

**Bill No. XVI of 2018**

THE PREVENTION OF GENDER PAY GAP BILL, 2018

A

BILL

*to address and curb the gender pay gap in the labour and employment sector and also to repeal the Equal Remuneration Act, 1976*

WHEREAS the Convention on Elimination of All Forms of Discrimination Against Women, adopted by United nations in 1979 and ratified by India on 9th July, 1993 requires that all forms of discrimination against women be condemned and states must take appropriate legislative measures to prohibit all forms of discrimination against women and establish legal protection of their rights on an equal basis with men;

AND WHEREAS the International Labour organisation (ILO) convention on Equal Remuneration (Convention No. 100) ratified by India on 25 Sep. 1958 provides for equal remuneration for work of equal value without discrimination;

AND WHEREAS Article 39 (d) of Constituion envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for work of equal value;

NOW THEREFORE it is expedient to re-enact the Equal Remuneration Act, 1976 in order to prevent discrimination between employees on the basis of gender in all workplaces and all positions and to provide employees with an efficient grievance redressal mechanism and to ensure that work done by different genders in valued fairly to achieve gender equality which is a core component of decent work.

BE it enacted by Parliament in the Sixty-ninth year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prevention of Gender Pay Gap Bill, 2018;
- (2) It extends to the whole of India;

Short title and  
Extent.

Application of Act.

2. Except where otherwise provided, for matters concerning equal remuneration for employees for work of equal value, the provisions of this Act shall apply notwithstanding anything contained in any other law for the time being in force.

Definitions.

3. In this Act, Unless the context otherwise requires,—

(a) "appropriate Government" means—

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(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—

(a) by the Central Government or the Union Territory administration, the central Government;

(b) by the State Government, the State Government;

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(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government.

(b) "discrimination" means as defined in section 4 of the Act;

(c) "employee" means any person employed for remuneration at a workplace for any work whether identified by the employer as regular, temporary, contractual, *ad hoc*, daily wage worker, probationer, trainee, apprentice or identified by any other such name, performing any manual, unskilled, skilled, technical, operational, clerical, managerial or supervisory work for reward, who gets remuneration from the employer either directly or through an agent, including a contractor, with or, without the knowledge of the employer, whether the terms of employment are express or implied and could be of any age and can be identified as male, female or transgender;

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(d) "employer" means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

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(ii) in any workplace not covered under sub-clause (i), any persons responsible for the management, supervision and control of the workplace, if the said affairs are entrusted to any other person, whether called a manager, or managing director or by any other name, such person will be employer;

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(e) "Other remuneration" includes any supplement, benefit, allocation, grant, fringe benefit payment to cover expenses, payments for vehicle maintenance, use of telephone, overtime quota, purchase of professional literature, clothing, use of vehicles, or any other compensation in cash in kind, direct or indirect, and even if they do not constitute wages;

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(f) "remuneration" means wages any additional benefits, allowance and emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employee's employment;

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(g) "work of equal value" shall have the meaning as defined by the National Pay Equity Committee from time to time and shall include work:—

(i) where employees perform work that is similar in responsibilities, skills or qualification required, requires same effort and is performed in similar working conditions; and

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(ii) where employees perform work that requires different effort, involving different responsibilities, requiring different skills or qualifications, and is performed under different conditions, but is overall of equal value.

(h) "workplace" includes—

5 (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

10 (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying or commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

15 (iii) hospitals or nursing homes;

(iv) any sports institute, stadium sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto.

## CHAPTER II

### 20 DISCRIMINATION

4. (1) Discrimination on the basis of gender identity including any distinction, exclusion, restriction or preference made on the basis of gender identity which has the purpose or effect of nullifying or impairing equality of opportunity or treatment in employment or is prohibited occupation. Provided that any distinction, exclusion or preference in respect of a particular  
25 job based on the inherent requirements thereof shall not be deemed to be discrimination.

Prevention of  
Discrimination.

