

CHAPTER-08

LEGAL FRAMEWORKS AND CHALLENGES FOR WORKING WOMEN IN INDIA: A COMPREHENSIVE ANALYSIS

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ABSTRACT

Jennifer Lawrence's assertion about the disparity in pay between women and men ignited a fresh discussion. Recent leaks of Sony emails uncovered that she was paid less than her male counterparts, prompting her to express self-criticism for not negotiating effectively. She emphasized her reluctance to be labelled as "spoiled" or "difficult," highlighting that women aren't seeking more pay per se, but rather fair compensation. She noted the societal discrepancy where men are encouraged to assert their worth when entering a room. Men consider women likable during negotiations by being kind, understanding, and cooperative. The instant we stray, we are called pushy, aggressive, and unlikeable.

Keywords: Working Women, Gender Bias, Work, Wage gap, Gender Pay Disparity.

1. INTRODUCTION

The issue of gender bias and its impact on societal development is a multifaceted one, deeply rooted in historical, cultural, and societal norms. Despite the professed ideals of equality, biases persist, particularly hindering the holistic development of individuals and societies due to entrenched patriarchal norms.

Gender bias refers to the unfair treatment of individuals based on their gender or sexual orientation, often resulting in the privileging of one gender over another without valid justification. This bias not only affects individuals' opportunities and experiences but also perpetuates systemic inequalities within societies.

In the context of ancient Indian texts like the Vedas and Upanishads, women were often revered as "Mata" (mother) or "Devi" (goddess), enjoying significant respect and honor within society (Mukhopadhyay, A. 2020). However, despite this historical reverence, the status of women began to deteriorate over time.

Historical practices such as polygamy further exacerbated gender disparities, as they often relegated women to subordinate positions within familial structures (Kok, J. 2017). Additionally, during the Middle Ages, the emergence of practices such as Sati (the immolation of widows on their husbands' funeral pyres), dowry systems, and purdah (the seclusion of women from public view) further entrenched gender biases and limited women's autonomy and agency (Mohan, K. 2006).

Despite these historical precedents, it's essential to recognize that gender bias and inequality persist in contemporary society, albeit in different forms (Lorber, J. 2001). While progress has been made in challenging and dismantling some of these entrenched norms, there is still much work to be done to achieve true gender equality and to ensure the holistic development of all individuals, regardless of their gender or

sexual orientation. This requires ongoing efforts to address societal attitudes, challenge discriminatory practices, and promote policies and initiatives that foster inclusivity and equal opportunities for all genders.

2. FACTORS CONTRIBUTING TO THE GENDER PAY DISPARITY

i. Workplace Challenges

Typically, women's involvement in the workforce remains limited, mainly concentrated in rural agricultural settings. A distinct gender gap in the labor force is evident, particularly in rural North India. Despite the high prevalence of female labor participation in India, disparities persist.

ii. Cultural Inequities

Social and cultural norms vary from state to state in India, with restrictions on women's paid employment and labor often dictated by societal status. Intriguingly, even when women from higher castes secure paid employment, they encounter greater difficulty in securing jobs (Mohanty, C. T. 2013).

iii. Education and Training Disparities

Women in India face significantly lower literacy rates compared to men, with many girls discontinuing their education prematurely (Kadam, R. N. 2012).

Additionally, there exists a notable bias favoring men in terms of investment in education and training, further exacerbating the gender gap in these spheres.

iv. Uncompensated Work

Women in India are estimated to dedicate 21 more hours per week to unpaid labor compared to men, with over two-thirds of all jobs being unpaid (Mukherjee, N., & Majumder, R. 2015).

While men allocate only a quarter of their working time to unpaid labor, women spend nearly two-thirds of their working hours engaged in such tasks, as reported by the Human Development Report 1995.

