

The Refinement of Gender Discrimination in Wages and Salaries in Kuwait and France

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Abstract

The issue of discrimination due to gender in salaries and wages is one of the matters which still raises argument and discussion even in the European Democratic communities despite the progress achieved by the said societies and also contrary to all stipulations of the Human Rights Declarations and Constitutions in the said Countries. The practical reality revealed a discrimination and breach in equality between men and women in salaries and wages for the same jobs, although the work conditions, hours and obligations are the same and despite the rules of the public Professions and labor laws. The Legislator interfered to adjust the pay rolls and assert equality in the Financial treatment irrespective of the gender, also the law insisted on new general principles, but they are necessary to restore balance in salaries and wages on equal basis between men and women. France is one of the main Countries which seeks to eliminate discrimination of gender in salaries and wages. In fact, the French Legislator played a significant role in this issue and the French Judge placed many general principles to achieve such equality. Investigating the gaps of salaries and wages between men and women in Kuwait imposed an obligation on us to get a benefit from the French experience which is very important to take it into consideration so that Kuwait can follow the methodology of the French law.

Keywords: gender, wage discrimination.

INTRODUCTION

Modern legislation has been keen to reject gender discrimination in the issue of salaries and wages among workers in the public and private sector. Women get less wages than men by doing the same job. Even if not stated in the texts, on the ground reality shows significant differences. The woman may be more qualified and of better experience than the man, especially in the private sector.

Although law texts prohibit discrimination and call for equality in public professions and labor law, many employers invoke seniority, special requirements, the nature of or work requirements.

Therefore, the legislator should interfere to impose gender equality between men and women in wages and salaries through proposing clear legislations that reject all aspects of gender discrimination.

The law should include texts that prohibit discrimination and enforce employers to reveal employees' wages and salaries (without mentioning names) whether males or females. Also, the law should force equality in wages and salaries for the same positions with equal job opportunities. 1

This research sheds light on the modern French experience in fighting gender discrimination in wages and salaries. In addition to the position of the Kuwaiti legislator in the issue of gender

equality in wages and salaries, adding to that, the judiciary position regarding gender discrimination.

In this research, we are trying to provide a descriptive study to the case in the distinction between men and women in Kuwait as well as analytical study of the legislative situation and the position of the French judiciary on this distinction.

Argument

This study attempts to answer the big questions in the interrogative issue. Even if the public employment and labor laws do not discriminate in salaries and wages between men and women, we notice this distinction clearly in practical reality. Where does discrimination come from and what are its causes? How can we alleviate it and what is the role of the judiciary in that?

Research Topic

The research contributes to studying the causes of discrimination in salaries and wages between men and women. It reviews some of the laws that contributed to creating the gaps and how to treat them scientifically through amending legislation and judiciary intervention in defining the concepts of equality between the two genders regarding salaries and wages.

The Importance of The Research

The importance of the research lies in shedding light on the reality of discrimination between men and women regarding salaries and wages, despite the explicit provision in legislation on salaries and wages' equality. Therefore, legislative intervention becomes necessary to reduce this discrimination, which can only be achieved through the judiciary that establishes principles to achieve actual equality.

Research Methodology

The research embraced the descriptive analytical method as it reviewed the reality of figures disparity regarding the gap between men and women in salaries and wages and it stated the employment and labor laws too. On the other hand, the research also followed the

analytical of modern laws and judicial rulings in dealing with discrimination in salaries and wages between men and women.

Research Plan

The research was divided into two sections. The first section addresses the large gaps in salaries and wages due to gender in Kuwait. The second section discusses the French experience in prohibiting gender discrimination in salaries and wages.

Keywords

Equality, equal opportunity, salaries, wages, financial benefits, civil service law, labor law social insurance and Judicial decisions and rulings

Section One. The Large Gaps in Salaries and Wages Due to Gender in Kuwait

The theoretical equality in wages between men and women, though is clear in the legislative texts, the texts themselves give special advantages for males over females; the practical reality shows us the inequality between men and women in wages and salaries.

