶ GC Magazine (Summer, 2019) *Redefining the old boys club*, Legal 500; <https://www.legal500.com/gc-magazine/feature/redefining-the-old-boys-club/>

interpretations so that any sort of discrimination in terms of pay on the grounds of sex or gender of the person, unless based on reasonable grounds, does not go unrefuted. However, the idea of the remuneration to women as equal to men have taken a backseat in the legal industry. Women had to first raise their voice to get admit into the profession and now to receive equal remuneration. Even if the lawyers are aware of the Right to Equality being a core to the constitution of India, the legal industry mirrors GPD.

Gender Pay Gap Bill, 2018

A private member bill on Prevention of Gender Pay Gap was introduced in Rajya Sabha in 2018 but lapsed in 2020. The bill was introduced by Mr. Husain Dalwai in Rajya Sabha. The bill stated the objective to reduce gender pay gap in the light of goal set in Article 38 (d) of the Constitution of India. Further, the bill pointed that it is imperative to re-enact The Equal Remuneration Act, which confers right to Equal Remuneration and Right against Gender Discrimination specifically relating to the remuneration paid. It pointed out the need of an efficient and effective grievance redressal mechanism to be in place.

The bill provided for the provision for prevention of gender discrimination at workplace and promoting Equal Pay for Equal Work under the provisions of Section 4. The bill further proposed to constitute a National Pay Equity Committee which shall be headed by a person, who has worked immensely to promote Gender Equality and the committee would have at least two women members. And, on the same lines, it provides for establishment of State Pay Equity Committee.

There were mixed opinions on whether a legislation on Gender pay would help. Supporters of this legislation say that it would ensure a more transparent environment to work in. The firms and companies would be held liable for their remuneration practices along gender lines. Others highlight that it may give rise to a fear that men may perceive about women. The anticipated fear is that women would be paid equally because of the legislation rather than for meritorious work done by them. Moreover, organisations would provide a range of salaries, which makes it difficult to identify whether there is a pay gap. Several other factors would include distance from workplace, working hours, profile etc.²⁷ Unfortunately, the bill has lapsed and not been tabled before house of parliament.

V. BRIDGING THE GAP

Despite the increase in number of women graduates in law and legal training and entering the

²⁷ SHEMIN JOY, DH News (July 30, 2018) *Bill seeking Equal Pay for Women introduced in RS* <https://www.deccanherald.com/national/bill-seeking-equal-pay-women-684395.html>.

profession, the number of senior women in the profession specially in private practice, at the bar and at the bench remain significantly low than those of their male counterparts. The concept of GPD is a worldwide reality in all economies and thus is also taken up as an International Issue by the United Nations. In 2015, members of UN adopted a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030 and collectively come up with Sustainable Development Goals. These goals include equal pay for equal work of equal value as one of them.²⁸

At the outset, it is imperative to eliminate gender discrimination and immediately adopt the policies that enable workers of all the genders to better combine their work and personal lives. In the longer run, there is a change needed in the current attitudes of the people at the workplace. The society and the workers, need to be educated and sensitised. The notions for gender roles need to be abandoned, and the society must view the interests and talent of the female lawyers to be at par with their male counterparts.

Arguments that mere entry of women must make a difference to the practice of law need to examine the work contexts where different methods might be adopted rather than focussing on the gender of the practitioner. The first step towards making the profession more favourable for women is to break down the barriers caused by persistence of gender role stereotypes and norms that women should be subordinate to men in professional and public life. One such step lies in the suggestion of Delhi High Court in setting up a creche for women advocates and court employees. Both male and female lawyers face the reality. They revolve around the culture of the legal profession that involves longest of work hours wherein the lawyers are expected to stay in the office for extraordinarily long hours. Some young women lawyers find it difficult to stay in office for long hours moreover when they are underpaid or not made according to their potential. Women who are mothers find it difficult to cope up with childcare facilities and responsibilities, in fact, many a times they have to carry work at home. The innumerable factors may lead to unfavourable medical conditions of the women who are not able to maintain a balance between all the works. Some of them even fall in prey of severe mental condition like depression. However, the changing point is that mindset of working women is changing and often each additional role brings increased self-esteem leading to physical and mental wellbeing.²⁹

