

International-cum-National Legal Framework and Gender Pay Gap: A Comprehensive Study

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Abstract

The gender wage gap, a persistent issue across global labor markets, represents a significant challenge to achieving equality in remuneration for equal work. Despite international frameworks advocating for gender equality and equal pay, such as the UDHR, ICCPR, ICESCR, and CEDAW, alongside ILO Conventions No. 100 and No. 111, ILO, substantial disparities remain. Against this backdrop, this paper explores the intersection of labor rights, wage discrimination, and gender equality within the context of Nepal. The analysis highlights the entrenched global issue of wage discrimination, emphasizing that, despite legal advancements and constitutional guarantees in Nepal, the gender wage gap remains prevalent. Afterward, the article delves into the provision of the Labor Act of 2074 that aligns with these international principles and judicial precedents that underscore the principle of equal pay. Finally, the paper concludes with recommendations to address these challenges, including stricter enforcement of existing laws, increased gender equality initiatives, awareness campaigns, support for female trade unions, and the establishment of a dedicated Equal Remuneration Act. These measures aim to bridge the wage gap and foster a more equitable labor market in Nepal, reflecting a broader commitment to gender equality and economic justice.

Keywords: Labor Rights, Wage Discrimination, Equal Pay for Equal Work, Gender Equality. Etc.

Understanding the Gender Wage Gap

In labor jurisprudence, labor remains at the center of attraction as the entire jurisprudence revolves around the question of assuring services, facilities, and benefits to the labor. Section 2(x) of Labor Act, 2074 have defined "Labor" means a worker or employee or a person employed with any job title who performs a physical or intellectual work for the employer. The labor rights or workers' rights are a group of legal rights and claimed human rights concerned with labor relations between

workers and their employers, usually obtained under labor and employment law. In general, these rights are concerned with workers' pay, benefits, and safe working conditions.

Amongst numerous labor rights, equal pay for equal work remains one of the most popular and stressful rights in the labor jurisprudence. In the simplest sense, it means equal remuneration for work of equal value. Conversely, when there is no equal wage paid for performing equal work, it is referred to as Wage or pay discrimination. (Olez, Olney & Tomei, 2013, P.30) It is the practice of paying people differently for the same or similar work because of various factors such as gender, age, background, caste, religion, race, disability, or any other basis.

Specifically, Gender wage discrimination occurs when the differences in pay are caused due to gender differences. It means employers pay women lower wages than identically qualified male workers when they perform the same or virtually the same work in equivalent conditions. (European Union, 2023, p. 2) In International human rights law, the wage gap between men and women remains as a flagrant violation of labor rights. Moreover, unequal pay for the same work is also considered a form of direct gender-based discrimination.

Despite the massive incorporation of women into the labor market, equal pay for equal work remains a challenge globally. (Santero-Sánchez, 2022) Wage inequality has been increasing in many industrialized countries over the past decades. (Antonczyk, Fitzenberger & Sommerfeld, 2010) The problem of gender wage gap is rampant in all forms and types of labor market. There are pronounced and persistent wage differences between men and women in all parts of the world. A report released by the World Economic Forum (WEF) in 2023 mentioned that there is not a single country where women are paid as much as men. Moreover, the global pay gap between men and women will take more than two centuries to close, because it is so vast and the pace of change so slow, the reports. (World Economic Forum, 2023) This shows that the crisis of wage difference based on gender is deeply embedded in the patriarchy based social pattern due to the defective value system based on the wrongly construed value which does not accept independent existence, integrity and identity of woman.

Global Standards Against Gender Wage Discrimination

Though it may seem to be a recent concept, the right to equal remuneration for women and men for work of equal value has been acknowledged by the ILO since 1919. The principle is set out in the preamble of the ILO Constitution which recognizes the principle of equal remuneration for work of equal value as a key element of social justice. (ILO Constitution, n.d., p. 5) Afterward, the right to equal wages for equal work has been consolidated in several international human rights and

labor rights instruments. Some of them which are academically more vital to present and discuss have been stated below: -

