*Athens Journal of Law - Volume 11, Issue 4, October 2025 – Pages 621-640*

# The Feminisation of Poverty and Labour: Exploring Women's Economic Vulnerability in South Africa's Labour Sector: A Comparison to the United Kingdom

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*Despite legislative strides toward gender equality, South African women continue to experience disproportionate poverty, driven by deep-rooted socio-economic inequalities, labour market segmentation, and limited enforcement of labour protections. Through a comparative analysis with the United Kingdom, this study highlights critical lessons South Africa can draw from the UK's integrated legal frameworks, robust enforcement mechanisms, and innovative transparency measures, such as mandatory gender pay gap reporting. The UK's approach, which combines minimum wage policies with gender equity strategies offers a valuable model for addressing wage disparities and enhancing women's economic security. The dissertation argues that adopting similar institutional reforms—strengthening enforcement agencies, mandating pay transparency, and implementing gender-sensitive labour policies—could substantially improve labour market outcomes for South African women. In doing so, this research contributes to broader discussions on poverty alleviation, labour rights, and gender justice, and calls for a holistic policy framework in dismantle systemic barriers and foster inclusive economic participation.*

**Keywords**: *Wage inequalities; National minimum wage; Women; Legislation; Economic Empowerment.*

## Introduction

The feminisation of poverty is a critical socio-economic and legal phenomenon that denotes the increasing concentration of poverty among women, particularly in post-colonial and developing economies. This concept, which gained prominence in the late 20th century, underscores how economic inequality is shaped not only by income disparities but also by structural and institutionalised gender biases that marginalise women in both public and private spheres.[1] In South Africa, these dynamics are especially pronounced due to the intersection of gender, race, and class, all of which are deeply rooted in the country's historical legacy of apartheid, patriarchal norms, and systemic economic exclusion.

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[1]Chant (2006).

https://doi.org/10.30958/ajl.11-4-13 doi=10.30958/ajl.11-4-13

Despite South Africa's progressive legal framework anchored by the Constitution of the Republic of South Africa[2] that enshrines gender equality and labour legislation aimed at ensuring fair labour practices, gendered economic disparities remain widespread and persistent. Women, particularly Black women, are disproportionately employed in low-wage, informal, or part-time sectors with limited access to job security, social protection, or avenues for upward mobility.[3] Legal framework in South Africa, such as the Employment Equity Act 55 of 1998[4] and Labour Relations Act 66 0f 1995[5], while conceptually strong, is inconsistently implemented and often fails to redress structural discrimination or address the burden of unpaid care work carried primarily by women.

The United Kingdom (UK) is a relevant and instructive comparator due to its long-established legal framework for gender equality, the presence of strong enforcement bodies, and its implementation of innovative mechanisms such as mandatory gender pay gap reporting. The UK's experience demonstrates how integrating minimum wage legislation with gender-sensitive policies and institutional accountability can reduce disparities and improve women's economic outcomes. The UK , by contrast, represents a high-income, post-industrial nation with a more developed welfare infrastructure and institutional accountability mechanisms such as the Equality and Human Rights Commission and gender pay gap reporting obligations under the Equality Act, 2010[6]. However, the UK also contends with wage gaps, the undervaluation of female-dominated occupations, and care-related penalties that reinforce gender inequality in the workforce. These comparative realities provide a valuable lens for analysing how different socio-legal regimes mitigate or reinforce women's economic vulnerability.

This article critically explores the feminisation of poverty and labour in South Africa with a comparative analysis of the UK to uncover the underlying legal, structural, and institutional drivers of women's economic marginalisation. The article adopts feminist legal theory and the principle of intersectionality as analytical tools to interrogate how South African law responds to gendered labour inequalities. It also examines how socio-economic conditions such as unpaid care work, informal employment, and limited access to social services interact with legal shortcomings to exacerbate poverty among women. By comparing South Africa with the United Kingdom, the article highlights both the challenges and possibilities of constructing a more inclusive and equitable labour regime.

## Feminisation of Poverty

The term "feminisation of poverty" emerged in the late 20th century to describe the increasing proportion of women among the world's poor. It draws attention to the gendered dimensions of economic deprivation, including wage inequality, lack

[2]The Constitution of the Republic of South Africa, 1996 (hereinafter the 'Constitution').
[3]Budlender & Lund (2011).
[4]Hereinafter EEA.
[5]Hereinafter LRA.
[6]Hereinafter EA.

of access to education, healthcare, and credit, and the burden of unpaid care work. Scholars such as Chant have argued that poverty is not only more prevalent among women but also qualitatively different, often involving dependency, invisibility, and vulnerability.[7] The phenomenon is particularly acute in single-mother households and among women in informal or precarious employment.

The concept of the feminisation of poverty refers to the disproportionate concentration of poverty among women, particularly as they navigate systemic labour market barriers. In South Africa, women, especially African women, face enduring economic vulnerability due to historical, legislative, and socio-cultural structures.[8] Feminisation of labour describes the increase of women in low-paid, precarious, and undervalued employment. Feminisation of poverty complements this, emphasising that women are disproportionately affected by economic hardship, especially in developing economies.[9] This dual dynamic is entrenched in South Africa's economic framework, where informal employment, care responsibilities, and gender-based discrimination limit economic mobility for women. Economic vulnerability is shaped by a complex interplay of legal, social, and institutional factors. Labour market segmentation, whereby women are disproportionately concentrated in low-wage, part-time, and informal employment, reinforces their economic precarity. Social norms and cultural expectations regarding caregiving and household responsibilities limit women's labour force participation and career advancement. Legally, even where anti-discrimination and equality statutes exist, enforcement mechanisms are often weak or inaccessible. Studies from both developed and developing contexts underscore that without robust implementation and gender-sensitive policy design, legal reforms have limited impact.