Theoretical Equality in Wages and Salaries Between Men and Women:

Article 29 of the Kuwaiti constitution stipulates that people are equal in human dignity, in public rights and duties; there is no distinction between them on the grounds of gender, origin, language or religion. Regarding the issue of salaries and wages, Kuwait's Civil Service Law No. 15 of 1979, considered salary as the amount of money an employee receives from legal subjects on a regular basis in return for the work he/she performs in his/her job. ² And we see that the salary in Kuwait is a form of redistribution of national income. ³

The Kuwaiti legislature has been keen to ensure consistency, harmony, and equality between all salaries in government agencies without gender discrimination. Article (5) Paragraph (3) of the Civil Service Law stipulates that the Civil Service Council should propose a general policy for salaries and wages in all government agencies, institutions, bodies, and public

bodies, as well as in companies where the state owns more than half of its capital. Moreover, the Kuwaiti legislator was keen to ensure that the nature of work and the responsibilities associated with it are the things that specify the salary amount. Employees are equal in salaries as long as they perform the same work, so they have the same responsibility, the same financial rights, and the same job privileges 4. As for academic degrees, qualifications, experience and training, the legislator considered them as indicators and standards for the level of the recruitments and promotion in the career ladder. 5

The Kuwaiti legislator has not placed any discrimination in salary between men and women, as they are equal, and there is also no gender discrimination in the periodic bonuses nor in the incentive bonuses. These bonuses are added to the salary to encourage the employee for his distinguished efforts that earned him/her an excellent evaluation. 6

However, there are differences between men and women in the social allowance. Social allowance means an amount of money that the employee is entitled to in addition to the basic salary to meet family burdens, inflation.

The social allowance differs for a man to a woman in special cases. Social allowance for a single man is equal to that for a single woman. However, a married man receives an additional social allowance as he is legally responsible for providing for his wife and children 7

In addition, the legislator stipulates 50 Kuwaiti dinars allowance for children for each child. As for the special needs' child, the state provides him and his father with great privileges to make it easier for the family. 8

As for an employed woman, even if married, she only gets a social allowance of a single woman. The previous Public Employment Act, Law No. 15 of 1979 9 used to grant the female employee, who is married to man who is not employed in a public sector, a social allowance of a married person. And this is supposed to be normal for a woman who is married to man who does not get social allowance.

However, if the employee is married to an unemployed or to a person who does not receive social allowance as married, then we criticize the legislature's behavior in canceling this allowance. We also see that a woman married to a non-Kuwaiti, who does not receive the Married-social allowance, should be provided with it to honor the family, since the Kuwaiti constitution explicitly stated in Article Nine, that "the family is the basis of society ... the law preserves its existence, strengthens its bonds, and protects motherhood and childhood."

Also, the employed woman does not receive the children's allowance except after the death of their father. According to the National Employment Support Law, the social allowance is paid to the husband as it is for the children. If the husband is not Kuwaiti, she is not entitled children's allowance, whether for the husband or for the wife.

And the Kuwaiti legislator decided -in Law No. (3) of 2011- to increase the social allowance for children with severe and moderate disabilities and to exempt them from the limited number of children for whom the social allowance is granted to the legal guardian.

The increase in the social allowance for children with severe and moderate disabilities has reached 100%, which means 100 dinars per month instead of 50 dinars. Also, the rule of which the allowance is paid for maximum seven children, does not apply on children with severe and moderate disabilities. 10

The monthly allowances for a person with a disability are also the same until he reaches the age of 21 and continues until the age of 28 years as long as the person with a disability continues his/her studies. The monthly allowance is 277 dinars for severe disability, 225 dinars for moderate disability, and 185 dinars if the disability is simple.

Moreover, the legislator decides that the insured or the legally assigned beneficiary, whether a man or a woman, to take the care of a medium or severe disability, is entitled to a retirement pension equivalent to 100% of the comprehensive salary, not exceeding an

amount of 2750 Kuwaiti dinar per month, without being bound by a certain age.