Although the change in attitude is only recent. Recruiters are realising that just because a male

²⁸United Nations, Department of Economic and Social Affairs, See Point No. 8.5 <https://sdgs.un.org/2030agenda>

²⁹ SANGITA LAHA (2011) Professional Hazards of Women Lawyers, *Study of Women and Legal Profession- A Feminist Approach* 161-209. https://shodhganga.inflibnet.ac.in/bitstream/10603/175292/14/14_chapter%204.pdf

lawyer stays for a long time does not mean that they are right candidate for promotion, especially if there is a female lawyer more capable of handling tougher case with more efficiency. It is now becoming a matter to provide comfort to the lawyers, in their workplace, which in turn increases their efficiency and effectiveness of work. Legal profession is yet to undertake a coordinative and transformative global response that tackles the problem of gender inequality in the industry. Until then, equal opportunities are going to continue only in the aspirations.³⁰ Both conscious and unconscious bias are widespread and requires systematic social change.

Employee Satisfaction

However, from the firm's point of view, as a whole, achieving gender balance may be secondary priority. The primary priority is the employee satisfaction, especially for client satisfaction. Therefore, it is imperative for any practice that the legal workforce remains highly and continuously motivated to be able to serve clients in the best manner possible. In the light of the same, employee satisfaction remains as essential as oxygen. Employee satisfaction can be measured by using broad measures such as:

- Professional process,
- Range of work and personal autonomy,
- Income,
- Confidence and level of support,
- Future plans and quality of life.

Better treatment of the employees will lead to knock-on effect on employee relations within the law offices, which can reduce absenteeism by enhancing employee attachment to or the engagement with the firm will have a positive impact on the productivity.³¹

In the aforementioned factors to satisfy the employee, income remains an essential factor. If the employee does not earn enough according to his/ her expectation, then he/she is likely to drop out of the job. The idea of sufficient income may vary from organisation to organisation howsoever, there exists an inequality between what employees are based, just based on their

³⁰ The Law Society of England and Wales (2019, June) *Advocating for Change: Transforming the future of legal profession through greater gender equality by The Law Society of England and Wales.* https://www.law.ox.ac.uk/sites/files/oxlaw/advocating_for_change_-_international_women_in_law_report.pdf

³¹ Law Society of England & Wales (2016) Chapter 2: Elements of a Socially Responsible Law Firm, *Diversity and inclusion in law firms - the business case* <http://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/diversity-and-inclusion-in-law-firms-the-business-case/>

gender. This idea of different pay gives rise to gender pay disparity in the organisation.³² Further, it is important that certain policy changes are incorporated in the practice which would add on the employee satisfaction.

Policy changes

The legal sector of India works broadly in two categories: litigation and non-litigation. While litigation is not an organised sector as for the eyes of employees are concerned, non-litigation works with utmost organisation and management in place. Yet, both the categories need to consider the factors which broaden GPD and make attempts to bridge the same. Admittedly, the implementation and execution of the legislation requires efforts over a period, repetitively. Therefore, alongwith the legislative attempts, it is important that policies are implemented to eliminate the innate gender bias. Few ideas that can be implemented by both litigation as well as non- litigation offices are enumerated below.

a. Family Oriented Policies: The immediate solution to address the issue of gender disparity in legal profession is that there should be family-oriented policies, favouring the women lawyers in the country. Such policies should include providing paternal leaves, flexible work schedules and childcare, which are of specific importance to the women lawyers, owing to the gender stereotypes. The role of employers in this process should be to recognize the extent to which gender bias permeates their operational structures, develop an understanding of how the environment created by these structures influences the behaviour of individuals, and change their operational structures to eliminate that bias.

b. Evaluating performance on professional competency only: All decision makers in the management as well as employees must learn to respect the work performed by women. They must learn that being too personal or familiar, flirting, and referring to appearance and family plans indicate to women that they and their work are not being taken seriously. Basically, employers must recognize that any behaviour or comments that bring a worker's gender to the fore are inappropriate and may cause the employee to question her competence.

A primary objective should be to ensure that women are given fair performance evaluations and are promoted according to their worth, not their gender. To do this, employers must recognize that employees are often judged according to stereotypes associated with groups to which they belong rather than by their individual performance.