The concept of intersectionality, introduced by Crenshaw, is central to understanding the multiplicity of disadvantages that women face.[10] In South Africa, for example, the intersection of gender, race, and class profoundly shapes labour market experiences. Black women, in particular, are often relegated to the most vulnerable forms of employment and face systemic barriers in accessing justice and social protection. Intersectionality demands a multidimensional policy and legal response that recognises the compounded nature of inequality.[11]

The feminisation of poverty in South Africa is a deeply entrenched socio-economic condition, shaped by intersecting factors such as race, gender, and class. It manifests in the disproportionate concentration of women in precarious, low-paid, and informal employment, especially black women. Despite South Africa's progressive legal framework, this phenomenon persists due to systemic gaps between legislation and implementation.[12]

[7]Chant (2006).
[8]Kehler (2001).
[9]Chant (2006).
[10]Crenshaw (1989).
[11]Chant (2006).
[12]Budlender & Lund (2011).

The Constitution guarantees equality[13] and provides for socio-economic rights, including access to social security.[14] Section 23 of the Constitution[15] Guarantees equality and non-discrimination for everyone. In line with these values, labour statutes such as the EEA and the LRA aim to advance substantive equality and fair labour practices. However, enforcement remains inconsistent, and many women in feminised sectors—like domestic work, retail, and care- remain economically marginalised.[16] Women in South Africa continue to face systemic challenges in employment, including unequal pay, limited career advancement, and inadequate protection against workplace discrimination and harassment.[17]

The Basic Conditions of Employment Act 75 of 1997[18] and the National Minimum Wage Act 9 of 2018[19] attempt to address income inequality, but fall short in protecting informal and part-time workers, where women dominate.[20] For example, domestic workers were historically excluded from the Compensation for Occupational Injuries and Diseases[21] until the Constitutional Court judgment in *Mahlangu and Another v Minister of Labour and Other*[22] which declared this exclusion unconstitutional. This landmark case illustrates the judiciary's potential to enhance women's labour rights, but also underscores the delay in legal recognition of their vulnerability.

Access to social protections, such as the Unemployment Insurance Fund and maternity benefits under the Unemployment Insurance Act 63 of 2001 remains limited for informal workers and single mothers, two key demographics in the feminisation of poverty. The state’s failure to integrate unpaid care work into labour law and social policy perpetuates gendered economic disparities.[23] Despite international obligations under instruments like the Convention on the Elimination of All Forms of Discrimination Against Women and ILO Convention No. 189 on Domestic Workers, implementation at the national level has lagged.

## Labour Market Dynamics in South Africa

Under apartheid, Black South African women were confined to the most precarious forms of labour, particularly domestic work and agriculture, with limited legal protections. The post-apartheid state inherited a highly segmented labour market that still reflects racial and gendered hierarchies. While legal reforms post-

[13]Section 9 (1) of the Constitution provides that: ‘*Everyone is equal before the law and has the right to equal protection and benefit of the law.*’
[14]Section 27(1)(c) of the Constitution provides that: ‘*social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.*’
[15]Section 23(1) of the Constitution stipulates that: ‘Everyone has the right to fair labour practices.’
[16]Benjamin (2015).
[17]Budlender (2019).
[18]Hereinafter BCEA.
[19]Hereinafter NMWA.
[20]Budlender (2019).
[21]Hereinafter COIDA.
[22]Mahlangu and Another v Minister of Labour and Others (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC).
[23]Antonopoulos (2009).

1994 sought to address these inequalities, the historical entrenchment of occupational segregation has proven resilient. Women's labour force participation in South Africa is significantly lower than men's. According to Statistics South Africa, the unemployment rate for women, 35.7%, remains higher than that for men, 30.0%, with even greater disparities among young and rural women. Structural unemployment, driven by deindustrialisation and skill-biased economic growth, disproportionately affects women with lower educational attainment.[24] Women's labour force participation in South Africa is significantly lower than men's. According to Statistics South Africa, the unemployment rate for women (35.7%) remains higher than that for men (30.0%), with even greater disparities among young and rural women. Structural unemployment, driven by deindustrialisation and skill-biased economic growth, disproportionately affects women with lower educational attainment.[25]

Women are overrepresented in low-paying sectors such as domestic work, cleaning, retail, and caregiving. These sectors are historically undervalued and lack bargaining power.[26] Over 40% of working women are employed in the informal economy, where enforcement of labour standards, including the NMWA, is weak or absent.[27] Women disproportionately bear unpaid care responsibilities, limiting their availability for full-time or formal employment.[28] Despite equal pay legislation, South African women earn on average 30% less than men for comparable work.[29] These dynamics suggest that a uniform minimum wage, while beneficial in theory, does not fully address the multifaceted disadvantages faced by female workers.

