

# GENDER EQUITY: EXAMINATION OF THE LAW RELATING TO EMPLOYMENT OF WOMEN IN UGANDA

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## Abstract

The main aim of this study is to find out how the existing legislation can adequately address the challenge of gender inequality in employment of women in Uganda. The violations of women's employment rights originate in the virtually universal history of unequal power relations between men and women. The findings of the study are that the existing regulatory framework on employment in Uganda though adequate, its enforcement is still a challenge. Major emphasis has been directed towards the use of gender-neutral non-sexist language whereas other factors that interfere with the regime have remained unchanged. The study further makes significant findings that gender inequality in the workplace takes many forms namely; denial of maternity leave, unequal pay, wrongful dismissal, denial of maternity leave, discrimination at work, sexual harassment, among others. The denial of such rights perpetuates gender inequality in the field of employment. The study makes relevant recommendations namely; strategic litigation, enforcement of existing laws, affirmative action, mainstreaming gender in employment sector and reform of traditional beliefs among others.

## 1.1 Introduction and General Background

Gender issues in the workplace is a major concern worldwide as men and women confront new challenges and difficulties in achieving gender equity and fair treatment at work.<sup>1</sup> Human kind has known the need to attain gender equity in all spheres of life for quite a long. Thus, a lot of literature exists on the subject. However, it is inadequate in many aspects as most of it is of a generalized nature. This study therefore focuses on analyzing the law relating to employment of women in Uganda and brings out contemporary knowledge on the subject being analyzed shedding light on the extent to which gender equity has been undermined leading to a gender equity gap in the field of employment.

It should be noted that there are a number of critical issues which affect women in meeting the demands of work place namely; gender stereotypes, glass ceiling, unequal pay,

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1 Jacqueline De Laat (1999), *Gender in the Work Place, A Case Study Approach*, Sage Publications, New Delhi India at p. IX.

discrimination in promotion and other benefits, lack of career development and mentoring, balancing work and family responsibilities and sexual harassment, as they are complex despite a number of laws and public policies directed at workplace equality.<sup>2</sup> This is aggravated by the fact that women by reason of their natural status are susceptible to various forms of discrimination hence the infringement of their employment rights. This therefore raises concern about the current gender issues in the work place in Uganda. Thus, the purpose of this study is to analyze the employment regulatory framework in Uganda towards achieving gender equity in the work place.

## 1.2 Definition of terms Used in the Study

'Gender' refers to socially constructed roles assigned to women and men. Gender may also mean an acquired identity that is learned, changes over time, and varies widely within and across cultures.<sup>3</sup>

"Gender equity" is the equal enjoyment by women and men of socially-valued goods, opportunities, resources and rewards. It does not mean that men and women become the same, but that their opportunities and life chances are equal. Gender equity also entails that women and men enjoy the same status. Therefore, gender equity recognizes that people experience barriers to resources, opportunities, and support because of their gender and accordingly provides what each gender needs to ensure they have equal access. Gender equity may also mean that one group gets more support, to ensure they can access resources, opportunities, and support equally. While equality can refer to 'sameness', equity can be seen as 'fairness'.<sup>4</sup>

"Employment" is the relationship between master and servant.<sup>5</sup> The Employment Act<sup>6</sup> does not define the term employment. However, it defines a "contact of service which means any contact, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship."<sup>7</sup>

## 1.3 Background to the Subordinate Position of Women

The inferior position of women in society has existed since time immemorial. There is a vast interesting but conflicting philosophy and anthropological literature on the origins

2 Supra.

3 Law on Gender Equality, article 3. Source: <https://www.gzk.rks-gov.net/ActDetail.aspx?ActID=10923/>.

4 UNESCO, Gender Responsive and Inclusive TEVET Training Course, Instructor's Handbook, 2019. Source: <https://www.unesdoc.unesco.org/ark:/48223/pf0000369087/>.

5 Bryan A. Garner, Black's Law Dictionary, 8<sup>th</sup> edn, Thomson West at p..556.

6 Employment Act 6 of 2006, Laws of Uganda.

7 Supra.

and development of gender inequalities in human history. It is a strong belief from early scholars that gender roles were historically influenced by an evolutionary transition that is said to have witnessed the overthrow of mother right (the rule of women) and its substitution by fathers right (the rule of men) and hence the beginning of patriarchy.<sup>8</sup> Men have traditionally worked outside of the home and have provided the financial means. Women meanwhile have been in charge of taking care of the family and doing housework. Women's work, although demanding, difficult, and time-consuming, has always been unpaid.

