

Rethinking Labour Regulation: Issues in and around the Indian Equal Remuneration Act

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Abstract: It is an undeniable fact that female labour force participation has been abysmally low in the Indian labour market. Anyone who denies this denies the very visible and glaring existence of patriarchy in India. Since the 1990 economic reforms, which promised a greater feminisation of labour, simply owing to the need for higher productivity, the only tectonic shift in the labour market has been for the worse, at least for women. In this regard, it is even more astonishing to see the number of women who face difficulties in the wage market because of the fact that they belong to Scheduled Caste (SC) or Scheduled Tribes (ST) communities- ushering in a gross projection of double marginalisation in the labour market. The Constitution of India mandates the Indian economy at even a microeconomic level to pay equally for work that is equal in nature irrespective of one's gender. In retrospect, that implies that Articles 14, 16 and 39d fall flat on their face if we conduct an empirical analysis of the ground reality today in both the formal and informal sector. Hundreds of women continue to fight everyday for their right to equal wages and a safe working environment. The very patriarchal nature of the Indian society has re-manifested itself in numerous manners- wage discrimination being one of the most prominent ones.

In a bid to reform this, the Indian Supreme Court ratified a legislation named the Equal Remuneration Act, 1976 which acts as a guideline for employers while deciding upon wages for their employees. Amongst the several issues that the Indian labour faces today, this act, in particular, has been vehemently avoided and stands dilapidated in terms of current legal applicability. Its provisions are redundant and implementation absolutely ineffective.

This article, in that regard, will first try to examine the discourse around equal pay for equal work-historical evolution in India, and then look into data on the implementation of the legislation in the country and point out the loopholes in the same. Following this, based on past working papers, reports from the International Labour Organisation (ILO), stakeholder consultation and regulatory governance tools, this article will try to suggest an alternative regulation mechanism in terms of wages for women in the Indian labour sector.

Date of Submission: 21-05-2020

Date of Acceptance: 08-06-2020

I. EQUAL PAY FOR EQUAL WORK: AN OVERVIEW

Table 2: Mean Daily Wages (in Rs) for Regular Wage/Salaried Men and Women Employees by Level of Education

Sector	Level of Education	1993-94		1999-2000		2004-05		2009-10	
		Men	Women	Men	Women	Men	Women	Men	Women
Rural	Illiterate	31.27	17.98	71.23	40.32	72.47	35.74	135.72	65.47
	Literate up to middle	45.87	23.92	91.63	50.18	98.59	47.75	160.04	80.32
	Secondary and higher secondary	72.31	57.61	148.23	126.09	158.04	100.19	267.14	151.54
	Graduate and above	97.71	72.16	220.93	159.92	270.02	172.7	403.05	285.98
Urban	Illiterate	46.28	26.75	87.63	51.83	98.79	48.7	156.6	92.56
	Literate up to middle	53.02	30.11	105.08	64.41	111.44	64.79	183.8	114.38
	Secondary and higher secondary	80.33	70.93	168.16	145.73	182.58	150.41	293.26	237.61
	Graduate and above	127.69	98.59	281.55	234.74	366.76	269.17	634.92	499.98

Image 1 Source: 50, 55, 61, 66 NSS rounds on "Employment and Unemployment Situation in India" (Sengupta and Das 2014)

As seen in image 1, the data has been collected and consolidated by Sengupta and Das- and clearly shows the wage differential over the years from 1993 to 2010. Against this background, it therefore becomes evident that India suffers from an inherent problem of discrimination against women, specifically when it comes to the payment of wages. To elucidate on why the central focus of this paper, the Equal Remuneration Act, has failed, it is important to gain context on the Act itself. Passed in 1976, the purpose of this Act was to prevent differences while paying wages for similar work or similar nature of work. However, what this Act has failed to understand is the fact that differentiating is a basic right of an individual and to make that choice illegal would always invite rebellion. Similarly, this Act fails to account for the principles of economics itself. In a competitive market, no self-motivated, profit-maximising individual would turn to human rights if their productivity is at stake, especially in work which requires physical strength. The legislation implicitly assumes, and very wrongly so, that the market automatically adjusts to costs and benefits under the pressure of a legislation that is redundant while the implementation. While the Act suggests that there should be no discrimination against women while recruitment or promotion of employees, the legislation completely ignores the fact that the natural market will always take into consideration the fact that maternity leave and such factors impede on productivity, meaning that gender forms as a criterion for promotion or recruitment.

Secondly, under Section 9(3), this Act prohibits the discrimination by employing labour inspectors by the Labour Ministry. Inspectorate Raj has become an absolutely redundant tool in regulatory governance and therefore, it is crucial to understand that a better mechanism to regulate this is the need of the hour. There is immense pressure on the Ministry because the inspectors are inefficient and often resort to bribery in exchange of a clean chit to workplaces. Thirdly, this Act has discounted the factor of having genders outside the purview of men and women. It is 2019, and gender binaries are long gone, especially when transgender persons fight everyday for their right to earn. Lastly, in a study conducted by the Centre for Civil Society¹, it was found that women themselves, because of an inherent socio-economic-cultural brainwash, have failed to take stock of the fact that they must be paid equal wages as men. In fact, women especially from the informal sector and the northern belt claimed to be weaker than men and only found it fair to have higher wages.