Furthermore, through the Social Insurance Law, the legislator in Kuwait tried to reduce the period of service for retirement for those who take care of a disabled person till the age of 20 for males and 15 for females, while it is 30 years for men and 25 years for women for the person who is not taking care of a disabled person. 11

In the field of accommodation welfare, the legislator discriminated between women and men. The Kuwaiti employee receives 300 Kuwaiti dinars per month for housing allowance and gets an interest-free 70 thousand Kuwaiti dinars government loan to build his own home. A Kuwaiti woman does not benefit from this merit unless she is divorced and has no home besides other complicated conditions. 12

And to encourage students to continue their higher education, the legislator decided to grant male and female students an amount of 200 Kuwaiti dinars per month, to study whether inside or outside Kuwait. 13

The Practical Reality of Wage and Salary Discrimination between Men and Women

While regulating public jobs and wages for workers, legislation in Kuwait did not clearly distinguish between men and women in salaries and wages. Civil Service Law No. 15 of 1979 set salary scales according to the employment grade, ranks of promotions, besides periodic and incentive bonuses free of gender discriminating.

Moreover, Labor Law No. (6) of 2010 defined the worker in its first article as every male or female who performs manual or mental work for the benefit of the employer and under their management and supervision, for a wage in return.

Nevertheless, there are bonuses and allowances that are for men only because of the obligations that laws impose on men but not on women. An example of this can be the Personal Status Law which obliges spending on the husband not the wife. 14 In addition to that, the social culture

and nature of the eastern Arab society discriminated between men and women in many aspects related to salaries and wages.

Legislation in Kuwait did not distinguish between females and males in salaries and wages, but on the other hand, there are no legislations that prevent this distinction in practice. Kuwait ranks high regarding distinction between men and women in salaries and wages. In fact, Kuwait may top the world's list in this distinction despite the apparent fact that Kuwaiti laws do not discriminate or differentiate in salaries and wages between genders. Difference in the public sector reaches 45% for men's interest while in the private sectors, the percentage increases to reach 59% for the interest of men. 15

Average monthly salary for males is \$ 20,000, while the average monthly salary for females drops down to \$ 11,000 only (16).

In the private sector, the average annual income of a man is \$ 99,088, while the average annual wage for a female is only \$40,120. In the public sector, basic salaries are equal between men and women according to the civil service laws with no discrimination. However, the differences lie in the amounts of social allowances determined by the laws for men not for women. The man receives marital allowances, children's allowance, and housing allowance while women are deprived these bonuses due to the legal obligations placed on the man in accordance with the provisions of Islamic law. The man is obliged to spend and responsible for children guardianship and housing rent. 17

A woman's salary is also affected in cases related to her feminine nature. She receives maternity leave, which results in suspension of payment in allowances like nature of work allowance, the transportation allowance and so on.

The number of females employed in the public sector is approximately equal to the number of working males. The number of women is approximately 154,229, while the number of men is approximately 171,940.

In the private sector, the number of female workers is 26,189 Kuwaiti women, and men 31,767 workers, which means that the female citizens represent 45% of the percentage of workers, according to the statistics of the Public Authority for Civil Information. 18

In the private sector, the number of female workers is 26,189 Kuwaiti women, and men 31,767 workers, which means that the female citizens represent 45% of the percentage of workers, according to the statistics of the Public Authority for Civil Information (18). A Kuwaiti male university graduate employee gets an average monthly salary of 835 dinars, if single, and 923 dinars if he is married. His salary increases 50 dinars per month when he gets a son, which continues until the boy reaches 21 or even 28 years if he is still a student under his father's care. This applies on maximum seven children.

A single male who works in the private sector gets a monthly wage of 690 dinars. A married man gets 798 dinars as support from the state according to the National Labor Support Program. 19

Kuwaiti women do not usually prefer the private sector given that the wage scale is not defined by the law. The private sector then resorts to employ non-Kuwaitis for very low wages that do not encourage local women to work there.