The EEA in South Africa prohibits unfair discrimination and mandates equal pay for work of equal value; however, enforcement is weak, and wage gaps persist across sectors and occupations. The gender wage gap is influenced by several interrelated factors, such as occupational Segregation whereby women are overrepresented in lower-paying sectors such as domestic work, retail, and social services, while underrepresented in higher-paying fields like engineering and finance.[30] Part-time and informal work, whereby many women work part-time or in informal employment to accommodate caregiving responsibilities. These jobs often lack job security, benefits, and legal protections.[31] Unpaid care work, women perform the majority of unpaid domestic and care work, reducing their labour market participation and limiting career advancement.[32] Discrimination and bias in which cultural norms and employer biases continue to influence hiring, promotion, and wage-setting practices, disadvantaging women in the workplace.[33]

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[24]Statistics South Africa. (2023).
[25]Statistics South Africa (2023).
[26]Statistics South Africa (2023).
[27]International Labour Organization. (2021)
[28]UN Women (2021).
[29]Bosch (2021).
[30]International Labour Organization (2021).
[31]Budlender (2019).
[32]UN Women (2021).
[33]Bhorat, Kanbur & Mayet. (2013).

*(1) Employment Equity Act*

Section 6(4) of the EEA stipulates that: 'A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1), is unfair discrimination.' While the equal pay principle is typically formulated internationally to equalise the pay differentials between men and women,[34] In South Africa, this can stretch broad then just gender. Despite constitutional and legislative commitments to gender equality, the gender pay gap in South Africa persists. One of the key legal instruments aimed at addressing this disparity is the Code of Good Practice on Equal Pay/ Remuneration for Work of Equal Value[35] (Equal Pay Code), issued in terms of the EEA.

Item 6 of the Equal Pay Code recognises that discrimination in pay based on the sex of an employee is an international phenomenon.[36] Job evaluation methods were traditionally designed based on male-dominated jobs, and 'women's work' remains stereotyped as less valuable than the work in which men are typically engaged.[37]

Item 6(2) of the Equal Pay Code provides that: 'The use of job evaluation does, in itself, not ensure that unfair discrimination is absent.

6.2.1. It is acknowledged that traditional job evaluation methods were designed based on male-dominated jobs.

6.2.2. Predominantly female jobs often involve different requirements from those of predominantly male jobs, whether in terms of qualifications, effort, responsibility or working conditions.

6.2.3. Traditionally, female-dominated jobs were evaluated based on methods designed mainly for male-dominated jobs, which partly accounts for wage discrimination.

6.2.4. It is important to be vigilant when selecting the method of job evaluation and to ensure that its content is equally tailored to both female-dominated and male-dominated jobs. For instance, responsibility for money or equipment is often valued more than other forms of responsibility.

6.2.5. Jobs involving caring for others or cleaning may be undervalued because of the erroneous assumption that the skills involved in these jobs are intrinsic to the nature of women and not acquired through learning and experience.'[38]

If a claim of unequal pay is based on the listed grounds stipulated in section 6(4) of the EEA, the burden of proof will rest on the employer to prove that the difference is justified. However, the employee will still be required to lay the foundations for his/her claim that the employer's policies or practices differentiate among employees. In terms of section 6(5) of the EEA, the Minister of Labour may prescribe the methodology for assessing work of equal value. In addition to the EEA, the Equal Pay Code and the EEA Regulations[39] may be used to assess work of equal value. Both the Equal Pay Code and the EEA Regulations are a response

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[34]See Article 2 of the ILO Equal Remuneration Convention, 1951 (No.100).

[35]Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (GN 448 in GG 38837 of 1 June 2015).

[36]Item 6 of the Equal Pay Code.

[37]Item 6(1) of the Equal Pay Code.

[38]Item 6(2) of the Equal Pay Code.

[39]Employment Equality Act Regulations 2014.

to the International Labour Organisation (ILO) Equal Remuneration Convention.[40] Article 3 of the Convention makes reference to the need for measures that promote the objective appraisal of jobs on the basis of the work to be performed; it adds that differential rates that are based on objective criteria shall not be considered as being contrary to the principle of equal pay for men and women.[41] If the employee alleges and providers credible evidence that a pay differential between employees or groups of employees is based on a listed ground as per section 6(4) of the EEA to avoid liability if there is a difference in pay, the employer must either establish that: the jobs being compared are objectively different in value; and/or if the work is of equal value, that the differences in pay is justified based on the objective factor, and is fair and rational. Despite this, persistent pay disparities between men and women highlight the gap between international obligations and domestic implementation.[42]

*Mangena & Others v Fila South Africa (Pty) Ltd & Others*[43] was a landmark case that expanded the scope of equal pay protections beyond gender to include race. The claimants alleged that Black employees earned less than their white counterparts doing work of equal value. The Labour Court acknowledged that unjustified pay disparities based on prohibited grounds such as gender or race could constitute unfair discrimination. However, it emphasised the burden on claimants to identify a valid comparator; demonstrate that the work is of equal value; and establish a causal connection between the disparity and the prohibited ground. The case was dismissed due to insufficient evidence on the comparators and the causality of the alleged discrimination. Nonetheless, it established a foundational principle that wage disparities based on race or gender must be objectively justified.

In the case of *Naidoo and Others v Parliament of the Republic of South Africa*[44], the Labour Court reiterated the application of Section 6(4) of the EEA and found that differences in pay between male and female employees with similar qualifications and experience constituted unfair gender-based discrimination. The Court ordered retrospective pay correction and damages.

