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**GENDER INEQUALITY AT WORKPLACE AND INDIAN LEGAL FRAMEWORK**

- Prashant Pandey<sup>1</sup> & Jai Kishan Mishra<sup>2</sup>

**Abstract -**

The fight for equal rights of women has been going on since the time immemorial. They have been treated unequally as the weaker vessel of the society and has been subjected to discrimination in almost all the fields of life. From fighting for equal educational rights, the fight has now shifted to equal rights at workplace. This research is derived from the above-mentioned problem and titled as “Gender Inequality at workplace and Indian Legal Framework”. The method of research used is descriptive and analytical. In this research work the researcher has discussed present scenarios of workplace discrimination and need for improvement. The research provides an analytical and descriptive overview of the previous research work done in the field of gender inequality alongwith relevant provisions of the Indian Constitution curtailing discrimination and inequality. Furthermore the researcher has also discussed the laws enacted to improve the condition of women in working places. The researcher has reached the conclusion that the condition of women at workplace can't improve unless the mindset of people in their surroundings is changed and hence the researcher discussed the importance to focus on men changing their mindset for inclusion of women. The aim of this research is to discuss the rights of women find out the efficacy of the laws enacted to improve the condition of the women at workplace and suggest improvements needed in them.

**Keywords-**

Women, Gender Inequality, Gender Discrimination, Women Rights, Women Laws, Gender Awareness.

**Research Methodology -**

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The method of research used in this research work is Doctorinal method, where I have went through several existing literatures on the topic to reach my conclusion.

## **Research Objectives -**

The objective of this research is to find out the condition of women at workplace and the gender biasness faced by them. It also aims to find out whether after the implementations of legislations, the condition of gender inequality has improved or not. This research also aims to find suggestions for the betterment of the condition at workplaces.

### **1. Introduction**

The fight for equal rights of women has been going on since the time immemorial. Women has been treated as the weaker vessel of the society and has been subjected to discrimination in almost all the fields of life. From the ancient times when they were only considered as a vessel to carry children, to the medieval times when they were debarred from getting basic education and now in the modern time when they are treated as a liability. The fight for equal rights has been different in different eras. This fight has now shifted from getting equal opportunities in education to getting equal opportunities at workplace. Gender disparity has remain one of the most pressing challenges facing modern societies. Although the world has moved forward by leaps and bounds with education and stricter laws but gender discrimination is one evil that is still being practiced in the modern societies. Gender biasness not only diminishes the potential of women but also negatively affect organizational productivity and economic growth. Indian legal framework, although vigilant, still battles with implementation and enforcement leading to persistent gap at workplaces.

Women's experiences of pursuing justice often differ from men's. These gendered discrepancies are usually influenced by higher levels of poverty and power imbalances within families and communities. Ensuring women's access to justice, especially among poor and marginalised groups, through fair, effective, affordable, and accountable mechanisms is essential for safeguarding their rights, addressing abuses of power, and resolving conflicts. Women's access to justice encompasses their ability to seek and obtain fair remedies through both formal and informal justice systems, as well as their capacity to participate in, and influence, law-making processes and institutions.<sup>3</sup>

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<sup>3</sup> Understanding the Barriers-Analysis of Women's Access to Justice Roza Cseby and Anne-Marie Leal(2024)  
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Gender disparity in professional settings remains a longstanding challenge, hindering women's opportunities for career advancement and equitable treatment across diverse industries worldwide. Although progress has been made in women's rights and numerous legal measures have been implemented to tackle these disparities, notable gaps persist, particularly in areas such as wage inequality, underrepresentation in leadership positions, and incidents of workplace harassment.

This research paper explores the underlying causes, prevalent forms, and consequences of gender inequality in the workplace, highlighting significant research and studies while evaluating the efficacy of current legal frameworks intended to address these issues.

## 2. Literature Review

### 2.1. Understanding Gender Discrimination at Workplaces

Under **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** discrimination against women is defined as, "any distinction, exclusion, or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise of human rights and fundamental freedoms by women"<sup>4</sup> From this definition we can understand that any act which nullifies the recognition or enjoyment of any right by women is an act of discrimination. Inequality at workplaces is one such form of discrimination against women where women does not enjoy the same rights as their male counterparts.

According to *Inequality Regimes: Gender, Class, and Race in Organizations* John Acker (2006), gender inequality is characterized as a systemic issue deeply rooted in organizational structures, practices, and cultural norms, leading to disparities in opportunities and outcomes between men and women. This phenomenon extends beyond being merely a social concern; it also has economic implications, as it can substantially influence workplace productivity and innovation.