The said patriarchal rule was linked with the exploitation and subordination of the female sex. Bachofen, an early writer on Greek society has argued that the social position of the men and women was as a result of the evolution of religious ideas and intrusions of new deities. He asserts that at this point of time, women who were formerly free to have sexual relationships with any man resorted to having permanent marriages with one man but after this man became a father figure and subordinated the woman.<sup>9</sup>

The inferiority of the woman is often interpreted in the biblical terms to have resulted from the woman's disobedience of God's rule which earned her a curse as follows;

*"... I will greatly multiply your sorrow and your conception, · in sorrow you shall bring forth children; and your desire shall be to your husband, and he shall rule over you."*<sup>10</sup>

Therefore, men have over the centuries perceived themselves as rulers and women as the subjects. But this was not the intended purpose of man and woman because in Genesis 2:23, man and woman were created as companions. Thus, the subjection of women was only a result of sin. Since Jesus Christ died to save the world from sin, it means that women have been redeemed from that subjection to sin.<sup>11</sup>

On the other hand, the Islamic Koran portrays the same inferior position of the woman, that men are a degree above the women and men are the protectors of women because Allah has given men more strength than the women and men support women from their means.<sup>12</sup>

Theorists such as the Marxists and writers like Morgan and Fredrick Engles, explain the conflict between sexes as resulting from the development of production.<sup>13</sup> They believed that all human societies evolved through three stages of development namely; savagery, barbarism and civilization. In the primitive communist society, man used rudimentary tools

8 Fredrick Engles (1977), *The Origin of the Family, Private Property and the State*, at p.6.

9 J. J. Bachofen, *Myth, Religion and Mother Right*, selected Writings, Bollingen Series LXXXIV, Princeton University Press, ISBN 0-691-01797-2, 1973.

10 The Holy Bible, King James Version Genesis 3:16.

11 1 Peter 3:18.

12 Koran 2:2 and 4:4.

13 Lewis Morgan (1970), *Ancient Society* at p.124.

and implements and therefore developed a division of labour; man hunted, went fishing and fought in case of any attack. The woman looked after the home, prepared food, weaved and sewed.

As man continued hunting, he changed his social and economic roles by domesticating animals and acquiring slaves. He introduced hoes and cattle-drawn ploughs for producing surplus food. Man became so propertied. However, man was not content because the system of inheritance was along mother line. This injustice caused man to overthrow the mother right and replaced it with the father right to ensure inheritance through the paternal line.<sup>14</sup>

The superimposition of the male over the female was therefore as a result of the male acquisition and accumulation of property and the reversal order of inheritance did away with the supremacy of the female sex. Engles asserts that the overthrow of mother right was the world's historic defeat of the female sex. The man seized the reign in the house, the woman was degraded, enthralled and the slave of man's lust, a mere instrument of breeding children.<sup>15</sup>

Similarly, the African folk belief about the overthrow of the female rule was through trickery in form of the males impregnating all the females and making them weak and vulnerable, unable to rule and the consequent overthrow and subordination.<sup>16</sup> The patriarchs therefore imposed themselves on women to the extent of imposing separate diets for men and women. Men rather than women enjoyed all protein foods.

Married women and women of marriageable age were barred from eating poultry, eggs, mutton, fish, grasshoppers and several other nutritious foods; eating was also gendered.<sup>17</sup> It can be inferred from the above views that the natural law theories are not only gender biased but also idealistic and fail to relate the occurrence of events to the existing socio-cultural and sometimes ecological factors.

In the same vein, in Uganda, gender roles are equally largely influenced by traditional trends. It is highly believed amongst the people in Uganda that a man is naturally the head of the family, he controls farm and crop proceeds, and he is the bread winner responsible for house hold essentials such as sugar, salt and soap.<sup>18</sup> The woman on the other hand bears children, looks after the house, prepares food, weaves, and sews; and she has no right to

14 P. N., Tuhaise (1999), Gender Roles and Sexual Inequality, Domestic Labour and the Burden of Housewives in Uganda, Reported in "Gender Roles & Sexual Inequality in Uganda, Vol 5:2 at p.144.

15 Supra.

16 Ali Mazrui, The Black Woman and the Problem of Gender, Trials, Triumphs and Challenges, the 1991 Guardian Lecture delivered on 04<sup>th</sup>, July, 1991.

17 D. L. Hodgson & Sherry A. MC Curdy, "Wicked" Women and the Reconstruction of Gender in Africa, at p.43.

18 Supra.

own property.<sup>19</sup> This makes her dependent on the man for all she needs hence, her inferior position in society.

The impact of colonialism, neo-colonialism and the cash economy also exacerbated the inferior position of women in Uganda. The colonial education policy favored educating boys while sidelining girls. As men got salaried jobs and labour wages, controlled political, social economic affairs of Uganda, women were confined to homes. In the same vein, colonial and postcolonial governments in Uganda enacted laws that promoted discrimination on the basis of sex.<sup>20</sup>

Although the Constitutions prohibited discrimination on grounds like sex, race religion and tribe, women were still sidelined. Article 20 (4) of the 1962 Constitution expressly provided that women were not allowed to inherit their father's estate. On the whole, most colonial and postcolonial laws treated women as minors and incapable of managing their own affairs.

It is evident from the above diagnosis that the subordinate position of the woman is a social evil that needs redress. The said subordinate position of women still manifests itself in all facets of life inclusive of the field of employment to date.

## 2.1 Regulatory Framework

This segment assesses existing regulatory framework on women employment in Uganda.