- a. **Universal Declaration of Human Rights (UDHR), 1948**, adopted by the United Nations General Assembly on 10 December 1948, includes provisions against wage discrimination. According to Article 26(3) of the declaration that everyone without any discrimination, has the right to equal pay for equal work.
- b. **International Covenant on Civil and Political Rights (ICCPR), 1966** *has not explicitly mentioned the principle of "equal wage for equal work." Yet, the right to equality and non-discrimination is a fundamental aspect of the ICCPR, particularly emphasized in Article 26, that all individuals are equal before the law and are entitled without any discrimination to the equal protection of the law.*
- c. **International Convention on Economic, Social and Cultural Rights (ICESCR), 1966** in article 7(b) obliges the States Parties to recognize the right of everyone to the enjoyment of just and favorable conditions of work ensuring fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men.
- d. **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979** in article 11(1)(d) endow the member states with the obligation to take all appropriate measures to eliminate discrimination against women in the field of employment to ensure, on a basis of equality of men and women. Most specifically, the instrument has internalized the women's right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work. This provision has been supplemented by General Recommendation No. 13, which is made in order to fully implement the Convention in those States parties that have not yet ratified ILO Convention No. 100. It recommends the state parties to support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.
- e. **Equal Remuneration Convention, 1951 (ILO Convention No.100)**, is one of the eight ILO fundamental conventions, ratified by 174 countries. Article 1(b) of the

Convention states that the term *equal remuneration for men and women workers for work of equal value* refers to rates of remuneration established without discrimination based on sex. As per article 2 of the convention, States parties are obliged to ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. This principle may be applied utilizing national laws or regulations, legally established or recognized machinery for wage determination, collective agreements between employers and workers; or by a combination of these various means.

- f. **The Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111)** is closely linked to Convention No. 100. It has been ratified by 175 countries till 2024. This Convention No. 111 prohibits distinctions, exclusions or preferences made on various grounds, including sex, that have the effect of impairing equality of opportunity or treatment in employment or occupation. The convention under article 2 establishes the state obligation to pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, to eliminate any discrimination in respect thereof.

Besides these global human rights standards, the issues of equal wage for equal work without distinction on any basis, have been asserted in *Article 4 of the European Social Charter, 1961*, which states that all workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families and *Article 15 of the African Charter on Human and People's Rights* which have ensured every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work. Further, Sustainable Development Goals (SDG) No. 8.5 has mentioned full employment and decent work with equal pay. This goal is targeted to achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and ensure equal pay for work of equal value.

Nepali Constitutional and Statutory Regime

Based on the commitment of the state expressed in several international human rights instruments and the historic development of labor norms in Nepal, there have been some principles spelled out in the constitution and other sub-ordinate laws.

Constitutional Regime:

The constitution of Nepal, having a socialist orientation philosophically is very rich in matters of addressing labor rights. Regarding gender-based discrimination in wages, the Constitution of Nepal in article 19 guarantees the fundamental right to equality stating that there shall not be any gender discrimination regarding remuneration for the same work and social security. Similarly, the Right to labor has been acknowledged in article 34(2) of the constitution, which states that every labor shall have the right to appropriate remuneration which implicitly means there should be equal wages for the performance of equal work. Also, Article 51(i) (4) of the constitution makes commitment to end all forms of labor exploitation.

Statutory Regime: Labor Act, 2074:

Besides the constitutional guarantee, the provisions regarding equal wages for equal work have been accumulated in some of the legislative enactments. Most importantly, the Labor Act, of 2074 is the principal law regulating the labor market in Nepal. The labor act of Nepal recognizes the importance of fair and equal remuneration for work and prohibits discrimination in pay based on gender. The Act in section 7 mentions that no discrimination shall be made between the laborers in remuneration for equal value of work on the grounds of sex. However, the explanation clause mentions that whether the work is of equal value shall be determined based on the nature of the concerned work, the time required for its performance, labor, skill, and productivity. This leaves the room for interpreting several works to be unequal disproportionately benefiting the male as witnessed in the society. Exclusively, the works demanding comparatively more energy may fall under the categorization of unequal work favoring males.

The Labor Act requires employers to provide equal remuneration for work of equal value, regardless of the gender of the employee. The Department of Labor under the Ministry of Labor, Employment and Social Welfare, Government of Nepal (GoN) can impose a fine not exceeding one hundred thousand rupees if any person/employer/company discriminates against laborers while employing them inside their working area.

The Labor Act in section 116 grants workers the right to organize and collectively bargain for better wages and working conditions. This provision is critical for ensuring that workers can advocate for their rights and negotiate fair and equitable remuneration with their employers.

