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## FAIR PAY TOWARDS SUSTAINABLE GROWTH – EVALUATING THE CODE ON WAGES, 2019’S CAPACITY TO CLOSE THE GENDER PAY GAP IN INDIA

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### ABSTRACT

The paper critically reviews the Code on Wages, 2019 that was implemented in India with the view to evaluating the potential of the document to eliminate the gender pay gap and promote sustainable development based on fair wage policies. The paper uses the doctrinal research methodology to examine statutory provisions, judicial precedents, constitutional foundations and international labour standards to place the Code in the larger context of labour law reforms in India and their alignment with the Sustainable Development Goals 5, 8, and 10. It assesses the innovations of the Code, including its universality and establishment of national floor wage, but at the same time points out its less prominent problems, including the ambiguity of interpretation and fragmentation of its implementation and insufficient coverage of the informal sector. In comparison to the previous enactments and international good practices, it can be noted that in as much as the Code marks a legislative step forward, it is still faced with conceptual limitation and enforcement challenges especially in the areas of gender equity and intersectionality. Finally, the study, concludes that to attain the possibility of equitable compensation and sustainable development, it is necessary not only to introduce new statutes and strengthen the institutions, but also to provide the attainment of equitable policies in relation to gender, the presence of effective control and monitoring mechanisms, and the continuous critical analysis of the legal and social-economic conditions that define wage inequality in India.

**Keywords:** Gender Pay Gap, Code on Wages 2019, Wage Equity, Sustainable Economic Growth, Substantive Equality, Pay Transparency.

## INTRODUCTION

The question of fair remuneration has always been central to the discourse in labour rights and economic development. Persistent wage inequalities in India's labour markets, especially with regard to gender-based disparities, have hindered both social cohesion and economic inclusivity. Despite constitutional commitments to equality and non-discrimination<sup>1</sup> alongside endorsements of international labour standards<sup>2</sup>, wage determination in practices remains fragmented, inconsistent and marked by systemic inequities. Against this backdrop, the Code on Wages, 2019, brings in a revolutionary moment in the evolution of labour laws in India.<sup>3</sup> It consolidates four key labour legislations, namely, the Payment of Wages Act, 1936<sup>4</sup>, the Minimum Wages Act, 1948<sup>5</sup>, the Payment of Bonus Act, 1965<sup>6</sup> and the Equal Remuneration Act, 1976<sup>7</sup>, into one comprehensive statute. The Code seeks to streamline wage regulation, expand universal coverage, foster equitable labour practices across all sectors and industries, organized or unorganized. The Code's transformative ambition lies not in merely rationalizing wage structures but also in embedding an express commitment to fair pay, gender equity and sustainable growth within India's labour regime.<sup>8</sup> Important innovations such as introduction of a nation floor wage, universal applicability irrespective of the sector, industry or skill and uniform definitions for wage-related jargons, are intended to address the persistent regulatory gaps.

Background of the study: The wage disparity in India, especially the gender wage disparity, has been highly covered in the empirical and judicial literature.<sup>9</sup> Although the Equal Remuneration Act, 1976<sup>10</sup> has been introduced, the concept of equal pay equal work has not been applied equally.<sup>11</sup> The piecemeal statutory system before 2019 enabled the jurisdictional overlaps, definitional inconsistencies and enforcement inefficiencies, which left workers in the formal and informal sector poorly covered.<sup>12</sup> The application of such terms as same work or work of similar nature in the previous legislation by judges demonstrated great ambiguities

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<sup>1</sup> INDIA CONST. arts. 14–16.

<sup>2</sup> ILO Convention No. 100 (1951).

<sup>3</sup> Code on Wages, 2019, No. 29 of 2019, India Code.

<sup>4</sup> Payment of Wages Act, 1936, No. 4 of 1936, India Code.

<sup>5</sup> Minimum Wages Act, 1948, No. 11 of 1948, India Code.

<sup>6</sup> Payment of Bonus Act, 1965, No. 21 of 1965, India Code.

<sup>7</sup> Equal Remuneration Act, 1976, No. 25 of 1976, India Code.

<sup>8</sup> NITI Aayog, India and the SDGs: Voluntary National Review (2020).

<sup>9</sup> Nat'l Statistical Off., Periodic Labour Force Survey 2022–23 (2023).

<sup>10</sup> ERA. *Supra* note 7.

<sup>11</sup> R. Shetty, Labour Law Reforms and Gender Equity in India, 10 NUJS L. Rev. 233 (2017).

<sup>12</sup> Int'l Labour Org., Women and Men in the Informal Economy (2018).

with different results and invalidated the purpose of the law in its substance wage equality. The Code on Wages, 2019 was adopted as a part of the larger project of labour law regulation initiated by the Government of India that aimed at consolidating 29 labour laws into four comprehensive codes.<sup>13</sup> The Code was placed as a rationalized, simplified and more inclusive wage framework. It was introduced at the time when India is becoming more engaged in the world, especially in the Sustainable Development Goals (SDGs), with SDG 5 (Gender Equality), SDG 8 (Decent Work and Economic Growth) and SDG 10 (Reduced Inequalities) being the most directly involved.<sup>14</sup> Therefore, the Code should not be placed as a domestic reform only, but as a tool of international alignment, as an attempt to align the Indian labour standards to those of the rest of the world.

**Research Methodology:** This paper will employ a doctrinal approach and will use statutory analysis, judicial precedent, constitutional text, and international instruments as a source of information. It is especially suitable to use a doctrinal approach since the research focus was on the interpretation of the text of the Code, its alignment with the current legal grounds, and the analysis of the judicial reasoning in cases about wage equity. Prior enactment is also referred to, and other relevant International Labor Organization (ILO) conventions and global best practices are looked at to set the Code in a wider normative framework.<sup>15</sup> The doctrinal approach is complemented by the critical analysis of the secondary sources such as scholarly commentary, policy reports, and empirical research on wage disparity. All these combines to offer a multi-dimensional view of how these Code will tend to work in practice, its limits and its interpretational problems.

**Statement of the Problem:** Although the Code on Wages, 2019 displays an ambitious design, the document is characterized by interpretation ambiguities and enforcement difficulties, which are likely to compromise its intended goals. The meaning of the terms, gender, same work and work of similar nature, have not been specified well thus leaving the courts with a lot of discretion in their interpretation.<sup>16</sup> This can be a continuation of the same inconsistencies that the Code was aiming to eradicate. Moreover, the lack of consistency in the implementation of

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<sup>13</sup> Prabirjit Sarkar, Labour Codes and the Future of Labour Rights in India, 56 *ECON. & POL. WKLY.* 38 (2021).

<sup>14</sup> G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development (Sept. 25, 2015), <https://sdgs.un.org/2030agenda>

<sup>15</sup> International Labour Organization, Equal Remuneration Convention (No. 100), 1951, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100)

<sup>16</sup> *Id.* Supra note 3.

the Code at the state level, as well as institutional capacity, casts doubt on the practical effectiveness of the Code. Pay discrimination by gender is still observed in many industries especially in informal and semi-formal industries, where the implementation is lax.<sup>17</sup> The Code has a scanty expression of gender, which is not explicit on intersectionality or inclusivity which further limit its transformative nature.<sup>18</sup> At that, although the Code represents progressive aspirations, it is hardly certain whether it is capable of significantly reducing the wage gap in India and aligning with the SDG commitments.<sup>19</sup>

**Objectives of the study:** The aim of the research within this study is multiple and interconnected. To begin with, the paper aims to examine the legal framework and purpose of the Code on Wages, 2019, focusing specifically on the matters of fair pay, pay equity, sectoral differences, as well as, the mechanisms of determination and enforcement of the wage. Second, it tries to determine the compatibility of the Code with the constitutional principles and international standards and also comes out with the differences the Code presents compared to the previous enactments. Third, the study concentrates on the interpretational breadth of the terms and definitions of the notions of gender and same work and work of similar nature in the Code, evaluating their possible consequences in the court rulings. Fourth, the research will find and critically analyse the underlying limitations of the Code working towards the full attainment of gender pay equity in India and to consider additional legal or policy actions that can enhance its effectiveness. Lastly, it evaluates the role of the provisions of the Code in wider objectives of sustainability and inclusive economic growth, especially with the international standards of sustainable development like the Sustainable Development Goals (SDGs 5, 8, and 10, and in conjunction with 4 and 1).