In the *Kok N.O. and Others v B A Development Company (Pty) Limited and Others*[45] the decision involved a challenge by a female employee who discovered her male counterpart was paid significantly more for identical duties. The Labour Court ruled in her favour, holding that the employer failed to justify the pay disparity. This case highlighted the importance of transparency and record-keeping in remuneration structures.

Gender wage inequality is not merely an economic issue but also a deeply rooted social and legal injustice. Despite progressive language, these laws are inadequately enforced. The EEA lacks robust mechanisms to ensure equal pay for work of equal value.[46] Another piece of legislation that was introduced was the NMWA[47], a landmark development aimed at addressing poverty and wage disparities;

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[40]ILO Equal Remuneration Convention see heading 25.6.2.
[41]Article 3 of the ILO Equal Remuneration Convention.
[42]Section 6(4) of the EEA.
[43](2009) 30 ILJ 3053 (LC).
[44](CA4/2019) [2020] ZALAC 38; (2020) 41 (ILJ) 1931 (LAC); [2020] 10 BLLR 1009 (LAC).
[45](38416/2020) [2022] ZAGPPHC 809.
[46]Benjamin (2015).
[47]National Minimum Wage Act No. 9 of 2018 - hereinafter NMWA.

however, its effectiveness in tackling gender-specific wage gaps remain debatable. The NMWA established a baseline wage for workers, with specific provisions aimed at protecting vulnerable groups, including women. However, the implementation of the Act has raised concerns about its adequacy in bridging gender pay gaps, particularly for female workers in sectors like domestic work, retail, and agriculture.

*(2) National Minimum Wage in South Africa*

Globally, approximately 90% of the 187 ILO member states have adopted some form of minimum wage policy. These policies vary from national wage floors to sector-based systems. In South Africa, the NMWA was a pivotal moment aimed at addressing severe socioeconomic inequalities entrenched by the apartheid era. Despite progressive legislative efforts, poverty and income inequality have remained pervasive, with women bearing a disproportionate burden.

Post-apartheid South Africa has struggled to reduce poverty and economic inequality, and these challenges are acutely experienced by women. Historically marginalised in both formal and informal economies, women are more likely to be employed in low-wage, precarious jobs. The NMWA, implemented in 2019, aimed to provide a wage floor to improve the standard of living for low-income workers. As of 2025, the minimum wage is R28.79 per hour (approximately \$1.48). The NMWA's gendered impact is particularly significant. Women in South Africa continue to face higher unemployment rates and earn substantially less than men, even when performing similar work. The national minimum wage, in theory, offers a baseline income that can help close the gender pay gap by lifting women out of extreme working poverty. However, the extent of its effectiveness is subject to various structural and practical limitations.

The NMWA set South Africa's minimum wage at an hourly rate applicable to all workers, with sectoral variations. Domestic workers and farm workers, who are predominantly women, initially received a lower wage than the general minimum wage, exacerbating gender-based economic disadvantages. The NMWA was later amended to ensure parity, but structural inequalities persist. South Africa's labour market reflects persistent gender-based disparities despite constitutional guarantees of equality and a comprehensive legal framework aimed at eliminating discrimination. One of the most persistent challenges is the gender wage gap—the average difference in earnings between men and women. Women, particularly Black women, continue to earn significantly less than men even when performing similar work.[48] Empirical studies indicate that while the introduction of a minimum wage has improved overall earnings for women, it has not significantly reduced the gender wage gap. Women remain overrepresented in low-paying and informal sector jobs, limiting their economic advancement. Employers have also responded by cutting working hours or resorting to informal labour contracts, further disadvantaging female workers.[49]

The implementation of the NWMA has seen some positive outcomes for women, such as: The implementation of the NWMA has yielded some beneficial outcomes for female employees. Notably, it has increased bargaining power among low-wage earners, particularly women. Reduced overt discriminatory pay practices by

[48]Bosch (2021).
[49]Diedericks & Bosch (2023).

standardising minimum wages across sectors. Contributed to a modest reduction in in-work poverty among female-headed households. By enforcing a legally mandated wage floor, the NMWA has made it more difficult for employers to justify paying women less purely on the basis of gender, especially in traditionally low-wage sectors such as domestic work, retail, and agriculture—sectors predominantly occupied by women.

Despite these improvements, significant challenges remain. The NMWA's broad design does not account for structural gender disparities such as: Occupational segregation (women clustered in lower-paying jobs) Discriminatory hiring and promotion practices. Unequal access to education, training, and career advancement opportunities. A lack of enforcement, particularly in the informal sector, which employs a large number of women. These challenges mean that many women continue to earn wages below subsistence levels or remain excluded from the protection of the NMWA altogether.

A major shortcoming of the NMWA in addressing gender wage discrimination is its limited application in the informal economy, where a large proportion of women work. In these informal jobs, enforcement is weak, compliance is minimal, and job security is nearly non-existent. Female workers in this sector are often unaware of their rights or are too fearful of retaliation to assert them. Even within the formal sector, the enforcement of the NMWA is inconsistent. Financial constraints among employers, loopholes such as exemptions, and the casual nature of employment contribute to widespread non-compliance. Despite the establishment of reporting hotlines and monitoring systems by the Department of Employment and Labour, enforcement mechanisms remain largely ineffective.

