

LEGALFOXES LAW TIMES

Title - Wage Disparity between Adam And Eve

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Abstract

The exploitation of women throughout history in every society of the world needs no mentioning. However, there is still one lesser explored form of economic exploitation which is so severe that it will take the next two centuries for it to vanish. This article lays emphasis on the same, that is, Gender Pay Gap. The median income of women is significantly lesser than men in every country. Although almost every nation has tried to imbibe some laws in its Constitution to ensure equality of all genders in the workforce, yet there are some major loopholes which allow this discriminatory practice to seep into the ideal concept of equality. Gender Pay Gap, which shows variations in its severity depending upon the race of women, is such a critical issue that it has deprived women of their fair share of earnings and respect, and violated the basic human right of equality. Iceland, being the first country to enforce laws on equal pay for all genders and penalizing the companies that exhibit this discrimination, has set an exemplary example which is worth considering as gender pay gap as it gravely affects women across the world. Through this research paper, an attempt has been made to highlight some solutions that can help in deterring this problem.

Introduction

“I measure the progress of a community by the degree of progress which women have achieved.”-
B.R. Ambedkar

The struggle to provide women equality in their work-place, primarily waging the gender pay gap, has been perpetual. Be it the still developing economy of India where the gender pay gap stands at women earning 19% lesser than men¹ or the economy of developed UK, where median pay gap stands at 9.7%², the problem of gender pay gap stands persistent in every other country across the globe. Gender pay gap which implies the hourly difference in men and women's wages continues to exploit the vulnerability of women and its effective medicament to provide relief is not in sight. It generally results in over qualified women applying for jobs that are much below their strata or them being paid less for efficiently doing the same work which their male subordinates do. The perennial existence of gender pay gap in today's time is abhorrent as it adds on to the unjust

¹ Monster Salary Index Survey. Available at : <https://economictimes.indiatimes.com/magazines/panache/gender-pay-gap-still-high-women-in-india-earn-19-pc-less-than-men-report/articleshow/68302223.cms> (Last visited on 14.07.20)

² Available at : <https://www.bbc.com/news/business-43632763> (Last visited on 14.07.20)

discriminatory practises against women which are as old as hills and no longer hold a place in a world guarded by equality.

The issue of gender pay gap has always struggled to find its way into the legal facet of the hemline of the heart of the Constitution of every country which is usually embodied with preaching the core value of equality. Through various breakthrough cases across the globe, this hiccup has somewhat been able to grab the concern of many nations, resulting in the formulation of various varying laws. However, what lies behind the stage show, is the fact that despite various countries claiming to have found a way to get rid of this obstacle, it continues to exist in every realm of global economy, primarily due to the implication and execution of such laws being flawed.

What the laws are lacking?

“Equality before law isn’t equality before the society”.

Instilling a law into the Constitution isn’t the equivalent of ensuring social equality. From the Fair Work Act of Australia to the Code Wages Bill of India, the widespread network of laws which try to imbibe parity in the wages gap is like a cease and desist effort to stop below the belt discrimination. The problem is so deep-rooted that the implications of the laws should be dealt in such a way that their inference impacts the ground-level subjects and doesn’t remain as mere engravings on a piece of paper. Since most of the wage policies are opaque and not inclusive enough to engulf every sector of economy, these half-hearted efforts to tackle this problem have received nothing but indirect defeat in the form of persistent wage gap which doesn’t seem to narrow down.

Despite the laws being enforced for years, the gap has not been taken down for which there is not one ground that can be pinpointed, but a pile of grounds that apply differently on different firms. The approach of the companies in dealing with this matter is the elementary cause because of which the enforcement of laws seems nothing but futile. Most companies have an inherent preconception which makes them turn a blind eye towards the discrimination going on in their firms. On the other side of the coin, there are a few companies who make apathetic efforts to tackle this issue by appointing legal advisors or attaching their companies to law firms to seek guidance. However, their callous approach is null and void. Moreover, there is a lack of effective enforcement. The problem of Gender Pay Gap hasn’t been taken as earnestly as other issues. There is no system of checks and balances on companies that still exhibit this malevolent offence. Due to negligible accountability, it is easy to get away with this detestable evil even without having the need to cover one’s tracks.

Repercussions of Gender Pay Gap

“Any society that fails to harness the energy and creativity of its women is at a huge disadvantage in the modern world”- Tian Wei

The principal reason why the legal authorities need to sincerely bat an eye towards this menace and check on the firms that have a run in with this law is that a huge section of working women across distinct sectors of economy is suffering in agony due to this prejudice which makes them devoid of their fair share of wages and status. The most exploited section is that of women who earn their bread and butter from the unorganised sector. Due to lack of education and awareness, that particular section is the most vulnerable under the suffering hand of exploiters who acquire cheap labour. The well-established world of corporate companies isn't free from this prejudice either. Women in workforce of the European Union earn 15% lesser than that of men per hour.³ And more often than not, the top positions in a company are offered to men only.