**Scope and Limitations:** The area of the proposed research is limited to a legal study of the Code on Wages, 2019, its interpretational system, and its adherence to the constitutional and international norms. Although citations to empirical data and socio-economic research are made, the study is more of a doctrinal one, and no research or statistical analysis is carried out on its own. It also restricts the analysis by the fact that the Code was recently enacted and there are not many judicial precedents to interpret its provisions. As a result, although the research might expect that future decisions by the court might take into account similar legal precedents in the past statutes, authoritative evaluations can only be realized over time as courts struggle

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<sup>17</sup> Ravi Srivastava, *Labour Market Segmentation and Informality*, 47 *ECON. & POL. WKLY.* 47 (2012).

<sup>18</sup> Sandra Fredman, *Substantive Equality Revisited*, 14 *INT'L J. CONST. L.* 712 (2016).

<sup>19</sup> G.A. Res. 70/1, *supra* note 14.

with the application of the Code. In the same way, with the federal form of wage regulation, differences in the state level application are recognized but not looked into in exhaustive details.

**Relevance of the Study:** This study is relevant because it is timely and policy relevant. In India, where economic inequality and labour market division has become the order of the day, the proper implementation of equitable compensation will not only be important in the social justice but also in the economic development of the country. Through a critical assessment of the potential and the deficiencies of the Code, the research makes a contribution in the current academic, judicial, and policy discussion on labour law reform. The research also puts the Code in the context of international obligations of India and highlights how it enhances the SDGs. The research holds insights of immediate importance to lawmakers, courts, labour unions, and employers and even international observers by foregrounding gender equity and interpretational clarity issues.

Overall, the study is aimed at going beyond a descriptive study of the Code on Wages, 2019, and offer a critical review of its potential as a transformative agent of wage equity and sustainable development. The study seeks to consider the extent to which the Code can deliver on its pledge of equitable remuneration to everyone, or whether additional changes are necessary to the Code. This study, therefore, contextualizes the Code as a project within a sequence of evolution of labour laws in India, but as a project that requires unrelenting attention, critical thinking, and reform to make the constitutional promise of equality and the world desire of sustainable development come to fruition.

## LITERATURE REVIEW

The scholarly writings on gender wage disparity and labour reforms in India stretch beyond and reflects a rich culmination of doctrinal, empirical and theoretical inquiries. India has long debated the adequacy of statutory provisions addressing gender pay differences. Shanthakumar provides a doctrinal critique of the law prior to the new Code, the Equal Remuneration Act 1976, highlighting its limited enforceability despite reflecting the country's constitutional commitments and international obligations.<sup>20</sup> His observations conclude with the remarks that

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<sup>20</sup> S. Shanthakumar, *Labor and Fundamental Human Rights: Is "Equal Remuneration Law" Doing the Job It Is Supposed to Do to Eliminate the Gender Pay Gap in India?*, 9 US-CHINA L. REV. 124 (2012). Available at: <https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/uschinalrw9&i=124>

the Act was particularly ineffective in the informal sector, where wage discrimination is often seen. Adding to this, Sarkar's evaluation of the Code on Wages, 2019, reveals how the promise of 'One Nation, One Wage' remains largely theoretical, as the code introduces definitional ambiguities.<sup>21</sup> Shetty similarly situates the Code at such pedestal, arguing that despite the consolidation of important laws, its potential to reduce disparities stay unrealized.<sup>22</sup> Sharma further broadens the doctrinal critique by stating that the wage inequality comes within the constitutional goal of economic justice and that the judiciary has failed to make a meaningful translation of Article 38 and 39 for protection of women workers.<sup>23</sup> These works, collectively emphasize that an effective enforcement with a proactive judiciary is vital to realize the full potential of any law. Several studies adopt econometric approaches to measure the existence and factors leading to wage discrimination. Sengupta and Puri, making use of quantile regression, establish that wage discrimination persists across, with evidences of 'glass ceiling' at higher quantiles and 'sticky floor' at lower quantiles.<sup>24</sup> Their analysis demonstrate that education and experience yield unequal representation and returns for women in workforce. Soni and Pattanaik furthers this inquiry by applying the Oaxaca-Blinder model, showing that discriminatory practices drive the wage disparity rather than the productivity differences.<sup>25</sup> Das and Monal's sub-national study show that 73% of wage differentials are attributable to discrimination, with female literacy lowering but male literacy widening the gap and enhancing men's relative returns.<sup>26</sup> The studies confirm that bias exist within the market forces and not individual underperformances. Structural factors beyond wage laws play a vital role in shaping the gender parities. Mukhopadhyay's theoretical modelling of education demonstrates that gender neutral subsidies increase inequalities disproportionately benefitting the men folk, whereas gender-specific subsidies are more effective in reducing the disparities in schooling

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<sup>21</sup> Santanu Sarkar, *The 2019 Code on Wages: Truth versus Hype*, 57 INDIAN J. INDUS. RELS. 1 (2021). Available at: <https://www.jstor.org/stable/10.2307/27282527>

<sup>22</sup> Shashwik Shetty, *The Wage Code 2019 and Its Implications on Labor and Capital*, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022). Available at: <https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/injlo1w5&i=3409>

<sup>23</sup> Shiv Kumar Sharma, *Contradiction Between Constitutional Spirit and Reality of Economic Justice: An Evaluation of Judicial Process in Union of India*, 62 J. INDIAN L. INST. 303 (2020). Available at: <https://www.jstor.org/stable/10.2307/27296716>

<sup>24</sup> Pooja Sengupta & Roma Puri, *Gender Pay Gap in India: A Reality and the Way Forward- An Empirical Approach Using Quantile Regression Technique*, 10 STUD. MICROECONOMICS 50 (2022). Available at: <https://journals.sagepub.com/home/mic>

<sup>25</sup> Nikita Soni & Falguni Pattanaik, *Mapping Gender Wage Gaps in Regular Employment: A Counterfactual Decomposition Analysis for India*, 46 INT'L J. MANPOWER 867 (2025). Available at: <https://www.emerald.com/insight/0143-7720.htm>