In terms of assuming leadership positions, it is noticed that there is discrimination between males and females. This gap can even be noticed at the levels of the Council of Ministers. There is usually one or two women maximum out of 16 ministers. In the National Assembly, there is one female representative out of fifty. The judiciary was opened for women to take the position of judge so eight female judges were appointed out of the 400 judges, 20 which is a very dangerous percentage. As in leadership positions, the number of female leaders is very low.

In the private sector, women do not have major role in supervisory and leadership positions. There are usually no women in the boards of directors of companies, and if any, the number

does not exceed one or two members maximum. The big gap is due to the prevailing culture in society, which requires legislative intervention, similar to what the developed countries do.

There is no doubt that the laws that were intended to take care of women, such as the laws on maternity, infant and childbirth leave, have negative consequences on salary and wages; These leaves result in stopping evaluating competency reports, which results in delaying the promotion by choice, in addition to stopping the allowances that women receive being on duty employees. These vacations are considered among the most important obstacles presenting women from obtaining supervisory and leadership positions and affecting, inevitably and imperatively, the progress and flow of work.

Moreover, for purely social and cultural reasons, women do not join diplomatic missions or studies outside the country, which has an impact on the gender of faculty members in universities and higher institutes as well as on the gender of Kuwaiti ambassadors and delegates of international bodies and organizations.

Some jobs are still restricted to men, such as the 'Muezzins' and 'Imams' of mosques.

The dominant legal opinion is that it is not permissible for a woman to lead the prayer or perform the call to pray, as her voice should not be heard in public in such fashion.²¹

According to the Kuwaiti Personal Status Law, the woman cannot conclude her marriage contract herself; There must be a guardian to agree on the marriage contract. The woman has no presence in the contract but is represented by her guardian. And the guardian must be a man, so the woman cannot be a guardian. And according to the Kuwaiti provisions of the Personal Status Law, marriage age for a woman is (15) years and for a man is (17) years.

The woman has no right to divorce individually, but rather to file a divorce due to harm. And she loses her child custody once she gets married to another person, her custody. A

man can marry four women and the wife has no right to object. Polygamy cannot justify the request for divorce or Khula.²²

Kuwaiti nationality is passed from the father to the children only through the right of blood. According to the Kuwaiti Nationality Law No. (14) of 1959, a Kuwaiti mother who is married to a non-Kuwaiti, cannot give her children the Kuwaiti nationality. In fact, Islamic law has its philosophy in matters of personal status, and we cannot consider that as racial discrimination, given that religions and their rulings are ideological issues.

The Kuwaiti Constitutional Court ruled that “the principle of equality before the law, according to what is stipulated in Article 29 of the constitution, is a fundamental pillar of all rights and freedoms; One of the pillars of society and a scale of justice and fairness ...” What is meant by this principle is the difference of law between people to face all forms and manifestations of discrimination.”²³

In the field of practicing political rights, Kuwaiti women obtained these rights in full in 2005 by the amendment of the Election Law No. 35 of 1962. Still, the number of female candidates does not exceed, at best, 12% of the number of candidates. In 2009, which is the date of women's participation in the first elections to the Kuwaiti National Assembly, women won four seats and one seat only in 2016 elections. In the municipal elections, however, a woman is usually appointed by Emiri decree as an appointed member in the Municipal Council which has (16) members, of whom ten are elected; One member from each electoral district.²⁵

Section Two. The French Experience in Prohibiting Sex Discrimination in Salaries and Wages

The French legislator has begun largely to eliminate any discrimination between men and women in salaries and wages. The French judiciary has expanded in defining the concept of discrimination between men and women in wages and salaries.

Legislative Progression in Combating Salary and Wage Gender Discrimination In France

The law issued on August 4, 2014 for equality between men and women includes the following:²⁶

- Institutions, companies, and employers must commit to contracts concluded after December 2014 to respect profession equality without discrimination based on gender in order to enter the market.
- Parental leave aims to increase job opportunities for women and distribute the responsibility among the parents.
- Sex Dismissal or sexual harassment is sinful and punishable.

