



Gender Inequality in Corporate Sector and Rights of Women in India: Challenges Ahead

Dr. Vaishali Gupta

Associate Professor, Law, N.R.E.C. College Khurja, INDIA

ABSTRACT

No country can progress if half of its population is behind – socially, economically and politically. Gender-inequality denotes any unequal treatment based on gender and refers to a situation wherein a person is denied opportunity solely on the basis of their gender. Women tend to face more difficulties to progress in their careers, to be paid less, and to be concentrated in fewer jobs than men. The aim of this paper is to present the Indian circumstances regarding gender disparities in corporate sector. How far our laws are gender sensitized and compatible for practicing gender equality in India as required in International and national laws. To achieve this aim this research is focused on concept of gender justice and highlights gender-based discrimination, violence, atrocities and crime against women in India also.

Keywords-- Gender Inequality, Gender Justice, Gender Disparity, Discrimination

is characterized by low literacy rate (65.46%) and female labour participation rate (FLPR) of 25.51%.

Gender inequality is not only a women's only problem. Men, as the current majority of senior leaders, are the biggest decision makers. If they are not involved, change won't happen. Women tend to face more difficulties to progress in their careers, to be paid less, and to be concentrated in fewer jobs than men. Across all industries and countries, the more you climb the corporate ladder, the fewer women you see. It's common to talk about the "glass ceiling," a metaphor used to represent an invisible barrier that keeps women from rising beyond a certain level in a hierarchy. In reality, from the very start of their careers, women face difficulties.

The aim of this paper is to present the Indian circumstances regarding gender disparities. To achieve this aim first of all this research is focused on concept of gender justice and highlights gender-based discrimination, violence, atrocities and crime against women in India also. Therefore it provides a general idea of International instruments which protect women's rights globally or universally. Secondly it will provide a brief examination of legislative efforts for eradicating gender inequalities in India. Moreover as India is being a signatory of globally accepted challenges it is necessary to examine its efficiency towards 'to respect, to protect and to fulfill gender equality through affirmative action taken by its legislative, executive and judiciary. At last but not the least, as due to scientific and technological development, society is moving gradually to modern changes, therefore it proposes some suggestions for promoting women in corporate sector removing social discrimination, violence and atrocities prevailing in society.

I. INTRODUCTION

The Gender has always shaped the legal and cultural landscapes of all countries. In India feminine glory was at its zenith in the Vedic period, later it suffered a decline. After independence, Indian Constitution enshrined noble principles of equality, liberty and social justice. No country can progress if half of its population is behind – socially, economically and politically. Gender-inequality denotes any unequal treatment based on gender and refers to a situation wherein a person is denied opportunity solely on the basis of their gender. Women though could be numerically equal, yet are a minority group in terms of power and influence. As far as the rights of women are concerned, the doctrine of gender justice is widely accepted globally. If equality and freedom evade women, it is offensive to human dignity, rights and development also. Women play a very important role in country's development yet the women population in India

II. CONCEPT AND KINDS OF GENDER INEQUALITIES IN CORPORATE

The concept of gender enables us to state that sex is one thing but gender is quite another. Everyone is born male and female. The criterion for being male and female can universally be judged by biological evidences but people are masculine or feminine cannot universally be judged in the same manner. Gender equality traverses every facet of the position of a woman in a society. *“Gender inequities throughout the world are among the most pervasive, though deceptively subtle forms of inequality. Gender equality concerns each and every member of the society and forms the very basis of a just society. Human rights issues, which affect women in particular, play a vital role in maintaining the peace and prosperity of a just society.”*ⁱ

