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GENDER DISCRIMINATION IN NIGERIAN LABOUR PRACTICES: LEGAL CHALLENGES AND POLICY IMPERATIVES

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Abstract

Gender discrimination remains a systematic challenge in Nigerian labour practices, impacting women's professional mobility, financial equity, and psychological wellbeing. This paper explores some discriminatory labour practices that perpetuate gender inequality in workplaces, despite constitutional guarantees and international commitments. It highlights the different forms of gender discriminatory practices prevalent in Nigerian labour and finds that gender discrimination is rooted in our beliefs and cultural practices and has transcended into labour practices. This occurs in form of wage disparity, pregnancy discrimination, occupational segregation, bias hiring among others. Using doctrinal research methodology, the paper analyzes Nigeria's legal framework, through primary sources including the Constitution of the Federal Republic of Nigeria, 1999 and Labour Act 2004, and evaluates judicial interpretations of gender-based claims. Secondary materials were also utilised, such as, textbooks, journals, articles and internet sources. The paper identifies key legal challenges such as gaps in statutory provisions and lack of enforcement mechanisms and proposes concrete policy imperatives, including legislative reform and the creation of a National Gender discrimination Commission. Lessons are drawn from Kenya and USA to guide Nigeria's reform trajectory.

Keywords: Gender discrimination, labour practices, employment equity, legal reform, workplace rights.

1. Introduction

The right to freedom from discrimination is both a legal right and an internationally recognised human right.[1] Generally, the victims of discrimination tend to be the most disadvantaged and vulnerable groups of society[2], such as women, children, the elderly, and physically impaired persons. These groups should be given special treatment aimed at protecting them in order to remedy inherent inequalities with regard to full enjoyment of all rights. In societies around the world, female gender is generally viewed as inferior and subordinate to male gender. Thus, their gender-role expectations is modeled on these assumptions of the "natural order" of humankind.[3] The historic subordination, silencing, and imposed inferiority of women are not simply features of society but a condition of society[4], even though the society tries to rise beyond it in recent times. The prevailing laws and policies of the Nigerian government; do not give a wide coverage and recognition to the rights of women in the workplace.[5] Due to this, women are sometimes left unprotected by the existing laws; and where there are, provisions made for them are not all embracing to meet their legal needs.

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[1] Adejugbe, Adeyinka and Adejugbe, Adedolapo, 'Women and Discrimination in the Workplace: A Nigerian Perspective' (August 20, 2018) <https://ssrn.com/abstract=3244971 or http://dx.doi.org/10.2139/ssrn.3244971> accessed 3 February 2025.

[2] C K Agomo, *Nigerian Employment and Labour Relations Law and Practice. Nigeria*: (Unilag press. 2011 P.6)

[3] Osita, Eze, Human Rights in Africa: Some Selected problems (1984 UNESDOC Digital Library) <https://unesdoc.unesco.org/ark:/48223/pf0000077710> accessed 3 February 2025

[4] C Abimiku, 'Poverty and the Nigerian Economy: A Gender Perspective' *African Journal of Economy and Society* (2006) (7) (1) 136 – 145

[5] Nasir, M., 1998. 'Women's Rights in Nigeria', in Tabiu M. and Ladan M. (eds), Individual Rights and Communal Responsibility in Nigeria 1998) (1) 15 – 27 at p.17

Equality and non-discriminatory employment practices are rooted in the principle that all employment decisions should be based on individuals' ability to do a job, regardless of their personal characteristics that are not related to the requirements for job performance.[6] The unfortunate reality is that we live in a patriarchal society where women are subjected to unfavourable cultural stereotypes and traditional practices, while economic, political and social powers are controlled and dominated by men. Historically, working outside the home was viewed as masculine and handling responsibilities within the home has been viewed as feminine. However, there has been a shift in paradigm by the massive entry of women into paid employment as a result of their struggle to achieve economic equality, develop new social roles, and renegotiate the relationship between paid and unpaid work.[7] Despite the labour force participation rate gradually closing up and some improvement in the educational and professional attainment of Nigerian women, there are obstacles confronting women in the workplace in form of gender discrimination. In almost 60 years since Nigeria attained independence in 1960, Nigerian women have made significant progress politically, economically and socially, but they are yet to completely transcend the challenge of discrimination. Whilst some Nigerian women have made giant strides in their workplaces, especially in the banking sector[8], most women are still grappling with one form of gender discrimination or another.