The Social Dialogue Law issued on August 7, 2015, includes the following:

- Equal participation for men and women is a must in the lists in the board of directors and professional elections.
- Participate is a must in disciplinary councils and higher professional councils.

As for the law of August 8th, 2016, it prohibited establishments and companies that have more than 49 workers from entering the market if they do not respect the rules and provisions of the equality between men and women. And that if there is gender discrimination in the field of employment, the penalty is three years imprisonment and a fine of 45,000 euros.

In the field of public service, the legislator of the law promulgated on November 30, 2018 was keen to stipulate equality in employment in responsible positions and leadership positions, and to combat sexual harassment against women.²⁷

The law promulgated on September 5, 2018 requires that, starting by 1st of March 2019, establishments and companies that have at least 1,000 workers, must publicly place and announce five basic principles to follow .²⁸

- Equality in salaries and wages, the same jobs, and tasks.

- Opportunities to increase salaries for women.
- Opportunities for promotion for women and rewards.
- How to compensate salaries after delivery and maternity leave.
- The number of women is among the highest paid and salaried in the institution.

And after September 1st, 2019, these became legal impositions and obligations on companies of more than 250 workers. For establishments with less than 250 workers, they must amend and correct their equality status, or they are subject to financial penalties otherwise.

The equality between men and women in salary and wage shows that in France, with the same work, women get 25% less wages than men, (3) women out of (4) get less wages than their husbands, and that 80% of part-time jobs are occupied by women.

Equality between Men and Women in The World of Work is Based on Four Principles

1. The necessity of equality in salaries and wages between men and women. The employer cannot discriminate between salaries according to gender. Men and women who practice the same work or engage in work of equal value must receive the same wage.
2. The necessity of equality in salaries and wages between men and women. The employer cannot discriminate between salaries according to gender. Men and women who practice the same work or engage in work of equal value must receive the same wage.
3. Prohibiting gender discrimination while applying for a position; Those looking for a worker or an employee cannot declare the gender or marital status of the employee to be highbred. Thus, gender cannot be considered a condition for employment, and then the employee cannot be rejected because of the applicant's gender or that she will get pregnant or give birth.

4. The necessity of equality during the course of the job. All employees shall have equal rights in training, qualification, promotion, paid leave, professional secrecy, punishment, and discipline. All these rights must be fulfilled without regard to gender.

5. The necessity of participation and equality in the boards of directors. This has been in France since 2011 with regard to public institutions, joint-stock companies, companies listed on the stock exchange and limited partnerships. The law stipulates women participation with a minimum rate of 20%. In 2017, the law stipulated that 40% of the board of directors should be women.²⁹

Recent Trends in The French Judiciary:

The principle adopted by the judiciary in France is based on the concept of equal work, followed by equal wages, regardless of the gender of the worker. In 2018, wage discrimination due to gender in France reached an average of 24% for women receiving wages less than men, while the rate in the rest of Europe is no more than 16%.

Women have long fought before the courts to obtain their right and are still calling for their right to equal salary with men without discrimination on the grounds of gender, since equal work attributes equal pay.³⁰

In 2015, the average monthly wage for a man working a full-time was 2.438 euros, while the average monthly wage for a woman working full-time was 1.986 euros. This means that a woman's wage was 18.5% lower than her male peer.³¹ Thus, in France, the legislator has intervened to narrow the gap in salaries through the Social Dialogue and Career Path of 2016, which came into effect on the 1st of September 2019.

Tracking judicial precedents in explaining inequality between men and women in the field of work, showed us that before the judge, the worker whose salary inequality is raised between her and her male colleagues must present the elements of discrimination on the basis of sex that led to her lower salary compared to men; and the employer to provide

justification that this difference in salary is due to objective factors not based on gender discrimination.

The judge analyzes the facts in depth, searches and examines the payment and defenses of each party, and takes into account especially the woman job knowledge, her colleagues, their certificates, their work in reality, their skills, the size of their job experiences, their responsibilities, and their natural commitments to the job.

The Judge Bases Evidence of Discrimination on:

1. Job Knowledge
2. Certificate and Diplomas
3. Practical Skills
4. Job Experience
5. Work Responsibility
6. Job description.

