



# Gender Bias in Indian Law: Analyzing the Under Representation of Women in the Organized Sector

## *Analyzing the Under Representation of Women in the Organized Sector*

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**Abstract :** This study examines the ongoing gender bias in Indian law and how it affects women's under-representation in the organized sector. The study investigates the legislative framework, policies, and practices that support gender gaps in women's access to employment, job stability, and career advancement. This study also intends to shed light on the structural obstacles that women encounter while trying to enter and advance within the organized sector by reviewing pertinent laws, judicial rulings, and empirical data. This study will help establish strategies to advance gender equality in the workplace and enlighten policymakers, solicitors, and organizations about the pressing need to address gender bias in Indian law.

**IndexTerms - Gender Bias, Indian Law, women, unorganized sector, gender equality.**

### Introduction

In many societies, including India, gender inequality is still a significant problem. Women in India continue to confront substantial obstacles and under-representation in the organized sector despite improvements in a number of fields<sup>1</sup>. In this study, gender prejudice in Indian legislation is examined along with how it affects women's involvement and representation in the organized sector.

The Constitution of the democratic and multicultural country of India defends the notions of gender equality. All citizens, regardless of gender, are guaranteed equal rights and opportunities. Additionally, India has ratified a number of international conventions that support the rights of women and gender equality. The representation of women in the organized sector is still disproportionately low, notwithstanding these legislative obligations and protections.

In India, gender equality and women's economic empowerment are significantly impacted by the under-representation of women in the organized sector. It limits women's access to financial resources, professional possibilities, and leadership positions, perpetuating gender inequalities in society. This study aims to comprehend the root causes and effects of gender bias inside the Indian legal system.

This study's goals are to evaluate the legal framework for gender equality in India, analyze the obstacles and discriminatory practices that prevent women from working in the organized sector, and suggest solutions to these problems. This research attempts to offer insights into the structural problems that contribute to gender bias in the workplace and offer ideas for enhancing women's representation and empowerment by examining case studies, empirical evidence, and pertinent literature.

This study is crucial because it highlights the gender disparities that still exist and the difficulties that women experience in the Indian organized sector. It will add to the corpus of knowledge already available on gender prejudice in Indian law and offer insightful information to policymakers, lawyers, businesses, and civil society organizations. This study aims to establish a more equitable and inclusive society that supports equal opportunities and gender diversity in the workplace by addressing the under representation of women in the organized sector.

### An Overview: Gender Bias in Indian Law

<sup>1</sup>Government of A.P. vs. P.B. Vijaykumar (1995) 4 SCC 520

In India, the constitution, laws, and other regulations that support women's rights and guarantee equality of opportunity make up the legal foundation for gender equality. The essential rights of equality, non-discrimination, and equal legal protection are all guaranteed under the Indian Constitution. In accordance with Articles 15<sup>2</sup> and 16<sup>3</sup>, there may be no gender discrimination in cases involving public employment. Article 15 forbids such discrimination<sup>4</sup>. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013 and the Protection of Women from Domestic Violence Act of 2005, respectively, offer legal protections against gender-based violence and harassment.

### Historical Context and Constitutional Provision

The ancient patriarchal attitudes and practices that have sustained gender inequality are reflected in the historical backdrop of gender bias in India. 1950 saw the adoption of the Indian Constitution, which included clauses aimed at reducing gender inequality and advancing women's empowerment. The Directive Principles of the State Policy outlined in the Constitution place a strong emphasis on the state's duty to protect gender equality, outlaw forced labor, and guarantee maternity benefits for women. Over time, amendments to increase gender equality have been adopted, including the 73rd and 74th Amendments, which encourage women to participate in municipal government.

### Challenges and Limitations of the Existing Legal Framework

In tackling gender bias, the current legal system faces a number of obstacles and constraints. First of all, there is a dearth of thorough law that addresses the various forms of discrimination experienced by women in various industries. Attempts to remedy underrepresentation are hampered by the lack of legislation particularly addressing gender-based hiring practices, occupational segregation, and glass ceilings. Inadequate implementation procedures, a lack of knowledge of legal rights, and societal barriers are among the factors that make it difficult for women to obtain justice and pursue remedies for discrimination.

The efficiency of the legal framework is complicated by how gender intersects with other social categories including caste, religion, and class. Multiple interacting factors that reinforce discrimination and biases might exacerbate the under representation of marginalized women.

### Current Status of Women in the Indian Workforce

Women are underrepresented in India's organized sector, which is defined as official employment with legal safeguards. Despite substantial advancement over time, women's presence in the workforce still falls short of what it could be. The World Bank estimates that the labor force participation rate for women in India was about 22% as of my most recent report in September 2021, substantially lower than the worldwide average.