This paper has ten parts; the first part gives an overview of gender discrimination in labour practices; the second part is conceptual clarification; the third part looks briefly at the historical analysis of women at workplaces. The fourth part considers the challenges with the existing legal framework on gender discrimination. The fifth part discusses forms of gender discrimination in labour practices. The sixth part is on factors that precipitate gender discrimination in Nigerian labour practices. The seventh part is a cross-country analysis focusing on Kenya and USA. The eighth part is on the impact of gender discrimination in Nigerian labour practices. The nineth part suggests with policy imperatives. The last part concludes and provides recommendations.

2. Conceptual Clarifications

I. Discrimination

The ILO Discrimination (Employment and Occupation) Conven tion, 1958 (No. 111) defines "Discrimination" as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. In the workplaces, discrimination is said to occur when people are treated differently on the basis of personal characteristics that are not related to their ability to perform on the job. To promote equality in the workplace there are two approaches. These are formal and substantive.[9] Formal approach is 'neutral' law, practice, or criterion, which applies equally to employees at work, this brings about injustice because when people are in unequal situations, treating them in the same manner invariably perpetuates, rather than eradicates, injustices. While substantive approach takes cognizance of the

[6] Dumebi, Ideh, Okwy, Okpala and Christopher Chidi, "Towards Eliminating Discriminatory Employment Practices in Nigerian Organisations" 2(1):75-86 2020 <https://www.researchgate.net/publication/349855110_Towards Eliminating Discriminatory Employment Practices in Nigerian Organisations"> accessed 20 September 2024

[7] Adejugbe, (n1)

[8] Across the financial services industry in Nigeria, women are represented on both the board and management levels, each of the top five Nigerian banks have female representation, on both the board and management level. First Bank of Nigeria and Guaranty Trust Bank have female chairs heading the board, Ibukun Awosika and Osaretin Demuren. Nigeria has also had a female acting central bank governor, Sarah Alade, in addition to regular representation of women on the central bank board. Nigeria has also had three female finance ministers in succession, one of whom was Ngozi Okonjo-Iweala, seen as one of the most powerful African women in the world, then Kemi Adeosun and Zainab Shamsuna Ahmed.

[9] "ABC of Women Worker's Rights and Gender Equality", (2nd edn) Geneva, International Labour Office (2000) <www.ilo.org>publication>wcms_087314 p.48

peculiarity and diversity of the modern-day society.[10] It extends beyond sameness of treatment; it refers to equality in outcome and includes an acceptance of unequal treatment of categories of people in order to achieve the goal of equality. Based on this, certain exceptions have been recognised as permissible; certain preferential treatment, such as the special treatment aimed at protecting pregnant women or disabled persons, is not considered discrimination as the purpose of the preferential treatment is to remedy inherent inequalities. The conceptual framework of this paper is in line with the substantive approach which focuses on real fairness**,** not just equal rules.

II. Gender

Gender is the state of being male or female with reference to socially and culturally defined characteristics of masculinity or feminity.[11] It includes the biological, social, psychological, cultural and behavioural aspects of being a man or a woman. The word gender is used as a synonym for sex.[12]

III. Labour

Labour is the service performed by workers for wages or salary. It is also be defined as an agreement between an individual and another entity that stipulates the responsibilities, payment terms and arrangement, rules of the work place, and recognized by the government.[13]

3. Historical Analysis of Women at Work in Nigeria

The Nigerian society is patriarchal in nature, which is a major feature of a traditional society,[14] which provides a super-structure where social relations with material base enable men to dominate women.[15] The Nigerian traditional society justified the marginalization of women in education, economy, labour market, politics, business, family, domestic matters, and inheritance.[16] Men exercise their control in receiving personal service work from women, in not having to do housework or rear children.