One under-looked reason behind the existence of gender pay gap is that women often have to make a choice between doing part-time work and joining a university. Women often have to resort towards taking lower-paying jobs in order to get the minimalistic financial stability and pay off their debts. One aspect which shall not be ignored is the hierarchy when it comes to equal wages. Women, in general, are given lesser wages than men. Even among women, it is the toughest for black women to earn the wages they deserve. Women find it tougher than men when it comes to paying off student loans. A study revealed that between the year 2007 and 2008, 33% full-time working women that had graduated paid off their student-debt loan by 2012. The percentage of men for the same was 44%.⁴ This can be highlighted in the student loans too. 61% of Asian women had the highest share amongst the ones that had paid off their debts. White non-Hispanic women had paid off 37%, black women 9% and Latina women 3%.⁵ In USA, black women make 62 cents and Hispanic women make 54 cents for every dollar that a white man makes.⁶

Not only daily wagers and MNCs but other domains such as the entertainment industry which is out in the open for everyone shows inherent bias and the ignorance displayed there is intuitively obvious. Female actors earn three to five times lesser than their male counterparts and in most cases, they have to accept the amount they are offered because the voice is often mumbled of those who try to speak up. Even in the forever advancing world of sports, women have to face the wrath of pay gap. Although there haven't been studies to obtain a clear image of the pay gap in sports, yet one cannot overlook the uncanny fact that there is seldom the name of a female sports personality amongst the list of wealthiest sports personalities.

Hence, as per various statistical reports, women earn a lot less as compared to their male counterparts in every walk of life. For instance, just in UK, women lose out on 132 billion pounds

³ Eurostat. Available at : <https://www.europarl.europa.eu/news/en/headlines/society/20200227STO73519/gender-pay-gap-in-europe-facts-and-figures-infographic> (Last visited on 14.07.20)

⁴ American Association of University Women. Available at : <https://www.mic.com/articles/188833/3-long-term-effects-the-gender-pay-gap-has-on-women> (Last visited on 14.07.20)

⁵ Available at : <https://www.mic.com/articles/188833/3-long-term-effects-the-gender-pay-gap-has-on-women> (Last visited on 14.07.20)

⁶ Available at : <https://www.cnbc.com/2020/03/31/how-the-gender-pay-gap-affects-womens-mental-health.html> (Last visited 14.07.20)

worth of money due to the pay gap⁷ and in USA, for every dollar earned by a man a woman earns only \$0.80.⁸ Earning lesser money than deserved not only makes it tough to access healthcare but it has also been proven that women who earn lesser than their male subordinates are on a higher risk of falling a prey to mental illnesses like depression and anxiety. It is even sturdier for mothers, especially single mothers, to bear the brunt of this vicious problem which takes a tough toll on them while raising their children in the modern world of inflation. Due to lack of financial security, it is not easy for women to make their both ends meet and to pay off all the loans and mortgage. Women find it much tougher than men to attain economic stability and the poverty rate among women is significantly higher as compared to men. If the gender pay gap is narrowed and wiped off completely, out of the 5.6 million children in poverty today, 2.5 million will come out of poverty.⁹

There is a pressing need to emphasise upon the hindsight of this issue rather than speculating about its foresight. It is baffling to see that in the times where there has been an upsurge of equality movements, this issue is still being blatantly neglected even though its consequences are ghastly. Not only does it deprive women of their access to rights and dignity but is a detrimental paradox that jeopardises the essence of Human Rights which have always advocated equality in all fronts of life. It is the equivalent of a blot on not only the social fabric but also the legal fabric of the world as all the laws formulated so far have found themselves unable to combat this monster of immorality which is outlined by baseless prejudice.