## 2.2 The Constitution of the Republic of Uganda, 1995 (as amended)

The Constitution enjoins the State to provide adequate resources to enable institutions function effectively to ensure that all Ugandans enjoy rights and opportunities and access to *inter alia* work, pension and retirement benefits.<sup>21</sup>

The State is also enjoined to ensure gender balance and fair representation of marginalized groups on all constitutional and other bodies.<sup>22</sup> The State is called upon to recognize the significant role that women play in society.<sup>23</sup> This focuses *inter alia* on bridging the gap between men and women in the employment sector and through recognition of women's contribution of mainly the non-monetary domestic labour like home keeping and child upbringing.<sup>24</sup>

The Constitution further provides for affirmative action in favour of groups marginalized on the basis of gender, age, or any disability or any or other reason created by history,

19 G. Afredson, et al Martinus (Editors) (2001), Nihijoff Publishers International Human Rights at p.433.

20 The most outstanding example is the old Constitutions (1962, 1966 and 1967) of Uganda.

21 Objective XIV (b).

22 Objective VI.

23 Objective XV.

24 Article 32 (1).

tradition or custom, for the purpose of redressing imbalances which exist against them. In the same vein, thereof prohibits laws, cultures, customs, and traditions which are against the dignity, welfare or interest of women or any other marginalized group to which clause (1) relates or which undermines their status, are prohibited by this Constitution.<sup>25</sup>

Additionally, women shall be accorded full and equal dignity of persons with men and that right shall include equal opportunities in political, economic and social activities.<sup>26</sup> The State shall provide facilities and opportunities necessary to enhance the welfare of women to enable them realize their full potential and advancement.<sup>27</sup> The State is also enjoined to protect women and their rights, taking into account their unique status and natural maternal functions in society.<sup>28</sup> Therefore, the employer of every woman worker shall accord her protection during pregnancy and after birth, in accordance with the law.<sup>29</sup>

However, this is constrained by a number of factors such as inadequate knowledge of the law, women's financial ability to meet costs of legal redress and conflict between modern law and cultural rules and practices; and ineffective law enforcement mechanisms and procedures. Consequently, women continue to be exploited in the employment sector because of persistent gender inequality.<sup>30</sup>

Article 40(1)(b) enjoins Parliament to ensure equal payment for equal work without discrimination. This aims at preventing discrimination between men and women *inter alia* in the field of employment. It is mainly intended to eliminate the clearly lower pay which has been given to women for centuries.<sup>31</sup> The first legal embodiment of equal pay which has been given to women in Uganda's Constitution. This aims at according women full equal dignity of the person with men.<sup>32</sup>

Further, Article 40(1)(c) is to ensure every worker is accorded rest and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays. Article 40(3) thereof provides that every worker has a right to form a trade union of his or her choice for promotion and protection of his or her economic and social interests and this includes collective bargaining and representation, withdrawal of his or her labour according to law.<sup>33</sup> Despite the above provisions, Uganda still fails to ensure gender equity through elimination of discrimination against women and realization of their employment rights.

25 Ibid.

26 Article 32(2).

27 Article 33 (2).

28 Article 32 (3).

29 Article 40 (4).

30 Op cit.

31 Op cit.

32 Article 33(1).

33 Article 40 (3) (a) (b) and (c).

### 2.3 Employment Act, No.6 of 2006

Section 6(1) provides that ‘it shall be the duty of all the parties, including the minister, labour officers and the Industrial court to seek to promote equality of opportunity, with a view to eliminating discrimination in employment.’

Section 6(3) further defines ‘discrimination to include any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, the HIV status or disability which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service.’

The purpose of the above provisions is to eliminate discrimination in the field employment between men and women on the basis of race, colour, sex, religion, political opinion, national extraction or social origin among others which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or preventing an employee from obtaining any benefit under a contract of service. However, its enforcement is still lacking.

In this vein, The Dilemma of Maternal Responsibility and Work Rights for Working mothers<sup>34</sup>, explains that a number of employers view problems related to child birth and child naturing as threats to be productivity of working mothers and often times use it as an excuse for discriminating against them.

Section 6(6) of the Act infers that the Minister and the Labour Advisory Board shall, in performing their duties seek to give effect to the principle of equal remuneration for work of equal value. Section 6(7) reiterates the same position. It should be noted that women dominate the low paid jobs of domestic work, teaching, nursing and secretarial work. They are also concentrated in the informal sector dealing in petty commodities where profit margins are very low.<sup>35</sup> The majority of Ugandan women are found in the agricultural sector where they rarely control cash crop incomes. The worst cases of exploited women employees are those in domestic house work where there is no remuneration or protection.

Section 56(1) of the Act grants a period of sixty working days maternity leave from work and full wages to a female employee as a consequence of pregnancy of which at least four weeks shall follow the child birth or miscarriage. In addition, a female who gets pregnant shall have the right to return to a job which she held immediately before her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.<sup>36</sup>

34 Supra.

35 Basirika, E (1992): Structural and Women Adjustment in the Formal Sector, A Study of Market Women; Research Report, Kampala, atp.15.