This under representation is caused by a number of things, including institutional and structural hurdles in the workplace, traditional gender roles, and sociocultural norms. The factor contributing to Under representation:

1. There are few options for women to work in India's traditional societies because they are frequently emphasized as carers and homemakers. This discrimination may deter women from pursuing careers or restrict their options to particular fields or professions.
2. Women have a disproportionate amount of responsibility for caring for the home and family. It can be difficult to balance work and family obligations, and a lack of support structures, such as easily accessible childcare centers, may deter women from entering or remaining in the workforce.
3. The under representation of women in the organized sector is partly a result of differences in educational attainment and skill development. Women's capacity to compete for skilled occupations may be hampered if they have limited access to quality education and vocational training.
4. Women frequently experience workplace discrimination, including prejudice in hiring, promotions, and uneven remuneration for equal labor. A further barrier to women's career advancement is discrimination based on gender which might result in exclusion from specific work opportunities or job responsibilities.

### Occupational Segregation and stereotyping

The concentration of men and women in certain employment areas or industries is referred to as occupational segregation. Because some industries in India are typically viewed as being "male-dominated" or "female-dominated," professional choices are often made based on gender stereotypes.

For instance, women are frequently encouraged to work in professions like education, healthcare, or other service-oriented businesses, whereas heavy industries, engineering, and other technical fields tend to be dominated by males. This professional segregation limits women's employment options and possibilities while also maintaining gender-based prejudices.

<sup>2</sup>Right to Equality

<sup>3</sup>Right to Equal Opportunity to all

<sup>4</sup>Air India vs. NergeshMeerza, AIR 1981 SC 1829

## Gender pay and Disparities

A key problem in the Indian workforce is the gender wage disparity<sup>5</sup>. For similar labor, women are frequently paid less than their male counterparts, and wage and salary inequities exist. Multiple variables, such as discriminatory pay practices, occupational segregation, and the undervaluation of roles that have historically been dominated by women, have an impact on this pay difference.

In addition, lack of mentorship and opportunity for skill development may impede the career advancement of women, which might worsen wage and positional discrepancies.

To overcome these obstacles, it is essential to put into practice laws and programs that advance gender equality at work, such as:

1. Raising awareness of and opposing societal conventions that restrict the employment options available to women.
2. Supplying easily accessible and reasonably priced daycare services to assist working mothers<sup>6</sup>.
3. Promoting and assisting the education and skill development of girls.
4. Putting anti-discrimination policies and legislation into practice to guarantee equal compensation for equal labor.
5. Encouraging workplace adaptability and work-life balance to take into account obligations to one's family.
6. Encouraging businesses to undertake diversity and inclusion initiatives to combat misconceptions and advance women's professional advancement.

India can make substantial progress towards advancing gender equality and increasing the presence of women in the organized sector by solving these problems, which would result in a more inclusive and diversified workforce.

## Case Studies on Gender Bias in Specific Industries

The existence of biases and gender inequities<sup>7</sup>, although the precise conclusions may differ depending on the study's setting and historical period.

1. Technology sector: Gender inequality has long been a problem in the technology sector. Issues like the underrepresentation of women in technical professions, gender wage inequalities, and workplace culture have been examined in a number of case studies. These studies frequently point to discriminatory recruiting, promotion, and retention practices that hurt women.
2. Finance and Investment: Studies in these fields have brought attention to the pay, access to capital, and leadership gaps between men and women. Research frequently points to preconceptions' effects on job advancement, the lack of networking opportunities for women, and biases in the judgment of women's performance.
3. STEM (Science, Technology, Engineering, and Mathematics) disciplines: Gender prejudice in STEM disciplines, where women are frequently underrepresented, has been the subject of numerous case studies. Certain studies look at things like lack of mentorship opportunities, gender stereotypes, and unconscious biases in recruiting and evaluation procedures that deter women from entering or succeeding in certain industries.
4. Legal Profession: Case studies in the legal field have looked at issues like salary inequities, work-life balance, and gender differences in partnership promotions. They frequently draw attention to prejudices in the selection of difficult cases, the standards for promotions, and how unconscious biases affect the dynamics of the courtroom.

## Gender Biased Hiring Practice and Bias

The term "gender-based hiring practices and bias" refers to unfair hiring procedures or prejudices that are motivated by a candidate's gender. These behaviors can take on many forms, including:

1. Job Advertisement: Some employment ads may include wording that is prejudicial to one gender over another, implying a preference for that gender. Using terms like "strong" or "assertive" for roles that have historically been dominated by men, or "nurturing" or "supportive" for roles that have historically been dominated by women, as an example.
2. Stereotyping: Hiring managers or employers could have preconceived notions about a person's aptitudes, competencies, or suitability based on their gender. As a result, hiring decisions may be influenced by bias.
3. Unequal Opportunities: When candidates are not offered equal opportunities based on their gender, gender-based discrimination can also happen. For instance, denying people of certain gender-equal access to training, mentorship, or advancement possibilities.
4. Pay Disparity: Pay differences between people of various genders for doing the same job can also be considered a kind of gender-based discrimination.

