



A LEGAL STUDY OF THE APPLICABILITY OF PINK TAX IN INDIA

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ABSTRACT-Did you ever thought or noticed that why the products designed for the females are more expensive than man? So here comes the phenomenon, that is, Gender-Based pricing, also called as **PINK TAX** where a price is fixed on the basis of your gender. The word Pink Tax refers to unnoticeable higher cost that females are paying on the products that are manufactured and designed specifically for them in comparison to the products marketed for the men. From the last few decades the discussions on the pink tax has been gradually increasing. Nowadays people are raising questions on its validity and they are having conflicting opinions on its impact, existence, causes. And now more research and data is required for actually knowing this phenomena and its root cause as there is a lack of government data for directly measuring the pink tax. This study basically deals with the past history of this pink tax how it actually came, how it is violating the fundamental ideologies and written provision of the constitution. This study specifically focused on the applicability of the pink tax in India and level of discrimination which are females are facing. And the findings have clearly indicated that there is huge difference in pricing, in some products there is price difference of several hundred and in some products it has crossed the several thousand rupees.

Keywords- Pink Tax, Gender-Based Practice,

I. Introduction

“Envy was just the tax you paid on the success”

‘Tax’ as we all know is an obligatory contribution to the Government in the form of money for the development of the society, paid by the citizens of the country. A person (individual, company, firm or others) paying a tax is known as a ‘taxpayer’. It is a moral as well as a legal duty for every citizen coming under the tax slab to pay the tax with full honesty and on time and contribute towards the development of people and society at large. In simple words, tax is that amount of money which the government collects from the citizens as part of their income and use it to provide facilities to the people like free water, medication, roads, schools and other services. Talking about the tax in legal sense, it is

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applicable over each and every citizen of the country irrespective of their religion, race, caste, sex, place of birth, etc.,

Generally, tax is divided into two types i.e. Direct tax and Indirect tax. Direct tax is the tax which is paid directly by the public to the government. The burden directly falls on the taxpayers and is paid directly to the respective authority. E.g. Income tax.² Indirect tax is the tax which is paid indirectly by people to the government as it falls indirectly on the ultimate consumers. E.g. Service tax.³ Indirect taxes cannot be seen by the general public and hence there comes a discrepancy in the amount of similar yet different products bought by a male and a female. This particular form of indirect tax is known as Pink tax. A pink tax generally differentiates between the product of a male and a female. In a broader sense, pink tax is nothing but just an extra amount of money which a woman pays to buy a product made specifically for a woman. Despite its name, a pink tax is not considered as a tax but rather it is a practice of discrimination based on gender when it comes to the pricing of goods. It is a practice where a woman has to pay more for a product just because she is a female while for the same product a man has to pay less. For example, when we go to a medical store, we can see a razor of a female costs more than that of a male. The only difference is that of a colour. A razor of a woman is of pink colour which specifically is identified as a female razor. The difference in amount of nearly the same products of a man and a woman is prima facie the violation of a fundamental right of women. The discrimination clearly shows inequality and lack of fairness. In a 2015 study by the New York City Department of Consumer Affairs (DCA), researchers surveyed 35 product categories that may upcharge women. Across the sample, DCA found that women's products paid more for their products 42% of the time, while men's products cost more just 18% of the time.⁴ A woman pays more just for being a woman. Products like shampoo, deodorants, perfumes, mobile covers, sports accessories, etc., are costlier either because of their colour or because of the shape of the product. The cost of the product has nothing to do with the quality of the product. The concept of pink tax is prominent all over the world including India. However, States like New York have now started to impose a ban on the pink tax and businesses imposing the pink tax shall be liable for civil penalties.⁵

When GST came into being in India, tax on sanitary products increased to a whopping 12%. It was only after the widespread protest that this tax was withdrawn. Personal care products have been an easy target for being more expensive for women like cosmetics, shoes or clothes. Products that are specifically designed and marketed for women always end up costing more than the gender neutral ones. It has to be noticed that some products cost more just because they are pink in colour and are marketed specially for women. Therefore, the pink tax describes the gender based price discrimination, where women are made to pay more than men for the same product and services. After going into the detail of pink tax, it is clear that it is exactly not a tax but a pricing model that puts women at a disadvantaged position.