<sup>26</sup> Simontini Das & Rhyme Mondal, *Spatial Disparity in Gender Pay Gap and Female Workforce Participation: A Sub-National Level Study in Indian Manufacturing Sector*, 49 INT'L J. SOC. ECON. 831 (2022). Available at: <https://www.emerald.com/insight/0306-8293.htm>

and earning capacities.<sup>27</sup> This highlights the requirement for gender-sensitive policy designs as opposed to formally neutral ones. Financial inclusion also emerges as an important driver of wage disparity among genders. Sarkar alongside Nair and Rao illustrate that women lag significantly behind men in access to financial systems with only 16% of women displaying financial resilience.<sup>28</sup> Without addressing these persistent disparities, the benefits of the legislations would largely remain inaccessible, thereby reinforcing inequalities. In the international context, the emphasis is laid on the institutional quality in narrowing the gender pay gap. Barcena-Martin, Medina-Claros and Perez-Moreno examined 74 *Global South* countries and found that strong property rights, judicial independence and secure environments aid on reduced gender disparities.<sup>29</sup> This comparative lens highlights the necessary fact that India's struggle with wage inequality is not only rooted in legislative potency but also in the institutional strength and governance capacity. The literature, when read together, reveals significant convergences. Firstly, legislative reforms such as the Equal Remuneration act and the Code on Wages are limited by enforceability, weak definitions and judicial inertia. Secondly, econometric evidences consistently demonstrate that discriminatory practices within sectors and industries are the primary drivers of wage discrimination, rather than the individual productivity differences. Thirdly, structural determinants, like education, financial inclusion and human capital investment, play a crucial role in policy design to mitigate disparities. Finally, institutional quality, both domestic and international, play a vital role in ensuring wage parity and is deeply connected to governance quality and institutional resilience. It underscores the need for a multidimensional strategy, which includes strengthening of wage laws, establishing gender-sensitive policies for education and financial inclusion and grounding institutional mechanisms, in order to achieve wage equity in India. Without comprehensive measures, the constitutional promise of 'Equal Pay for Equal Work' would remain aspirational rather than a needed reality.

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<sup>27</sup> Ujjaini Mukhopadhyay, Gender-neutral vs Gender-specific Education Subsidy: Effects on Schooling and Earning Inequality, 59 INT'L J. SOC.ECON. 303 (2020). Available at: <https://www.emerald.com/insight/0306-8293.htm>

<sup>28</sup> Sanjukta Sarkar, Saritha Nair & Vishnu Vardhana Rao, *Exploring the Gender Dimension in Financial Inclusion in India: Insights from the Global Findex Database*, 8 J. DEV. POL'Y & PRAC. 141 (2023). Available at: <https://journals.sagepub.com/home/jdp>

<sup>29</sup> Elena Barcena-Martin, Samuel Medina-Claros & Salvador Perez-Moreno, *Economic Gender Gap in the Global South: How Public Institutions Matter*, 158 SOC. INDICATORS RES. 459 (2021). Available at: <https://doi.org/10.1007/s11205-021-02715-6>

## 1. LEGISLATIVE INTENT OF THE CODE ON WAGES, 2019

The Wage Code, passed in 2019 is a major legislative amalgamation of the wage-related legislation of India, replacing the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976.<sup>30</sup> With these provisions contained within a single piece of statutory rule and express forbidding gender discrimination in wage determination and recruitment to same work or work of similar nature, the Code formally enshrines the normative commitment to equal pay to equal work in both the organized and unorganized sectors.<sup>31</sup> Such statutory expression displays three salient strengths. First, the consolidation suppresses fragmentation; minimum-wage floor, timely-payment protections and equal-remuneration rules are now wrapped together in a single lawful framework to give doctrinal consistency, and reduce the possibility of employers taking advantage of differences in the timing of different acts.<sup>32</sup> Second, the express prohibition of gender discrimination in wage and employment opportunities determined by the Code gives the normative force to the modern labour law and aligns the domestic law with the equality guarantees provided by the Constitution and international labour standards.<sup>33</sup> Third, the Code builds upon much of its protection to the unorganized sector and brings in a national floor wage that, in theory, helps reduce inter-regional wage inequalities that might increase gender gaps in which women are overrepresented in the local low-paying labour markets.<sup>34</sup>

However, the gap between the statutory text and material gender pay equity is still huge.<sup>35</sup> The initial, and most dogmatic constraint is in the conceptual parsimony that is retained: similar to the Equal Remuneration Act that it replaces, the Wage Code puts fairness into effect by operationalizing the comparator model of same work or work of similar nature.<sup>36</sup> This test requires a comparison of skill, effort, responsibility and working conditions as well as most importantly, it assumes the male and female jobs are directly comparable as regards to their type. The comparator method fails to understand the systemic underpayment of female-dominated jobs, including care work, some types of informal retail and paraprofessional work,

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<sup>30</sup> Code on Wages, No. 29 of 2019 (India).

<sup>31</sup> *Id.* § 3.

<sup>32</sup> Standing Committee on Labour, Textiles & Skill Dev., 31st Report on the Code on Wages, 2019, Lok Sabha Secretariat (2019).

<sup>33</sup> INDIA CONST. arts. 14–16; Int'l Labour Org., Equal Remuneration Convention (No. 100), June 29, 1951, 165 U.N.T.S. 303.

<sup>34</sup> Code on Wages § 9 (India).

<sup>35</sup> Ministry of Statistics & Programme Implementation, Periodic Labour Force Survey 2022–23 (2023).

<sup>36</sup> Code on Wages § 2(zx) (India).

in which occupations are assigned different formal definitions, but have the same social and economic worth.<sup>37</sup> Researchers and social workers have cautioned that the constraint will continue to create structural wage disparities as it will not challenge the classification and grading systems that designate work traditionally carried out by females as low status and low pay jobs.<sup>38</sup>

The second practical weakness is related to enforcement architecture. Although statutory prohibition is necessary, it cannot work in secrecy unless it has powerful enforcement mechanisms.<sup>39</sup> The Wage Code continues to have inspection, penalty and complaint provisions as in earlier legislation, but it does not impose employer-facing transparency requirements, such as obligatory disaggregated pay reporting by gender, or obligatory job-evaluation systems or compulsory regular pay audits, which is already being identified as international good practice to reveal and prevent discriminatory pay practices.<sup>40</sup> As a result, enforcement is mostly complaint-based and responsive and is ineffective against pervasive and subtle discrimination in pay occurring on scales of pay, bonus formula and grading schemes.<sup>41</sup>

Third, there is disparate implementation in the economic geography of India. Though the Code does reflect on a central floor wage, still the real minimum rates, social safeguards and inspection capability remain, to a greater extent, State-specific; the resources of enforcement, political intent and administrative structure differ among states.<sup>42</sup> Furthermore, the extension of the Code to the unorganized sector is conceptually broad, yet the practical coverage of the informal workforce such as platform workers and other participants of the gig economy is a controversial topic depending on regulatory regulations and notification. Such a heterogeneity compromises the ability of the Code to achieve uniform gender pay equity about practice.<sup>43</sup>

Both the potential and the boundaries of both statutory and constitutional remedies are demonstrated in developments in the judiciary. In a series of cases that includes *State of Punjab v. Jagjit Singh*,<sup>44</sup> where in the constitutional principle of equal pay equals work has been

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<sup>37</sup> Int'l Labour Org., *Equal Pay: An Introductory Guide* (2013), <https://www.ilo.org>

<sup>38</sup> U.N. Women, *Progress of the World's Women 2019–2020* (2019), <https://www.unwomen.org>

<sup>39</sup> Code on Wages ch. VII (India).

<sup>40</sup> OECD, *Pay Transparency Tools to Close the Gender Wage Gap* (2021), <https://www.oecd.org>

<sup>41</sup> Int'l Labour Org., *Global Wage Report 2022–23* (2022)

<sup>42</sup> Code on Wages § 9 (India).

<sup>43</sup> PLFS 2022–23, *supra* note 35.