II. REVIEW

One of the pioneer writings on how to regulate wage differentials was suggested by Norman Barry in his commentary in a working paper series on wages (Barry 2000), where he suggests that the market essentially is a self-regulator, and if left to its natural state, can bring about equilibrium without the intervention of the state. He writes that thus far the state has been ineffective, corrupt and static when it comes to regulation. Owing to principles of natural economics, the market is fully capable of modifying wages and bringing about equality on its own. However, what Barry has failed to take into account is the fact that the Indian labour market is still growing in nature and is evolving. It is premature, and where most of the labour is employed in the informal sector, it becomes very difficult for the market itself to remain non-exploitative in nature. This informal nature along with neo-liberal reforms leads to a constant reduction of wages for reduced cost and unequal wages to promote maximum “productivity” (Das 2012). A huge section of academia also suggests that the use of legal mechanisms to bring about a change in attitudes of people. This section strongly believes that strict regulation brings up a sense of fear amongst the people and substantially regulates behaviour (Dickens 2010). Based on this literature surveyed, the author’s personal reflections shall be elucidated in the next section.

The primary concern was the idea of regulation of wages in order to more effectively implement the Equal Remuneration Act, 1976. The sole objection to the regulation in the legislation is the fact that the method of inspection is dilapidated. Instead, this author suggests looking at a new regulatory body which surmises the overall issues. A second issue is the idea of replacing *equal pay for equal work* with *equal pay for equal value of work*. The difference between both can be explained as follows:

Equal Pay for Equal Work	Equal Pay for Equal Value of Work
Comparing payees of similar jobs	Compares the value of the job. For example, a construction worker is more valued than a domestic worker
Open to both men and women to lodge a complaint against	Only people working jobs which are conventionally supposed to be done by women can complain. For example, a domestic worker can complain irrespective of their gender

The essential debate which surrounds this discourse is the very fact that equal pay for equal value of work further facilitates gender discrimination as it gives the leeway to every person to lodge a complaint that

they are not being paid as much as someone else is being paid in a job that requires a higher risk factor. In its very essence, therefore, it assumes that some jobs are to be paid lesser than others because of its “value.”

III. PERSONAL REFLECTIONS: TOOLS OF REGULATION

After conductive extensive literature survey and taking stock of the primary issues raised under gender wage differentials, the author’s key takeaways have been (i) equal pay for equal value of work poses a fundamental challenge to the idea of doing away with gender discrimination; (ii) India ratified the ILO Convention 100 (1951) in 1958 which specifically states that equal pay for equal work is a basic principle of labour rights, which can be applied through legal documents, collective bargaining or a mix of both; (iii) Most astonishingly, in the ILO rankings, countries without an equal remuneration legislation were ranked above countries which actually enforced the same. This goes on to show that legislation as an authoritarian tool fails, and the enforcement of the principle, rather, depend on the socio-cultural conditioning of the state itself; (iv) Some of the best practices around the world include China, Japan and Malaysiaⁱⁱ. The labour standards and their constitutional validation stands enough for generating equal wages for both men and women, and interestingly, Malaysia ranked 10 in the wage rankings in spite of missing a law in place (Figure 1).

Country	Survey data	Normalised score	Rank in world
Malaysia	5.54	0.79	10
Thailand	5.41	0.77	16
United Kingdom	4.74	0.67	52
Japan	4.64	0.66	58
United States	4.47	0.65	66
China	4.54	0.65	70
Germany	4.14	0.59	95
India	4.01	0.57	103
Korea	3.67	0.52	125
France	3.32	0.47	134

Figure 1: World Economic Forum Rankings 2016

In his book, Arie Frieberg (Freiberg 2010) states numerous tools that can be used in order to regulate the state. They are stated as follows:

- (a) Economic Regulation
- (b) Transactional Regulation
- (c) Authorisation Regulation
- (d) Structural Regulation
- (e) Informational Regulation
- (f) Legal Regulation

