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## A Legal Outlook on gender-based Pay Gap in Sports: A Male-Dominated Mafia

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*This article highlights the prevalence of the gender-based pay gap which is very apparent in the field of sports in India. The newly enacted code on the wage bill, 2019 was introduced to bring equality in terms of equal pay for equal work. Various reasons for the gender pay gap in the field of sports and constitutional perspectives on the same are highlighted in this article. The article also tries to throw light on the rights enshrined under the Indian constitution concerning providing equal pay for equal work and how the states have safeguarded these rights for all professional athletes in India. The role of the media in shaping such inequality in the field of sports which resulted in pay gaps based on gender is brought to light through this article. The sponsorship gap that exists in the field of sports between professional male and female athletes in India is also highlighted by this article. The article attempts to highlight some current scenarios that depict the wide disparity in pay scales between professional male and female athletes. Finally, the article tries to propose various measures to rectify the challenges faced by female athletes and helps in securing equal opportunity and pay parity for female athletes as their counterparts.*

**Keywords:** *gender pay gap, sports, equality, media, sponsorship.*

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## INTRODUCTION

Sports is one such field where a clear gender-based gap/inequality is visible. Even though 50% of the world population is comprised of females still such gender-based disparity is very high and more notably in the field of sports, it is visible. One main reason for the gender-based gap in pay scale in sports is there being an unequal projection and promotion by the media due to the low viewership count and lack of sponsorship which has ultimately paved the way for the gender-based pay gaps in sports. Numerous instances can be cited to highlight such a gap in the pay scale. For instance - Sania Mirza was widely criticized by Islamic organizations for wearing women's tennis attire which is considered to be inappropriate according to the tenets of Islam<sup>1</sup>. Despite the existence of various safeguards enshrined within our constitution which endeavours in securing an equal opportunity for all of its citizens, as has been provided under Article 14<sup>2</sup>, Article 15<sup>3</sup>, and Article 16<sup>4</sup> which lays down the principle of equal pay for equal work. Nonetheless, a clear disparity in pay scales of women in sports can be observed, when compared with the men indulged in sports. One prime example to demonstrate the above said is the sport of cricket in which there exists a huge gender-based pay gap, one of the reasons why women in the field of cricket encounter many challenges is that they are not compensated equally to men, depriving them of the opportunities that are not only morally and ethically right but also guaranteed by the Constitution of India.<sup>5</sup>

Currently, substantial changes are being brought to the laws governing these matters as a consequence of forces exerted by various pressure groups and organisations. Gradually, women are also starting to get equally compensated to that men and this brings out a bright ray of hope that such inequality in the pay scale will be eliminated in the future for women athletes. This change can be observed from the recent announcement made by the secretary of The Board of

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<sup>1</sup> 'Mirza responds to Muslim criticism of how she dresses' (*ESPN*, 17 November 2005)  
<<https://www.espn.com/sports/tennis/news/story?id=2227000>> accessed 06 December 2022

<sup>2</sup> Constitution of India 1950, art. 14

<sup>3</sup> Constitution of India 1950, art. 15

<sup>4</sup> Constitution of India 1950, art. 16

<sup>5</sup> Joshua A. Senne, 'Examination of Gender Equity and Female Participation in Sport' (2016) 20 *The Sports Journal*

Control for Cricket in India “As we enter a new era of gender equality in cricket, the match fee will be the same for male and women cricketers”<sup>6</sup>.

## CONTEMPORARY STATUS

Over the years, the difference in the pay scale between men and women has become a widely discussed topic and it has become very evident that there is clear discrimination based on sex even in sports, yet nothing significant has been done to improve this position. Women and men are put on equal footing by our law yet the seriousness of the gender-based pay gap between men and women has not been taken into cognizance in most instances. Women have even started becoming leaders and owners of fortune 500 companies which signifies that they can perform on par with the opposite gender. However, despite them showing the same amount of work ethics, women are discriminated against in the field of sports and are often underpaid in comparison to men. India slipped to the 112th position in 2020 from the 108th position in 2018, according to the Gender Gap Index.<sup>7</sup>