<sup>44</sup> *State of Punjab v. Jagjit Singh*, (2017) 1 S.C.C. 148 (India).

reaffirmed by the Supreme Court several times<sup>45</sup> (equality of temporary employees) and previous jurisprudence on gender-discrimination, like *Air India v. Nargesh Meerza*.<sup>46</sup> These cases show that courts are ready to apply parity to cases of comparators that are proven and to grant relief to areas of employment. Nevertheless, the judicial use of comparators and other fact-specific questions implies that systemic and gendered undervaluation of different classes of jobs can be beyond effective judicial corrections.<sup>47</sup>

Remedial and policy-wise, bridging the gap between codification and substantive gender pay equity would need doctrinal and institutional creativity. At the doctrinal level, the work of equal value should be identified as a cognizable basis of comparison with same or similar work in the law.<sup>48</sup> This would allow re-grading of the female dominated jobs and redress systemic under-valuation. On the institutional level, the Code must be supplemented by obligatory employer pay-transparency regulations with periodic, gender-disaggregated earnings reporting and public dashboards, obligatory pay-audits of medium- and large-employers, statutory information on job-evaluation frameworks to limit biased grade systems, and enhanced inspection and sanctioning authority with gender desks.<sup>49</sup>

Lastly, the success of the Code in providing adequate pay and gender balance will be pegged on the accompanying social and economic policies, the provision of better access to childcare and parental leave, the incentive to enter and remain in better-paid jobs, affirmative recruitment and training opportunities, and social arrangements that reduce employment discontinuities that come with care costs.<sup>50</sup> However essential, legal reform will fail to turn back the labour-market segmentation and the socio-cultural norms that support the gender pay gap in India.

Overall, the Wage Code is a much-needed and welcome unification that makes the state officially committed to non-discrimination and formalizes the principles of equal remuneration despite sectoral boundaries. However, as currently statutory and as implemented, it is not enough in its own right to generate significant gender pay equity among the heterogeneous economic sectors of India. The delivery of the promise of the Code must involve the expansion of the doctrine (equally valuable work), active transparency and audit requirements, more

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<sup>45</sup> *Randhir Singh v. Union of India*, (1982) 1 S.C.C. 618 (India).

<sup>46</sup> *Air India v. Nargesh Meerza*, (1981) 4 S.C.C. 335 (India).

<sup>47</sup> *Mackinnon Mackenzie & Co. v. Audrey D'Costa*, (1987) 2 S.C.C. 469 (India).

<sup>48</sup> Sandra Fredman, *Substantive Equality Revisited*, 14 INT'L J. CONST. L. 712 (2016).

<sup>49</sup> OECD, *supra* note 40.

<sup>50</sup> Int'l Monetary Fund, *Gender Inequality and Economic Growth* (2018), <https://www.imf.org>.

robust and better-resourced implementation and comprehension between the Code and the wider gender-responsive economic strategies.<sup>51</sup> It is, therefore, imperative that a policy that integrates these legal, and policy interventions, should be implemented in order to transform the declaratory commitment of the Wage Code into quantifiable changes in gender pay gap in India.

## **2. ALIGNMENT WITH CONSTITUTIONAL COMMITMENTS AND INTERNATIONAL STANDARDS**

The terms and conditions that are provided in the Code on Wages, 2019, exhibit a subtle conformity to, and significant deviations to, the applicable constitutional requirements and international conventions regarding wage equality and the eradication of discrimination. In this connection, this section systematically examines such intersections, with a focus on the conceptual foundations of the Code, its legislative and constitutional context, and the degree to which it adheres to the international standards of gender-pay disparities.

### **2.1 Foundation of Code on Wages, 2019**

The code on wages, 2019 is the result of a variety of pre-existing wage laws being consolidated and revised, especially the equal remuneration act 1976 which had traditionally been one of the foundations of wage equality in the country. The same or similar work on the basis of gender with regard to wages and recruitment is categorically prohibited by Section 3 of the Code.<sup>52</sup> Notably, the terminology used in the Code cites gender hence including transgender individuals hence enhancing inclusivity as compared to the previous two-term version of the Equal Remuneration Act. The Code also stipulates that no employer shall cut remuneration to obtain the adherence to the non-discriminatory concepts and creates the procedures of resolving the conflict about the character of work or wage equality before the special organs. Besides, it presents a broad definition of wages, which will widen the coverage and help in understanding the elements of wages and, hence, limit the discrimination of wage forms.

### **2.2 Constitutional Standards**

With a wide range of clauses that together promote gender justice and ethical work practices,

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<sup>51</sup> U.N. Women, *supra* note 38.

<sup>52</sup> *Code on Wages, 2019, § 3 (India) (Prohibition of Discrimination on Ground of Gender)*, The Gazette of India, Act No. 29 of 2019 (Aug. 8, 2019), <https://www.indiacode.nic.in/bitstream/123456789/15793/1/aA2019-29.pdf>

the Indian constitutional framework provides a strong basis for the principles of wage equality and the ban on discrimination. The cornerstone of India's equality jurisprudence is Article 14, which ensures equality before the law and equal protection under the law.<sup>53</sup> This is furthered by Article 15, which enshrines gender equality by specifically forbidding discrimination on the basis of sex.<sup>54</sup> By requiring equal opportunity in state services, Article 16 applies these principles to the field of public employment.<sup>55</sup> The constitutional commitment to substantive wage equality is emphasized by Article 39(d) of the Directive Principles of State Policy (DPSPs), which expressly instructs the State to ensure equal pay for equal work for men and women.<sup>56</sup> Complementing this, Article 42 obligates the State to ensure just and humane working conditions, including maternity benefit, while Article 51A(e) casts a fundamental duty on citizens to renounce practices derogatory to the dignity of women, thereby embedding gender equity within State action as well as societal conduct.

Judicial interpretation has played a transformative role in operationalizing these constitutional mandates. In the case of *Randhir Singh v. Union of India*<sup>57</sup>, the apex court categorically held that the principle of 'Equal Pay for Equal Work' is not merely a directive principle put upon the state but rather an enforceable constitutional right arising from Articles 14 and 16. Construing this principle as a binding constitutional requirement, the court elevated wage equality from an aspiration to a justiciable entitlement. The court further emphasized that the discrimination in pay for the similar nature of work, amounts to violation of the guarantee of equality. This reinforces the indivisible nature of social and economic rights from fundamental rights. The principle was reaffirmed in the case of *State of Punjab v. Jagjit Singh*<sup>58</sup> where the Court applied the doctrine to casual, contractual and daily wage workers. The court held that, denying equal pay for equal work to temporary employees and workers as compare to their permanent counterparts amounted to 'exploitative enslavement', offending both human dignity and constitutional guarantees of equality. This judgement expanded the scope of the principle by including the vulnerable categories of workers, who are often the most neglected and affected by wage disparities.

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<sup>53</sup> INDIA CONST. art. 14, <https://www.indiacode.nic.in/handle/123456789/1522>

<sup>54</sup> INDIA CONST. art. 15, <https://www.indiacode.nic.in/handle/123456789/1522>

<sup>55</sup> INDIA CONST. art. 16, <https://www.indiacode.nic.in/handle/123456789/1522>

<sup>56</sup> INDIA CONST. art. 39(d), <https://www.indiacode.nic.in/handle/123456789/1522>

<sup>57</sup> *Randhir Singh v. Union of India*, (1982) 1 S.C.C. 618 (India).

<sup>58</sup> *State of Punjab v. Jagjit Singh*, (2017) 1 S.C.C. 148 (India).

Indian courts have gradually reconciled the Directive Principles with enforceable fundamental rights through this developing body of jurisprudence, bridging the formal and substantive aspects of equality. By ensuring that the principle of wage equality is based on enforceable standards that hold the State and employers accountable, rather than being limited to idealistic abstractions, this judicial approach reflects a purposive interpretation of the Constitution.