In a patriarchy-dominated society, women rights have been misunderstood because of cultural, customary practices and beliefs, which encouraged discrimination against women. The idea of equality of sexes in employment is foreign to Nigerian native law and custom.[17] In Nigeria, historical existence of a permanent body of wage earner did not exist. Nigerians, often illiterates and unskilled were not keen upon taking up wage earning occupation on a permanent basis. Subsistence farming was attractive, while women have a long history of participation in productive work in the informal sector. They were engaged in crafts making cloth dyeing and weaving, substance farming, trading and food processing among others.[18] However, Nigeria and other traditional Africa societies encouraged women to develop self-reliance through these endeavours in addition to full time housework, child bearing and child rearing but the consideration of this aspect of their work does not have any economic value. It therefore never counted and still does not count

[10] Barnard, C. and Hepple, B. "Substantive Equality", *The Cambridge Law Journal* (2000) (59)(3):562-585 at p.567
[11]<https:// www.collinsdictionary.com> accessed 20 September 2024
[12] <https://En.m.wikipedia.org> accessed 20 September 2024
[13]< https://www.myaccountingcourse.com/accounting-dictionary/employment> accessed 22nd September 2024
[14]A I Olabisi, 'Women, Culture and Society', in A Sesay and A Odebiyi (eds), *Nigerian Women in Society and Development.* (Ibadan: Dokun Publishing House 1998) p. 10; G Lerner, 'The Creation of Patriarchy'(London: Oxford University Press 1986) p. 5
[15]J Stacey, 'Untangling Feminist Theory', in D Richardson and V Robinson (eds), *Introducing Women Studies: Feminist Theory and Practice* (London: Macmillan 1993) p. 49 – 73.
[16]R Lister, 'Women in Poverty', in K Funken and P Cooper (eds), *Old and New Poverty: The Challenge for Reform.* (London: Rivers Oram Press 1995) p.12.
[17]B Amadi, Ethics *in Nigerian Culture* (Ibadan: H. E. B. Ltd. 1982) p.7.
[18]C K Agomo, 'The Working Woman in a Changing World of Work', An inaugural lecture delivered at the University of Lagos, 15th December 2004.

as an integral part of production process. What was predominant in that era was the male breadwinner model, whereby the men were the breadwinners while the women, the caregivers.

The weakening of this model gives rise to dual career, changed the nature of women's work, coupled with industrial revolution, technological advancement, and economy necessity. Even when women have jobs, many obstacles make their lives more difficult than men in the work place because the conception of labour law and its inflexibility to accommodate women's dual role. Women often are responsible for management of the household and childcare, while carrying out work place responsibility; this effectively requires them to do double entry of work responsibility and home management.

4. The Challenges with the Existing Legal Framework

A. Absence of Explicit Definition of Gender Discrimination in the Constitution

The Constitution of the Federal Republic of Nigeria[19] (1999), the fon et origo (supreme law) of our legal system prohibits all forms of discrimination, including gender discrimination and guarantees citizens the right to freedom from discrimination. Section 42(1) provides:

> *(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, **sex**, religion or political opinion shall not, by reason only that he is such a person –*
> *(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, **sex**, religions or political opinions are not made subject;*
> *or*
> *(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.*

The Nigerian Constitution has not explicitly defined "discrimination", and this makes it unclear what amounts to gender discrimination thereby making implementation cumbersome.

B. Poor Enforcement of Treaties like International Labour Convention 111 of 1958

Article 2 of the International Labour Organisation (ILO) Convention on Discrimination (Employment and Occupation) of 1958 (which Nigeria has ratified) provides that **e**ach member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. The ILO Convention has been poorly enforced in Nigeria. Hence, the subsisting issues of gender discrimination in labour practices.