While the NMWA has contributed to modest improvements in wages and working conditions for female employees in South Africa, it is not a silver bullet. Gender wage discrimination remains deeply rooted in systemic factors that extend beyond hourly pay rates. Combating these disparities requires more than wage regulation—it demands comprehensive policy reform, vigilant enforcement, and a commitment to gender equality in the workplace. Only through a holistic approach can the goals of the NMWA be fully realised for South African women.

*(3) Mahlangu v Minister of Labour and Others*

The South African judiciary has increasingly grappled with issues of gender inequality and economic vulnerability within the labour market. While the term feminisation of poverty has not been directly invoked in South African jurisprudence, several landmark decisions have acknowledged and addressed the systemic disadvantage experienced by women, particularly Black and working-class women, within the socio-economic and legal landscape. These cases, when analysed through feminist legal theory and intersectionality, reveal the courts' evolving recognition of gendered labour inequality and structural discrimination.

The Constitutional Court's decision in *Mahlangu v Minister of Labour and Others* marks a watershed moment in the legal recognition of the economic vulnerabilities faced by women in South Africa's labour market, particularly domestic workers, who are overwhelmingly Black women. The Court's ruling that excluding domestic workers from the COIDA violated constitutional guarantees of equality and dignity explicitly acknowledges the intersectional nature of discrimination impacting this group.

COIDA provides compensation to workers who suffer injuries or diseases arising from their employment. Historically, domestic workers were excluded from its ambit, reflecting their marginal status within the formal labour system. This exclusion denied them access to compensation benefits, reinforcing systemic economic insecurity. Given that domestic work is heavily gendered and racialised in South Africa,[50] the exclusion disproportionately affected poor Black women, perpetuating socio-economic inequalities rooted in apartheid and patriarchy.

The applicants challenged the exclusion on the basis that it violated section 9 of the Constitution and section 10 of the Constitution. The Constitutional Court's unanimous judgment found in favour of the applicants, ruling that the exclusion was discriminatory and inconsistent with constitutional mandates. The Court's reasoning advances the constitutional project of substantive equality, as conceptualised by scholars such as,[51] This requires recognising and remedying the historical and social disadvantages experienced by marginalised groups. The Court recognised that the exclusion of domestic workers from COIDA entrenched "patterns of disadvantage," effectively maintaining economic vulnerability based on gender, race, and class. The court articulated that the exclusion was a product of systemic and structural inequality and stated: "The exclusion of domestic workers from COIDA entrenches patterns of disadvantage and disproportionately affects poor Black women."[52]

This framing reflects the core of intersectionality theory,[53] Which highlights how overlapping systems of oppression in this case, patriarchy, racism, and classism converge to deepen poverty and inequality for Black women domestic workers. The Court's acknowledgment of these intersecting identities is a crucial legal recognition that economic vulnerability cannot be divorced from social identity.

Furthermore, the Court emphasised the importance of dignity as a constitutional value. Denying domestic workers compensation not only exposed them to economic precarity but also inflicted "humiliation and degradation," violating their constitutional right to human dignity in section 10 of the Constitution.[54] This aligns with feminist legal critiques that emphasise dignity as foundational to gender justice.

The *Mahlangu* judgment illustrates how legal exclusion in social protection mechanisms can perpetuate the feminization of poverty by systematically denying predominantly female workers access to labour rights and protections. Feminist scholars have documented that women's labouring informal and undervalued sectors is a primary driver of their disproportionate experience of poverty.[55] The Court's ruling therefore not only remedies a legal gap but also symbolically challenges the socio-economic structures that marginalise women in the labour market. By mandating that domestic workers be covered under COIDA, the Court's decision helps to extend formal labour protections to a sector historically excluded and economically

[50]Budlender (2019).
[51]Freeman (2014).
[52]*Mahlangu and Another v Minister of Labour and Others* at para. 75
[53]Crenshaw (1989).
[54]Crenshaw (1989).
[55]Budlender (2011) and Chant (2006).

marginalised. This legal inclusion represents a step toward dismantling the structural barriers that reproduce gendered economic inequality.

Despite its progressive stance, some critics argue that the *Mahlangu* decision, while significant, does not fully address the deeper systemic issues that sustain the feminization of poverty. For example, legal recognition of rights does not automatically translate into effective enforcement or socio-economic upliftment.[56] Many domestic workers still face precarious employment conditions, limited bargaining power, and informal labour relations that inhibit the full realization of their rights.[57]

Moreover, the ruling does not tackle other intersecting dimensions of vulnerability, such as undocumented migrant domestic workers, who may remain excluded from formal protections. Thus, while *Mahlangu* is a vital judicial acknowledgment of gendered labour exclusion, it is but one piece in the broader struggle against the feminization of poverty.[58]

The Court's reasoning aligns with intersectional theory Crenshaw which argues that multiple forms of identity-based oppression much as those based on gender and race—interact to create unique experiences of discrimination and vulnerability.[59] The M*ahlangu* decision thus offers a critical legal precedent supporting the notion that economic vulnerability among women in labour markets is not incidental, but structurally embedded.

In *President of the Republic of South Africa and Another v Hugo,*[60] *(Hugo)* the Constitutional Court considered whether a presidential pardon that applied only to mothers of young children violated the constitutional right to equality. While the Court upheld the policy, several justices used the occasion to acknowledge the gendered burden of caregiving borne disproportionately by women. Although not a labour case per se, the judgment highlighted that women's labour particularly in the domestic and caregiving spheres is socially and economically undervalued.