### 2.3 Conformity to International Standards

The concept of gender pay equality is not a recent one in the international legal system as it is best represented by the Equal Remuneration Convention, 1951 (No. 100) of the International Labor Organization (ILO).<sup>59</sup> This Convention commits the States to assure that men and women employees are remunerated equally to work of equal value, a criterion that goes beyond the domestic instruments of same work or work of similar nature. The concept of equal value brings in a broader and more substantive test because pay equity cannot be limited to the same or almost similar tasks but must consider the overall value of the various types of work in sectors. The Code on Wages, 2019, reaffirming the long-standing Indian attachment to the principle thereof of same work or work of a similar nature, is loyal to the domestic constitutional and legislative tradition of wage equality, as expressed by Article 39(d) and the previous Equal Remuneration Act, 1976.<sup>60</sup> Even though this formulation is limited compared to the international standard of the work of equal value, the Code remains on a broad level that complies with the India obligations under Convention No. 100. This coincidence is interesting especially since India is one of the signatories of the Convention which means that it has entered into the international commitment of similar remuneration, despite its unique doctrinal focus on the aspect of similarity instead of value.

The work of equal value benchmark has been elaborated in other jurisdictions, most notably the Equality Act 2010 of the United Kingdom.<sup>61</sup> Under this act, claims of equal pay should not be limited to jobs that are same or similar in terms of content but also jobs that are of equal value when compared on the basis of skill, effort, responsibility, and working conditions. This more comprehensive strategy enables courts and tribunals to reveal and consider the more

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<sup>59</sup> International Labour Organization, Equal Remuneration Convention (No. 100), June 29, 1951, 165 U.N.T.S. 303,

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312245](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312245)

<sup>60</sup> Equal Remuneration Act, 1976, No. 25 of 1976, India Code,

<https://www.indiacode.nic.in/handle/123456789/1790>

<sup>61</sup> Equality Act 2010, c. 15 (U.K.), <https://www.legislation.gov.uk/ukpga/2010/15/contents>

subtle aspects of gender-based pay discrimination, such as the structural underpayment of a feminized sector of the economy, like care work, teaching, or clerical work, which, though experienced of great skill and responsibility, has been historically underpaid due to the existence of gendered stereotypes about their value.

To sum up, the Code on Wages, 2019 is a major improvement in the legislative process of achieving gender pay parity and the absence of discrimination in India, which is quite consistent with the constitutional spirit of equality. Its direct proscription of gender-based wage disparity, gender-neutral wording, and broadening of definition of wages represent liberal advances. However, the Code also drastically differs with the ILO Convention No. 100 because it continues to use the less challenging standard of same work or work of the same nature and it does not contain explicit definitions of direct and indirect discrimination, which would prevent the eradication of deeply rooted gender biases. The only solution to this still existing gap is by statutory amendment and effective enforcement. The introduction of the benchmark of equal value of work, the broadening of anti-discrimination laws, and the introduction of systematic awareness programs among the workers and employers are not only necessary, but also urgent. It is only under a multidimensional approach based on the principles of the Constitution and guided by the principles of international standards that India can realize the promise of gender wage equality.

### **3. INTERPRETATIONAL AMBIGUITIES**

The Code on Wages, 2019, was passed in the promise of unifying and rationalizing the existing fragmented wage related legislations in India such as the Equal Remuneration Act, 1976. Fundamentally, the Wage Code is intended to promote the principles of non-discrimination and wage equity, in particular, by mandating that all employees receive equal remuneration despite the fact of their gender, i.e., being the same or doing same work or a work of similar nature. However, the interpretational ambiguities of the terms, such as, gender, same work, work of similar nature, etc., have far-reaching consequences on the effectiveness of the statutory arrangement, however. In this part, the definitional uncertainties are explored as well as their impacts on the outcomes of judicial cases and the actualization of wage equity in practice.

#### **3.1 Uncertainty in the Nature of the Term ‘Gender’**

The code defines and prohibits the discrimination on grounds of ‘gender’ but does not provide

a substantive definition to the term.<sup>62</sup> The omission stands in contrast to Equal Remuneration Act, which explicitly prohibited the discrimination between men and women. By expanding the scope of the term ‘gender’, the Code potentially recognizes the non-binary and transgender identities. This change is not merely semantic. By using the term ‘gender’, the Code aligns itself with constitutional jurisprudence and statutory developments that recognise transgender persons as a distinct and protected class. In particular, the Code must be read alongside the Supreme Court’s decision in *National Legal Services Authority v. Union of India*<sup>63</sup> and the Transgender Persons (Protection of Rights) Act, 2019, which together affirm the legal recognition of transgender persons and prohibit discrimination in employment and remuneration.<sup>64</sup>

Thus, unlike the Equal Remuneration Act, 1976, the Code on Wages does not exclude transgender persons from its protective ambit. In principle, discrimination against transgender workers in wages or recruitment would fall squarely within the prohibition on discrimination based on ‘gender’. However, the core ambiguity does not lie in *whether* transgender persons are included, but in *how* this inclusion is operationalised within the wage equity framework of the Code.

Firstly, the Code does not articulate any guidance on how wage discrimination affecting transgender persons is to be identified, assessed, or remedied. While inclusion exists at a formal level, the statute remains silent on the distinct forms of disadvantage faced by transgender workers in labour markets. Transgender persons in India are disproportionately represented in informal, casual, and precarious employment, where wage determination is discretionary, undocumented, and weakly regulated.<sup>65</sup> The Code does not provide tailored enforcement mechanisms or evidentiary standards that take into account these structural realities.

Secondly, the Code adopts a uniform, formally neutral model of non-discrimination that treats all gender-based wage claims as analytically identical. This approach overlooks the fact that transgender workers often face indirect and systemic discrimination, including occupational exclusion, wage suppression justified through stigma, and denial of advancement

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<sup>62</sup> *Code on Wages, 2019*, § 3 (India).

<sup>63</sup> *Nat’l Legal Servs. Auth. v. Union of India*, (2014) 5 S.C.C. 438 (India), <https://indiankanoon.org/doc/193543132/>

<sup>64</sup> Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019, India Code, <https://www.indiacode.nic.in/handle/123456789/13091>

<sup>65</sup> UNDP India, *Mapping Transgender Inclusion in India* (2018), <https://www.undp.org/india>

opportunities. Such forms of discrimination are difficult to capture within a framework that focuses primarily on explicit wage differentials between comparably situated workers.<sup>66</sup> The absence of explicit recognition of indirect discrimination or structural disadvantage limits the Code's capacity to deliver substantive equality, even while formally including transgender persons.

Further, the Code does not engage with intersectionality. Gender-based disadvantage frequently intersects with caste, class, regional location, disability, and informality, producing compounded wage inequities. For transgender persons, these intersecting vulnerabilities are particularly pronounced. Yet, the Code remains silent on whether and how such compounded discrimination should be addressed, leaving enforcement authorities without normative direction and placing an excessive burden on individual claimants to frame their grievances within narrow legal categories.

Therefore, while it would be incorrect to argue that transgender persons are excluded from the Code on Wages, it is equally problematic to assume that formal inclusion alone ensures effective protection. The ambiguity lies in the absence of substantive guidance, differentiated safeguards, and enforcement sensitivity. The Code's conception of 'gender' remains formally inclusive but substantively thin, relying on general equality language without addressing the distinct labour-market vulnerabilities of transgender workers. As a result, inclusion risks becoming nominal rather than transformative.

### **3.2 Ambiguity in Determining 'Same Work or Work of Similar Nature' and the Absence of a Standardised Measure**

The second major ambiguity affecting wage equity under the Code on Wages, 2019 arises from its continued reliance on the standard of 'same work or work of similar nature' as the basis for enforcing equal remuneration. Although the Code lists factors such as skill, effort, responsibility, and working conditions, it does not prescribe a standardised or objective methodology for evaluating these elements. This omission perpetuates long-standing interpretational difficulties that existed under the Equal Remuneration Act, 1976.