Women have to face direct or indirect discrimination at workplace such as **unequal pay**: It is very common form of discrimination; wages earned by women are generally lesser than their male counterparts. **Glass ceilings**: It’s an invisible barrier to keep the females from rising beyond a certain level in a hierarchy. It is mostly concerned with high-achieving women in the corporate sector. **Diminished responsibilities**: The sex differences are exaggerated to treat men and differently as the latter are given jobs with less responsibility like house-keeping, organizing events, etc. whereas men are entrusted with leadership roles. **Positional bias**: Women are stereotypically considered for the posts of secretaries, HR (human relations), receptionist, etc. **Sexual harassment**: Women are also victim of various forms of sexual harassment at workplace affecting their work productivity and a grave safety concern. **Victimization**: When the prejudiced or biased treatment translates into victimization of the women workers. **Biased terminations**: There are cases of females being dismissed on account of speaking against sexual harassment or for asking for equality. Also, females are being terminated on account of taking maternity leaves as well. **Interview questions**: Women candidates are often put to questioning in terms of their work commitment due to their familial responsibilities and the choices they make in their personal lives which male candidates aren’t asked about. There are outdated views regarding the dressing, working, and how they must carry themselves, etc., which affect their productivity.

Apart from this there is lack of proper grievance redressal mechanism for female workers to register their complaints and get them redressed properly. Often, there are biased enquiries and unfair and wrongful dismissal of women who speak up against the discrimination. In India, despite the law being in place for appointing an *Internal Complaints Committee under the Women at Workplace (prevention, prohibition and redressal) Act, 2013*, there are many companies without such a committee in place; who have it, are in a dysfunctional state.

III. INTERNATIONAL EFFORTS AND GENDER EQUALITY

There are several Covenants which have universally accepted Women’s Rights as Human Rights. The United Nations Charter 1945, Universal Declaration of Human Rights 1948, International Covenants on Economic, Social and Cultural Rights, 1966; International Covenant on Civil and Political Rights, 1966; Convention on the Elimination of All Forms of Discrimination against Women, 1979ⁱⁱ all recognizes these principles. *‘Human rights instruments and mechanism provide avenues for challenging the systematic abuse of women and governments can be made to take gender-based violations more seriously by being held accountable for the implementation of laws against them...’*ⁱⁱⁱ At the International level, prohibition against sex discrimination was first articulated in the **UN Charter** and later reiterated in the **UDHR**. Since then, virtually all human rights instruments have reinforced and extended protections against discrimination. The **ICCPR** guarantees equal protection of the law to both sexes. The **ICESCR** promises women *equality of status*.

Perhaps the most important conceptual advance in the international law of women’s rights is the **CEDAW**, effective 1981, which provides that women be given rights equal to those of men on equal terms. Its Preamble maintains that *“the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.”*

The Preamble to *UN Charter* expresses the determination of the peoples of the United Nations “to reaffirm the faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of man and woman.” **Article 1** provides one of the purposes of the UN that is to achieve international cooperation in solving international problems of an economic, social and cultural or humanitarian character and in promoting and encouraging respect of human rights and fundamental freedoms for all without discrimination as to race, sex, language and religion. **Article 8** declares that the “UN shall place no restrictions on the eligibility in its principal and subsidiary organs.” **Article 13** states that it shall be the endeavour to promote international cooperation in the economic, social, cultural, educational and health fields and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.” In **Article 55** of the Charter, emphasis is laid upon “the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

In *UDHR* it is declared that both the parties to a marriage should give their full and free consent to the marriage. In this declaration a provision is also made for

equal remuneration and for protection of maternity. In *ICESCR* it is provided that a female shall not be given any inferior work than her male counterpart. The *ICCPR* provides that a pregnant woman cannot be executed. It is also provided that both the parties to a marriage should have equal rights of divorce. It is prescribed in the Covenant that a woman has a right to participate in public activities without any discrimination. *The World Conference on Human Rights, 1993* was held in Vienna, to deliberate on the issue of elimination of discrimination on the ground of sex. *The Fourth World Conference on Women, 1995* held at Beijing brought us further forward by reaffirming gender equality as a fundamental prerequisite for social justice. At an international level^{iv}, it is accepted that Women's Rights are Human Rights.