While participating in the world twenty 20 events the international cricket council sponsored all the men’s teams to travel in the business class whereas only economic class tickets were sponsored for the women’s cricket team<sup>8</sup>. Even though 83% of sports now compensate men and women equally, disparities still exist in cricket, football, and golf, according to a 2017 report commissioned by Women Sports Week. Coming to unequal pay in India, it is pertinent to discuss the most talked about sport in the country, Cricket. The most popular and biggest cricket league in the world is the Indian Premier League, in which the men’s edition has 10 teams with huge sponsorship and viewership as against the women’s edition has only 3 teams with very low viewership and sponsorship. The annual salary of an A-graded men’s cricketer is around 5

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<sup>6</sup> ‘Hitting gender disparity for six, BCCI announces equal pay for men and women’ (*The Times of India*, 27 October 2022) <<https://timesofindia.indiatimes.com/sports/cricket/news/bcci-announces-equal-pay-for-centrally-contracted-male-and-female-players/articleshow/95117892.cms>> accessed 06 December 2022

<sup>7</sup> Neetu Chandra Sharma, ‘India slips four ranks on World Economic Forum’s global gender gap index 2020’ (*Mint*, 17 December 2019) <<https://www.livemint.com/news/india/india-slips-four-ranks-on-world-economic-forum-s-global-gender-gap-index-2020-11576574974188.html>> accessed 06 December 2022

<sup>8</sup> Madeleine Chapman, ‘Men in business class, women in Economy: A tale of two t20 world cups’ (*The Spinoff*, 21 March 2016) <<https://thespinoff.co.nz/sports/21-03-2016/men-in-business-class-women-in-economy-a-tale-of-two-t20-world-cups>> accessed 06 December 2022

crores but the annual salary of an A-graded women's cricketer is just 50 lakhs as of the year 2020<sup>9</sup>. Despite the constitution guaranteeing equal pay for equal work, the present-day disproportion in the field of sports in India is very apparent and evident. The Hon'ble Supreme court in the case of *State of Punjab v Jagjit Singh* held that a worker who is hired to do the same or similar work as another worker who in turn is performing the same or similar type of work and carrying out the same responsibilities cannot be paid less than that worker, and this is not allowed in a welfare state.

## REASONS FOR THE GENDER-BASED PAY GAP IN SPORTS

- **Media Gap in Sports**

Some people put forth the argument that the reason for the gap in pay scale between men and women in sports is the revenue generated by male professionals is far higher than that of the revenue generated by their female counterparts. The gender pay difference in professional sports seems to be justified by this revenue argument, but the whole crux of the argument is flawed since male athletes procure a greater number of sponsorships and media attention in comparison to female athletes<sup>10</sup>. These media houses do not only invest in popular sports personalities but such investment has a direct nexus with increasing the popularity of the athletes and the sport as a whole. This is where the problem begins, professional female athletes can never compete with professional male athletes if the audience were never to see professional female athletes in advertisements or for proper media coverage of female sports.<sup>11</sup>

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<sup>9</sup> Karunya Keshav et al., 'Indian cricket: Why a movement towards equal pay for men and women is important' (*Scroll*, 21 May 2021) <<https://scroll.in/field/995395/indian-cricket-why-a-movement-towards-equal-pay-for-men-and-women-is-important>> accessed 06 December 2022

<sup>10</sup> Nicole Zerunyan, 'Time's Up: Addressing Gender-Based Wage Discrimination in Professional Sports' (2018) 38(3) <<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1619&context=elr>> accessed 06 December 2022

<sup>11</sup> Charlotte Rogers, 'Why brands must rethink their approach to women's sports sponsorship' (*MarketingWeek*, 8 February 2018) <<https://www.marketingweek.com/brands-neglecting-womens-sports-sponsorship/>> accessed 06 December 2022