In the absence of statutory benchmarks, the determination of whether two sets of work are

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<sup>66</sup> Ministry of Social Justice & Empowerment, Government of India, *Report of the Expert Committee on Issues Relating to Transgender Persons* (2014), <https://socialjustice.gov.in>

‘similar’ is left largely to employer-defined job descriptions and hierarchical classifications. Employers retain considerable discretion in structuring roles, distributing tasks, and assigning titles, often fragmenting work in ways that obscure substantive equivalence. Labour inspectors and courts, lacking clear evaluative criteria, frequently defer to these organisational classifications, thereby reinforcing existing power asymmetries within workplaces.

Judicial precedents demonstrate the consequences of this ambiguity. While courts have occasionally adopted a purposive approach, as seen in *Mackinnon Mackenzie & Co. Ltd. v. Audrey D’Costa*<sup>67</sup>, recognising that minor differences in duties should not defeat wage parity claims, subsequent jurisprudence has been inconsistent. In many cases, courts have demanded near identity of functions, qualifications, or working hours, effectively raising the evidentiary threshold for workers seeking equal remuneration. The Code on Wages does not resolve this inconsistency, as it neither codifies guiding principles nor introduces a structured test for comparability.

More importantly, the ‘same or similar work’ standard is inherently limited in addressing systemic wage inequality. Gender-based wage disparities often arise not because women or transgender persons perform identical work for less pay, but because the work they predominantly perform is institutionally undervalued. Occupational segregation ensures that certain forms of labour, such as caregiving, clerical work, education, and service-sector employment, are classified as distinct from male-dominated occupations, even when they require comparable levels of skill, responsibility, and effort.<sup>68</sup> The Code’s framework does not permit comparison across such occupational categories, thereby insulating structural undervaluation from legal scrutiny.<sup>69</sup>

International labour standards highlight this limitation. ILO Convention No. 100 endorses the broader principle of ‘equal remuneration for work of equal value’, recognising that substantive equality requires evaluation of the social and economic worth of different forms of work. Jurisdictions that have adopted this approach supplement it with job evaluation schemes, pay audits, and transparency obligations. By contrast, the Indian Code retains a narrow comparator model without providing tools to assess value objectively.

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<sup>67</sup> *Mackinnon Mackenzie & Co. Ltd. v. Audrey D’Costa*, (1987) 2 S.C.C. 469 (India), <https://indiankanoon.org/doc/1576776/>

<sup>68</sup> Claudia Goldin, A Grand Gender Convergence, 104 AM. ECON. REV. 1091 (2014).

<sup>69</sup> World Bank, *Gender Data Portal – India Wage Gap Data*, <https://genderdata.worldbank.org>

The absence of mandatory job evaluation systems, gender-neutral grading frameworks, or pay transparency requirements further weakens enforcement. Without these mechanisms, wage discrimination embedded in classification systems, bonus structures, and discretionary allowances remains invisible. Enforcement authorities are left to react to individual complaints rather than proactively identifying systemic inequities.

Accordingly, the ambiguity surrounding ‘same work or work of similar nature’ is not merely semantic but structural. It reflects a continued reliance on formal equality that fails to interrogate how work is valued within labour markets. Without a standardised measure or evaluative framework, the Code’s promise of wage equity remains constrained by employer-defined categories and limited judicial intervention.<sup>70</sup>

### 3.3 Formal Inclusion versus Substantive Wage Equity

The ambiguities surrounding the interpretation of ‘gender’ and ‘same work or work of similar nature’ must be understood not as isolated drafting imperfections, but as manifestations of a deeper tension within the Code on Wages, 2019 between formal equality and substantive wage justice. While the Code adopts inclusive terminology and consolidates protective norms, it largely relies on a formal, comparator-based model of equality that is ill-equipped to confront the structural and systemic nature of wage discrimination in contemporary labour markets.<sup>71</sup>

With respect to gender, the Code’s formal inclusion of transgender persons reflects compliance with constitutional and statutory developments.<sup>72</sup> However, the absence of differentiated standards, interpretative guidance, or enforcement sensitivity reveals a reluctance to move beyond symbolic inclusion.<sup>73</sup> Substantive equality, as articulated by the Supreme Court, requires the law to account for historical disadvantage and structural exclusion, not merely to prohibit identical treatment.<sup>74</sup> By treating all gender-based wage claims through a uniform lens, the Code risks flattening difference and obscuring the distinct barriers faced by transgender

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<sup>70</sup> OECD, *Pay Transparency Tools to Close the Gender Wage Gap* (2021), <https://www.oecd.org>

<sup>71</sup> Code on Wages, No. 29 of 2019, §§ 3–4 (India), [https://labour.gov.in/sites/default/files/Code\\_on\\_Wages\\_2019.pdf](https://labour.gov.in/sites/default/files/Code_on_Wages_2019.pdf)

<sup>72</sup> Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 3 (India), <https://egazette.nic.in/WriteReadData/2019/214037.pdf>

<sup>73</sup> Ministry of Labour & Employment, Govt. of India, Code on Wages (Central) Rules, 2020, G.S.R. 486(E) (July 7, 2020), <https://egazette.nic.in/WriteReadData/2020/220973.pdf>

<sup>74</sup> *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438 (India).

workers, particularly in informal and precarious employment contexts.<sup>75</sup> Similarly, the continued reliance on ‘same work or work of similar nature’ reflects an adherence to formal comparability rather than a meaningful assessment of economic value.<sup>76</sup> Wage inequality in India is rarely the product of explicit pay differentiation for identical tasks; it is more commonly the result of occupational segregation, undervaluation of certain forms of labour, and employer-controlled classification systems.<sup>77</sup> The Code’s failure to introduce objective evaluative tools or standards allows these structural inequities to persist under the guise of organisational difference. In effect, the law accepts existing labour-market hierarchies as neutral, rather than interrogating their gendered foundations.<sup>78</sup>

These two ambiguities operate cumulatively. The lack of clarity around gender, combined with the absence of a standardised method for assessing work similarity, places an excessive evidentiary burden on workers while granting employer’s significant interpretive control. Enforcement authorities, constrained by vague statutory language, are rendered reactive and inconsistent.<sup>79</sup> Courts, in turn, are left to navigate complex socio-economic realities without legislative guidance, leading to fragmented jurisprudence and unpredictable outcomes. From a normative perspective, this design choice reflects a minimalist approach to wage equality, one that prioritises administrative simplicity and employer flexibility over transformative justice. While consolidation and universality are important legislative achievements, they cannot substitute for doctrinal precision and substantive safeguards.<sup>80</sup> The Code thus exemplifies the limits of codification without conceptual reform.