3. GENDER PAY DISPARITY AT WORK

Unequal pay and the gender pay gap are two interconnected but distinct issues within the realm of gender inequality in the workforce. Unequal pay specifically refers to the situation where individuals of different genders receive different compensation for performing the same or similar work. This could occur due to various factors such

as discrimination, bias, or simply lack of awareness or oversight by employers (Bornstein, S. 2017). Legislation and policies aimed at addressing unequal pay typically focus on ensuring that individuals receive equal compensation for equal work, regardless of their gender.

Legislation in many countries and sectors mandates equal pay for equal work, which means that employers are legally obligated to pay employees the same wage or salary for performing identical tasks, regardless of their gender. These laws are crucial for promoting fairness and combating discrimination in the workplace.

Conversely, the gender pay gap refers to the overall disparity in earnings between men and women across the workforce. It takes into account various factors beyond just equal pay for equal work, such as differences in occupation, industry, education, experience, and working hours. The gender pay gap is often measured as the difference in median earnings between men and women, expressed as a percentage of men's earnings.

One challenge with addressing the gender pay gap is that it can be influenced by a multitude of factors beyond direct discrimination, including societal norms, expectations, and structural barriers that affect women's career advancement and earning potential. For example, women may be more likely to take time off work for caregiving responsibilities or face barriers to accessing higher-paying jobs or leadership positions.

One limitation of the gender pay gap measure is that it may not fully capture the experiences of all women in the workforce. For instance, it may overlook women who have chosen to leave the workforce temporarily or take breaks for caregiving purposes. These women may experience significant interruptions in their careers, leading to lower lifetime earnings and contributing to the overall gender pay gap.

If workplace discrimination against women and the general atmosphere of social injustice against women are not addressed, the gender pay gap in India might not close. Despite possessing the qualifications, Indian women will face discrimination in the workplace (Rhode, D. L. 1991). According to Oxfam India's most recent "India Discrimination Report 2022," which emphasizes the bias of both employers and society, women have the same educational background and work experience as men (Khan, I., & Gunwant, D. F. 2024).

4. THE GENDER PAY GAP AT INDIAN COMPANIES

In India, women employees earn less than their male counterparts at every stage of their careers, and this disparity grows as women advance up the organizational hierarchy, according to a study done last year by IIM-Ahmedabad. For the study, responses were submitted by over 4,000 senior executives from 109 NSE companies. At the individual contributor level, women are paid 2.2% less than men in equivalent roles; however, this gap increases to 3.1% for managers and supervisors and 4.96–6.1% for directors and senior executives (Ho, C. K. 2005).

5. RECENT DATA ON WORKING WOMEN'S POSITIONS IN INDIA

The Periodic Labour Force Survey (PLFS) 2020 reports that just 18.6% of working-age women in India are employed which is three times less than the percentage of men in the same workforce. Only a few regions of the Arab world have lower rates of women participating in the formal economy than India, according to the World Bank. Women are not engaging in the formal economy, despite increases in fertility rates, educational attainment, and economic growth (Padhi, B., & Motkuri, V. 2021). Fewer people are participating with them. According to the 2018 Economic Survey, Indian women generally work in very precarious jobs for low pay. In terms of full-time employee median earnings, India had the biggest gender disparity in 2015. According to the International Labour Organization (2018), 88% of women working in industries and 71% working in services are informal workers. Despite being superior workers and supervisors, women also do not advance in the ranks, according to research that has been repeatedly conducted (Mehta, B. S., & Awasthi, I. C. 2019).

6. GENDER DISPARITY IN OUR WORKFORCE

At the same rate as men, Indian women entered the labour force, potentially mobilizing over 200 million more workers. According to estimates from the McKinsey Global Institute, India's economy could gain \$700 billion through equal opportunities for women by 2025 (Arora, S. 2020).

The "State of Discrimination Index" monitors how states handle female job seekers about four freedoms: working at night, working in dangerous jobs, working in difficult jobs, and working in morally repugnant jobs. Most of the work had to end at dusk before the Industrial Revolution. Most mills had switched to electric lighting and 24-hour machinery by 1896 (Anand, B., & Kaur, S. 2022).