IV. LEGISLATIVE EFFORTS AND GENDER EQUALITY IN INDIA

The constitutional mandate was followed by the legislative intent being expressed in the form of various enactments which were passed to protect the rights and uphold the dignity of women. The Constitution of India also accepts the equality of male and female genders. This equality means that no one shall be discriminated against only on the ground of being a female. The Preamble to our Constitution refers to the promise of social justice. Not only that, but there is a directive in the *suprema lex* to enact legislation in favour of women and children also

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. The right to gender equality is intrinsic to the right to life under Article 21 of the Constitution that comprehends the right to live with dignity. The pledge of equality between men and women was inherent in the provisions relating to fundamental rights that affirm equal opportunity for all its citizens. *Art 14 of the Constitution of India* has accepted the right to Equality and *Article 15* has clearly prescribed that no person shall be discriminated against by the State only on the ground of religion, caste race, place of birth and sex. Article 15(3) of the Constitution provides: '*Nothing in this Article shall prevent the State from making any special provision for women and children.*'^v Article 15(3) makes a special provision enabling the State to make affirmative discriminations in favour of women. Therefore all human rights are conferred by the *Constitution of India* on every person and are available to women also. Similarly, Article 16 provides for equality of opportunities in matter of public appointments for all citizens.

In addition in part IV Directive Principle of State Policy is designed to bring about the social and economic revolution,^{vi} which the state must apply, in law making.

They are aimed at securing social justice, **adequate means of livelihood**, ownership of material resources, **equal pay for equal work, equal justice** as well as free legal aid and a welfare State.^{vii} Article 41 directs State to provide effective provision for securing the **right to work**, to education and to public assistance in certain cases of unemployed, old age, sickness, disablement. Article 42 directs the State to make provisions for ensuring **just and humane conditions of work** and **maternity relief**. Article 44 requires the State to endeavour to secure for the citizens a **uniform civil code**. Article 51^{viii} imposes a fundamental duty on every citizen to renounce practices derogatory to the dignity of women.

Above all, the Constitution imposes a fundamental duty on every citizen through Article 51A (e) to renounce the practices derogatory to the dignity of women. Despite these Constitutional provisions, special laws enacted to promote gender justice; the status of women continues to be a cause of concern not only in our country but also in most countries of the world. The question, however, is: Have the women been able to reap the benefits provided for them under the Constitution of India? The answer unfortunately is not encouraging. There is a long way to go to achieve the goals enshrined in the Constitution.

In order to achieve the object of Article 14, Women are given certain concessions by the Constitutions. The Indian Parliament has enacted numerous women-specific legislations^{ix} to protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriages, dowry, rape, practice of Sati, etc. Notwithstanding the enactment of the laws relating to dowry, rape, violence against women, the factual position is rather distressing. What is true at the national level is also a cause of concern at the global level.

In spite of Constitutional provisions of equality, Women's rights are being violated everywhere in India. The birth of a female child is an unwelcome event in traditional Indian society. Since birth there is discrimination in the bringing up of a female child. Women's Rights in the fields of education, at workplace, in family are being violated or limited in comparison to those of their male counterparts. As these enactments are largely based upon religion and its traditions, it reflects unequal balance between males and females. Atrocities and discrimination are the means to keep women under control and to give them a lower social status. Atrocities against women were restricted in the achievement of equality, development and peace. In each class and culture there are discriminatory treatment accorded to women in families and in societies in general. Because of the atrocities women could not enjoy the rights and liberties. These rights and freedoms are meaningless in the absence of such enjoyment.

In India, Dowry Deaths are taking place in every 7 minutes. In rape cases also, females are the victims.

Compulsory termination of pregnancy, birth of an unwanted child, female foeticide, domestic violence, torture and sexual harassment to female members of the family violate human rights. It is a common experience of the women employee to be harassed at their work places. Sexual harassment is a violation of Human Rights. Some areas in Orissa, girls between 15 to 17 years age are dedicated to temples as 'Devdasis' and they are sexually exploited. In Metropolitan cities like Delhi, Mumbai, Surat, Chennai, Nagpur, school and college going girls are molested. For this reason buses and trains specially meant for ladies have been introduced in some cities like Chennai and Ahamdavad.