³² The Law Society of England and Wales (2019, June) *Advocating for Change: Transforming the future of legal profession through greater gender equality* by The Law Society of England and Wales. https://www.law.ox.ac.uk/sites/files/oxlaw/advocating_for_change_-_international_women_in_law_report.pdf

c. **Diversity Training:** Some law firms have come up with the idea of organising and sponsoring ‘diversity training’ programs designed to teach employees to understand and value the difference between men and women. Once employers commit themselves to instituting these programs, they should also acknowledge their responsibility for educating future employees. The law offices need a strong economic inclusion of the employees in order to adhere to the raising bar of the consumer of the legal services. For instance, the firms which do not support an employee to stay and return to work will, at the minimum, suffer opportunity costs of the losing talented, knowledgeable staff, of placement, recruitment and training new staff. While discussing opportunities for the law society to make real difference in the likely legal landscape in 2020, the future report cites ‘if a business is not reinventing itself to adapt to new changing market conditions then it is highly likely it will go into decline or be taken over by those that are better adapted to the new environment’³³

d. **Women Lawyers Collective:** With regard to Indian context at the Bar and the Judiciary, there needs to be some specific structural changes which need to be made in order to address the issue of gender disparity. The women involved in the legal profession must come together and form an association which can look into the issues of gender disparity at workplace, without letting any women feel alone in their fight against a structural and societal evil. It is also important that such groups and associations are led by able leaders so as to avoid any kind of caste or class discrimination in cases of gender inequality faced by the women in the legal profession.

e. **Gender Role Reversal:** Gender role reversal is a concept that deconstructs ancient traditions and rather aims to portray women as strong, authoritative and unapologetic and reversal analogy of men objectified as consorts. The constitution of India fosters and strengthens the spirit of equality and envisions a society where every person enjoys equal rights which enable him/her to grow and realise his/ her potential as an individual. The guarantee of an individual runs through the entire length and breadth of this dynamic instrument. The Constitution has been conceived of and designed in a manner which acknowledges the fact that ‘change is inevitable’. It is the duty of the courts to realize the constitutional vision of equal rights in consonance with the current demands and situations and not to read and interpret the same as per the standards of equality that exists decades ago. The judiciary cannot remain oblivious to the fact that the society is constantly evolving and many a variation may emerge with changing times. There is a constant need to transform the constitutional idealism into

³³ RICHARD DEVLIN, ‘Bend or Break: Enhancing the Responsibilities of Law Societies’, (2015) 38 Man. L.J 119.

reality by fostering respect in human rights, promoting inclusion of pluralism, bringing harmony, that is, unity among diversity, abandoning idea of alienation or some unacceptable social notions build of medieval egos and establishing a cult of egalitarian liberalism founded on reasonable principles that can withstand scrutiny.³⁴

The solutions and the suggestions seem to be quite simple and straight-forward because the real challenge does not lie in any system or any structure as such. It is the mindset of the people in the legal profession, in specific, and any profession, for that matter which is the genuine cause of concern amongst the women folks. Hence, there needs to be a holistic approach to address this root of the gender pay disparity³⁵ and establishing Economic Democracy³⁶ as envisioned by framers of the Indian Constitution.

Ultimately, the following holds true:

“The time has passed when women’s movement had to exclude men in the fight ‘against’ patriarchy. The time has rather for women’s vision to restructure and redefine work in order to fashion a new society for women and men based on women’s experience and skill as caregivers and reproducers. It is not a question of adding gender to the world’s major cosmologies, but rather of re-writing the latter at their very roots.”

– Wendy Harcourt³⁷

³⁴ *Navtej Singh Johar v. Union of India* AIR 2018 SC 4321 (India)

³⁵ NITESH MISHRA (2019, February 15) *Gender Disparity in legal profession*. Law Times Journal <http://lawtimesjournal.in/gender-disparity-in-legal-profession/>

³⁶ “The concept of economic democracy may be defined as a “system of checks and balances on economic power and support for right of citizens to actively participate in the economy regardless of social status, race, gender etc.”-

³⁷ WORLD COMMISSION ON CULTURE AND DEVELOPMENT (1995, September 12) *Our Creative Diversity* <https://unesdoc.unesco.org/ark:/48223/pf0000101651/PDF/101651eng.pdf.multi>

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