36 Section 56(2).

Section 57 gives men freedom to care for their wives at home after birth.<sup>37</sup> It entitles them to four days paternity leave per year. Nevertheless, there is a controversy on the issue of men with polygamous families.<sup>38</sup>

## 2.4 Minimum Wage Advisory Board and Wage Council Act Cap.221

This is the legal instrument which is supposed to appoint a Minimum Wage Advisory Board for a specified area or group of employers in any occupation. Section 14 of the Act, provides for penalty for failing to pay minimum wage. However, there is no minimum wage in Uganda. This therefore exposes women to exploitation through low remuneration as compared to their male counter parts.

## 2.5 Workers Compensation Act Cap.225

This Act deals specifically with compensation of workers for injuries suffered at work places and diseases contracted during the course of employment. Section 2<sup>39</sup> defines a workman as a person who is employed otherwise for the purpose of the employer's trade or business. This implies that the employer's liability arises if personal injury by accident arises out of and in the course of employment; the employer is liable to pay. However, women are not effectively catered for under this provision and the Act as a whole, the informal work mostly done by women is not covered under the Act.

## 2.6 Labour Unions Act 7 of 2006

The Labour Unions Act;<sup>40</sup> regulates national organization of trade unions and provides for the formation of employees' autonomous trade unions and branch unions of their own choice. It provides for the right to form or join trade unions. The workers' right to association and collective bargain have been laid down in the case of **Uganda Electricity & Allied Workers Union v. UEB**.<sup>41</sup> However, there is still a problem of women not getting fully involved in trade unions because the men have led these unions which may not readily represent women.

37 The New Vision, Tuesday, April 4<sup>th</sup>, 2006 at p.26.

38 Basirika, E (1992): Structural and Women Adjustment in the Formal Sector, A Study of 'Market Women; Research Report, Kampala, at p.15.

39 Op cit.

40 The Labour Union Act 7, 2006.

41 [1974] E.A 203 where Uganda Electricity Board sought to close certain allowances out of negotiation and Court concluded that labour awards will never be made which will favour a daily worker the right to bargain or to negotiate collectively to obtain better and reasonable conditions of service from their employers. Interference with the right of association in contravention with Section 4 is an offence under Section 5.



*Sandra Fredman*,<sup>42</sup> writes that trade unions play a significant part in maintaining women's disadvantaged in labour market. The initial response was to exclude women entirely from trade union membership. In 1886, the Union finally faced the recommended acceptance of women provided that they paid at the same rates and as men. For this reason, the percentage of female members in trade unions is limited and insufficient.<sup>43</sup> *Josephine Eit-tan*,<sup>44</sup> explains that men monopolize the leadership in trade unions and end up representing themselves rather than being gender inclusive.

## 2.7 National Social Security Fund Act Cap.222

*Okumu Wengi*<sup>45</sup> observes that the majority of female workers unfortunately by nature of posts they occupy within the employment sector largely fall in the category of deprived workers. The NSSF Act is greatly influenced by rampant by the rampant inflation and as such the scheme under the Act has not amounted to any post-employment security for the workers especially women.<sup>46</sup>

## 2.8 The Equal Opportunities Commission Act 2007

The Equal Opportunities Commission Act is a key piece of legislation in Uganda that aims to promote equal opportunities and eliminate discrimination against marginalized groups, including women. The Act establishes the Equal Opportunities Commission (EOC), a body tasked with promoting and monitoring equal opportunities across various sectors of society. Section 9 mandates the EOC to promote gender equality and the participation of women in all sectors of society including employment.

Furthermore, the EOC is authorized to investigate complaints of discrimination and provide remedies, including recommending legal action against those responsible for discrimination. In addition, section 16 of the act provides for the monitoring and evaluation of policies and programs that affect women. This is an important piece of legislation that promotes gender equity and women's participation in various sectors of society, including employment. Its provisions help to ensure that women's rights are protected and that they have equal opportunities to participate in all aspects of society.

42 Sandra Fredman, *Women and the Law*.

43 Op cit.

44 Josephine E., "Unequal Rights".

45 Okumu Wengi (1997), *Weeding the Millet Field: Women's Law and Grassroot Justice in Uganda*, Kampala, Uganda Law Watch at p.12.

46 Op cit.

## 2.9 National Gender Policy 2007

The National Gender Policy is a comprehensive framework that guides *inter alia* the implementation of gender equality and women's empowerment in Uganda. The policy addresses a range of issues, including women's political rights, and provides a road map for promoting gender equality in all sectors of society.

## 2.10 EAC Gender Equality, Equity and Development Act, 2016

The East African Community (EAC) Gender Equality, Equity and Development Act was adopted in 2016 as a framework for promoting gender equality and women's empowerment in the East African region. The Act seeks to ensure that women and men have equal opportunities in all areas of life, including political participation.