A few years ago, the New York State department of consumer affairs did a study of over eight hundred products and found that the products used specially by a woman cost 7% more than the one made for men or are general neutral. This price difference rose to 13% when it came to items of personal care for women care. Although, there has not been much research about the pink tax in India but the survey shows the price differences of the products for women and men. For example, ladies perfume cost more than man for no reason at all. Its not only about products but also about services provided to both men and women. To highlight, it has been noticed that a woman's haircut cost 60% more of a man's haircut. The reasoning given behind the excessive cost of a haircut is bizzard as they say that women have longer hair, hygiene needs to be taken care off, training is different and the most popular that it is as it is. The pink tax refers to gender based price discrimination where women are made to pay more than men for same products and services. In other words, it's not actually a tax but an "income-generating scenario for private companies who found a way to make their product look either more directed to or more appropriate for the population and saw that

²What is Tax, <https://www.educba.com/what-is-tax/> (last visited on July.5,2022)

³ *Id.*

⁴ What is pink tax, <https://www.thebalance.com/what-is-the-pink-tax> (last visited on July.5,2022)

⁵ <https://www.thebalance.com/what-is-the-pink-tax>

as a moneymaker,”⁶. Pink tax in India is not as popular as in western countries which often leads to the misconception that it does not exist in India. We do not have much research and data for such gender discrimination which leads to inequality between a man and a woman.

II History of Pink Tax: A gender biased discriminatory practice, Pink Tax which is not a tax in a real sense but still it is a legal pricing practice. The colour based coding which has been going on from the decades has entrenched the distinction between pink products of woman and blue products of men. These type of invidious marketing campaign has encourage the gender biased practice of pink tax and many other types of gender biased pricing.⁷. The concept of pink is existing since the time when the sales tax system has been drafted by the U.S between the 1930s and the 1960s. Co founder of PeriodEquity.org., Laura Strausfeld says “It was a very different world at a time when legislators were figuring out which products to tax and which to exempt.” Before the *Affordable Care Act* became law in 2010, women were paying higher monthly premiums than men because women have more health reproductive costs than men. It was a different world when families were running smoothly with single income of men working and women were staying at home. In simple terms we can say that in earlier all these expenditure were smoothly managed by the household but today the time has been changed and now these expenses are usually borne by a woman alone. The idea of pink tax came from the progress which are women are now making in the work force and paying the costs of being a women. The others reasons of the existence of this gender biased practice are tariff on the clothes which are imported for women are higher. And secondly the products which are designed for the women’s consumer goods are more elaborate and specific like for example marketing of pink colour razors, which hikes up the costs for a company.⁸

Pink Tax in India

- I. **Gender Inequality under Indian Constitution:** The Preamble of the Indian Constitution deals with the principles of the Constitution and also deals with the sources of authority. It is an introduction of the document and states the purpose and intention to frame the Constitution of India. It promises to secure each and every citizen of India **Justice**, social, economic and political; **Liberty** of thought, expression, belief, faith and worship; **Equality** of status and of opportunity; and to promote among them all **Fraternity**, and fraternity will assure the dignity of the individual and the unity of the Nation.⁹ All these principles lay down the new dimensions to Indian society. The Indian Constitution does not use the word gender at any place, instead it uses the word sex. For example, few articles of the Indian Constitution prohibits discrimination on the basis of religion, race, caste, sex or place of birth. Similarly, Article 14 of the Indian Constitution guarantees equality before the law, Article 15 and 16 deals with non-discrimination based on religion, race, caste, sex, place of birth or any of them.¹⁰ Before independence, there was a lot of discrimination faced by the Indian women and hence the Constitution framers were aware about this unequal behavior towards the women. Similarly, the backward classes were also given ill-treatment. The rich were becoming more rich and the poor were not getting any chance to uplift their lifestyle. So now when we compare today's time with the earlier time even today also a lot of discrimination is faced by the woman like, for example- today the gender bias practice i.e pink tax, which is so prevalent nowadays not only in the western culture but in India also women are paying more for the products which are designed for them. As per the study women are paying 7%

⁶ The horrifying reality of the Pink Tax: Why does it cost more to be a woman <https://feminisminindia.com/2018/10/09/pink-tax-womencost/#:~:text=In%20India%20we%20do%20not%20have%20any%20credible,evident%20gender%20price%20discrimination%20in%20products%20and%20services> (last visited on July,5,2022).

⁷ Hannah Guo, *Think pink: Analyzing the history and future of the pink tax*, The Varsity, (July. 8, 2022, 9:23 AM), <https://thevarsity.ca/2022/01/09/history-and-future-of-pink-tax/>

⁸ What is the pink tax? (And Are You Paying It ?) www.valuepenguin.com (last visited July. 8, 2022) .