The term encompasses various dimensions, including unequal pay for equal work, discriminatory hiring practices, gender-based violence or harassment, and the underrepresentation of women in leadership and decision-making roles *Theories Of Gender In Organizations: A New Approach To Organizational Analysis And Change- Robin J. Ely and Debra E. Meyerson* (2000). The persistence of these issues, despite legal protections and

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<sup>4</sup> Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)  
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awareness, suggests the complexity of achieving gender equality in professional environments.

## **2.2. Roots of Gender Inequality in Professional Settings**

Social and cultural expectations significantly contribute to the persistence of gender inequality in the workplace. *The Comparative Analysis of Employee Engagement Measures: A Theoretical Perspective* Neha Gupta and Vandana Sharma (2018) highlight how patriarchal social structures influence the type of employment opportunities women pursue and the societal expectations regarding their domestic responsibilities. Women are supposed to play the roles of house makers and professionals at the same which often contradict to each other.

*Inequality Regimes: Gender, Class, and Race in Organizations* John Acker (2006), argues that organizational frameworks, originally created by and tailored to men, continue to marginalize women. These systems often encompass informal networks and recruitment strategies that disproportionately benefit men, especially in leadership capacities. Additionally, the "glass ceiling" effect, as identified by *Theories Of Gender In Organizations: A New Approach To Organizational Analysis And Change*- Robin J. Ely and Debra E. Meyerson (2000)., illustrates systemic obstacles that restrict women from reaching top-tier roles, regardless of their skills or achievements.

The presence of women in leadership positions remains disproportionately low. research titled *Inequality: A persisting challenge and its implications* by McKinsey & Company (2019) and others underscores that women occupy only a fraction of executive and board positions.

## **2.3. Examples of Gender Inequality in the Workplace**

### **2.3.1. Unequal Pay for Equal Work**

The persistent wage disparity between genders remains one of the most prominent indicators of gender inequality in the workplaces. According to the International Labour Organization (ILO, 2018), women in India earn, on average, 20% less than men, and this gap is even larger in informal sectors. *The Gender Wage Gap: Extent, Trends, and Explanations* Francine D. Blau and Lawrence M. Kahn (2017), found out that women generally earn lower wages than men in most industries, even after adjusting for factors like education, experience, and job

roles. This wage gap is especially noticeable in high-income sectors such as technology, finance, and engineering.

### **2.3.2 Sexual Harassment at Workplaces**

Sexual harassment at workplace remains one of the most challenging form of discrimination against women in workplace. Research conducted by the National Commission for Women (2017) in India revealed that a substantial number of women face harassment in the workplace, yet a majority refrain from reporting such incidents due to fears of retaliation or social stigma. To address this problem, India enacted the *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act in 2013*. However, adherence to this legislation remains inadequate, especially in smaller enterprises and the informal sector, as highlighted by *The Comparative Analysis of Employee Engagement Measures: A Theoretical Perspective Neha Gupta and Vandana Sharma (2018)*.

### **2.4 Legal Framework Addressing Gender Inequality and Their Implementation**

The law making bodies has often found it necessary to address the gender biasness and inequality faces by women in their life. The Constitution of India under its various articles such as Articles 14, 15(1), 16 provides for equality, prohibits any kind of discrimination on the basis of sex and gives equal opportunities, Articles 39(d) and 42 mandates for equal pay for equal work and maternity relief.

Apart from the constitutional provisions other laws passed by the legislature such as *Equal Remuneration Act, 1976 (subsumed under the Code on Wages, 2019)* *Maternity Benefit Act, 1961* and *The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013* ensures that women are equal and gets paid maternity relief and protects them from harassment at workplaces.

These laws provide for strict measures and also punish the offender stringently but their implementation is often irregular. As *Gender Discrimination in India - Themes and Perspectives Dr Aritra Ghosh, (2018)* points out, the implementation of these laws is often inconsistent, particularly in informal and unregulated sectors. The enforcement of gender specific laws remains a challenge as most of women of the unregulated sectors are not aware about them *Understanding the Barriers-Analysis of Women's Access to Justice Roza Cseby and Anne-Marie Leal(2024)* emphasizes that numerous women lack awareness of their legal

entitlements or encounter substantial obstacles in seeking legal recourse, such as prolonged judicial procedures and inadequate support mechanisms.

The lack of strong enforcement mechanisms and the limited reach of legal protections in informal sectors have resulted in the continuation of gender inequalities despite the establishment of legal frameworks designed to address these issues **Gender Discrimination in India - Themes and Perspectives**(*Dr Aritra Ghosh, 2018*).