(2) On and from the commencement of this Act, no employer shall, while making recruitment for the work of equal value, or in any condition of service subsequent to recruitment including payment of remuneration and other remunerations, promotions, training or transfer, make any discrimination against any employee on the basis of gender except  
30 where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:

Except when such payment of remuneration or other remunerations or both is made —

(a) where the performance of employees is evaluated using a gender-neutral formal system of performance appraisal and employees have been made aware of the  
35 same;

(b) where the employees receive periodic increases in remuneration based on the time period of service with the employer or seniority;

(c) where an employer pays to an employee remuneration that are higher than justified by the value of the work performed by that employee during recuperation of  
40 limited duration from an injury or illness;

(d) where the employer, without decreasing the employee's remuneration, reassigns an employee to a lower position due to unsatisfactory work performance of the employee caused by factors beyond the employee's control, such as the increasing complexity of the job or the impaired health or partial disability of the employee, or as  
45 a result of an internal labour force surplus that necessitates the reassignment;

(e) where a procedure of gradually reducing remuneration is prescribed for any of the reasons set out in paragraph (d);

(f) where, for the purposes of an employee development program that is equally available to all employees and leads to the career advancement of the employees who  
50 take part in the program, an employee temporarily assigned to the position receives

remuneration at a different level than an employee working in such a position on a permanent basis;

(g) where there is an existence of an internal labour shortage in a particular job classification;

(h) where there is a reclassification of a position to a lower level, where the incumbent continues to receive remuneration on the scale established for the former higher classification; 5

(i) where the wage scale that applies to the employees provides for different rates of remuneration for the same job depending on the defined geographic area of the workplace; and 10

(j) any other differential that is based on factors other than gender:

Provided, that an employer who is paying a wage rate differential in violation of this sub-section shall not, in order to comply with the provisions of this sub-section, reduce the rate of remuneration of any employee:

Provided further that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, socially and educationally backward classes, persons with disability, ex-servicemen, retrenched employees of any other class or category of persons only in matters of recruitment and promotion to the posts in an establishment or employment, as provided under any law for the time being in force. 15

(3) where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for employees for the same work or work of a similar nature are different only on the ground of gender, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in case where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on an from such commencement, to such employees: 20 25

Provided that nothing in this sub-section shall be deemed to entitle an employee to the revision of the rate of remuneration payable to them with reference to the service rendered by them before the commencement of this Act.

### CHAPTER III

#### CONSTITUTION OF COMMITTEES 30

Constitution  
and  
Jurisdiction of  
National Pay  
Equity  
Committee.

5. (1) The Central Government shall, by notification, constitute a body to be known as the National Pay Equity Committee to exercise the powers conferred on, and to perform the functions, assigned to it under this Act.

(2) The National Pay Equity Committee shall consist of the following members,—

(a) a Chairperson, who is a person of eminence and has done outstanding work for promoting gender equality to be nominated by the Central Government; 35

(b) not less than six Members, out of which at least two shall be women, from the following fields, to be appointed by the Central Government from amongst persons of eminence, ability, integrity, standing and experience in,—

(i) Labour Welfare; 40

(ii) Human resources;

(iii) gender equality; and

(iv) best practices relating to gender equal pay.

(3) The Office of the National Pay Equity Committee shall be at New Delhi.

(4) The Chairperson and every Member shall hold office for a term of three years from the date on which they assume office: 45

Provided that, subject to fulfilment of criteria mentioned herein, each Member, including the Chairperson, shall be eligible for re-nomination for a second term of three years, but no subsequent nomination beyond the second term shall be permitted.

(5) If, for any reason, any member of the National Pay Equity Committee leaves the Committee, the vacancy so created shall be filled by fresh nomination in accordance with the provisions of this section:

Provided that any decision taken or function performed by the National Pay Equity Committee shall not be questioned merely on grounds of vacancy in the Committee.

(6) The salary and allowances payable to and other terms and conditions of service of the Chairperson and other members shall be such as may be prescribed.

(7) The National Pay Equity Committee shall have such member of officers and staff on such term and condition as may be prescribed.

**6.** The National Pay Equity Committee shall perform the following functions namely:—

(a) conduct research to devise the format and methodology to draft Equality Plan;

(b) establish or research for globally accepted gender neutral job evaluation methods that assesses the four criteria of skill, effort, responsibility and working conditions and reflect the range of work found in an organisation and capture that organisation's values and are capable of measuring all jobs in the establishment;

(c) establish a framework to be followed by the National Pay Equity Committee for evaluation of workplaces to issue the Certificate of Equal Pay;

(d) address any other matter deemed relevant by the Central Government for the effective implementation of this Act.