This lack of coverage by the popular media houses resulted in a lack of many female role models in sports<sup>12</sup>. This unwillingness to invest in female sports by corporations and media houses only forms the main reason for discrimination and the gender-based pay gap in sports. Women make up 40% of all athletes in the world but they receive a mere 4% of the total media coverage<sup>13</sup>. Further, to strengthen the argument the viewership count of the 2015 men’s ODI world cup has been compared with the 2017 women’s ODI world cup. The 2015 ICC Cricket World Cup was a monumental occasion in terms of scope, audience, and support. “The World Cup has proven to be the biggest event for Indian consumers with over 600 million viewers, the greatest grouping of marketers ever, and one of the most talked-about marketing efforts. Whereas on the contrary, approximately only 180 billion people across the world watched the women’s 2017 ICC ODI world cup, where India finished as a runner”<sup>14</sup>. This media gap provides cascading effects, as a consequence female athletes tend to lose money, fans, and sponsorship the reason being the dearth of airtime.<sup>15</sup>

- **Lack of Sponsorship**

In addition to the media houses discriminating against female athletes by not providing adequate coverage of women’s sports, the corporate giants also tend to be biased against women athletes by not providing them with adequate sponsorship. All ten of the top athletes in 2018 who received sponsorship endorsements were men<sup>16</sup>. Only 1% of sponsorship money from major businesses went to female athletes as of 2020, and only 5% of sports media attention was devoted to women's sports in India<sup>17</sup>. Some of the largest corporate sponsors in India right now are Adidas, Puma, and Nike. Shockingly, athletes like Virat Kohli and KL Rahul have signed

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<sup>12</sup> Suhani Kabra, ‘Gender based pay gap in sports’ (*Manipal The Talk Network*, 27 January 2022) <<https://www.manipalthetalk.org/current-affairs/gender-pay-gap-in-sports/>> accessed 06 December 2022

<sup>13</sup> *Ibid*

<sup>14</sup> Upasana Purohit, ‘Impact of Gender of the Players on the Viewership of Sports in India: A Case study of ICC World Cup Tournaments’ (2019) 1(1) Sports Academia Research Journal <<https://www.iismworld.com/wp-content/uploads/2020/12/Sarj2.pdf>> accessed 06 December 2022

<sup>15</sup> *Ibid*

<sup>16</sup> Ben Golliver & Rob Mahoney, ‘Top 100 NBA players of 2018’ (*SI*, 11 September 2017) <<https://www.si.com/nba/2017/09/11/top-100-nba-players-2018-list-rankings>> accessed 06 December 2022

<sup>17</sup> Priyanka Gulati, ‘No sports/sponsorships: Dual pandemic that hit sportswomen globally, Feminism in India’ (*Feminist India*, 5 February 2021) <<https://feminisminindia.com/2021/02/05/no-sports-sponsorships-dual-pandemic-that-hit-sportswomen-globally/>> accessed 06 December 2022

lifetime deals with Puma. Whereas, on the other hand, female athletes are not provided with lifetime sponsorship arrangements by these sponsors, making the sponsorship gaps between men and women in sports very wide.<sup>18</sup> Lack of sponsorship continues to be one of the main reasons for gender-based pay gaps in sports. Hence, to bridge this gap, corporate business houses must equally sponsor both professional male and female athletes.

- **Stereotyping the Role of Women**

Since women's roles and responsibilities are frequently stereotyped, participating in sports becomes more difficult for them in India. Women are accustomed to believing that their contribution to society is very primitive and confined to only domestic work. Right from their childhood, women are made to believe by their parents that the main motive of life is to get a good marriage alliance to get a well-settled life. The problem is intensified when there is an added psychological and sociological pressure put upon them due to the burden of pregnancy. A sportswoman is discouraged from pursuing her career as their parents consider having muscular gain, a tanned complexion, and frequent travel for contests will make their daughters look unfeminine which acts as a basis for such gender discrimination. This attitude is developed from schooling itself where Girls aren't given the same opportunities or encouragement as boys are, to take part in sports from a very young age. Rubbing salt into the wounds, women athletes are often sexually objectified by the media and are sometimes commoditized.