Reviewing some of the judicial decisions will reveal the basis on how the judge makes rulings in the matter of gender discrimination. 32

On January 23rd, 2018, Paris Court of Appeal issued a ruling convicting the company (Bull) for discriminating between men and women according to the following:

1. The female worker has not been promoted for years, nor has she received any wage increase.
2. She exercised various tasks with increase in her job responsibilities.
3. Her work has been approved at positive level.
4. Comparing her work to her male colleagues shows that her work skills and qualification are the same as her colleagues, who only top her in salary.

Faced with these defenses, the company did not provide objective evidence and proof that the decrease in her wages for the colleagues was due to elements other than discrimination the basis of sex. On this basis, the court ruled a

10,000 euros compensation for the damage she suffered and the benefit she did not receive. Paris Court of Appeal issued a ruling convicting the company (Rennes) for discriminating between men and women. A female worker among five men in an establishment gets a lower salary than men and was the only one who did not receive a bonus. The court raised the following:

1. It is not important that the female worker does not carry an educational qualification equal to men, since her previous practical experience justifies not discriminating against her in the salary and that the qualification is not taken into consideration except upon acceptance in the job.
2. If her sales were less than her colleagues, the employer did not provide evidence that she worked less than them.
3. Discrimination according to the sales is considered violation of the law.

In a judgment of the Toulouse Court of Appeal, the court said that the female employee who was a manger in the agency noticed that her wages were 1000 euros less compared to her male mangers' colleagues, although some of them had a lower level of employment, and some of them were newly appointed but receive the same salary.

The court compared their work contracts and found that the difference is 1000 euros. She gets 4000 euros while they get 5000 euros and she will not reach their salaries unless she achieves the stipulated number of work and working hours, even if this was not required from her male colleges.

The employer responded with the following:

- These are the new rules for agency managers. The judge replied that these new rules were implemented after employment.
- The male managers of the agency have a delegation for signature while the female worker does not have this mandate Delegation. The judge replied that this element is useless, as some agents do not have a mandate and

nevertheless get higher salaries than her even though they are not better in performance.

- The court ruled her to 10,000 euros as moral compensation for the damages she suffered and the benefits she lost.

Conclusion

In this paper we went through gender discrimination in salaries and wages, and it became clear to us that there is discrimination, if not in the laws, then in practice, whether in Kuwait or France; and that the state, with its legislative and judicial institutions seek to fight this discrimination and want to eliminate it.

We conclude with a set of results and a set of recommendations:

1. The Kuwaiti legislation, as well as the French one, made sure to reject gender discrimination in salaries and wages.
2. Equality is explicitly stated in the legislation.
3. Kuwaiti and French laws included defined standards for equality in wages and salaries based on the nature of work.
4. Intervention of the French legislator imposing specific number of female workers and arranging penal sanctions on those who do not abide by the law.
5. The French legislator also obligated the institutions to announce all the information regarding the salaries and wages, rules, and provisions for opportunities to increase women's salaries, promotion, bonus system, and how to compensate women for absence due to maternity leave.
6. There are four basic principles of equal pay and wages that must be adhered to in order to avoid discrimination on the basis of gender.
7. The judiciary has placed precise elements to prove discrimination based on gender and wages.
8. The French judiciary simplified a precise and extensive protection over the

review of salaries and wages and verification of the extent and existence of sex discrimination in salaries and wages.

9. The judge expands on the concept of equal salary and includes experience as a requirement in addition to the prohibition of discrimination based on the elements of profitability as long as the work is the same.

It is further recommended that the Kuwaiti legislator follow the example of the French legislator, and then they should:

1. Pay attention to legislations that stimulate women's work whether in the public or private sector.
2. The issuance of legislations requiring the announcement of the size, type, wages, and positions held by workers in each work separately.
3. The prohibition of explicit discrimination in wages and salaries due to gender, whether in the public or private sector.
4. Imposing penal and financial penalties for those who discriminate on the basis of sex in wages and salaries.

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