Supreme Court's Jurisprudence:

In several cases, the judiciary has stressed the importance of the equal pay principle. The Indian judiciary has applied and interpreted the doctrine of "equal pay for equal work" in

a series of decisions from the year 1980s. The court has initially given a wider interpretation to the phrase “same work or work of similar nature”. In the landmark judgment of *Mackinnon Mackenzie (1987)*, the Supreme Court held that the principle of equal remuneration presupposed that the same level of pay is guaranteed not only to persons performing identical jobs but also to persons performing work that was different but was considered to be of equal value. In another case of *State of Madhya Pradesh v Pramod Bhartiya and others (1992)*, the Supreme Court held that Equal pay for equal work is implicit in the doctrine of equality enshrined in Article 14 because Article 39(d) did not cease to be a part of Article 14. But, Unlike the Indian Supreme Court, the court jurisprudence on the equal wage principle in Nepal has not been developed. The Supreme Court has appreciated and acknowledged the importance of the equal wage principle in these cases: -

Prakash Mani Sharma v. Government of Nepal, Ministry of Women, Children and Social Welfare, Singh Darbar, NKP 2065:

In this case Supreme Court of Nepal has propounded the principle that that all citizens will have the freedom to do any profession, employment, industry, and business and there will be no discrimination in wages and social security between men and women for equal work. Furthermore, the court has stated that unequal wage to females constitutes act of violence against women.

Bhubaneshwar Shahu Teli V. Sundarkanta Mandal, NKP 2077:

In this case, the apex court has ruled that every person is guaranteed the right to choose employment, to have a proper work environment, not to be unequally paid for the same job, and to be able to provide for himself and his family, and social security. The court has referred to several international instruments to justify that providing unequal wages to the females is wrong. The court has cited the Minimum Wage Fixing Convention 1970 (C131) passed by the ILO on 19 September 1974, which concerns the state's commitment to human rights.

Reena Bajracharya v. Royal Nepal Airline Corporation, NKP 2057:

The case was a landmark case relating to gender equality, though not directly concerning the issues of the gender pay gap. It concerned gender discrimination and retirement policies at the workplace. The petitioners claimed that the Royal Nepal Airlines Corporation (RNAC) Regulation Rule provided that crew personnel would retire at the age of 55, and non-crew personnel retire at the age of 60 years; whereas, air hostess' retirement was at the age of 30 years or once they have served over 10 years. The Supreme Court gave a decision stating that the rule could not establish the right to equality and such discriminatory provisions were against the fundamental rights guaranteed by the Constitution. This case set a reference for organizations that it is necessary to maintain consistency of rules or the by-laws with the Constitution.

The Situation of Equal Wages for Equal Work

The gender wage gap has long been a critical aspect of gender inequality. The issue is even more crucial for countries such as Nepal, where there are significant differences between men and women in educational attainment levels. (Yamamoto et al., 2019, p. 234) The social view that women are less productive due to their lower levels of education has led to this inequality in pay. Although improvement in women's education level has positive impacts on quality of life, including higher earnings, larger returns to education, national economic growth and development, and improvement in health and schooling of children, Nepalese women still receive lower wages for identical work. Education than men do in many developing regions. Despite the praiseworthy legal guarantee and judicial safeguards in the Nepalese labor market, the issue of equal wages for equal work remains a dream for many female workers. Different research findings reveal that the principles enumerated in several legal infrastructures have not been realized. Women often face numerous barriers in accessing formal employment opportunities and they are paid less than men for performing the same or similar work. This gap is even wider in certain sectors, including agriculture and other labor work.

According to the 2023 Global Gender Gap Report, Nepal has been ranked 116 out of 146 countries globally. (UNDP, 2023) The Global Gender Gap Index showed that Nepal was ranked high on political empowerment while placed at lower positions to guarantying labor rights. The gender wage gap in Nepal is significantly higher than the global average. According to the ILO Global Wage Report 2018/19, women earn on average about 20 percent less than men. (ILO, 2024)

In a comprehensive report published in 2019, the then Central Bureau of Statistics (now National Statistics Office) empirically revealed the pay disparity between men and women in Nepal was around 30 percent. This means, on average, women earn some 30 percent less than their male counterparts even if all other conditions are the same for both genders. (CBS, 2018) The above research reports that the biggest pay gap between male and female workers is in the "professional" category. In this category, for example, if a male earns Rs23,800 monthly, a female earns Rs12,000. Even in the "managers" category, which requires competency, if a male earns Rs32,000 per month, the pay for women averages Rs25,500. The pay gap in the "technicians and associated professionals" is comparatively less, the monthly salaries for men and women being Rs24, 000 and Rs22, 500 respectively. In the "agriculture, forestry and fisheries workers" category too, if a male earns Rs12,167 monthly, female workers earn Rs11,406.