V. JUDICIAL EFFORTS AND GENDER EQUILITY

The Judiciary has adopted its role of judicial construction that regard must be have to international Conventions and norms for construing domestic law when there is no inconsistency between both and there is a space in the domestic law. It was held^x that there is no reason why international Conventions and norms cannot be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embodied the basic concept of Gender Equality in all spheres of human activity.

The Constitution has accepted the principle of affirmative action favouring women and children. Such principle has activated the state to make provision for reservation for women in elected bodies of local government and other selected bodies, and in laws such as the section of the factories Act 1948, prohibiting women's employment in dangerous and hazardous tasks; the special facility is provided under the Maternity Benefit Act 1961. The Courts have upheld such special provisions.^{xi} Supreme Court also holds^{xii} that the principle contained in article 11 of CEDAW must be read into the contract of service between Municipal Corporation and the women employees (muster roll); and entitled the employees to all the benefits conceived under the Maternity Benefit Act 1961. The 73rd and 74th Constitutional amendment^{xiii} have provided for 33 percent reservation of seats for women at the local level in the elected bodies in rural and urban areas. The sad reality remains that such provisions have not laid solid foundations for legal gender-equality. The struggle against discrimination in employment surfaced in 1979, when Supreme Court declared Indian Foreign Service Rules unconstitutional because they required a woman officer to obtain the permission of the government to marry and also to resign if in the government view such a marriage or her family obligations were likely to come in the way of the efficient discharge of her duties.^{xiv} The issues of women's equal rights in employment also arose in *Air-India V. Nargis Meerza and others case*,^{xv} in which the clauses regarding retirement and pregnancy of airhostesses were

declared void, but the fact that conditions of service for airhostesses and flight pursers are different were not challenged. Similarly in *Maya devi v State of Maharashtra case*^{xvi} Supreme Court held that requirement of consent of husband for a married woman before applying for public employment was violative of articles 14, 15 and 16 and thus unconstitutional. The Apex Court quoted^{xvii} article 2 of UDHR and CEDAW and held that 'basic structure of Indian Constitution metes equality of status and negates gender bias.' Dignity of a woman is a right inherent under the Constitution that negatives by section 6 of Hindu Minority and Guardianship Act, 1956 and Guardianship and Wards Act, 1890. Therefore, a mother is entitled as the guardian of the minor for the purpose of investment made with the money hold by their minor son. Thus it ensures the dignity of a working woman through equal enjoyment of rights in socio-economic relations.^{xviii}

In *Madhu Kishwar and others v State of Bihar case*^{xix} the Supreme Court recognised the right of women to inherit property as a dimension of the right to life. and striking down gender discriminatory customary laws of tribal for infringement of the equality clause in article 14 of the Constitution. In *Vijay lakshmi v Punjab University and anothers*^{xx} Supreme court reaffirmed classification and held that appointment of a woman principle in a woman's college cannot be held to be violative either of article 14 or 16 of the constitution because the classification is reasonable and it has a nexus sought to be achieved.

The Supreme Court^{xxi} has prescribed certain guidelines in cases of sexual harassment and held that they will be treated as law unless and until Parliament enacts a law to that effect. It was directed in this case that in every case of sexual harassment, the employer would be held liable for failing to protect its female employees. The Supreme Court^{xxii} found all facets of gender equality including prevention of sexual harassment in the fundamental rights guaranteed under our Constitution. The Court noted "these international instruments 'CEDAW, ICESCR and Beijing Declaration 1995' cast an obligation on the Indian state to gender sensitise its laws and the courts are under an obligation to see that the message of the International Conventions and norms for construing domestic laws are respected and obeyed more so when there is no inconsistency between them and there is a void domestic law." The applicability of the UDHR and principles thereof may have to be read, if need be, into the domestic jurisprudence.