The key solutions to the 'How's' of tackling gender pay gap

“Real change, enduring change, happens one step at a time”- Ruth Bader Ginsburg

The legal realm perhaps needs to pay heed to the gravity of the situation and formulate strategies and laws to tackle this issue effectively. Recently, a landmark decision that shattered the glass of stereotypes was passed in India where the Supreme Court granted permanent commission and ordered to command equal positions to women officers, on par with men in the domain of defence.¹⁰ It was a progressive decision which was welcomed by all alike as it is a step in the right direction to fight this wage gap. While giving the judgment, it was said, “The time has come for a realisation that women officers in the Army are not adjuncts to a male dominated establishment whose presence must be ‘tolerated’ within narrow confinements”¹¹. It is high time that the legislation of every country realises its obligation to propound equality by making these laws as

⁷ Young Women's Trust. Available at : <https://www.telegraph.co.uk/business/2018/01/17/women-lose-nearly-140bn-year-due-gender-pay-gap/> (Last visited on 14.07.20)

⁸ Available at : <https://www.business.org/finance/benefits/gender-pay-gap/> (Last visited on 14.07.20)

⁹ Available at: <https://www.mic.com/articles/188833/3-long-term-effects-the-gender-pay-gap-has-on-women#:~:text=%203%20long-term%20effects%20the%20gender%20pay%20gap,for%20lifetime%20income%20between%20men%20and...%20More%20> (Last visited on 14.07.20)

¹⁰ Union of India vs Ld Cdr Annie Nagaraja and others : Civil Nos 2182-87 of 2020 @SLP © Nos. 30791-96 of 2015

¹¹ Ministry of Defence vs Babita Puniya and others : Civil Appeal Nos. 9367-9369 of 2011s

their kryptonite that shields the residents of their country from the attack of stereotypes and inequality. Furthermore, the laws such promulgated should be flexible enough to accommodate changes in them as the form of pay gap varies from not only one state to another, but one firm to another as well.

The genesis of the pay gap lies at unawareness and the conception of prejudice among people. Hence, the initiative of raising awareness is mandatory to combat ground level discrimination as it will make women acquainted with their rights. The results in the formation of the pay gap. The applications of men are selected in bigger numbers when compared with that of women. Unpaid parental leaves are another reason because of which the gap isn't narrowing. Women are more likely to take leave when someone in the family suffers from sickness. If paid parental leaves are given, it will significantly help in decreasing the pay gap.

Empowerment isn't a concept that can be achieved individualistically. It is rather a collective movement. The gap between median income of men and women has certainly declined gradually over the last few decades. In societies, where this was witnessed, what was also noticed was that when the wages of women increased, the wages of men for the same, decreased slightly. Empowerment of women to bridge the gap of discriminated pay is a complex yet refined process that needs to be accompanied by strategic laws devised specifically for the cause. The recent legislative reform in Iceland has made it the first country in the world that has legally taken a substantial step towards enforcing equal pay among men and women.¹² As per the law, any company constituting of 25 or more than 25 people, if, is not certified as to paying equal wages to men and women, would be held liable and penalized depending upon the circumstances. For the last nine years, Iceland has been marked as the most 'gender-equal country'.¹³

Conclusion

To quote Pope Francis, "Inequality is the root of social evil". Hence, to wage a war against this evil, the most indispensable weapon is the utmost efforts on part of everyone. Only then can we emerge as victorious. The companies that exhibit pay gap should come clean instead of hiding the numbers and put their front foot forward on the battlefield. Then strategic planning should be undertaken to assist the companies asking for aid. There should be a stringent set of protocols that every company should be made to adhere to and the violation of such should amount to serious offence to be followed by suitable penalisation. Furthermore, any and every shortcoming should be eradicated in the execution of such laws as the most crucial component in making any law a success comes down to its execution.

¹² Act on Equal Status and Equal Rights of Women and Men, No. 10/2008. Available at : <https://www.government.is/Publications/Legislation/Lex/?newsid=8900031c-fbd6-11e7-9423-005056bc4d74> (Last Visited on 14.07.20)

¹³ Available at : <https://www.theguardian.com/world/2018/feb/20/iceland-equal-pay-law-gender-gap-women-jobs-equality> (Last Visited 14.07.20)

At present, there is no continent, no country in this world which is free from this pay gap. Women across the globe, of different countries, different race, suffer from the ire of discrimination in parity of pay alike. As per World Economic Forum, it will take 202 years for the gender pay gap to completely disappear.¹⁴ The graph of growth is extremely slow and the awaited result won't be achieved anytime soon. The real question that arises is if we should continue in the direction we are marching on currently and wait for two centuries for this gap to disappear, or bend our course of conventional and callous approach to wipe out this menace from the economic map. In a world where economic hardships are ever increasing, the scrutiny of this matter becomes all the more important. Therefore, the issue of gender pay gap should be taken up earnestly so that our future generations project a clear image of equality from us.

“Life doesn't always give us what we deserve, but rather, what we demand. And so you must continue to push harder than any other person in the room.” — Wadi Ben-Hirki



¹⁴Available at : <https://www.theguardian.com/world/2018/dec/18/global-gender-pay-gap-will-take-202-years-to-close-says-world-economic-forum> (Last visited on 14.07.20)