⁹ The Constitution of India, No.1, Acts of parliament, 1950 (India)

¹⁰ *Id.*

extra than the man on the same products and on personal items the difference rises to 13% . If we take the example of salons, charges are high for the services given to woman in comparison to same services given to men. And even the personal items bodywashes, creams, soaps for woman are expensive in comparison to men¹¹. this is clearly showing how we are violating the essential spirit and principles of non –discrimination, fairness, equity, non-arbitrariness of the Constitution which are actually governing the society. It is explicitly stated in Article 14, 15(1) and 16 of the Constitution and implicit in the essential spirit of the Constitution that no citizen shall be discriminated on the ground of religion, race , sex, caste. And everyone shall be treated equally but it is apparent on the face that how we are violating these principles and ideologies, by discriminating between the genders through these types of gender biased pricing which is currently prevailing in our society.

Conclusion

A Pink tax is not actually a tax which are charged more on the products designed for the women but it is an additional price that compels the people to pay more price for using the feminine products. And the products on which the women are required to pay supplementary charges are the same products but only difference is that they are designed differently. Some of the examples of the pink tax (pink and blue razor, Secret vs decree deodorant) are described in the research with a view to highlight that there is gender- based discrimination in respect to some products in the market place. This gender based price gap cost women and her family real money which they can't afford to lose and it existing because of the many reasons and largely because of gender socialization. And this gender socialization intensify because of the marketing strategies designed to exploit stereotypes. However more investigations and data is required for understanding better that what are the actual building blocks which are adding fuel to the gender-based disparities through out the economy and how they are affecting the women. In order to end this gender disparities gap the first and foremost step is the awareness, consumers are required to very much cautious and aware while making the purchasing decisions to fight back with this tax. And secondly steps should be taken to bring awareness of pink tax to the consumers and make them educated through social media and television as a mean to end. And lastly the paramount role is of the government and the policy makers to come forward and take action to combat this gender-based practice by formulating the federal laws, but barring that, also at local and state level.

Suggestions

It's not only unjust and unfair that women or anyone who purchases the products manufactured and marketed for women has to pay extra for the pink razor in comparison to the blue razor marketed for men, but it also acts as a cherry on the cake as the earnings of women are also less because of the wage gap. Some of the ways which can be opted to avoid paying pink tax in particular and capitalism in general are as follows:

- 1. Awareness-** the first and the foremost key to avoid becoming the victim of pink tax is the awareness . like Recently in 2018, when the Government came up with 12-14% GST on sanitary napkins how protestors and awareness compelled the government to do away with tax on sanitary napkins. So you should be very cautious when purchasing any product: For Example, if a product does not correspond to your stereotypical femininity but meets your needs and is within your budget, then go for it. Choose gender-neutral products if the products of the women are costing you more.
- 2. Publicly, Disclose the Brands-** The Another way to prevent this gender-based practice is to disclose the brands. An issue can be raised by tagging such brands on social media because we can't anticipate that such a renowned and leading brands will adopt these types of gender-based discriminatory practices.
- 3. Boycott preferential Products/ brands-** Marketer is very much aware of the consumer expectations and willingness to buy any product and nowadays, mostly we are paying extra even for the packaging also and

¹¹ What is Pink Tax And How Does It Contribute To Increasing Gender Bias?,

<https://www.google.com/amp/theologicalindian.com/amp/gender/pink-tax-gender-bias-30767> (last visited July. 9, 2022).

not only for the women products. We can ban that products which have gender discriminatory pricing and prefer the stitched clothes over the branded clothes. And nowadays most of the leading brands have gender based pricing which is violating human rights, abusing labour norms and exploiting the environment.

4. Encourage establishments with gender-neutral pricing- You can encourage and support the organizations which are havmg gender neutral pricing and prefer the products marketed and designed by these organizations and avoid the products which are marketed and designed for the women and charging extra price. You can also combat this issue by coming in touch with local representative.

5. Be a Smart Shopper- You don't need to prefer a pink products if your need can be met by less-expensive blue products. The lotions, shampoos, conditioners manufactured for the women are more costlier because of the aroma and beautiful packaging but think of it before buying that whether you really need this fragrances or the ordinary products which are less-expensive can work for you? If yes, then go for it and don't waste money on unecessary items.