In another dynamic judgement^{xxiii} the relief was provided to a Bangladeshi woman who was raped. The Court observed that the word life as used in UDHR must get the same meaning as in Article 21, interpreted as a life worth living, meaningful and dignified. In *Anuj Garg v. Hotel Association of India*^{xxiv} it was held that Instead of prohibiting women employment in the bars altogether the State should focus on factoring in ways through which unequal consequences of sex differences can be

eliminated. It is the States duty to ensure circumstances of safety which inspires confidence in women to discharge duties freely in accordance to their professional requirements.

VI. CONCLUSION AND SUGGESTION

What follows from this is that the different status the women and men enjoy in society is indeed socially and culturally determined; It is manmade, nature has very little to do with it. It is gender not sex which has determined that (almost) everywhere women as a group are considered inferior to man. They enjoy fewer rights, control, fewer resources, work longer hours than men but their work is either undervalued or underpaid. They paid systematic violence at the hands of men and society, and they have little decision making power in social, economic and political institutions.

Discrimination is against the basic human law of equality and humanity which seeks to treat a fellow human as inferior and second-class citizens .The most fundamental moral principle of civilised societies i.e. equality, which forms the basis of Article 1 of the Universal Declaration of Human Rights (UDHR). Widespread discrimination can lead to intolerance and conflict in the society. Discrimination at workplace results in breeding of ill feelings at work, and reduced productivity. Studies have shown that women have more patience and high emotional quotient so they are well-suited for the leadership role as they are able to better communicate and handle the work-relations. Women are also good at management and have better sense of ethics.

There is a need for targeted efforts to ensure the rights of women in difficult circumstances who include

women in extreme poverty, destitute women, women affected by natural calamities, women in conflict situations, women in less developed regions, the disabled, widows, elderly women, single women, women heading households, those displaced from employment, migrants, victims of marital violence and prostitutes etc.

For the emancipation for women in every field, economic independence is of paramount importance. Along with economic independence, equal emphasis must also to be laid on the total development of women, creating awareness among them about their rights and responsibilities—the recognition of their vital role and the work they do at home.

Better implementation of Companies Act, 2013 to bring in more independent women corporates on board and increasing their strength with time to 35%. Better implementation of laws like Sexual Harassment at Workplace (prevention, prohibition and redressal) Act, 2013 for maintaining a safe environment for women to work in. The attitudinal issue associated with patriarchy can only be tackled with the socialization process in which education plays a major role. Education increases the awareness among the population regarding their rights and gives them opportunity for becoming economically independent which increases their status in society, their confidence, and gives them voice.

Females are generally treated as an inferior citizen in India. This subordination is harmful not only for women and girls but also for man and boys and the entire society. Because of this discrimination since a woman's birth, enactments and judicial pronouncements cannot bring about a change. There must be a social environment conducive to it. Laws and procedure must be scrutinized and be made more gender sensitive.

ⁱ "Women Empowerment - the key to achieving the Millennium Development Goals" Keynote address by Hon'ble Justice A.S. Anand, Chairperson, NHRC at UN Information Centre on 7 March 2003

ⁱⁱ hereinafter The UN Charter, UDHR, ICESCR, ICCPR, CEDAW respectively

ⁱⁱⁱ C. Bunch, *Transforming Human Rights from a Feminist Perspective*, 1995

^{iv} See also UN Millennium Declaration 2000, Declaration on the Elimination of violence against Women, 1993, Conventions on the Rights of Migrant Workers and member of their families GA Resolution 45/158, 18th Dec.1990 45th Session, Convention against Discrimination in Education, General Conference UNESCO, 14th Dec. 1960, Discrimination (Employment and Occupation) Convention General Conference of ILO, 42nd Session, 25th June, 1958, Convention on the Nationality of Married Women , GA Resolution 1040 (XII) 29th Jan.1957, Convention on the Political Rights of Women, GA Resolution 640 (VII) 20th Dec.1952, Equal Remuneration Convention General Conference of the ILO 34th Session 29th June 1951, Convention on the Suppression of the Trafficking Persons, GA Resolution 317, 2nd Dec. 1949, Declaration on the Protection of women and Children in Emergency Armed Conflict, The Slavery Convention 25th Sep. 1926