The Act requires EAC member states to adopt measures to promote gender equality and eliminate discrimination on the basis of gender.<sup>47</sup>

## 2.11 Universal Declaration of Human Rights (UDHR), (1948)

The Declaration provides that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, without discrimination, equal pay for equal work, just and favourable remuneration, ensured by any means of social protection and the right to form and to join trade unions for protection of his interests.<sup>48</sup>

## 2.13 International Covenant on Economic, Social & Cultural Rights (ICESCR), 1966

The Covenant calls upon State parties to recognize the right to work, opportunity to gain a living by work, technical and, and vocational guidance and training, to achieve among other things full and productive employment.<sup>49</sup>

However, the school systems in Uganda continue to stereotype female students to traditional careers of nursing, secretarial services and home management which tend to be low paying. Science is still considered a preserve for men as fewer women take up science subjects. Yet, women like men need skills that will make them self-reliant, facilitate personal entrepreneurship, and to facilitate them to compete in the job market favorably.

Article 7 calls upon all State parties to recognize the right of everyone to enjoyment of just and favourable conditions of work which ensure *inter alia* fair wages and equal remuneration for workers of equal value without distinction of any kind, decent living, safe and healthy working conditions, equal opportunity for promotion, and rest, leisure

<sup>47</sup> Section 6.

<sup>48</sup> Article 23(1)-(4).

<sup>49</sup> Article 6.

and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays.<sup>50</sup>

Article 8 provides that State parties should ensure the right of everyone to form trade union and join a trade union of his choice subject to rules of organization, establishment of national federations, the trade union to function freely subject to no limitations than those necessary and prescribed by law, right to strike among others.

Article 9 states that State parties should recognize the right of every one to social security. The Covenant also explicitly prohibits discrimination. It further provides that the covenant should not be interpreted to imply any right to engage in any activity or to perform any act aimed at the destruction of any rights and freedoms recognized therein.<sup>51</sup>

#### 2.14 African Charter on Human and Peoples' Rights (ACHPR) 1981

The fundamental human rights stem from the attributes of human beings, which justifies their international protection and on the other hand, that the reality and respect of people's rights should necessarily guarantee human rights.<sup>52</sup> The Charter on one hand contains several provisions that relate to non-discrimination and equality of treatment. On the other hand, only one article makes a reference to women. Even then, it is contained in an omnibus clause that covers both the family and upholds the tradition thereby reproducing the essential tension that plagues the realizations of human rights of women.<sup>53</sup>

In *Attorney General v. Unity Dow*<sup>54</sup> the court adopted and used values enshrined in the Bill of Rights of the Constitution of Botswana and the African Charter in order to override the traditional customs relating to the unequal treatment of women regarding their citizenship rights. Unity Dow's case thus is important for the conceptual and normative boost it gave to the domestic application of the African Charter. The Court upheld that the provisions of the instrument bound Botswana. Therefore, where the domestic law is silent about an issue in contention, relevant provisions of the instrument will be relied upon.

#### 2.15 Convention on Elimination of Discrimination Against Women (CEDAW), 1979

This is the chief international human rights instrument for protection of women's rights. The enactment of the Convention appears to have been prompted by the fact of existing and continuing inequalities between women and men, their effect on the world development generally, and on women and the realization of their rights in particular.<sup>55</sup> The Convention

50 Article 7(a)-(d).

51 Article 25.

52 Preamble of the ACHPR.

53 Article 18.

54 C.A Civ..App. No.4/1991 Botswana (unreported).

55 Op cit.

calls upon state parties to implement policies that eliminate discrimination against women not only by embodying it in its domestic legislation, but also by effecting its practical realization.

The Convention also enjoins State parties to take all measures to eliminate discrimination against women in the field of employment; in the particular right to same employment opportunities, free choice of profession and employment, promotion, job security, benefits and conditions of service, equal remuneration, social security, and protection of health and proper working conditions.<sup>56</sup> It also calls upon states to prohibit dismissal on grounds of pregnancy or maternity leave, or marital status, introduce maternity pay and to provide necessary supporting services.<sup>57</sup>

Further it enjoins state parties to take into account in particular problems faced by rural women and the significant roles the women play in the economic survival of their families, including their work in the non-monetized sectors of the economy.<sup>58</sup> As already intimated, the structure and institutions of international legal order set up under the United Nations reflect and ensure the continued dominance of a male perspective.<sup>59</sup> In practice, this means that the promise of rights is thwarted by the inequalities of power.<sup>60</sup> As such, since legal rights do not stand alone but are embedded in the dominant social and cultural setting.<sup>61</sup>

### 3.1 Challenges Faced by Women in formal Employment in Uganda

This part discusses the challenges faced by women in Uganda's employment sector. Women remain under represented in the labour market. There are a number of constraints to women's participation in the labour market.<sup>62</sup> *Basirika* (1992)<sup>63</sup> argues that employed women dominate the low paid jobs of domestic work, teaching, nursing and secretarial work. The women are also concentrated in the informal petty commodity trade where profit margins are very low. The majority of Ugandan women are found in the agricultural sector where they rarely control cash crop incomes. The worst cases of exploited women employees are those in unpaid domestic house work.