**7. (1)** Every State Government and UT Administrative shall by notification constitute a State Pay Equity Committee to perform the functions assigned to it under this Act.

(2) The State Pay Equity Committee shall have the following members,—

(a) a Chairperson to be nominated by the affordable Grant from amongst the eminent women in the field of social work and committed to the cause of gender equality;

(b) not less than five Members to be approved by appropriate Government:

Provided that the Chairpersons and the Members shall have a background in law or legal knowledge:

Provided further that at least one of the member shall be a woman or belonging to the Scheduled Castes or the Scheduled Tribes or the Backward Classes or minority community as notified by the appropriate Government, from time to time:

Provided also that three members, shall represent employees' association or groups in the state, the employers' association or groups and shall the transgender community.

(3) The Chairperson and every member of the State Pay Equity Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the Appropriate Government:

Provided that, subject to fulfilment of criteria mentioned herein, each Member, including the Chairperson, shall be eligible for re-nomination for a second term of three years, but no subsequent nomination beyond the second term shall be permitted.

(4) If, for any reason, any member of the State Pay Equity Committee leaves the Committee, the vacancy so created shall be filled by fresh nomination in accordance with the provision of this section:

Powers and Functions of National Pay Equity Committee.

Constitution and Jurisdiction of State Pay Equity Committee.

(5) The salary and allowances payable to and other terms and conditions of service of the Chairperson and other members shall be such as may be prescribed:

Provided that any decision taken or function performed by the State Pay Equity Committee shall not be questioned merely on grounds of vacancy in the Committee.

Power and  
Responsibilities  
of State Pay  
Equity  
Committee.

**8. (1)** The State Pay Equity Committee shall:— 5

(a) set up Grievance Redressal Cells in each district of the State with not less than three members, one of whom shall be a job evaluation expert and one of whom shall be a woman and each Grievance Redressal Cell may within the local limits of its jurisdiction:—

(i) require any employer to produce any register, or other documents 10 relating to the remuneration and employment of employees and examine such documents;

(ii) take on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, 15 complied with;

(iii) make copies, or take extract from, any register or other document maintained in relation to the establishment under this Act;

(iv) conduct all such functions as, delegated by the State Pay Equity Committee for effective grievance redressal.

(b) set up an Advisory Committee which shall consist of not less than three 20 members of which one shall be a woman or transgender member and it shall,—

(i) regulate its own procedure;

(ii) for the purpose of providing increasing employment opportunities for women and transgender employees, advise the State Pay Equity Committee with regard to the extent to which women and transgender employees may be employed 25 in such establishments or employments within the jurisdiction of the State Pay Equity Committee;

(iii) having regard to the number of women and transgender employees employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women and transgender employees for employment, 30 as the case may be, recommend the need for providing increasing employment opportunities for women and transgender employees, including part-time employment, and such other relevant factors as the State Pay Equity Committee may think fit:

Provided that Government may, after considering the advice tendered to 35 it by the Advisory Committee and recommended by the State Pay Equity Committee and after giving to the persons concerned in the establishments or employments within its jurisdiction an opportunity to make representations, issue such directions in respect of employment of women and transgender employees, as it may think fit. 40

(c) examine the Equality Plans of different organisations and issue Certificate of Equal Pay on being satisfied that the organisation does not discriminate on the basis of gender in determining remuneration;

(d) maintain computerised records of all organisations that have received certification, that have not submitted Equality Plans and that have been denied a 45 certificate alongwith reasons thereof;

(e) appoint Job Evaluation Experts using open recruitment based on the rules prescribed by the Government.

(f) ensure systematic and efficient grievance redressal by taking informed decisions based on the reports submitted by the Job Evaluation Expert;

5 (g) regularly collect and publish data on remuneration of employees in the State or UT recommend changes based on the analysis of the findings to the State Government or UT Administration report to the State Government or UT Administration with all data which shall then be further handed to the Central Government to be published on its website at the end of every financial year;

10 (h) receive the Equality Plan report from different organisations every year and order an inquiry, in a manner that it deems fit, after one official warning if, the committee finds that the organisation is discriminating on the basis of gender in determining remuneration and not taking sufficient steps to bridge the gender pay gap in the organisation;

15 (i) report to the Department of Labour of the respective State or UT Administration with an Annual report of its work, which shall also be put on its own website and laid on the table of the Assembly of the respective State or UT having assembly;

(j) spread awareness about the rules and regulations under the legislation through workshops and sessions and provide guidance and technical assistance to employers in implementation of the rules under this Act;

20 (k) conduct research and provide recommendations to the Appropriate Government to develop appropriate incentives to encourage employers to follow the provisions laid under this Act.