From a feminist legal perspective, *Hugo* underscores the social reproduction role of women and the consequent disadvantages they face in labour market participation. It implicitly supports the argument that unpaid care work, a key driver of the feminization of poverty must be considered when designing labour and social policy frameworks.

These cases have demonstrated the potential and limitations of South Africa's legal system in addressing the feminization of poverty. Courts have increasingly acknowledged women's economic marginalization, especially when it stems from the intersection of race, gender, and class. However, legal redress remains uneven, particularly where discrimination is structural rather than overt. Feminist legal theory and intersectionality provide valuable interpretive frameworks for understanding how legal systems can either reinforce or dismantle the socio-economic hierarchies that impoverish women. To fully combat the feminization of poverty in South Africa's labour sector, judicial reasoning must continue evolving toward a more substantive, context-sensitive understanding of equality and economic justice.

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[56]Freeman (2014).
[57]Ntsabane (2020).
[58]Rogan & Skinner (2019).
[59]Crenshaw (1989).
[60]1997 (4) SA 1 (CC).

**United Kingdom Analysis**

The status of women in the UK workforce has seen significant legal transformation over the past several decades, driven by domestic reform and the influence of European Union EU directives. Yet, despite robust anti-discrimination frameworks, women continue to face inequality in pay, representation, and progression. Through exploring the key legal instruments and judicial interpretations that shape women's labour rights, critically assessing their adequacy in the context of persistent systemic inequalities.

In the UK, although formal legal segregation did not exist to the same extent, women historically faced exclusion from skilled and unionised sectors. The rise of industrial capitalism entrenched the ideology of separate spheres, relegating women to unpaid care work and low-paid service jobs. While anti-discrimination laws since the 1970s have improved women's labour market status, structural disparities persist. The UK has a higher female labour force participation rate (around 74.2% in 2023, Office for National Statistics).[61] However, British women are more likely than men to work part-time or in low-paid sectors, which has implications for income security and career advancement.

The UK introduced the NMWA UK, later complemented by the National Living Wage and the EA in 2010. Together, these laws address both low pay and gender inequality in the workplace. A unique feature of the UK's system is the establishment of the Low Pay Commission[62] (LPC) an independent body that advises the government on minimum wage rates using empirical research and stakeholder consultation. The inclusion of employer, union, and academic representatives ensures a balanced and evidence-based approach. One of the most impactful developments in the UK is the mandatory gender pay gap reporting introduced in 2017 for employers with 250 or more employees.[63] This requirement promotes transparency and accountability, encouraging employers to identify and rectify wage disparities. The UK's enforcement mechanisms are supported by the HM Revenue and Customs, which has powers to investigate and penalise non-compliant employers. Additionally, the Equality and Human Rights Commission plays a critical role in upholding gender equality in employment practices. While both South Africa and the UK have minimum wage laws, the UK's legislation incorporates gender equity considerations explicitly through pay gap reporting and equality duties under the EA.[64]

*(1) Gendered Dynamics of the Labour Market UK*

The National Minimum Wage in the UK represents a fundamental pillar of labour market regulation aimed at ensuring fair pay and reducing income inequality. However, despite the implementation of the National Minimum Wage and subsequent introduction of the National Living Wage, gender-based wage disparities persist. Since then, it has undergone significant reforms, notably with the introduction of

[61] Office for National Statistics, 'Labour Market Overview, UK: June 2023' (ONS, 2023). https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/latest accessed 11 June 2025.
[62] UK Government Low Pay Commission National Minimum Wage Report (2022).
[63] UK Government Equalities Office Gender Pay Gap Reporting Overview (2017).
[64] UK Government Low Pay Commission National Minimum Wage Report (2022).

the National Living Wage in 2016. While the policy is universally applicable, its gendered implications are of particular concern, given the persistent gender pay gap and the overrepresentation of women in low-paid sectors.[65]

The NMWA UK sets out the legal minimum wage to be paid to workers, with rates reviewed annually by the L. The introduction of the National Living Wage for workers aged 25 and over (subsequently lowered to 23 and over) was intended to reflect a higher wage floor to better support living standards. The legislation defines various minimum wage rates based on age and apprenticeship status. Notably, it does not differentiate based on gender, thus appearing to uphold formal equality. However, substantive equality remains elusive, especially given the gendered nature of low-wage employment. Despite the legal guarantee, enforcement remains problematic. According to the HM Revenue and Customs enforcement data, non-compliance is relatively widespread, particularly in sectors such as hospitality and the social care industries, dominated by female workers.[66]

The EA Regulations[67] require employers with 250 or more employees to report annually on mean and median gender pay gaps, bonus gaps, and the proportion of men and women in each pay quartile. While these regulations have increased transparency, they are often criticised for lacking enforcement mechanisms, as there are no financial penalties for non-compliance.

The EA serves as the principal statute governing discrimination law in the UK, consolidating and harmonising previous legislation such as the Sex Discrimination Act[68] and the Equal Pay Act.[69] The Equal Pay Act defines sex as a protected characteristic and prohibits both direct[70] and indirect[71] discrimination. The Act's most salient feature in the employment context is found in Chapter 3, Sections 64 to 80 of the Equal Pay Act cover the 'equality of terms' provisions. These require that men and women performing like work, work rated as equivalent, or work of equal value must receive equal pay unless the employer can demonstrate that any disparity is due to a genuine material factor unrelated to sex.[72]

*Smith v Avdel Systems,*[73] in this case, the court reinforced the requirement that any pay disparity must be justified by a material factor unrelated to sex. The burden lies with the employer to prove objective justification, thus strengthening the protection for women under the equal pay provisions.