^v Justice Hegde in *Syed Ahmed v. N. P. Taj Begum*, AIR 1958, Mys. 128

^{vi} Justice Hedge as quoted by Woods, J.M., and Lewis, H. in *Human Rights and The Global Market Place*, Transnational Publishers, (2005) at 658

^{vii} Ibid, article 39, 39A 'Equal Justice and Free Legal Aid'

^{viii} inserted in 1976 by the 42nd Constitutional amendment

^{ix} The Protection of Women from domestic Violence Act, 2005, The Child Marriage Restraint Act,2006, The Juvenile Justice (Care and Protection of Children) Act,2000, National Commission for Women Act, 1990, Indian Penal Code,1860, Code of

Criminal Procedure,1973, The Hindu Marriage Act,1955, The Hindu Adoptions and Maintenance Act,1956, The Hindu Succession Act,1956 alongwith its amendment Act 2005, The Hindu Minority and Guardianship Act,1956, The Immoral Traffic (Prevention) Act,1956,The Indecent Representation of Women (Prohibition) Act,1956, Compulsory Registration of Marriages, Eve Teasing (New Legislations), The Dowry Prohibition Act,1961, The Commission of Sati (Prevention) Act,1987,The Guardians and Wards Act,1890, The Pre-Natal Diagnostic Technique (Regulation and prevention of Misuse) Act,1994, The Medical Termination of Pregnancy Test,1971(34 of 1971), Maternity Benefit Act,1961, The Minimum Wages Act, The Bonded Labour System (Abolition) Act,1976,The Equal Remuneration Act, 1976, The Special Marriage Act,1954, The Muslim Personal Law (Shariat)Application Act,1937,The Employees' State Insurance Act,1948,The Family Courts Act,1984, The Foreign Marriage Act,1969(33 of 1969), The Contract Labour (Regulation and Abolition) Act, 1979, And many others too

^x *Nelabati Bahera v. State of Orissa*, 1993, 2 SCC 146

^{xi} *Dattatraya Motiram More V. State of Bombay* AIR 1953 Bom 311; *K. R. Gopinathan Nair V. Co-operative Societies and Others* AIR 1987 KER 167; *Toguru Sudhaker Reddy and another V. Govt. of Andhra Pradesh*, AIR 1994 SC 544

^{xii} *Municipal Corporation of Delhi v. Female Workers (muster roll) and another*, 8 Mar, 2000 (2 LRI 530)
See para 37, 38

^{xiii} Article 243 T (1-6): Reservation of Seats, in Part IX A of the Constitution of India Ins. By The Constitutional Amendment Act, 1992

^{xiv} *C.B. Muthamma v India*, AIR, 1979, SC 1868

^{xv} AIR 1981 SC 1829

^{xvi} 1986 1SCR 743

^{xvii} *Gita Hariharan & Another V. Reserve Bank of India & Ors.*, Supreme Court of India 17 Feb, 1999 (para21)

^{xviii} See also *Saurabh Chaudhry & Ors. v. Union of India & Ors.*, Supreme Court of India, 4 Nov. 2003

^{xix} 1996, 5 SCC 125

^{xx} Supreme Court of India,23 sep 2003

^{xxi} In *Vishakha v. State of Rajasthan* AIR 1997 SC 301

^{xxii} In *Apparel Export promotion Council v. A. K. Chopra* AIR 1999 SC 625

^{xxiii} *Chairman Railway Board v. Chandrima Das*, AIR 2000 SC 988; 2000 (2) SCC 465

^{xxiv} *Anuj Garg v. Hotel Association of India* 2008 (3) SCC 1