C. Absence of Explicit Gender Discrimination Clauses in the Labour Act, 2024

There are no clear-cut provisions in the Labour Act on discrimination in employment or labour practices but it could be gleaned from sections 54 (maternity protection) that the law has some level of protection for pregnant women in employment. Section 58 of the Labour Act provides that any person who contravenes the provisions of section 54 of this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N200 or to imprisonment for a term not exceeding three months, or to both.

[19] CAP. C23 Laws of the Federation, 2004

D. Outdated Gender-Biased Regulations

Police Regulation 126 provides that a woman police officer who is desirous of marrying must first apply in writing to the Commissioner of Police for the State Command in which she is serving, requesting permission to marry and giving the name, address and occupation of the person she intends to marry. Permission will be granted if the intended marriage partner is considered to be of good character. This regulation imposes marital control over adult female officers. There is no equivalent requirement for male officers. It violates constitutional rights to privacy, dignity, and freedom from discrimination.[20] Also, Police Regulation 127 provides that an unmarried woman police officer who becomes pregnant shall be discharged from the Force and shall not be re-enlisted except with the approval of the Inspector-General of Police. This provision criminalizes pregnancy outside marriage only for women. It enforces moral policing and unjustly punishes reproductive choices.

5. Forms of Gender Discrimination in Labour Practices in Nigeria

Discrimination has a wide-ranging effect on labour practices at the work place. It runs from, the method an employer adopts in making selections of whom to employ, the terms on which he/she offers employment, access to promotion, transfer, training or other benefits, or dismissal. Despite the provisions of section 42 of the Constitution which guarantees the right to freedom from gender discrimination, and International Labour Organisation (ILO) Convention on Discrimination (Employment and Occupation), gender discrimination is still prevalent in Nigeria labour practices Below are some forms of gender discrimination prevalent in Nigerian workplaces:

I. Wage Disparity in the Sport Industry

Wage disparity between male and female is a major issue in in the sport industry. The male footballers earn a lot more than female footballers despite the fact that they both dissipate the same energy to do the same job. The Nigeria women's national football team, the Super Falcons, represents Nigeria in international women's football and is controlled by the Nigeria Football Federation (NFF). Super Falcons are paid significantly less than the Super Eagles.[21] The Super Falcons is Africa's most successful international women's football team, having won a record eleven Women's Africa Cup of Nations titles. When Mercy Akide-Udoh, a popular female footballer complained during an interview, the NFF spokesperson Olajire had this to say: “At the end of the day, playing for your country should not be premised on how much you get, patriotism should not be denominated in naira and kobo, but the pride of wearing the national colors.”[22] Whereas in reality, patriotism goes both ways and it takes more than just nationalistic fervor for the Falcons to thrive in football.[23] Furthermore, Alisha Lehmann, a popular female footballer in UK recently opened up on the salary difference between her and boyfriend Douglas Luiz (male footballer). While Luiz earns around £100,000-a-week, Lehamnn, earns £200,00-a-year.[24] Also, opening up on the huge gap in salary between men's and women's players, the glam Swiss winger told La Gazzetta dello Sport: "Everyone would like to have the same salary. "We do the same job, but he gets paid a hundred times more than me. "It's something that affects me because I’m a woman”

II. Pregnancy Discrimination

The Police Act and Regulations are discriminatory in nature against women in some area, such as recruitment, promotion, marriage, pregnancy, and childbirth. A Police officer who is single at the time of her enlistment must spend three (3) years in service before applying for permission to marry giving particulars of fiancé who must be investigated and cleared before permission for marriage is

[20] Section 37 and 42 of the Constitution, 1999.
[21] Chidinma Nwoye ‘Why are Nigeria’s Super Falcons Earning Less Than Their Male Counterparts?’ (2016) <https://www.okayafrica.com> accessed 21 September 2024.
[22] Ibid
[23] Ibid
[24] <https://core.ac.uk/download/pdf/2340718.pdf> accessed 18 September 2024.