To sum up, while the Code on Wages, 2019 adopts inclusive language and formally extends protection against wage discrimination on the ground of gender, its effectiveness is curtailed by persistent ambiguities in the interpretation of both ‘gender’ and ‘same work or work of similar nature’. The absence of substantive guidance on addressing the distinct vulnerabilities of transgender workers and the lack of a standardised framework for assessing the nature and

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<sup>75</sup> Int’l Labour Org., Inclusion of Transgender Workers in the Workplace in India 12–18 (2022), <https://www.ilo.org>

<sup>76</sup> Code on Wages § 2(zx) (definition of same work or work of similar nature), [https://labour.gov.in/sites/default/files/Code\\_on\\_Wages\\_2019.pdf](https://labour.gov.in/sites/default/files/Code_on_Wages_2019.pdf)

<sup>77</sup> Jayati Ghosh, Informalization and Gender in India, 42 *ECON. & POL. WKLY.* 2990 (2007), <https://www.epw.in>

<sup>78</sup> World Bank, Women, Business and the Law 2023, at 34–40 (2023), <https://wbl.worldbank.org>

<sup>79</sup> Standing Committee on Labour, Textiles and Skill Development, 31st Report on the Code on Wages, 2019, Lok Sabha Secretariat (2019), <https://loksabha.nic.in>

<sup>80</sup> Law Commission of India, 275th Report on Implementation of Labour Laws (2017), <https://lawcommissionofindia.nic.in>

value of work confine the Code to a model of formal equality.<sup>81</sup> As a result, structural and systemic wage disparities remain insufficiently addressed, limiting the Code's capacity to realise its objective of genuine wage equity in practice.<sup>82</sup>

#### 4. INTEGRATING WAGE EQUITY INTO CORPORATE GOVERNANCE AND MARKET REGULATION

The Code on Wages, 2019 does not operate in isolation as a labour statute, as it also intersects meaningfully with corporate governance, commercial regulation, and market accountability.<sup>83</sup> In a liberalised economy where corporations are central actors in production, employment, and capital formation, wage regulation directly influences corporate conduct, compliance culture, and long-term enterprise sustainability.<sup>84</sup> Fair wage practices are increasingly recognised as part of directors' fiduciary oversight and responsible business conduct.<sup>85</sup>

Under the Companies Act, 2013, directors are obligated to act in good faith to promote the objects of the company while considering the interests of employees and the community at large in lieu of Section 166.<sup>86</sup> This statutory formulation expands the traditional shareholder-centric model and situates wage equity within broader stakeholder governance. Gender-based wage discrimination, if persistent within corporate structures, may therefore raise not only labour law concerns but also governance and compliance issues.<sup>87</sup> Further, Section 134 of the Companies Act mandates the Board's Report to include disclosures on internal financial controls and risk management systems.<sup>88</sup> Wage non-compliance, including violations of the Code on Wages, can constitute regulatory and reputational risk. In an era where institutional investors evaluate environmental, social and governance metrics, wage transparency and pay equity increasingly affect corporate valuation and access to capital.<sup>89</sup>

The integration of wage equity into corporate disclosure frameworks is reinforced through the Securities and Exchange Board of India's Business Responsibility and Sustainability Reporting

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<sup>81</sup> Int'l Labour Org., Global Wage Report 2022–23: The Impact of Inflation and COVID-19 on Wages and Purchasing Power (2022), <https://www.ilo.org>

<sup>82</sup> U.N. Women, Progress of the World's Women 2019–2020: Families in a Changing World 115–130 (2019), <https://www.unwomen.org>

<sup>83</sup> Code on Wages, No. 29 of 2019 (India), [https://labour.gov.in/sites/default/files/Code\\_on\\_Wages\\_2019.pdf](https://labour.gov.in/sites/default/files/Code_on_Wages_2019.pdf)

<sup>84</sup> Gov't of India, Econ. Survey 2022–23, Vol. I, ch. 10 (2023), <https://www.indiabudget.gov.in>

<sup>85</sup> OECD, G20/OECD Principles of Corporate Governance 44–47 (2015), <https://www.oecd.org>

<sup>86</sup> Companies Act, No. 18 of 2013, § 166 (India), <https://www.mca.gov.in>

<sup>87</sup> *Mackinnon Mackenzie & Co. v. Audrey D'Costa*, (1987) 2 S.C.C. 469 (India).

<sup>88</sup> Companies Act § 134(3)(n) (India).

<sup>89</sup> BlackRock, Investment Stewardship Annual Report 2023, <https://www.blackrock.com>

regime.<sup>90</sup> The Securities and Exchange Board of India (SEBI), through its BRSR requirements for listed entities, mandates reporting on employee well-being, gender diversity, and wage structures. Such disclosures transform wage equality from a private employment matter into a public market-facing obligation. Companies failing to address gender pay gaps may face investor scrutiny, shareholder activism, and ESG-linked financing constraints.<sup>91</sup>

Wage regulation also influences contractual structuring, supply-chain liability, and due diligence practices. Large corporations frequently operate through layered contractual networks involving contractors and gig workers.<sup>92</sup> If principal employers structure operations to externalise wage liabilities, questions may arise concerning sham contracts, indirect control, and vicarious compliance responsibility.<sup>93</sup> Courts have historically looked beyond formal arrangements to determine the true nature of employment relationships, especially in cases of exploitative labour practices.<sup>94</sup> As supply chains globalise, multinational buyers increasingly impose wage compliance clauses to mitigate legal and reputational exposure. Internationally, wage equity aligns with the social pillar of ESG governance.<sup>95</sup> The International Labour Organization Equal Remuneration Convention, 1951 (No. 100) recognises equal remuneration for work of equal value as a foundational labour standard. India's continued engagement with such standards strengthens its position in global trade negotiations and responsible sourcing frameworks. Non-compliance, conversely, may affect export competitiveness where labour standards are embedded in trade agreements and procurement conditions.<sup>96</sup>

Further, sustainable growth depends on inclusive wage structures. Persistent gender pay gaps reduce aggregate demand, suppress labour-force participation, and undermine human capital optimisation.<sup>97</sup> From a market efficiency perspective, wage discrimination distorts resource allocation and perpetuates productivity losses. Therefore, strengthening the Code on Wages enhances not merely social justice but economic rationality.<sup>98</sup>

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<sup>90</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended (India), <https://www.sebi.gov.in>

<sup>91</sup> PRI Ass'n, ESG Integration in India: Market Practices (2022), <https://www.unpri.org>

<sup>92</sup> NITI Aayog, India's Booming Gig and Platform Economy (2022), <https://www.niti.gov.in>

<sup>93</sup> *Hussainbhai v. Alath Factory Thezhilali Union*, (1978) 4 S.C.C. 257 (India).

<sup>94</sup> *Balwant Rai Saluja v. Air India Ltd.*, (2014) 9 S.C.C. 407 (India).

<sup>95</sup> World Bank, Women, Business and the Law 2023 (2023), <https://wbl.worldbank.org>

<sup>96</sup> European Commission, *Trade and Sustainable Development Chapters in EU Trade Agreements* (2022), <https://trade.ec.europa.eu>

<sup>97</sup> Int'l Monetary Fund, Gender Inequality and Economic Growth (2018), <https://www.imf.org>

<sup>98</sup> World Economic Forum, Global Gender Gap Report 2023 (2023), <https://www.weforum.org>

In conclusion, the Code on Wages, 2019 from a corporate lens stands as a compliance obligation, governance metric, disclosure imperative, and market stability instrument.<sup>99</sup> Embedding wage equity within board oversight, ESG reporting, contractual due diligence, and investor accountability frameworks will ensure that fair pay is not treated as a peripheral labour issue but as a core determinant of corporate legitimacy and sustainable commercial growth.<sup>100</sup>

## **5. RETHINKING WAGE REGULATION: STRENGTHENING THE CODE ON WAGES, 2019 FOR SUSTAINABLE AND INCLUSIVE GROWTH**

The Code on Wages, 2019 is an important milestone in India's labour law reform. By consolidating multiple wage-related statutes, it seeks to simplify regulation and expand coverage across sectors. However, as the preceding analysis shows, consolidation alone is insufficient to achieve wage equity or to promote inclusive economic growth. Wages are not merely a labour issue; they shape productivity, workforce participation, income distribution, and long-term economic stability. Strengthening the Code therefore requires targeted reforms that move beyond formal equality and address structural wage disparities.<sup>101</sup>

### **5.1 Moving Beyond 'Same Work': Recognising the Value of Work**

A critical reform lies in expanding the standard for wage equality. The current focus on 'same work or work of similar nature' limits the law's ability to address systemic undervaluation of certain occupations, particularly those dominated by women and marginalized genders. Introducing the principle of equal remuneration for work of equal value, as recognised under ILO Convention No. 100, would allow comparison across different job categories based on skill, responsibility, effort, and working conditions.<sup>102</sup>

Such a shift would help challenge historical biases in job classification and ensure that wages reflect actual economic contribution rather than social perception. From a growth perspective, fair valuation of labour improves efficiency in labour markets and supports better allocation of human capital.