### 3. The Indian Legal Framework Addressing Gender Inequality

#### 3.1 Constitutional Provisions

The Indian Constitution, under Articles 14, 15, and 16, guarantees equality before the law, prohibits discrimination based on sex, and mandates equal opportunities in employment.<sup>5</sup> These provisions lay the foundation for gender equality in the workplace.

Article 14: Right to equality before the law. This article provides that everyone is equal in the eyes of Law irrespective of their gender.

Article 15: Prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. This article provides that men women shall not be discriminated merely on the basis of sex. Article 15(3) also provides that nothing in this article shall prevent the State from making any special provision for women and children.

Article 16: Guarantees equality of opportunity in matters of public employment. This article ensures that women are treated in matters of getting jobs and other opportunities.

#### 3. 2 Key Labor Laws for Gender Equality

The Equal Remuneration Act, 1976: This law mandates equal pay for equal work, regardless of gender. However, the effectiveness of this law is questionable as pay disparities persist, especially in informal sectors.<sup>6</sup>

The Maternity Benefit Act, 1961: It provides women with paid maternity leave, but its provisions do not extend to women employed in the unorganized sector, where a large proportion of female workers are engaged.

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<sup>5</sup> Constitution of India

<sup>6</sup> The Equal Remuneration Act, 1976:

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**The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal)**

**Act, 2013:** This Act was a significant step towards addressing workplace harassment. It requires organizations to set up internal complaints committees and ensure preventive measures, but its implementation has been inadequate in many workplaces, especially in smaller organizations.

**The Factories Act, 1948:** This Act ensures safety, health, and welfare of workers, with specific provisions aimed at ensuring the safety of women in industrial settings.

#### **4. Judicial Precedents**

The court by means of judicial precedents has over the year tried to put an end to gender inequality at workplace and bring men and women at equal footing. Some of the important judicial decisions are listed herein.

**1. *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa and Other*<sup>7</sup>**

The Supreme Court held that differential treatment of male and female stenographers by the company smacked of discrimination, and held that the management was liable to pay the same remuneration to all stenographers, irrespective of their sex. The Court relied on the Equal Remuneration Act and Article 39 (d) of the Constitution of India, which provides that the State shall, in particular, direct its policy towards securing equal pay for equal work for both men and women. It held that a broad view must be taken to decide whether a particular work is the same or similar in nature as another. Similar work may have differences in detail, but these differences cannot defeat a claim for equality. Furthermore, the Courts must look at the duties actually performed, not those which were theoretically possible. In this case, the women were doing the same or similar work as the male stenographers. Accordingly, the Court upheld the decision of the High Court and reiterated the applicability of ERA to all companies.

**2. *Vasantha R. v. Union of India*<sup>8</sup>**

The Court held that Section 66(2) of the Factories Act 1948, resulted in the denial of livelihood and the opportunity for improvement in status to women, and violated the

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<sup>7</sup> SLP (C) No.1265 of 1987, decided on March 26, 1987

<sup>8</sup> W.P. No.4604-4606 of 1999, decided on December 8, 2000

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guarantee of non-discrimination under Article 14s and 15(1) of the Constitution. It analysed the differential treatment under the “reasonableness” test, and found that there was no connection between the prohibition of women and the object sought to be achieved by the Act i.e. safe working conditions. There was no difference with regards to the nature, scope, or hours of work between an adult male or female worker in a factory in a given period of time, and therefore no reason to discriminate between them. The prohibition was also an unreasonable restriction on the rights of women to carry on an occupation of their choice under Article 19(1)(g). The Court held that instead of prohibiting women’s work, the State should ensure safe working conditions. It accordingly issued guidelines and welfare measures for women workers who come forward to work during the night shifts, ranging from protection against sexual harassment, sufficient security, adequate transportation and ensuring an adequate number of women workers working together in a shift.

3. *Lt. Colonel Nitisha and Others v. Union of India and Other*<sup>9</sup>

**Justice D Y Chandrachud** quoted, *“We must recognize here that the structures of our society have been created by males and for males. As a result, certain structures that may seem to be the “norm” and may appear to be harmless, are a reflection of the insidious patriarchal system. At the time of Independence, our Constitution sought to achieve a transformation in our society by envisaging equal opportunity in public employment and gender equality. Since then, we have continuously endeavored to achieve the guarantee of equality enshrined in our Constitution. A facially equal application of laws to unequal parties is a farce, when the law is structured to cater to a male standpoint. ... It is not enough to proudly state that women officers are allowed to serve the nation in the Armed Forces, when the true picture of their service conditions tells a different story. A superficial sense of equality is not in the true spirit of the Constitution and attempts to make equality only symbolic.”*