The Haryana government gave 212 businesses 592 exemptions between 2015 and 2021 for hiring women for night shifts. For example, Accenture was able to obtain

exemptions in 2015 for eight different locations, including two different floors within the same building. The administration would have needed to carefully review each application and ensure that the extensive list of requirements was met before granting exemptions. Trayas discovered a humorous phenomenon while speaking with IT establishments: women are being picked up after work by “new cousins.” It turns out that one of the requirements is that female staff members travel in company cars or with family members.

Women cannot be employed on plantations between the hours of 7 p.m. and 6 a.m. according to the Plantation Labour Act of 1951. This is the rule that all states in the index adhere to, barring plantation approval. The 1970 Contract Labour Act gives state governments the authority to set requirements for contract laborers to be employed for profit. While seven states severely restrict the ability of female laborers to work at night, seventeen states allow it completely or partially. States have the authority to set requirements for women's employment through the Inter-State Migrant Workmen Act of 1979. The only states that permit migrant women to work at night under any circumstances are Gujarat and Kerala. States exempt women employed in "female jobs," such as midwives, nurses, and crèches, from all three of these laws enslaving women to curtails at sunset their opportunities to advance and receive overtime compensation. In fact, data from World Bank researchers indicates a positive correlation between women becoming top managers and their ability to work at night.

Women's working days were still limited to eleven hours, while men's increased from twelve to sixteen (Smuts, R. W. 1971). India strengthened these regulations in 1921 when it ratified conventions from the International Labour Organization that forbade the employment of women in factories from 7 p.m. to 5 a.m. Karnataka, Kerala, Tamil Nadu, and Uttar Pradesh allow women to work at night in all kinds of establishments with the least restrictions, whereas Odisha and Telangana impose the most. Only eight states provide industry exemptions under specific conditions; no state permits women to work in factories with this level of freedom. For instance, the canning and curing of fish is exempt in certain states; however, it is unclear how the night shift and food perishability are related. In contrast, Himachal Pradesh excluded factory owners and female employees from the exemption in 2020 and did so for three months. Since viruses do not discriminate between sexes or cease to propagate at night, it is unclear why Himachal would take this action.

7. INDIAN LAW

Similar laws are present in India, as evidenced by the Directive Principles of State Policy within the Constitution, which advocate for parity in wages for comparable

labor. Mandated by Article 39(d) of the Indian Constitution, the state is expressly obligated to guarantee equal recompense for equivalent work carried out by both genders.

In accordance with Section 4 of the Equal Remuneration Act of 1976, employers are obliged to offer commensurate compensation to individuals of both genders undertaking similar or identical tasks.

Section 5 of the Act specifically prohibits positive discrimination against women, stating that an employer cannot discriminate against a woman when she is hired for the same position or one like it. According to Section 10(2), discrimination is punishable by law if any employer

- a) hires anyone in defiance of the terms of his Act, or
- b) engages in unfair treatment toward both female and male workers, contravening the regulations outlined in this Act, or provides differing rates of payment or compensation to men and women performing identical or comparable tasks.

For the first offense, there will be a minimum fine of ten thousand rupees, with a maximum of twenty thousand, or a minimum of three months' imprisonment, with a maximum of one year's imprisonment, or both. The penalty for the second and subsequent offenses is a maximum two-year sentence in prison.

8. CASES

The case of *Randhir Singh v. Union of India* (Jay, V. 2022) stands out as a landmark ruling on the principle of equal pay for equal work. In this instance, the Supreme Court clarified that while “equal pay for equal work” isn't explicitly recognized as a fundamental right, it undoubtedly aligns with constitutional objectives and can be pursued through constitutional remedies under Article 32.

Similarly, in *Grih Kalyan Kendra v. Union of India*, the Supreme Court emphasized that the notion of equal pay for equal work holds significant importance in service jurisprudence (Das, J. K. 2022). Despite not being expressly designated as a fundamental right in the Constitution, it is deemed so due to its alignment with the directive principle of state policy as outlined in Article 39(d), and the equality provisions of Articles 14 and 16.