5 of 1908 (2) The State Pay Equity Committee appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of taking  
25 evidence and of enforcing the attendance of witnesses and compelling the production of documents, and shall be deemed to be a Civil Court for all the purposes of section 195 and  
2 of 1974 Chapter XXVI of the Code of Criminal Procedure, 1973.

## CHAPTER IV

### CONSTITUTION OF INTERNAL AUDIT COMMITTEE

30 **9.** (1) Every employer shall, by an order in writing, constitute a Committee to be known as the Internal Audit Committee on the commencement of this Act:

Constitution of  
Internal Audit  
Committee.

Provided where the offices or administrative units of an establishment are located at different places, the Internal Audit Committee shall be constituted only at the head office or head administrative unit.

35 (2) The Internal Audit Committee shall consist of the following members, namely:—

(a) a Presiding Officer who shall be a woman employed at a senior level in the workplace;

(b) not less than one representative of the employer to be nominated by the employer or the employer themselves;

40 (c) not less than one representative of the employees to be nominated by the employees:

Provided that at least one member represents each gender in the workplace.

(3) All members of the Internal Audit Committee shall hold office for such period, not exceeding three years, from the date of their nomination. Provided that they may be re-nominated on the expiry of the tenure for one more term, but no subsequent nomination shall be permitted.

(4) If, for any reason, any member of the Internal Audit Committee leaves the workplace

or the Committee, the vacancy so created shall be filled by fresh nomination in accordance with the provision of this section.

Self-Audit and  
Equity Plan.

**10.** (1) The Internal Audit Committee shall conduct self-audit by drawing an Equality Plan, once within six months of the coming into operation of this Act and everytime the employer revises pay-scale of any or every employment within the organization, as prescribed by the National Pay Equity Committee, which shall include an analysis of the jobs performed and pay received by employees, measures to address the gender pay differentials and a review of their impact. 5

(2) The Internal Audit Committee shall submit the Equality Plan to the State Pay Equity Committee at the end of the financial year. 10

## CHAPER V

### GRIEVANCE REDRESSAL

Complaint of  
discrimination.

**11.** (1) Any aggrieved employee may make, in writing, a complaint of discrimination at workplace to the Grievance Redressal Cell of the State Pay Equity Committee:

Provided that where such complaint cannot be made in writing, any member of the Grievance Redressal Cell, shall render all reasonable assistance to the employee for making the complaint in writing. 15

Conciliation.

**12.** (1) The Grievance Redressal Cell shall forward the complaint to the Job Evaluation Expert, within a period of seven days, who shall find all relevant facts to determine whether the jobs in dispute were of equal value and whether the employee faced gender based discrimination in determination of remuneration: 20

Provided that if the Job Evaluation Expert requires production of documents from the employer, the employer shall provide the same with in a period of seven days from the date on which such request is made:

Provided further that the Job Evaluation Expert shall maintain confidentiality in dealing with such documents. 25

(2) The Job Evaluation Expert shall submit his report to the Grievance Redressal Cell with a period of forty five days of receiving the complaint and based on the report submitted by the Grievance Redressal Cell, the State Pay Equity Committee shall record its order and forward the same to the employer to take action as specified in the order within a period of thirty days from receiving the report. 30

(3) The State Pay Equity Committee shall provide the copies of the order as recorded under sub-section (2) to the aggrieved employee and the employer.

(4) Where a settlement is arrived at under sub-section (2), no further inquiry shall be conducted by the State Pay Equity Committee. 35

Appeal.

**13.** (1) Any person aggrieved from the recommendations made under sub-section (2) of section 12 or non-implementation of such recommendations may prefer an appeal to the Labour Court or Tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed. 40

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of receiving the order.

Rights of  
action.