## CONSTITUTIONAL OUTLOOK

The drafters of the constitution specifically intended the state to focus its policies to achieve equal rights for men and women in terms of giving them equal opportunities<sup>19</sup>. The crux of the constitution relies on equality and equal opportunity hence forms the essential feature in our constitution. The doctrine of equal pay for equal work is essentially not guaranteed as a fundamental right by our constitution. However, it is undeniably a sacred objective of our

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<sup>18</sup> Megan Armstrong, 'These 13 athletes won the most lucrative endorsement deals' (*GOBankingRates*, 24 February 2020) <<https://www.gobankingrates.com/making-money/wealth/biggest-sports-endorsement-deals/>> accessed 06 December 2022

<sup>19</sup> JK Mittal, 'Causal Labour and "Equal Pay for Equal Works' (1986) 28(2) *Journal of the Indian Law Institute* 260

constitution. “ Article 39(d) of the constitution announces meet pay for parallel work for the two people, either men or women”<sup>20</sup>. This is provided by the constitution as directive principles of state policy which are primary directives that are to be adopted by the state to provide social and economic welfare to the people. In *Rhandir Singh v Union of India*<sup>21</sup>, the Hon’ble apex court held that although it is not a basic right the standard of equal pay for equal work is unquestionably clearly stated objective of the state and as a result, qualified for approval through holy remedies under Article 32 of the Constitution. Equality forms the base of our constitution. It is the crux of the democratic republic and prohibits injustice, arbitrariness, and inequality. From article 14 and article 16 of the constitution, it is deductible when there are disparate pay scales based on an unreasonable classification that has no direct nexus to the object sought to achieve, even though the people receiving the disparate pay scales perform the same work for the same employer, the principle of equal pay for equal work can be properly applied.

In *M/s Mackinnon Mackenzie & Co. Ltd. v Audrey D’Costa*<sup>22</sup> wherein the case was that the respondent filed the case against the company in which she was working as a lady Stenographer. She contended that she was terminated from the job and she contends that She was entitled to recover the sum equal to the difference between the salary she had been receiving and what was expected to be given because her pay was much lower compared to that of her male co-workers. The case was mainly invoked to apply the Equal Remuneration Act. The Hon’ble supreme court held that if there were any disparities in terms of compensation within the same levels, the Equal Remuneration Act would be welcomed, regardless of whether the association had financial needs.

Article 39 of the constitution is very precise in nature and it is extremely comprehensive. The article relating to the directive principle of state policy specifically calls on the state to attempt to secure measures up to equal remuneration for labour performed by men and women.

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<sup>20</sup> Constitution of India 1950, art. 39d

<sup>21</sup> *Rhandir Singh v Union of India* (1982) SC 879

<sup>22</sup> *M/s Mackinnon Mackenzie & Co. Ltd. v Audrey D’Costa* (1987) SCR (2) 659

Therefore, these types of unequal pay scales based on gender in sports, if given without proper rationale will be completely arbitrary and will be against the crux of the constitution.

### **CRITICAL REVIEW OF CODE ON WAGES BILL, 2019 AND EQUAL PAY FOR EQUAL WORK**

The code on wages bill was finally passed by both Lok Sabha and Rajya Sabha on 8<sup>th</sup> august 2019. The code on wages encompasses Wages, Industrial Relations, social security, working conditions, and occupational safety. The code replaced the Payment of Wages Act, 1936 Minimum Wages Act, 1948 Payment of Bonus Act, 1965 Equal Remuneration Act, and 1976 and brought a single law named code on wages. The main aim of the equal remuneration act, 1976 which was replaced by the code on wages, 2019 was that both men and women must be treated equally and must be paid equally for equal work.

There should not be any discrimination or difference in pay based on gender.<sup>23</sup> The wage gap based on gender in sports has become a widely debated topic nowadays. Irrespective of the work done by women being on par with that of men, discrimination in pay scale based on gender is still prevalent and apparent in the sports industry. To address the issue of the daily wage gap between men and women, numerous acts were enacted, such as the Minimum Wage Act and the Equal Remuneration Act. Even after the establishment of such laws, the issue of the salary gap between men and women in sports persists. Finally, to fill all the voids in the previous acts the Code on Wages, Bill 2019 was enacted but still the problem of a gender-based pay scale gap in sports exists and the act has not been sufficient enough to tackle the problem.