Contrary to these perspectives, the 1962 case of *Kishori Mohanlal Bakshi v. Union of India*¹, presented a different stance. The Supreme Court ruled that the principle of equal pay for equal work couldn't be enforced through legal means (GJ, A. 2022).

9. SUPREME COURT'S LANDMARK VERDICT ON POSH ACT (MAY 2023)- AURELIANO FERNANDES VS. STATE OF GOA²

On May 12, 2023, the Supreme Court of India made a landmark ruling concerning serious breaches of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, commonly known as the PoSH Act. This significant verdict underscores the necessity of adhering to and enhancing the Act's provisions to ensure the safety of women in the workplace (Kumar, A. 2019).

i. Context and Importance of the PoSH Act 2013

The PoSH Act, which was created to protect women from sexual harassment at work, requires companies with ten or more employees to set up an Internal Committee (IC) to handle complaints of harassment. It outlines a particular complaint process and requires the IC to investigate complaints within a certain amount of time. But the Supreme Court decided to draw attention to a glaring discrepancy between the recommended practices and their disjointed implementation in practice, calling for an urgent revision.

ii. The Case in Focus: Aureliano Fernandes v. State of Goa

A case involving Aureliano Fernandes, a former employee of Goa University, highlighted this inconsistency. Fernandes was found guilty of serious misconduct involving multiple instances of sexual harassment in a Complaints Committee report, which resulted in his dismissal from service and ban from employment in the future. Because of health problems that resulted in ex parte proceedings, Fernandes was not given a fair chance to present his defense, thus the principles of natural justice were circumvented in this case. According to the Supreme Court, these mistakes defeat the purpose of the PoSH Act (Pais, C. S. 2017).

¹ *Kishori Mohanlal Bakshi v. Union of India*, A.I.R. 1962 S.C. 1139

² *The Case in Focus: Aureliano Fernandes v. State of Goa, May 2023*

iii. Challenges in Putting the PoSH Act into Practice

The Act's effective implementation is being hampered by several practical issues, including general disdain for the enforcement regime, ignorance of the complaint and redressal procedure, and lack of confidence in the process and its results.

10. THE WAGE CODE OF 2019

The Code nullifies the Minimum Wage Act, 1948 and the Payment of Wages Act, 1936.

Its aim is to regulate salaries and bonuses across various sectors such as business, manufacturing, and commerce by July 23, 2019.

The term "Same work" or "work of a similar nature" is elaborated in Section 2(v) as work involving identical levels of skill, effort, and responsibility, when performed under comparable conditions by employees.

According to Section 3 of the Code For any employee working in an establishment or any of its units, gender discrimination in wage matters is illegal, regardless of whether the employer performs the same or comparable types of work. Additionally, no employer may: Reduce any employee's pay rate to comply with sub-section (1) guidelines;

a) Unless there are currently laws or legal restrictions prohibiting women's employment in such roles, it is unlawful to treat someone differently because of their gender when offering them a job or determining the terms of their employment.

Section 42 stipulates that representatives from the federal and state governments will comprise advisory boards. The Central Advisory Board will comprise five state government representatives, employers, and personnel in an equal number of employers (Sarkar, S. 2021).

11. CONCLUSION

India's standing on the Global Gender Index places it marginally ahead of numerous other countries. With a slight uptick in its score from 0.625 to 0.629 this year, India demonstrates a modest advancement. However, this improvement underscores a broader reality: the journey toward achieving gender equity globally remains sluggish. Despite the evident imperative for change, the pace of progress appears to be somewhat subdued. In addition to being necessary for moral and humanitarian reasons, gender equality is also necessary for human and economic development. Any progress that ignores gender justice is doomed to failure because it leaves out and marginalizes a sizable segment of the populace. It could be argued that economic growth depends on

achieving gender justice. Women and gender minorities must be involved in the process of making policies and decisions because it creates a more inclusive environment for development. Finally, regardless of gender, caste, or religion, everyone has a right to fair recompense for the labour they have performed.

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