**14.** (1) An action under this law may be brought by —

(a) the employee; 45

(b) with the employee's consent - the representative employees organisation at



that workplace, and if there is no such employees organisation to which the employee belongs — by an employees organisation to which the employee belongs;

(c) with the employee's consent — by an organisation that deals with women's rights.

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## CHAPTER VI

### DUTIES OF THE EMPLOYER

**15.** All employers shall —

Duties of employers.

(a) upload the Equality certificate, if issued by the State Pay Equity Committee, on the website of the organisation or be available for public view in an accessible manner;

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(b) disclose, on the employee's demand, information for the purposes of this Act regarding the wage levels of persons employed by him, according to categories of employees, categories of jobs or categories of grades, provided that the employee shall only be required to deliver such information to such extent as the circumstances require, that avoids disclosure of details of the identity of employees, and which does not by virtue thereof, constitute a breach of any other law, within a period of fourteen days;

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(c) ensure constitution of Internal Audit Committee to draw up an Equality Plan and ensure submission of the same at the end of each financial year;

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(d) ensure the use of effective job evaluation methods, as prescribed by the National Equity Pay Committee, to eliminate gender based discrimination;

(e) maintain such registers and other documents in relation to the employees employed by him as may be prescribed.

## CHAPTER VII

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### MISCELLANEOUS

**16.** (1) If after the commencement of this Act, any employer, being required by or under this act, so to do—

Penalty for non-compliance with provisions of Act.

(a) omits or fails to maintain any register or other document in relation to employees employed by him under section 15, or

(b) fails to submit the Equality Plan to State Pay Equity Committee under section 15, or

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(c) fails to constitute an Internal Audit Committee under section 9, or

(d) fails to disclose the payroll of employees under section 15,

he shall be liable to pay a fine which shall not be less than five thousand rupees but which may extend to an amount decided by the State Pay Equity Committee or Labour Court.

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(2) If, after the commencement of this Act, any employer—

(a) makes any recruitment in contravention of the provisions of his Act under section 4, or

(b) makes any payment or remuneration at unequal rates to employees of different genders, for work of equal value under section 4, or

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(c) makes any discrimination between employees in contravention of the provisions of this Act under section 4, or

(d) omits or fails to carry out any direction made by the appropriate Government under clause (b) of sub-section (1) of Section 8, or

(e) fails to follow the orders of the State Pay Equity Committee within the time limit prescribed as under sub-section (2) of section 12, or

(f) omits or refuses to give any evidence to the Job Evaluation Expert or prevents his agent, servant, or any other person in charge of the workplace, or any employee, from giving evidence under sub-section (1) of section 12,

he shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to an amount decided by the State Pay Equity Committee or Labour Court or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

(3) If, after the commencement of this Act, any Job Evaluation Expert or any member of the State Pay Equity Committee discloses the information produced by any employer under sub-section (1) of section 12, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

(4) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—

(a) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

(b) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the Court shall take due cognizance of the same while awarding the punishment;

Determination of compensation. **17.** (1) For the purpose of determining the sums to be paid to the aggrieved employee under clause (b) of sub-section (2) of section 16, the State Pay Equity Committee, shall determine the compensation which shall include —

(a) the amount by which the remuneration payable to the employee exceeds the amount actually paid from the date when payroll was disclosed or first date of official work of employee, whichever is later; and

(b) compensation which shall depend on the feasibility of such payment in lump sum or in instalments and the amount of which shall be decided by the State Pay Equity Committee depending on the financial sustainability of the workplace under the employer.

Offences by organisations. **18.** (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed

with the consent or connivance of, or is attributable to, any neglect of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

5       **19.** (1) Nothing in this Act shall apply—

(a) to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women, or

(b) to any special treatment accorded to women in connection with—

(i) the birth or expected birth of a child, or

10       (ii) the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.

**20.** The provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force except to the extent the provisions of other laws are inconsistent with the provisions of this Act.

15       **21.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the matters referred to in Section 6; and

20       (b) registers and other documents which an employer is required to maintain in relation to the employees employed by him under Section 15;

25 of 1976

**22.** (1) The Equal Remuneration Act, 1976 is hereby repealed.

25       (2) Notwithstanding such repeal, anything done or any action taken or any liability, right or claim arising under the Act, so repealed including any notification, nomination, appointment, order or direction made thereunder shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act were in force when such thing was done or action was taken or any liability, right or claim had arisen.