### **GOVERNMENT'S INTERVENTION TO REGULATE EQUAL PAY**

Through the years the government of India has adopted numerous policies in combatting gender discrimination and unequal pay between professional male and female athletes.

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<sup>23</sup> Equal Remuneration Act 1976



**National sports policy:** The government of India adopted this policy to widen access to sports for women. The policy's main aim is "enhanced participation of women, scheduled tribes and rural youth".

**Khelo India:** The main aim of this scheme is to "promote development in the playfield, constant development and Support infrastructure in Sports Academics at National/ Regional/ State level, Community Coaching Development, Khelo India Centres at State Level, Physical education in school for children, encourage\_sports for women, Sports Competition held on an annual basis, Promotion of sports for disabled people, scouting for Talent and development, promoting peace through sports and Development, Utilization and Creation/ infrastructural upgradation of sports, Promotion of the rural and indigenous/ tribal games".

**National sports development fund:** The program "enables both female and male athletes to flourish in their sport by allowing them to train with renowned coaches who provide technical, scientific, and psychological support as well as exposure to international events".

**Target Olympic Podium Scheme:** Preparing for the Olympic Games in Paris in 2024 and Los Angeles in 2028, the scheme's main aim is to make both men and women athletes bring back medals to our country. This scheme provides equal opportunity to both professional male and female athletes<sup>24</sup>. Although the government has adopted several new rules and allocations to espouse equal opportunities for male and female athletes, most of the allocations are used up only for the promotion of sports and even in this a great portion goes off to male athletes and only the remaining funds are given to the female athletes. Except for this, no scheme targets female athletes only. The lack of such female-orientated schemes is one of the major issues that require attention at the federal, state, and local levels. Hence, to combat discrimination based on gender which is a direct reason for the difference in pay scale in sports, the government should enact more female-specific policies in sports to provide equal opportunity<sup>25</sup>. The pay discrepancy between male and female athletes in sports has worsened for the reason being,

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<sup>24</sup> 'Target olympic podium scheme' (*Sports Authority of India*) <<https://sportsauthorityofindia.nic.in/sai/target-olympic-podium>> accessed 06 December 2022

<sup>25</sup> Habeeb Husan, 'A Study on Female and Sports Condition in India' (2015) 2(3) *International Journal Online of Sports Technology & Human Engineering*

governmental control or regulation is absent. Lack of financial security has been the reason for many talented women to quit sports. In most sports, women are not even being provided with the minimum remuneration. Hence to tackle all this, the government must try to promote specific policies directly targeted at helping sportswomen, which will not only provide them with equal opportunity but also help in eliminating the gender-based pay gap.

### RECENT CHANGE INTRODUCED BY BCCI

The BCCI made a historic move to eliminate the enormous pay disparity between Indian men and women players. The honorary secretary Jay Shah made a historic change in the pay structure of cricket by declaring the same match fee for both men and women cricketers<sup>26</sup>. With the effect of the new change, women cricketers will now get 15 lakh rupees for a test, 6 lakh rupees for an ODI, and 3 lakh rupees for a T20I. This is a significant improvement for female players, who previously received about INR 20,000 which is almost equal to a 1500 percent hike in salary. All cricketers both men and women receive a fixed annual contract fee, and a match fee is paid apart from the fee which is paid through the annual contract. There still exists a pay gap in the annual contract however, there exists a slight ray of hope for a change to occur even in the annual contract after witnessing the massive improvement and recognition which has been gained by women's cricket, in the recent past. To explain the same in a better manner, a table comprising of the previous salary and the present-day salary has been shown.<sup>27</sup>