56 Article 11 (1).

57 Article 11(2).

58 Article 14 (1).

59 J. Peters & A. Wolpereds, (1995), *Women's Rights, Human Rights* at p.104.

60 Op cit.

61 Op cit.

62 Mwaka, V., (1993), *The Relationship between personal Profiles of Women in top Management in Uganda and their Access to Top Management Positions*, Seminar paper, Kampala at p.12.

63 Basirika, E, (1992), *Structural Adjustment and women in the Informal Sector, A study of Market Women*, Research Report, Kampala, p.15.

### 3.2 Manifestations of Patriarchy and its Pervasiveness

The fundamental problem is that, individuals are often not aware of the manifestations of patriarchy and its pervasiveness because it is intrinsically rooted in our value systems, beliefs and thinking processes. Therefore, the violations of women's employment rights originate in the virtually universal history of unequal power relations between men and women. The inequalities are rooted in a combination of social, economic, political, cultural and psychological conditions. The questioning of patriarchy invariably means challenging one's values and beliefs or culture. As a result, policy makers who are mainly men hardly realize that they are practicing gender discrimination.<sup>64</sup> Culture is used to justify and keep women subordinate.

### 3.3 Gender stereotyping of work

This refers to regarding certain types or categories of work as "male" and others as "female". Although the number of women in many formerly male professions notably law, medicine, governance and academia have increased dramatically, one of the most important contributing factors has been the increased similarity among men and women in the percentage graduating from college. Women are an easy target of gender stereotypes. Challenging such stereotypes is essential not only to ensure gender equality and equity, but also to expand the debate about economic development.<sup>65</sup> The occupations dominated by men so ably summarize that this segregation persist because of a variety of factors. Although Goldin (1990)<sup>66</sup> reports most explicit rules prohibiting women from certain types of work or requiring them to resign on marriage are now illegal, the impact of these earlier practices remains whereas few individuals may be willing to oppose that established pattern.

### 3.4 Maternity challenges.

A number of employers view problems related to child birth and child naturing as threats to the productivity of working mothers and often times use it as an excuse for discriminating against women in employment.<sup>67</sup> In an article titled; *When Pregnancy puts your Career at Stake*, Muyiyi writes that when pregnant, not only is social life halt but also the ability

64 Op cit.

65 Gender Equality in Employment, anti-stereotyping and gender responsive toolkit for Kosovo Employment Agency, 2022.

66 Goldin, (1990), Understanding Gender Gap, An Economic History of American Women, Oxford UK, Oxford University Press, p.8.

67 The Uganda Human Rights Commission, Monthly Magazine, Can Ugandans Claim Their Work Rights? Vol.III.4, April/May 2000, p.19.

to do a number of tasks.<sup>68</sup> More pressing though is that most women have cried foul about losing out on promotion prospects or training because they are pregnant.<sup>69</sup> The writer also states that certain jobs such as being a security guard or a house help are not pregnancy friendly; few people are for instance willing to employ a pregnant woman as a house maid even though she is hard working.<sup>70</sup>

However, section 56(1) of the Employment Act grants a period of sixty working days leave from work on full wages to a female employee as a consequence of pregnancy of which at least four weeks shall follow the child birth or miscarriage and the right to return to a job which she held immediately before her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave<sup>71</sup>. In practice, most working mothers end up choosing one option at the expense of the other.

### 3.5 Unequal Pay for Equal Work

Equal pay for men and women is still not a reality. Although the legislation in Uganda provides for equal remuneration for equal or same work for both men and women, this is practically different.<sup>72</sup> Wages for women are still below those established for men.<sup>73</sup> There are multiple reasons to blame, including traditional social norms that keep women from choosing higher-paying roles and male-dominated industries, unequal access to education, and discrimination. In analysis, in most cases women working in the formal sector earn less compared to their male counter parts.<sup>74</sup> This remains a great challenge to working women in Uganda despite the legislation in place.

68 Daily Monitor, February 16 2008, at p.6.

69 The author reports one incident where Rosemary Kalebo; a former receptionist working in a bank knew that the 'axe' was looming over her head the moment she got pregnant. The employer called Kalebo in the in his office and handed to her a dismissal letter.

70 Daily Monitor, February 16, 2008 at p.6.

71 In the case of Ms. C, who worked as food scientist in a beverages company. Her employer had reduced her meager salary of UGX150,000/- to UGX75000/-while she was maternity leave. After returning to the work, she found out that somebody else had been recruited in her place rendering her jobless. When she tried to complain, her employer told her that: *"You have chosen between child birth and work, your husband can look after you."*

72 Section 6 (7) of the Employment Act, every employer shall pay male and female equal remuneration for work of equal value.

73 Nasimbwa (1998), Women Law & Grassroot Justice in Uganda, Participation of women Formal Employment in Uganda.

74 Maggie, W., (2021), Gender inequality in the workplace: The fight against bias, p.1.

### 3.6 Barriers to Promotion

There exists a broken rung at high levels of employment. Fewer women managers mean there are fewer candidates to promote to heads of department and directors. There is lack of women representation in higher offices.