granted.[25] Unmarried pregnant police officers shall be discharged from the force and shall not be re-enlisted except with the approval of the I.G.[26] This is one of the contributory factors for the low percentage of women in the Nigeria Police Force.[27] On February 15, 2021, the Nigerian Bar Association filed an originating summons challenging the discriminatory practices within the Nigerian Police Force where an unmarried female police officer was dismissed for getting pregnant.[28] The court held that Regulations 126 and 127 of the Police Act "interfere with the privacy of the lives of female police officers and discriminate against them on the basis of their gender". Oyewole, JCA had this to say: "I do not agree with the learned trial Judge that the regulations in issue are necessary for morality and discipline in the Police Force as morality and discipline do not have gender bias. It is unthinkable that the Nigerian Police of this day and age operates on the principle that female officers need to be specially moderated and regulated while their male counterparts are free. This is unacceptable in a decent and democratic society governed by the rule of law."[29] Also, in the case of Mrs. Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access initiative,[30] the applicant, a woman, had her employment terminated for being pregnant. The court applied section 42 of the Nigeria's Constitution, the African Charter on Human and Peoples' Rights[31] and the ILO Convention 111 on Discrimination. It held the termination to be wrongful and unconstitutional and awarded compensation to the tune of Five Million, Five Hundred and Seventy - Six Thousand, Six Hundred and Seventy Naira (N5,576,670.00) being one year's full gross pay.

III. Sexual Harassment

Sexual harassment at the workplace further exacerbates gender discrimination, creating a hostile work environment for women. These experiences contribute to discomfort, fear, and the erosion of women's confidence in their professional environments. It can take the form of "quid pro quo" in which a supervisor demands sexual acts from a worker as a job condition, or promises of work-related benefits. Sexual harassment in the workplace subjects the female gender to an unequal position unlike the male counterpart and this amounts to unfair labour practice. [32] In the case of *Pastor (Mrs) Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & anor*,[33] the National Industrial Court ordered the payment of the sum of N5, 000,000.0, for sexually harassing the claimant and discriminating against her.[34] The termination of the claimant's employment, simply because she refused to succumb to sexual harassment from 2nd defendant constituted a violation of her human dignity and freedom from discrimination as protected by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, and against the claimant's fundamental human right under the Constitution.

IV. Occupational segregation

Even though labour market gender gaps are closing up in emerging economies and developing countries like Nigeria, there is still gender discrimination often exacerbated by gender patterns in

[25] Regulation 124 of the Police Act; Force Order No.30; and Force Administrative Instructions No. 23.
[26] Ibid
[27] 128 in 2015, the figure for senior female police officers was 7%; and 15.9% for junior female police officers in Nigeria.
[28] See also: *Omolola Olajide v The Nigerian Police Force & 2 others* (unreported Suit No: NICN/AK/14/2021) where an unmarried pregnant police officer was dismissed.
[29] <https://punchng.com/court-declares-dismissal-of-pregnant-umarried-police-officers-illegal/#google_vignette> accessed 19 September 2024.
[30] *Mrs. Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access initiative, Nigeria & 2* Ors [2012] 27 NLLR (Pt. 76) 110 NI.
[31]The African Charter on Human and Peoples' Rights (Ratification and enforcement) Act Cap. A9 LFN 2004
[32] Section 254C of the Constitution confers on the National Industrial Court the exclusive jurisdiction on matters relating to or connected with any dispute pertaining to unfair labour practice.
[33] Pastor (Mrs) Abimbola Patricia Yakubu v. Financial Reporting Council of Nigeria & Anor Unreported Suit No. NICN/LA/673/2013, the judgment of which was delivered on 24th November 2016.
[34] Ibid.

occupational segregation. In addition, women are heavily represented in the informal economy where their exposure to risk of exploitation is usually greatest and they have the least formal protection. The informal economy provides a vital source of livelihoods for masses of women and families. Thus, occupational segregation leads to fewer opportunities for women in male-dominated fields like engineering, construction, and technology. Even within sectors where women are more represented, they tend to occupy lower-level positions, while leadership and managerial roles are overwhelmingly held by men.