In the *Hayward v Cammell Laird Shipbuilders Ltd,*[74] the House of Lords case provided critical clarification on the concept of "equal value," endorsing the use of job evaluation schemes. The claimant, a female cook, successfully argued that her work was of equal value to that of male tradesmen, thereby widening the scope for equal

[65]UK Government Low Pay Commission National Minimum Wage Report (2022).
[66]Resolution Foundation (2023). https://www.resolutionfoundation.org.
[67]EA Gender Pay Gap Information Regulations 2017.
[68]Sex Discrimination Act 1975.
[69]Equal Pay Act, 1970.
[70]Section 13 of the Equal Pay Act 1970.
[71]Section 19 of the Equal Pay Act 1970.
[72]Section 69 of the Equal Pay Act.
[73][1994] ICR 542.
[74]*Hayward v Cammell Laird Shipbuilders Ltd.* [1988] AC 894.

pay claims. In *British Airways plc v Starmer,*[75] the Court of Appeal held that the employer's refusal to allow a female pilot to work part-time constituted indirect discrimination. The ruling emphasised that policies must be flexible to accommodate women's disproportionate childcare responsibilities and set an important precedent for work-life balance claims.

*R (Unison) v Lord Chancellor,*[76] the Supreme Court ruled that Employment Tribunal fees introduced in 2013 were unlawful because they impeded access to justice. This decision had significant implications for women seeking redress for discrimination and unfair dismissal, many of whom were deterred from bringing claims due to the cost barrier. Despite legal protections, the gender wage gap persists. As of 2024, the Office for National Statistics reported a 7.7% median pay gap for full-time employees. The gap is more pronounced in certain sectors—such as finance, STEM, and law—and at senior levels of employment. While the 2017 reporting regulations increased awareness, they have done little to reduce the gap in practice. This points to the limitations of formal legal equality in addressing entrenched socio-economic disadvantages.[77]

**Critical Reflections on the Efficacy of UK Labour Laws**

UK law largely achieves formal equality but falls short on substantive equality. Formal equality treats everyone the same, whereas substantive equality recognises different needs and barriers. Laws must evolve to tackle intersectional inequalities—those arising from the convergence of sex with race, class, or migration status. Even though Employment Tribunal fees were abolished in 2017, significant barriers remain, including the complexity of procedures, fear of victimisation, and financial risk. Vulnerable women, such as migrants, low-paid workers, or those in informal employment—are least likely to seek legal remedies. Equal value claims are procedurally burdensome, often requiring expert reports and lengthy litigation. The material factor defence is sometimes applied too broadly, undermining the principle of pay parity.Much of UK equality law has its roots in EU law, including the principle of equal pay.[78] The introduction of the NLW led to a reduction in the gender pay gap at the lower end of the wage distribution. However, several limitations undermine the effectiveness of NMW legislation for women: Wage compression: Employers may freeze wages above the minimum threshold, limiting upward progression. Job quality and hours: Some employers reduce hours or shift patterns to offset increased wage costs, impacting women more due to their concentration in flexible jobs.[79] Lack of consideration for unpaid labour: Minimum wage policy does not address the unpaid care burden disproportionately borne by women, which limits their full labour market participation. Moreover, enforcement remains weak. Research shows

[75][2005] IRLR 862.
[76][2017] UKSC 51.
[77]UK Government Equalities Office, Gender Pay Gap Reporting (2017).
[78]UK Government Equalities Office, Gender Pay Gap Reporting (2017).
[79]Bargain, Doorley & Van Kerm (2019).

that nearly 1 in 5 workers entitled to the NMW do not receive it, and women are more likely to be underpaid.[80]

UK labour law has made significant advances in promoting gender equality in employment. However, the persistence of the gender wage gap, challenges in accessing justice, and the inadequacy of equal pay mechanisms reveal systemic shortcomings. A shift towards substantive equality, backed by rigorous enforcement and reform, is required to ensure that legal rights translate into tangible workplace outcomes for women. Brexit introduces further uncertainty, underlining the importance of maintaining and strengthening equality safeguards in a post-EU legal landscape.

## Comparative and Intersectional Perspectives

One of the most powerful tools in the UK's arsenal has been the Gender Pay Gap Reporting Regulations,[81] which require companies with over 250 employees to publish annual reports on pay differentials.[82] South Africa lacks this integration, limiting its ability to address gender-based wage disparities.[83] The UK benefits from a collaborative institutional design through bodies like the LPC and HM Revenue and Customs.[84] South Africa's institutions, such as the Commission for Gender Equality and the Department of Employment and Labour, have limited capacity to enforce wage equality in a gender-responsive manner.[85] Mandatory pay gap reporting in the UK creates a culture of transparency that pressures employers to address disparities.[86] South Africa does not yet require such disclosures, making it harder to track progress or hold employers accountable. These disclosures must include the mean and median gender pay gaps; proportion of men and women in each pay quartile; and gender disparities in bonuses.[87] While enforcement is limited and compliance varies, the public exposure of pay gaps has created reputational risk, incentivising voluntary corrective action and internal auditing. For example, several large UK firms were compelled to reassess bonus schemes and recruitment practices after publication of damning statistics.[88] South Africa CAN consider the creation of a South African LPC with a gender mandate, modelled after the UK LPC, to guide minimum wage setting through evidence-based recommendations. Introduce a legal requirement for large employers to disclose gender pay gap data annually. Increase resources for labour inspection and create partnerships with civil society organisations to monitor compliance in female-dominated sectors. Develop targeted interventions for women in informal employment, including wage subsidies, unionisation support, and access to legal aid.