Following this, this article will try to suggest one mechanism each which can be followed under the stated regulatory tools. Firstly, under economic regulation, the author suggests a regulatory mechanism which oversees that the income charts of each working company is submitted to the Labour Department, apart from the inspectoral checks. This could be carried out as something like filing a tax return, where failure to comply with the law would lead to an economic penalty either in the form of monetary or fiscal punishment. It is important to recognise that an economic sanction on companies bears the most severe implications as it has a heavy impact on the profit margins. Secondly, under transactional regulation, this article suggests a stringent revolution of the return of collective bargaining for women. This bargain is the only way to (a) promote the decimation of wage differentials and (b) ensure that the male breadwinner model is toppled through the feminisation of arguments. Women trade unions must especially be encouraged, not just in South Indian industries, but also the North Indian belt, where women’s power to bargain reduces. In order to do this, it is important for the government to facilitate low income women groups and legalise women working councils both at the national and the international levels. In terms of authorisation tools, it is of utmost importance that the government comes up with a robust social policy towards women- this includes making care work payable, social protection policy for working women’s children, and household rights, implying taxation of women at lower rates and provision of special services. As for structural regulation, there needs to be a complete overhaul of the existing inspectorate raj. As stated by several scholars, the public sector, thus far, has proven to be absolutely inefficient in dealing with the problem of wage inequality. Therefore, this article suggests consultancy-based projects to gauge how

different industries might react differently to the wage policies and come up with tailor-made mechanisms to ensure that women are not being paid lesser than men. Informational regulation can come through awareness campaigns. More than half the women workforce is not aware of the fact that they are entitled to similar wages for similar work. Holding regular meetings within small women trade union *sabhas* would go a long way in achieving equality. Lastly, the legal regulation must be firstly, accommodating the interests of transgenders. This is where the legislation has completely become an age-old document as it only looks at gender binaries. The sanctions mentioned require to be more stringent in nature in order for the law to be enforced in a more comprehensive and authoritarian manner.

IV. POLICY IMPLICATIONS: POLICY MIX AND ENFORCEMENT

In the field of public policy making, therefore, it is imperative on our part to recognise the fact that gender inequality is an issue which cannot be looked at through an isolated lens. It is a result of several years of patriarchal conditioning and suppression of the female gender, and a complete ignorance of the third gender. To overcome this issue, one has to look at the broader picture of tackling this social conditioning through protective discrimination of women. Therefore, this article broadly suggests a policy mix in order to achieve the same- essentially meaning that the regulatory policies undertaken should be economical as well as social to achieve a more robust outcome. To that effect, the regulatory mechanism suggested has four following essential principles:

- (a) Economic policy may be used to close the gender pay gap, but social protection and social services to women is a must as complementary to the same.
- (b) Gender is invariably intertwined with society, and must, therefore go hand-in-hand with gender and social equity measures.
- (c) The regulation has to be, most importantly, region-specific in India. For example, bargaining power in the North is not as strong as bargaining power in the South. In the east, gender equality is more about raising the pay ceiling for women.
- (d) Lastly, it must be realised that closing the gender pay gap is not a one-time trade-off. It is a continuous process which would require not just regulation but also continuous evolution.

State	Employer	NGOs	Individual
-Labour inspectorates	-Private auditing of companies	-Publicity and awareness	-Protection against whistle-blowers
-Conciliation /arbitration	-Collective bargaining	-Naming and shaming	
-Labour tribunals			
-Incentives			
-Naming and shaming			

Figure 2: Suggested Regulatory Mechanisms

As seen in Figure 2, regulation is possible at all levels of the nation. At the state level, tools are formal and more authoritarian in nature, whereas at the smaller unit levels, tools are much more informal and require collated efforts. Considering the complexity of the issue of wage inequality, this table is as far as regulation goes.

V. CONCLUSION

In a country where wage differentials can be traced across numerous regions, states, sectors and classes, prominence of inequality in wages along the lines of gender becomes glaring. However, gender wage inequality in India is far more complicated than it might look. Apart from in-market bias and discrimination against promotion or remuneration, one has to look at the often ignored enlarged System of National Accounts (SNA) work which defines women as a creature to be confined to the four walls of the household and establishes the woman gender essentially as a caretaker, but never a caregiver. The Indian economy has been flooded with self-employment and the informal sector, owing to which a substantive ground for collective bargaining for wages has been excruciatingly difficult. In that regard, achieving equal wages in a society which is so fraught with patriarchal sentiments has been a constant struggle for welfarists. With the onset of neo-liberal India, the economists failed to take into account the discrimination that women faced in labour. Although there has been a recent increase in the feminisation of labour in the economy, the reasons attributed to it are not necessarily the increase in women participation, but a decrease in the male efforts. This feminisation of labour and the controversy around it has also long been discredited because till date women are paid lower wages with the justification of “unequal effort” or “lesser technical skills.” Thus, in an effort to reform this system, this

article has looked into the complexities of the same and suggested policy mechanisms which helps accentuate the process for a future of equality in labour.

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ⁱ The article was published by CCS after a study conducted in Uttar Pradesh. (<https://ccs.in/equal-remuneration-act>)

ⁱⁱ http://icrier.org/pdf/Working_Paper_346.pdf- This paper carefully explains how Malaysia achieved the rank in spite of being a low-income nation with a newly written Constitution

Anoushka Roy. "Rethinking Labour Regulation: Issues in and around the Indian Equal Remuneration Act." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(6), 2020, pp. 20-24.