<sup>5</sup>Vishaka v. State of Rajasthan AIR 1997 SC 3011

<sup>6</sup>McKinsey & Company: Women Matter: Gender diversity, a corporate performance driver (2007)

<sup>7</sup>A.K. Warren: Cascading gender biases, compounding effects: An assessment of talent management systems

Many nations have developed laws and rules to promote gender equality in employment to address gender-based hiring practices and bias. These rules forbid gender-based discrimination and support equal opportunity for all applicants.

### **Maternity Rights and Discrimination**

The terms "maternity rights" and "discrimination" refer to the legal rights and protections provided to employees who are pregnant as well as situations in which discrimination may take place based on pregnancy or maternity status<sup>8</sup>. Among the many problems with maternal rights and prejudice are:

1. **Maternity Leave:** Employees who are pregnant may take time out of work before and after giving birth thanks to maternity leave laws that are in place in many nations. However, if a company forbids maternity leave or penalizes a worker for taking it, it may be discriminatory.
2. **Maternity Pay:** Pregnant workers frequently qualify for maternity pay while on leave. When a pregnant employee is paid less or is denied maternity leave compared to other workers on similar leaves, it may constitute discrimination.
3. **Job Security:** In principle, pregnant workers should not be fired arbitrarily or subjected to unfavorable treatment because of their pregnancy. If an employer discharges an employee or treats them unfairly as a result of their pregnancy, that is discrimination.
4. **Workplace accommodations:** Pregnant employees may be entitled to fair workplace adaptations from their employers, such as flexible work schedules, modifications to physical chores, or time off for doctor's appointments. Failure to make these modifications or treating pregnant workers less favorably than those with a temporary disability can constitute discrimination.

While different jurisdictions have different laws and regulations aimed at preventing pregnancy discrimination, many nations have particular laws in place to safeguard pregnant workers and guarantee their rights are protected.

### **Workplace Sexual Harassment and Safety**

Any type of unwanted sexual advances, requests for sexual favors, or other verbal or physical activity of a sexual character that foster an intimidating, hostile, or offensive work atmosphere are considered forms of workplace sexual harassment. Beyond sexual harassment, there are other workplace risks that can raise safety issues. Key elements of workplace safety and sexual harassment include:

1. **Prevention:** It is the duty of employers to create rules and practices that forbid sexual harassment in the workplace. This includes specific instructions on how to report incidences, what constitutes sexual harassment, and the penalties for offenders.
2. **Investigation and reporting procedures** must be in place for employees to report instances of sexual harassment in a secure, private setting. Employers should look into complaints right away and take the necessary steps to address the situation.
3. **Protection from Retaliation:** Many nations have laws protecting employees from being fired for reporting sexual harassment. Employers are forbidden from retaliating against employees who file complaints by dismissing or demoting them.
4. **Safe Workplace:** It is a legal requirement that employers give all workers a safe place to work. This entails taking action to stop and address any potential safety risks, including sexual harassment.

Many nations have laws<sup>9</sup> in place that address workplace safety and sexual harassment, defining the rights and protections of workers and providing instructions on preventing and resolving such problems<sup>10</sup>. Employers should actively seek to foster a climate of fairness, equality, and safety at work.

### **Promoting gender equality in the organized Sector**

A multifaceted strategy comprising policy proposals, legislative changes, business initiatives, and cooperation between diverse stakeholders is needed to promote gender equality in the organized sector. Here is an explanation of each component:

- **Policy Recommendation**

Governments should develop thorough gender equality plans that concentrate on the organized sector. These regulations should cover matters like pay equity, gender-based prejudice, and work-life balance. Encourage businesses to hire women and men equally and to value diversity in the workplace. Implement measures to aggressively combat gender biases in hiring and promotion decisions, as well as to create rules that encourage flexible work arrangements, such as telecommuting and flexible work schedules,

<sup>8</sup>Maternity Benefit Act, 1961

<sup>9</sup>ILO Convention No. 190

<sup>10</sup>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

to promote greater work-life balance, which can be especially helpful for women who frequently shoulder more responsibility in care giving. Some strong regulations have to be into place to guarantee equal compensation for equal labor. The gender pay gap can be reduced through regular audits and pay scale transparency. To lessen the strain on working parents, particularly women, governments should invest in inexpensive and accessible childcare facilities.