V. Barriers to Career Advancement

Women face structural barriers to career advancement in Nigeria. Factors such as maternity and family care responsibilities, lack of access to mentoring, and discriminatory hiring and promotion practices limit their career advancement. Women are sometimes judged harshly in terms of maintaining employment standards, and may need to do more to prove their competence in the workplace as compared to men. Having the 'ideal worker orientation' and using males as role models might increase the pressure on women to stay late in the office to demonstrate commitment and loyalty. Usually when the opportunities at workplace are limited, men tend to be more favoured than women. The "glass ceiling" effect is also an example, where women are excluded from top executive positions, despite being qualified. Examining Nigerian Military newly ratified "Conditions of Service,[35] the new conditions of service, reversed the freedom of females to take part in Regular Combatant Course,[36]excludes female cadets from the combatant course of the Nigerian Defence Academy. The Armed Forces has the "Regular Combatant Commission", the "Short Service Combatant Commission", the "Direct Regular Commission", the "Direct Short Service", and the "Executive Commission". All the commissions have a limited career path except the Regular Combatant Commission. Only personnel enlisted in this commission have the opportunity to head any service or become Chief of Defence Staff. In the newly ratified conditions of service, women will never be able to attain such heights in the Nigerian Military which is discriminatory. Apart from societal and moral displeasures, the policy is a clear violation of Constitution which prohibits gender discrimination, based on sex.

VI. Biased Hiring Practices

An example of gender discrimination manifests in biased hiring practices, where qualified female candidates may be overlooked in favor of male applicants. Despite possessing similar qualifications and experience, women are sometimes unjustly excluded from job positions or promotions. Police Regulations allow enlistment of men at the age of 17, while the enlistment age for women is 19 and married women are disqualified from enlisting.[37]

6. Factors that Precipitate Gender Discrimination in Nigerian Labour Practices

I. Cultural Norms and Traditional Practices

Traditional gender roles and cultural norms play a significant role in reinforcing gender discrimination in employment. In many parts of Nigeria, especially in rural areas, women are expected to prioritize family and domestic responsibilities over career ambitions. These societal expectations limit women's access to education, skills training, and formal employment, further perpetuating gender inequality in the labour market.

[35] Ratified November 2017.
[36] Akeredolu, B. "Nigeria Military and Gender Discrimination", The Vanguard Newspaper, 13th November, 2017. <www.google.com.ng/amp/s/www.vanguardngr.com/2017/11/nigeria-military-genderdiscrimination-betty-akeredolu/am> accessed 20 September 2024.
[37] 125 Regulation 118, Police Act (under Qualifications for women candidates for enlistment)

II. Legal Gaps and Lack of Enforcement of Existing Laws

The Nigerian Labour Act does not explicitly address gender discrimination in labour practice, leaving a gap in implementation. Also, the Constitution has not defined what gender discrimination is, thus making the enforcement of gender discrimination difficult. Also, while Nigeria has ratified several international conventions aimed at promoting gender equality, including the Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW), and the International Labour Organisation (ILO) Convention on Discrimination (Employment and Occupation), among others, enforcement of these treaties remains weak.

III. Ignorance of the Law

A lot of Nigerian citizens are unaware of their right to freedom from discrimination enshrined in the Constitution.[38] This explains why they succumb to all manner of discriminatory labour practices without making any effort to report to relevant authorities.

IV. Lack of Education

Education is a vehicle that breaks the shackles of poverty thereby leading to transformation, development, and progress.[39] Education bestows on women a disposition for a long-life acquisition of knowledge, values, attitudes, competence, and skills. Lack of education has been a strong visible barrier to female participation in the formal sector. The impact of economic downturn and poverty on the women is higher than on the men because of the nonchalant emphasis placed on female education in some part of Nigeria. It is important to note that there is a regional variation in the levels of literacy in Nigeria. Female literacy rate is generally higher in the southern region of the country as well as the more urbanized areas compared to the northern region and rural areas. Examining the rate of literacy in Nigeria for 2016/2017, the literacy rate among female and male age 15- 24 years was 59.3 per cent and 70.9 per cent respectively. The literacy rate of most young women and men in the Southern region was higher than Northern region.[40] While the illiteracy level for women in the Northern part is very low when compared with their male counterpart in the North[41]. The educated women in the urban centres enjoy more gender equality in the workplace than those in the rural area or less educational states in Nigeria.