The World Bank, in its Nepal Gender Brief, has also asserted that the equal pay law lacks enforcement in Nepal. The report states that Compared to other South Asian countries, Nepal has high rates of female labor force participation: *23.69% of women are in the labor force*, though there

is still a severe gender wage gap in earned income. (World Bank, 2019) This also shows women suffer to work according to their productive capacity.

The gender wage gap is even extended to Sports. The disparity in pay between male and female players is another problematic scenario depicting the blatant violation of gender equality. Men typically receive higher salaries, prize money, endorsements, and media coverage, reflecting long-standing societal norms and revenue disparities between men's and women's sports leagues. Such practices perpetuate inequality making women feel undervalued and underpaid simply because of their gender. Despite this women have continued their participation in sports with immense talent and dedication. (Pantha, 2024)

In Nepal, the impact of wage discrimination has gone beyond just the financial aspect. It has led to a lack of representation of women in various sectors and limited their opportunities for growth and development. Moreover, wage discrimination has created an environment in which workers are afraid to speak out against other forms of exploitation and abuse in the workplace, such as unsafe working conditions or excessive working hours, as they are afraid of losing their jobs or facing retaliation.

Conclusion

In our country, this wage gap is a result of various factors, including the belief that men are the primary breadwinners, which leads to men being paid more because of their perceived value. Wage discrimination not only perpetuates economic disparities but also reinforces gender inequalities and social injustices. It restricts women's opportunities for growth and development, limits their representation in various sectors, and perpetuates a cycle of inequality. Moreover, it affects the overall well-being of workers and their families.

Ensuring equal wage rights is essential for the well-being and dignity of workers and for the advancement of sustainable and inclusive economic growth. When workers are treated fairly and with respect, they are more likely to be productive and motivated and to contribute to the overall success of the company and the economy.

The government has taken some steps to address unseen wage discrimination in the labor sector in Nepal, but there is still much work to be done to ensure that these laws are effectively enforced and that workers are protected from wage discrimination. Here are some recommendations to the government and the other concerned authorities to realize the application of the equal pay principle in action.

Recommendations

The government should fully implement enacted labor laws to protect the rights of workers, including provisions to prevent wage discrimination based on gender. Additionally, The government

should launch initiatives to promote gender equality in the workplace, including programs to increase the participation of women in the labor force and to address the gender pay gap. The huge gender pay gap in Nepal is because of the deeply rooted patriarchal spirit in society that falsely assumes that men are physically and mentally stronger than women. This kind of baseless and illogical misogynist thought should be outlawed.

The awareness-raising campaigns to educate female workers about their rights and to raise awareness about the issue of wage discrimination should be organized. Also, the labor inspectorate should play a meaningful and result-oriented role in enforcing labor laws and monitoring compliance with labor standards. Similarly, the government should encourage female workers to form trade unions and engage in collective bargaining to improve their working conditions and wages. It is the duty of government to ensure that women who experience wage discrimination have access to legal aid and complaint mechanisms to seek redress.

The state must provide funds and promote research and studies on wage discrimination in various sectors to identify specific challenges and develop targeted solutions. In addition, there should be dialogue and cooperation between employers, workers' unions, and government bodies to address gender-based wage discrimination collaboratively. The concerned bodies should promote programs that offer training and skill development opportunities to women to enhance their employability and bargaining power in the job market.

Last but not least; Nepal should make material efforts to enact a separate Equal Remuneration Act as in India. In India, The Equal Remuneration Act of 1976 was enacted to bring pay parity among men and women. The main objective of the Act was to eliminate discrimination in the workplace based on gender and provide equal remuneration for equal work to employees irrespective of their gender. The notable point of this Act is that if the rate of remuneration before this Act were high, then the employer cannot reduce the rate of remuneration to comply with the provisions of this Act and the highest of the rates are payable. The Indian parliament has made the Equal Remuneration Act, 1976 which provides for the payment of equal remuneration to female and male workers and for the prevention of discrimination on the grounds of sex, against women in matters of employment. These recommendations, if implemented effectively, can contribute to reducing wage discrimination in Nepal and promoting a more equitable and inclusive workforce. Collaboration among government agencies, civil society organizations, and the private sector is essential for this meaningful progress.

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