- **Legislative Reform**

Promoting gender equality in the organized economy necessitates legislative reform. The following significant legislative changes can help achieve this objective:

1. **Anti-Discrimination Laws:** Pass laws that expressly forbid gender-based discrimination in all facets of employment, such as hiring, promotions, pay, and working conditions, or make existing laws stronger. These laws should include procedures for reporting infractions and precise definitions of what constitutes discrimination.
2. **Equal Pay:** Enact laws that guarantee equal compensation for equivalent work. This may entail actions like mandates on pay transparency, compensation reviews, and fines for firms that practice pay discrimination based on gender.
3. **Mandatory Parental Leave:** Pass laws requiring both parents to take a paid leave of absence, with a focus on encouraging males to actively participate in childcare duties. The detrimental effects of childbirth on women's employment can be lessened with the support of longer and more flexible parental leave laws.
4. **Quotas and Targets:** Consider implementing quotas or targets for women's representation on corporate boards, executive positions, and other leadership roles. These measures can help address the under representation of women in decision-making positions and create more opportunities for their advancement.
5. **Workplace Harassment Laws:** Establish comprehensive laws that address workplace harassment, including sexual harassment. These laws should define prohibited behaviors, outline reporting procedures, and ensure that victims are protected from retaliation. Adequate mechanisms for investigation and redress should also be in place.

- **Corporate Initiative and Inclusions**

Organizations should design and put into place diversity and inclusion initiatives that advance gender equality, combat gender bias, and foster a welcoming workplace environment. Create initiatives for mentoring and sponsorship to assist the progress of women in the organization's workforce. Conduct gender pay equity analysis on a regular basis and take corrective action to close the wage gap. Encourage the creation of employee resource groups (ERGs) devoted to gender equality to promote networking and activism.

### **Role of Government, Civil Society, and International Organization**

**Government:** Governments must set a positive example for gender equality in the public sector. Additionally, they might offer rewards and recognition to private businesses that excel at advancing gender equality.

NGOs and other members of civil society are essential to promoting gender equality and ensuring that laws and other measures are being followed.

**International Obligations:** Nations should uphold their obligations under numerous conventions and treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women<sup>11</sup>, to advance gender equality.

All spheres of society must work diligently to advance gender equality in the organized sector. We can create a more inclusive and equitable working environment for everyone by putting these policy ideas, governmental reforms, and corporate initiatives, and fostering collaboration into practice.

### **Conclusion**

The research on gender bias in Indian legislation and how it affects the under representation of women in the organized sector has shown some important discoveries. First of all, despite having a legislative framework for gender equality, India faces difficulties and restrictions in its application and enforcement. For example, with relation to gender-based hiring practices, occupational segregation, and glass ceilings, existing legislation frequently falls short in addressing the various forms of discrimination experienced by women.

The historical setting and cultural norms that were impacted by patriarchal structures also play a role in the survival of gender bias. Women's prospects for economic empowerment are restricted, and preconceptions and traditional gender norms prevent them from fully participating in the workforce. The difficulties that women encounter are made worse by social attitudes, deficient support networks, and obstacles to justice.

<sup>11</sup>CEDAW

The results also emphasize the necessity for a comprehensive law that tackles how caste, religion, and other social categories intersect with gender. Inter sectional discrimination exacerbates the under representation of marginalized women, calling for a comprehensive strategy to address their particular difficulties and hindrances.

Women's ability to seek redress for discrimination is further limited by gaps in the implementation processes and awareness of legal rights. Beyond legislative requirements, efforts to advance gender equality in the organized sector must center on building a welcoming and inclusive workplace that actively combats bias and advances equal chances.

Enhancing implementation processes and ensuring efficient enforcement of current laws are also necessary. To do this, it is necessary to increase the capacity of law enforcement organizations, educate women about their legal rights, and set up support networks to make it easier for them to contact the court system. To build an environment that fosters women's empowerment and gender equality in the workplace, cooperation between government agencies, civil society organizations, and corporate entities is essential.

Corporate actions are very important for advancing gender equality. Employers should implement procedures and policies that combat prejudice, promote diversity, and provide equal opportunities for professional advancement. For the purpose of fostering a positive work environment, measures including flexible work schedules, maternity benefits, and campaigns to eliminate workplace sexual harassment are crucial.

The gender bias in Indian legislation and how it affects the representation of women in organized labor are two important topics covered in this study, but there are a number of other issues that need for additional research. Future studies should examine how gender intersects with other social categories and what that means for the under representation of women. In-depth research can highlight the particular difficulties marginalized women experience and provide focused solutions to meet their particular needs.

Further research is needed in the area of how technology and digital platforms can be used to combat gender bias and increase the presence of women in the organized sector. Investigations should focus on the digital divide, cyber bullying, and the potential of technology to empower women economically.

In conclusion, sustained efforts are needed to overcome gender prejudice in Indian law in order to achieve gender equality in the organized sector. To build a more equal and inclusive society, it is crucial to strengthen the legal system, raise awareness, and adopt inclusive policies. Collaboration between disciplines and ongoing research will help develop evidence-based policies and open the door for a more gender-equal future in India.

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