### 3.7 Bias Against Mothers

There exists bias against mothers and women of child bearing age. These women are less likely to receive call back from hiring managers, even when their resumes are similar to those of their male counter parts. This points to gender biases rooted in work family narrative which views women as home care givers. The erroneous conclusion is that their devotion to family and childcare results into less commitment and in capabilities especially at high-level jobs.<sup>75</sup>

### 3.8 Incidents of sexual harassment

Sexual harassment is yet another challenge faced by women in the employment field in Uganda. Sexual harassment<sup>76</sup> is defined as unwelcome sexual advances, requests for sexual favour, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection to this conduct explicitly or implicitly affects individuals' employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. In Uganda, one in every three women have suffered sexual harassment at some point during their careers. This is a sign that sexism is overlooked in the workplace. Sexual harassment is also a direct side effect of disparity in pay and promotions. According to *Jacqueline Delaat*<sup>77</sup> the extent of harassment appears far more widespread than many initially believed, with close to half of all working women have encountered some form of sexual harassment at work.

### 3.9 Balancing Work and Family Responsibilities

The nature of families and the performance of family responsibilities have undergone a drastic change at the same time that the increase of women in the workplaces has occurred. The majority of women with children of tender years now work outside the home. Other women are single heads of households charged with both children nurturing and earning an income. The issue of taking paid work as a lone parent is a far more complex proposition

75 Ibid.

76 <http://www.eoc.gov>.(accessed on 02/10/2023).

77 Op cit.

than that suggested by the economic rationally model of labour market participation.<sup>78</sup> Many families with children no longer have either parent available in the household during day. Most children are cared for by non-family members or grandparents and are on their own after school. Even within two parent headed households, fathers rarely share family responsibilities that are solely borne by the mothers.<sup>79</sup>

Hall, D. (1990)<sup>80</sup>, reports that mothers have "a lot of stress" compared to fathers in trying to mesh work and family roles. Garey (1999), states that this has resulted into stereotyping of women as either to do family oriented or work oriented, obscuring the interconnectedness of work and family.<sup>81</sup> In a nut shell, women still find it hard to effectively mesh work and family responsibilities without stress.

### 3.10 Glass Ceiling

This refers to the invisible barrier preventing women from reaching top positions. It is interesting to note that most laws in Uganda do not facially appear discriminatory against women. Indeed, they mostly use non-sexist language which encompasses at least equality on paper of both women and men. Save for a few cases, the laws appear to offer similar guarantees and protection to both men and women. Unfortunately, this law prevents women from reaching top positions in the field of employment by assuming that they are at parity with men.

### 3.11 The Recruitment Process

The interviewing questions, techniques and stereotypes of initial recruiters may also be discriminative. Employers' control of workplace, rules and structure such as location of hours of work, shift rotations among others may also operate to discourage women from entering certain types of work.

### 3.12 Lack of technical skills

In Uganda, women remain grossly underrepresented in scientific, technical and vocational education. This makes many women less competent for formal employment as compared to their male counter parts.

78 Duncan, S. & Edwards, R. (1999), *Lone Mothers, Paid Work and Gendered Moral Rationalities*, Macmillan, Basingstoke.

79 Op cit.

80 Supra.

81 Garey, A. (1999), *Weaving Work and Motherhood*, Temple University Press, Philadelphia, at p..1.



### 3.13 Underestimation of women's unpaid housework

There are persistent limitations in data collection, which leads to continue under estimation of women's labour especially house work. Women continue to shoulder the bulk of unpaid care work. Therefore, equality of opportunity and treatment between men and women in employment remains an intractable problem.

## 4.1 Conclusion

In final analysis, in spite of the major strides taken towards women empowerment in Uganda, a close look at the present steps taken reveals a number of bottlenecks. In addition, there are other factors that interface with the legal regime have remained unchanged. Likewise, the environment in which men and women work has remained historically and culturally construed. "Wherever women are deprived of their rights and freedoms, humiliated and abused, development is invariably limited." In search for answers for failure to achieve gender equity in employment, recourse must be made to the limitations and constraints to the legal regime, in the protection of women employment rights. It must be determined whether the law *per se* is enough to achieve the gender equity in the field of employment and appropriate measures be made accordingly.

## 5.1 Way Forward

However, these predictions are based on the current state of gender inequality. We can start making a meaningful impact now to bridge the gap.

### *Strategic litigation*

Strategic litigation to bring changes in the law, practice or public awareness through taking carefully selected case relating to women discrimination in employment should be taken to court. This can be done by any person whose employments rights are infringed or in public interest.

### *Affirmative Action*

The legislature should make laws towards redressing imbalances created by history. This is what is referred to as affirmative action. Literacy for women is an important key to empower women to enable the participate in decision making in the society. Education opens avenues for women to better employment opportunities. This will lead to gradual shattering of the glass ceiling with the slow but steady entry of women into managerial and decision-making positions.

### *Gender Mainstreaming*

Mainstreaming gender in the development process right from planning to implementation and evaluation should be made. This will lead to positive indicators such as increased participation of women in both legislative and administrative structures, increased enrollment of girls in schools.