[80]Bargain, Doorley & Van Kerm (2019).
[81]Gender Pay Gap Reporting Regulations (2017).
[82]Gender Pay Gap Reporting Regulations (2017).
[83]Bargain, Doorley & Van Kerm (2019).
[84]Bargain, Doorley & Van Kerm (2019).
[85]Bargain, Doorley & Van Kerm (2019).
[86]Commission for Gender Equality Act 39 of 1996.
[87]Gender Pay Gap Reporting Regulations (2017).
[88]Gender Pay Gap Reporting Regulations (2017).

In contrast, South Africa lacks mandatory transparency mechanisms, relying instead on internal audits and Employment Equity Plans, which are often treated as bureaucratic formalities rather than instruments for transformation.[89] Enforcement by the Commission for Employment Equity and Department of Labour Inspectors is sporadic, underfunded, and heavily reliant on employee complaints.[90] Moreover, the informal economy where women are overrepresented is largely excluded from the EEA's scope. The failure to enforce equal pay principles in sectors such as domestic work, agriculture, and small-scale retail reveals how class, race, and informality intersect with gender to create compounded vulnerability.

Intersectional analysis reveals that minority ethnic women, migrant women, and women with disabilities face compounded disadvantages.[91] The one-size-fits-all approach of the NMW fails to account for these intersecting vulnerabilities. The NMWA has had a mixed impact on female workers in South Africa. While it has improved wage levels, it has not sufficiently closed the gender pay gap or addressed structural employment inequalities.[92] In contrast, countries like the UK have implemented more robust policies, combining minimum wage laws with gender equity measures. Strengthening South Africa's enforcement mechanisms and adopting gender-sensitive labour policies would be crucial to achieving true wage equality. [93]

South Africa can draw several important lessons from the UK's approach to labour law for women, particularly in areas of legal structure, enforcement, transparency, and cultural change. While both countries share a commitment to gender equality in the workplace, the UK's longer standing and more comprehensive framework offers South Africa a model from which to adapt and strengthen its labour law regime. Evidence from South Africa and UK indicates that combining minimum wage laws with targeted support such as social grants, subsidised childcare, and vocational training yields better outcomes in reducing gendered poverty. For South Africa to make meaningful progress in closing the gender wage gap, it must adopt a multi-pronged strategy, including strengthening compliance and inspection mechanisms; extending minimum wage protections to informal workers; promoting pay transparency and mandatory gender pay audits; and supporting skill development programs tailored to women.

The UK's EA provides a single, comprehensive statute covering all forms of discrimination, including sex, pregnancy, and maternity. South Africa has multiple pieces of legislation such as the EEA, the LRA, and the BCEA that address aspects of gender equality. However, they are fragmented. A consolidated gender perspective in the EEA, similar to the UK's EA could enhance coherence, awareness, and enforceability for both employers and employees.

UK case law such as *Hayward v Cammell Laird* and *Smith v Avdel Systems* illustrates practical use of job evaluation schemes and clearly defines the scope of equal pay for equal value claims. While the EEA (Section 6 and Regulation 7) addresses "equal pay for work of equal value," implementation is limited and weakly

89 Commission for Employment Equity Annual Report (2022).
90 Commission for Employment Equity Annual Report (2022).
91 Crenshaw (1989).
92 Crenshaw (1989).
93 Diedericks & Bosch (2023).

enforced. South Africa should: Strengthen the use of objective job evaluation systems in the public and private sectors. Train and resource the Commission for Employment Equity and Labour Inspectors to audit pay disparities proactively. Publish guidelines based on comparative jurisprudence to help adjudicators and HR practitioners assess claims of pay inequality effectively.

The UK's Gender Pay Gap Information Regulations mandate annual public reporting of gender pay data for large employers. South Africa could introduce similar mandatory gender pay gap disclosure laws for companies with more than 100 employees, particularly JSE-listed firms. Public reporting would incentivise compliance, promote accountability, and provide civil society and the media with tools to apply pressure for gender pay equity. This would also give effect to Section 9 of the Constitution and the EEA's aim of eliminating discrimination in pay.

## Conclusion

South Africa stands to gain significantly from the UK's experiences in promoting gender equality in the workplace both from its innovations and its shortcomings. Central lessons include the need for comprehensive and enforceable legislation, mandatory transparency, access to justice, and structural reforms to address substantive rather than merely formal equality. These lessons are particularly vital in the context of South Africa's own labour market inequalities, which are shaped by deep-rooted gender, racial, and class disparities.

South Africa's national minimum wage legislation represents a critical tool in the struggle against poverty and inequality, but it has not yet fulfilled its potential in advancing gender equity. Drawing on the comparative case of the United Kingdom, this paper has shown that integrating gender-specific mechanisms, strengthening institutions, and promoting transparency can significantly enhance the effectiveness of minimum wage legislation for female workers. A more inclusive, accountable, and gender-responsive approach is essential to ensuring that no woman is left behind in the pursuit of economic justice.

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