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<sup>99</sup> Code on Wages §§ 3–4 (India).

<sup>100</sup> G20 Sustainable Finance Working Group, Sustainable Finance Report 2023, <https://g20.org>

<sup>101</sup> Code on Wages, No. 29 of 2019 (India).

<sup>102</sup> Int'l Labour Org., Equal Remuneration Convention (No. 100), June 29, 1951, 165 U.N.T.S. 303, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100)

## 5.2 Making Pay Gaps Visible: Transparency as a Tool for Equality

Wage discrimination often persists because it remains hidden. To address this, the Code should incorporate pay transparency measures.<sup>103</sup> Requiring medium and large employers to maintain gender-disaggregated wage data and conduct periodic wage audits would help identify unjustified pay gaps early.

Transparency does not merely serve a regulatory function; it encourages institutional accountability and fair competition among employers. When wage practices are visible, discriminatory structures are harder to justify and easier to correct. Over time, such measures can improve trust in labour markets and encourage greater workforce participation, especially among women and transgender persons.

## 5.3 Fixing the Measurement Problem: Standardising Job Evaluation

One of the major weaknesses of the Code is the absence of a clear method to assess the nature of work. This gap can be addressed by introducing standardised, gender-neutral job evaluation frameworks through rules or guidelines. Clear criteria for evaluating skill, effort, responsibility, and working conditions would reduce employer discretion and improve consistency in enforcement.<sup>104</sup>

Standardised evaluation also helps labour authorities detect indirect discrimination embedded within grading systems and pay structures. By ensuring that wage determination is based on objective criteria, such reforms promote fairness while also enhancing productivity and organisational efficiency.

## 5.4 From Paper to Practice: Strengthening Enforcement Institutions

Legal standards are only as effective as their enforcement. The Code should therefore be supported by stronger institutional mechanisms. Inspectors-cum-facilitators must be trained in wage equity analysis and gender-sensitive enforcement. Dedicated wage equity cells and simplified complaint procedures would improve access to justice, particularly for workers in

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<sup>103</sup> Int'l Labour Org., Pay Transparency Legislation: Implications for Employers and Workers (2022), [https://www.ilo.org/global/publications/books/WCMS\\_849209/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_849209/lang--en/index.htm)

<sup>104</sup> Int'l Labour Org., Equal Pay: An Introductory Guide (2013), [https://www.ilo.org/global/publications/books/WCMS\\_216695/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_216695/lang--en/index.htm)

informal and semi-formal sectors.<sup>105</sup>

Effective enforcement also supports economic sustainability. When compliance is consistent and credible, responsible employers are protected from unfair competition, and labour markets function more efficiently.

### **5.5 Reaching the Margins: Addressing Vulnerability and Intersectionality**

Inclusive growth demands that wage reforms reach those most affected by inequality. The Code should explicitly recognise intersectional forms of disadvantage, where gender interacts with caste, migration status, or informality. Tailored compliance norms and targeted outreach programmes would ensure that protections extend beyond formal employment and into sectors where wage exploitation is most common.

Such inclusion is not merely a social goal; it expands the productive workforce and strengthens domestic demand, both of which are essential for sustainable growth.<sup>106</sup>

### **5.6 Wages as Economic Policy: Linking Fair Pay to Development**

Finally, wage regulation must be understood as a component of broader economic policy.<sup>107</sup> Fair remuneration increases household income, boosts consumption, and reduces inequality, thereby supporting long-term economic stability. Complementary investments in childcare, skill development, and social security further enhance the impact of wage reforms by enabling continuous and meaningful labour-force participation.

Seen in this light, the Code on Wages should function not only as a labour law but as a strategic instrument of inclusive development aligned with the Sustainable Development Goals.

In essence, strengthening the Code on Wages, 2019 requires a shift from formal consolidation to substantive reform. By recognising the value of work, improving transparency, standardising job evaluation, reinforcing enforcement, and addressing structural vulnerability, the Code can

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<sup>105</sup> Standing Committee on Labour, Textiles and Skill Development, 31st Report on the Code on Wages, 2019, Lok Sabha Secretariat (2019), <https://loksabha.nic.in>

<sup>106</sup> U.N. Women, Progress of the World's Women 2019–2020: Families in a Changing World (2019), <https://www.unwomen.org/en/digital-library/progress-of-the-worlds-women>

<sup>107</sup> Int'l Monetary Fund, Gender Inequality and Economic Growth: Evidence from India (2018), <https://www.imf.org/en/Publications/WP/Issues/2018/03/07/Gender-Inequality-and-Economic-Growth-in-India-45685>

evolve into a powerful tool for sustainable and inclusive economic growth. Such reforms would bring wage regulation closer to constitutional ideals, international standards, and the economic realities of a diverse and unequal labour market.<sup>108</sup>

## CONCLUSION

The Code on Wages, 2019 stands as one of the most ambitious interventions in India's labour law landscape, seeking to recalibrate wage regulation around the ideals of fairness, dignity, and inclusive growth. By consolidating fragmented wage statutes and extending formal protection across sectors, the Code symbolically reaffirms the constitutional promise of equality and India's commitment to global labour standards. Its emphasis on universality, gender neutrality in language, and the introduction of a national floor wage reflects a legislative intent to place fair pay at the centre of sustainable economic development.

Yet, this research demonstrates that legislative ambition alone cannot dismantle deeply entrenched wage inequalities. The Code's continued reliance on the narrow comparator of 'same work or work of similar nature', coupled with the absence of clear standards to identify indirect and structural discrimination, confines wage equality to a formal ideal rather than a lived reality. While gender is expansively articulated, the lack of substantive guidance on intersectionality, informal work, and systemic undervaluation renders protection uneven and, at times, illusory. In effect, the law prohibits discrimination without fully confronting the mechanisms through which discrimination is produced and sustained.

The persistence of the gender pay gap in India is not merely a failure of compliance but a reflection of how labour markets value work. Occupational segregation, opaque pay structures, employer-controlled classifications, and weak enforcement architectures continue to undermine equitable remuneration. In this context, the Code risks becoming declaratory rather than transformative unless it is supported by doctrinal clarity, institutional capacity, and economic foresight. Wage justice cannot be achieved through consolidation alone; it demands visibility, accountability, and a willingness to challenge entrenched hierarchies of labour value.

To fulfil its constitutional and developmental mandate, the Code on Wages must evolve from a unifying statute into a vehicle of substantive equality. Incorporating the principle of equal remuneration for work of equal value, mandating pay transparency and job evaluation

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<sup>108</sup> World Economic Forum, Global Gender Gap Report 2023 (2023).

mechanisms, and strengthening gender-sensitive enforcement are not peripheral reforms but foundational necessities. When wages are regulated with fairness and precision, they do more than correct inequity; they enhance productivity, expand workforce participation, and strengthen the social fabric of economic growth.

In sum, the Code on Wages, 2019 represents a critical beginning, not a conclusion. Its true success will be measured by whether it can translate the rhetoric of equality into measurable reductions in wage disparity and embed fairness within India's growth story. Without sustained reform and vigilant implementation, the promise of fair pay risks remaining aspirational. With it, however, wage regulation can become a powerful instrument of social justice and sustainable development, transforming equality from principle into practice.