7. Cross Country Analysis

I. Kenya

Section 5. Employment Act, (No. 11 of 2007) places an obligation on employers in Kenya to promote equal opportunity and to strive to eliminate discrimination of any form in the workplace. Thus, it is an offence for an employer to discriminate against employees during specific processes such as recruitment, training, promotion and the general terms and conditions of employment. However, gender discrimination against women by employers in the workplace still exists despite these provisions in the Act. GMV v Bank of Africa Kenya Ltd is a landmark case, has set precedence which has been used to solve many other cases. This case involves the resolution of a dispute on termination of employment on the basis of gender-related discrimination. The claimant was an employee of the respondent who had worked with them for five years. However, on the last two years of her employment, she was blessed with children. Her second pregnancy was not a smooth one and she fell ill with a pregnancy related issue, proceeded to take sick off and was subsequently terminated as the respondent's employee. Just before her termination, it was discovered that her employer mentioned to her that she had become 'an expensive employee'. This accusation was because in two years the employee took maternity leave twice and sought sick leave once. It was when she sought her sick leave, that her employment was then terminated under claims of

[38] Section 42 of the Constitution of the Federal Republic of Nigeria, 1999.
[39] D Ikoni, *The Challenges of Poverty in a Globalised World: Perspective on the Nigerian Situation* (Nigeria: Longman publishers 2009) p.21
[40] <https://www.nigeriansstatlib.gov.ng/elibraryaa> accessed 28 August 2024
[41] Ibid.

underperformance as an employee. She then proceeded to sue the respondents on the basis of unfair discrimination, contrary to Section 5 of the Employment Act of 2007. The main issue before the court was whether the dismissal of the claimant amounts to discrimination under Section 5 of the Employment Act. The respondents counterclaimed that the employment was terminated because the employee had not achieved any of the targets set for the last two years of her employment. As a result, she was put on probation but still carried on her duties. They averred that her employment was terminated on the basis of poor performance, and not on the basis of pregnancy. They also denied any claims of calling her an 'expensive' employee. The court recognized that the Act places an obligation on employers not to discriminate against employees on the basis of gender, and furthermore on the basis of pregnancy and ruled in favour of the employee.

Lesson for Nigeria: Nigeria should adopt Kenya's approach and make clear cut provisions on gender discrimination in the Labour Act, and also prosecutes cases of discrimination to a logical conclusion.

II. United States of America (USA)

Gender discrimination in the workplace is also a pressing issue in the USA. Despite significant progress in promoting gender equality, instances of gender discrimination in workplaces still exist in terms of, unequal pay, stereotyping and bias, promotion and advancement, harassment, pregnancy discrimination, unequal opportunities, retaliation, unequal dress codes and appearance standards.[42] However, the USA has Equal Employment Opportunity Commission (EEOC) where employees who believe that they have been discriminated against at work because of your race, color, religion, sex (including pregnancy) can file a Charge of Discrimination. A charge of discrimination is a signed statement asserting that an employer, union or labor organization engaged in gender discrimination. It requests EEOC to take remedial action. There are other anti-discrimination laws, and agencies responsible for enforcing those laws e.g Fair Employment Practices Agencies (FEPA). [43]

Lesson for Nigeria: Nigeria can adopt the practice of the USA and create a commission where issues of gender discrimination and indeed all forms of discrimination in the work place can be reported.

8. The Impact of Gender Discrimination in Nigerian Labour Practices

Gender discrimination has adverse effects, profoundly impacting both individuals and the organizations alike. Below are some of the impacts:

I. It directly erodes employee's confidence, restricts their career advancement, and perpetuates gender inequality. The negative repercussions of discrimination extend beyond individual experiences, influencing overall motivation and well-being within the workplace, with women bearing a disproportionate burden.