### *Hiring women in top male dominated roles*

This will allow more women to access top positions in employment. Provide women with regular coaching sessions so they can build skills and develop the mindsets they need to thrive, especially in leadership roles. Provide women with opportunities to learn new skills and become more tech-savvy.

### *Conduct an audit and make salaries transparent*

Conduct a company-wide audit to ensure that men and women in the same roles get paid equally.

### *Establish mentor-mentee relationships*

Providing opportunities for women to take up mentoring skills to help boost and train them into leadership roles as well as role models thus eliminating gender bias.

### *Advocating for Increased Paternity and Maternity Leave*

Establishing generous policies for maternity leave should be done. Maternity leave should be increased from 60 working days to at least a minimum of four months. On the other hand, the paternity leave should be increased from four working days to at least one month.

### *Reform of traditional beliefs, customs and other laws*

There is a need therefore to reform traditional beliefs and other laws, as well as the Constitution to remove obstacles to gender equality in Uganda. History has shown that culture is always changing. Culture is never static but changes in response to the needs and circumstances of a particular society at a given time. The beliefs and values of our forefathers who were mainly hunters and gatherers cannot be easily maintained in the present day.

### *Reconciliation of reproductive roles and work*

There is need to emphasize reconciliation of reproductive roles and work. Affirmative action and other measures continue to be necessary in the short term to increase women's representation in decision making management. Apart from the state's action, measures by trade unions, employers' organizations, grass root and other organizations of civil society, including mobilization of women dialogue and collaborative action, are vital in achieving women's employment rights.

### *Strong Commitment by all Stakeholders*

The strong commitments of government employers and workers organizations is vital in addressing women's strategic and practical needs and to promote gender equity at work. This often depends on the degree of these bodies, gender sensitivity and the extent to which women are represented in all structures and leadership positions. Unfortunately, women's representation lags behind that of men despite considerable positive developments.

## **References**

- Ali Mazrui, *The Black Woman and the Problem of Gender, Trials, Triumphs and Challenges*, the 1991 Guardian Lecture delivered on 04<sup>th</sup>, July, 1991.
- Basirika, E (1992): *Structural and Women Adjustment in the Formal Sector, A Study of 'Market Women'*; Research Report, Kampala.
- Basirika, E, (1992), *Structural Adjustment and women in the Informal Sector, A study of Market Women*, Research Report, Kampala.
- Bryan A. Garner, *Black's Law Dictionary*, 8<sup>th</sup> edn, Thomson West.
- D. L. Hodgson & Sherry A. MC Curdy, "Wicked" Women and the Reconstruction of Gender in Africa.
- D. J. Bakibinga, *Equity and Trusts in Uganda*, Professional Book Publishers, Kampala, Uganda, 2003.
- E. Fredrick Engles (1977), *The Origin of the Family, Private Property and the State*.
- F. Afredson, et al Martinus (Editors) (2001), *Nihijoff Publishers International Human Rights*.
- Garey, A., (1999) *Weaving Work and Motherhood*, Temple University Press, Philadelphia.
- Goldin (1990), *Understanding Gender Gap, An Economic History of American Women*, Oxford, UK, Oxford University Press.
- J. J. Bachofen, *Myth, Religion and Mother Right*, selected Writings, Bollingen Series LXXXIV, Princeton University Press, ISBN 0-691-01797-2, 1973.
- K. Peters & A. Wolpereds, (1995), *Women's Rights, Human Rights*.
- Jacqueline De Laat (1999), *Gender in the Work Place, A Case Study Approach*, Sage Publications, New Delhi India.
- L. B. Curzon, *Equity and Trusts*, 2<sup>nd</sup> edn. Great Britain, Cavendish Publishing Ltd., 1996.
- Lewis Morgan (1970), *Ancient Society*.
- Lisa Kois (1996) *Article 18 of the African Charter on Human and People's Rights: A Progressive Approach to Women's Rights*, *East African Journal of Peace and Human Rights*, Vol.3.

- M. K. Rwebangira, Proceedings of a National Workshop on Woman and the Law in East Africa, 1992.
- Mwaka, V., (1993), The Relationship between personal Profiles of Women in top Management in Uganda and their Access to Top Management Positions, Seminar paper, Kampala.
- Nasimbwa (1998), Women Law & Grassroot Justice in Uganda, Participation of women Formal Employment in Uganda.
- Duncan, S. & Edwards, R. (1999), Lone Mothers, Paid Work and Gendered Moral Rationalities, Macmillan, Basingstoke.
- Okumu Wengi (1997), Weeding the Millet Field: Women's Law and Grass root Justice in Uganda, Kampala, Uganda Law Watch.
- Oxford Advanced Learners Dictionary, 1995.
- P. N., Tuhaise (1999), Gender Roles and Sexual Inequality, Domestic Labour and Burden of Housewives in Uganda, Reported in "Gender Roles & Sexual Inequality in Uganda.
- Sandra Fredman, Women and the Law.
- The Uganda Human Rights Commission, Monthly Magazine, Can Ugandans Claim Their Work Rights? Vol.III.4, April/May2000.