4. *C.B. Muthamma v. Union of India and Others*<sup>10</sup>

The Supreme Court held in very direct terms that discrimination against women was “traumatically transparent” in this rule, because the same risk is run by government if a male member contracts a marriage. The Court criticised the discriminatory service

<sup>9</sup> W.P. (Civil) No.1109 of 2020, decided on March 25, 2021

<sup>10</sup> 1979 INSC 184; (1979) 4 SCC 260; MANU/SC/0580/1979

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rules that had survived for so long, and held that Rule 8(2) blatantly discriminated against women by imposing conditions on their marriage and coercing their resignation, a rule that does not apply to men. This was clearly in violation of Article 16, which guarantees equal opportunity in public employment. Additionally, Rule 18(4), which denied married women the right to be appointed to the service, was equally unconstitutional. The Court observed that the Government needed to overhaul the Service Rules to remove all forms of sex discrimination. Following this, the Government promoted Muthamma and appointed her as the Ambassador of India to The Hague and the Court directed the government to review her seniority in light of her promotion. Despite such a finding, the rule was not set aside on the assurance of the Solicitor-General that the Union of India will review the seniority of the Petitioner. Hence, the Court did not make a specific finding striking down the Rules.

#### 5. *Rama Pandey v. Union of India and Others*<sup>11</sup>

The High Court ruled in favour of the Petitioner, holding that even a woman who has become a mother through surrogacy is entitled to maternity leave. The Court reasoned that the term 'maternity' under Rule 43 of the Central Civil Service Rules should not be limited to biological mothers. Maternity encompasses the legal and emotional role of the commissioning mother, and her responsibility for the well-being and care of the child after birth. Denying leave based solely on the method of childbirth would be unfair to both the mother and the child. While referring to the advancements in reproductive technologies, the Court also emphasized that legal frameworks must evolve to address these new realities. The Court accordingly allowed the petition and directed the government to grant her request for maternity leave.

### 5. Recommendations for Legal and Institutional Reforms

To effectively tackle gender inequality in Indian workplaces, several reforms are necessary:

***Stronger Enforcement Mechanisms:*** The government must strengthen the enforcement of existing laws, with stricter penalties for non-compliance. Regular audits of workplaces to ensure compliance with the Sexual Harassment Act, equal pay, and other gender-sensitive provisions are essential.

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<sup>11</sup> 2015 LAB IC 3921; MANU/DE/2054/2015

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Promoting Awareness: Achieving equal access to justice requires the empowerment of women through exercising their rights.<sup>12</sup> A nationwide campaign to raise awareness of gender equality laws among both employers and employees is crucial. Training programs for employees on gender sensitivity can also help reduce discrimination.

Facilitating Work-Life Balance: More comprehensive maternity and paternity leave policies, as well as flexible working hours and work-from-home options, could encourage a more equitable distribution of domestic responsibilities and increase female participation in the workforce.

Support for Women in Leadership: The public perception of women as less capable or fit than men for governance processes remains an obstacle to their full and effective contribution to the public sphere.<sup>13</sup> Policies aimed at increasing women's representation in leadership roles through quotas or affirmative action could help break the glass ceiling. Ensuring equal career growth opportunities for women, including mentorship programs and leadership training, would be a positive step forward.

Incentivizing Gender Diversity: Despite significant advancements in gender equality policies and legal frameworks, women consistently earn less than men across various industries and job positions.<sup>14</sup> Companies should be incentivized to create more inclusive and gender-diverse environments. Providing tax breaks or other financial incentives for businesses that implement gender equality policies may encourage greater commitment to the cause.

## 6. Conclusion

Gender inequality in the workplace remains a significant issue in India, despite the existence of several legal provisions designed to address the problem. While the Indian legal framework has evolved to reflect a commitment to gender equality, its implementation remains a major hurdle. Violence against women and girls is an extreme expression of the unequal power relations between men and women, and it hampers their ability to engage in

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<sup>12</sup>Understanding the Barriers-Analysis of Women's Access to Justice Roza Cseby and Anne-Marie Leal(2024)

<sup>13</sup> Women Economic Empowerment Study-The World Bank (2018)

<sup>14</sup> The Gender Wage Gap: Extent, Trends, and Explanations Francine D. Blau and Lawrence M. Kahn

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social, economic or political activities.<sup>15</sup> To create a truly inclusive and equitable work environment, it is essential to strengthen the enforcement of existing laws, address cultural biases, and provide adequate support for women's career advancement. By implementing these reforms. There shall be an emergent, localized approach to systemic, organizational change whereby organization members continuously identify and disrupt oppressively gendered social practices and revise them accordingly.<sup>16</sup> India can take substantial steps towards ensuring that gender does not hinder one's professional success.

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