II. Gender discrimination strengthens inequalities and restricts peoples' freedom to choose, develop their capabilities, and to pursue their professional as well as personal aspirations without regard to ability. Therefore, discrimination impedes the development of skills and competencies, and brings about denial of reward for work.

III. Gender discrimination creates a sense of humiliation, frustration and powerlessness. It discourages workers from making their best contribution to the organisation and impedes the creation of a harmonious, highly motivated and productive workplace. It is a good practice for employers to try and ensure that two workers doing same job are not treated or paid differently.

IV. Gender discrimination in labour practices has adverse effect on Nigeria's economic development. By limiting women's participation in the workforce, the country fails to fully harness the potential of half of its population. Studies show that gender equality in the

[42] <https://spigglelaw.com/examples-of-gender-discrimination-in-the-workplace/> accessed 19 September 2024
[43] <https://www.eeoc.gov/filing-charge-discrimination> accessed 20 September 2024

workplace can lead to higher productivity, economic growth, and improved outcomes in health and education.[44]

9. Policy Imperatives

Nigeria's legal environment continues to enable gender discrimination through statutory silence, ambiguous constitutional provisions, and institutional inactions as discussed earlier on this paper. To address these issues, this paper proposes the following policy imperatives:

1. The Labour Act, 2004 should be amended to include direct prohibitions against gender-based discrimination in labour practices.
2. The word "discrimination" should be explicitly defined in the Constitution to improve legal clarity. Thus, an alteration of section 42 of the Constitution of Nigeria, 1999 is proposed.
3. Establish a National Gender Discrimination Commission (where gender discrimination complaints will be lodge) with enforcement powers.
4. Provide legal aid and fast-track gender discrimination cases at the National Industrial Court of Nigeria.
5. Expand mass awareness campaigns and integrate gender equity into national labour strategies.

10. Conclusion and Recommendations

Gender discrimination in labor and employment practices is a significant issue in Nigeria. It is deeply rooted in social, cultural, and economic structures. Despite the country's legal framework, such as the Constitution, which prohibits discrimination based on gender, the reality on the ground shows that inequality persists across various sectors. Addressing this issue requires a multifaceted approach, including enforcement of existing laws, legal reforms, educational awareness, cultural shifts, and concerted efforts from both the public and private sectors to promote gender equity in employment practices.

Consequently, this paper recommends as follows:

1. The National Orientation Agency (NOA) should collaborate with Nigeria Bar Association (NBA), Non-Governmental Organizations and other stakeholders to create awareness through educational programmes on gender discrimination in labour practices in Nigeria and the remedies available in law.
2. The National Assembly should consider review of statutory provisions or any administrative instructions, regulations or practices which are inconsistent with the extant laws against gender discrimination and amended or repealed same. For example, Regulation 126 and 127 of the Police Act that discriminates against pregnant women.
3. Reported cases of gender discrimination should be given priority in court and prosecuted to a logical conclusion and appropriate sanctions should be given to defaulters.
4. The Federal Government should invest more in promoting girl child education as this will go a long way in bridging the gap of gender discrimination in labour/employment.
5. The Nigerian Labour Act should be amended to include provisions that protect employees from gender discrimination. While the Constitution should be altered to define "Discrimination".
6. The Federal Ministry of Labour and Productivity should consider proposing to the National Assembly through an Establishment Bill, the creation of a National Gender Discrimination Commission to specifically handle all gender discrimination related cases.
7. Flexible working arrangements: Employers should be required by law to offer flexible working conditions (such as remote work options or flexible hours) to help both men and women (especially the nursing mothers) balance their work and family responsibilities.

[44] ABC of Women Worker's Rights and Gender Equality", (2nd edn) Geneva, International Labour Office (2000) <www.ilo.org>publication>wcms_087314 p.48