### MATCH FEE

FORMAT	WOMEN		MEN
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<sup>26</sup>Anshul Gupta, 'What was the per match salary for an Indian woman cricketer before introduction of pay parity by BCCI' (*TimesNow*, 27 October 2022) <<https://www.timesnownews.com/sports/cricket/explained-what-was-the-per-match-salary-for-an-indian-woman-cricketer-before-bcci-closed-pay-parity-with-male-players-article-95116165>> accessed 06 December 2022

<sup>27</sup> Amol, Karhadkar, 'India women cricketers to get equal pay as men, announces BCCI' (*Sportstar*, 27 October 2022) <<https://sportstar.thehindu.com/cricket/bcci-equal-pay-india-men-women-cricketers-match-fee-contract-jay-shah/article66059998.ece>> accessed 06 December 2022

	EXISTING	REVISED	
TEST	2.5 LAKHS	15 LAKHS	15 LAKHS
ODI	1 LAKH	6 LAKHS	6 LAKHS
T20	1 LAKH	3 LAKHS	3 LAKHS

### **SUGGESTIONS TO ELIMINATE PAY GAPS IN SPORTS**

The gender-based discrimination and pay scale gap in sports has become an inevitable subject and attracted numerous controversies. Through this article, some of the suggestions that can be implemented for the betterment of the positions are discussed below. Firstly, parents should be more supportive, the girls will have wide access to sports when they are insisted to participate in sports from a very young age by their parents. Secondly, legislation that specifically targets sportswomen like Title IX should be introduced for providing gender equality and reducing pay gaps based on gender in sports. These legislations are the need of the hour in India for providing equal opportunities to sportswomen. Thirdly, like the MCC framework which was successful in Australia to implement PPE to reduce gender pay gaps in professional sports likewise, India should also implement the PPE framework to modify the existing sports ecosystem and the framework will in turn help in reducing the gender-based pay gaps.

India should adopt and enact legislation like Equal Athletic Broadcasting Act and the Equal Sponsorship Act to ensure equal television coverage of women’s professional sports, and provide various tax incentives to companies that sponsor female athletes. These kinds of initiatives will assist in achieving pay parity for women in sports.

## CONCLUSION

Mary Kom, a three-time world champion boxer, won gold recently, but her story only gained attention after the Bollywood film *Mary Kom*, which starred Priyanka Chopra, was released. Even after the release of the film, photographs circulating on the internet were predominantly that of Priyanka Chopra, only one image of Mary Kom with her husband and child was circulating on the internet. This is the current position of women in sports, they are not covered adequately by the media and they are not seen on par with their male counterparts making the gender discrimination between professional male and female athletes very wide and visible. "Article 13(C) of The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides equally for men and women right to participate in recreational activities, sports and all aspects of cultural life".<sup>28</sup>

Compared to the northeastern states, which have a balanced sex ratio in sports, just 15-20% of women participate in sports in developed states like Haryana and Punjab. Inequality starts right from here, which forms the main reason for the pay gap in sports based on gender. Hence it is high time for us to demand the Indian government pass The National Sports Development Bill, 2013 making it legally valid. To resolve the problem of gender-based pay gaps in sports the doctrine of equal pay for equal work must be sincerely followed and legislation enhancing the same must be enacted. Even though legislation like the Equal Remuneration Act, of 1976 has failed in achieving its end objective to bring equality in wages between men and women yet, it is considered significant legislation.

In *Peoples' Union for Democratic Rights v Union of India*,<sup>29</sup> the Supreme Court opined that the rule of law does not imply that only a fortunate few should be protected by it or that those with vested interests in maintaining the status quo should be permitted to abuse the legal system in the name of safeguarding their civil and political rights. Hence on a concluding note, the media should cover women's sports on par with that of men's and corporate houses should sponsor

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<sup>28</sup> Convention on the Elimination of All Forms of Discrimination against Women 1979, art. 13(C)

<sup>29</sup> *Peoples' Union for Democratic Rights v Union of India* (1982) 3 SCC 235

women athletes and their sports to bring equality in the field of sports and to secure parity in the pay scale between men and women in sports.