Act not to apply in certain special cases.

Act to be in addition to any other law.

Power to make rules.

Repeal and saving.

## STATEMENT OF OBJECTS AND REASONS

Gender pay gap is one of the most crucial and yet, the most disregarded gender issues in India. Women in India earn twenty five per cent less than men. Women earned a median gross hourly salary of Rs. 259.8 while men earned Rs. 345.8 in 2016. While the gap has reduced by two percentage points since 2015, gender still plays a pivotal role in determining salaries. Research shows that the pay gap increases with women's work experience, age, educational qualification and rise in occupational hierarchy. Since women are overburdened with disproportionate share of household chores, employers discriminate against women as they are perceived to be less productive. Career breaks and socialisation also adds to the gender pay gap. India ranked 108, out of 144 countries, on the World Economic Forum's Global Gender Gap Report 2017. The situation is similar when it comes to transgender employees. Marginalisation and discrimination pushes the transgender community down the socio-economic ladder when it comes to social and economic empowerment. This also translates into discrimination in remuneration at workplaces.

The situation is alike in labour intensive occupations, both, agricultural and non-agricultural. As per the Labour Bureau of India, in December 2016, the average daily wage rate for a man undertaking ploughing and tilling work was Rs. 291.17 and for a woman, it was 201.36. In the same month, the average wage rate of construction workers varied too. A man was paid Rs. 307.39 while a woman was paid Rs. 220.45 for construction work.

The Equal Remuneration Act, 1976 attempts to address the issue, however, it is insufficient, selective and limited in its scope. It is only applicable to employers covered under the Payment of Gratuity Act, 1972 which includes "employer" in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop either Government or privately owned. The Act covers workers working in organisations that have been listed in the definition of employer. Hence, it does not include corporate organisations and NGOs with managerial and supervisory staff that do not engage in physical labour. Lastly, the Act also fails to address the gender pay gap with respect to transgenders. Hence, despite the existence of a relevant law, the gender gap has not been addressed appropriately. The Global Wage Report of 2016-17 published by ILO has ranked India 42nd with one of the widest gender pay gaps, out of 46 selected economies.

India ratified a key ILO convention on Equal Remuneration (Convention No. 100) on 25 September, 1958. This convention provides for equal remuneration for employees for work of equal value which refers to rates of remuneration established without discrimination based on gender. India ratified the Convention on the Elimination of all Forms of Discrimination Against Women on 9 July, 1993. As a result, it is committed "to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises."

In *Randhir Singh vs. Union of India*, the Supreme Court held that 'Equal pay for equal work' is not just a "demagogic slogan". It may not be a fundamental right but it is definitely a constitutional goal. As a result, it is "capable of attainment through constitutional remedies by the enforcement of constitutional rights". In the case of *Grih Kalyan Kendra vs. Union of India*, the Supreme Court reiterated the importance of the doctrine of 'Equal pay for equal work'. It held that "Equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principles of State Policy as contained in article 39(d) of the Constitution 'Equal pay for equal work' has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in articles 14 and 16 of the Constitution."

Article 39(d) of Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women.

Articles 14 and 19 guarantee the fundamental rights to equality before the law and equality of opportunity in the matter of public employment respectively. This Bill attempts to give effect to these Constitutional provisions. It is essential to ensure that work done by different genders is valued fairly to achieve gender equality. It is also a core component of decent work.

Hence, this Bill.

HUSAIN DALWAI

#### FINANCIAL MEMORANDUM

Clause 5 of the Bill *inter alia* provides for constitution of the National Pay Equity Committee. Clause 7 seeks to constitute State Pay Equity Committee. Therefore, the Bill, if enacted, will involve expenditure from the Consolidated Fund of India as well as Consolidated Fund of the concerned State. However, it is not possible to access the actual financial expenditure likely to be incurred at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 21 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matter of details only, the delegation of legislative powers is of a normal character.

RAJYA SABHA

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**BILL**

to address and curb the gender pay gap in the labour and employment sector and also to  
repeal the Equal Remuneration Act, 1976

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*(Shri Husain Dalwai, M.P.)*