

Women in Legal Profession: Challenges and the Way Forward

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Abstract

India has an abysmal track record in the Gender Gap Index. Although some fields can boast higher women's participation, the legal profession is still infamous for its skewed sex ratio. Albeit the Indian legal profession opened its doors to the female entrants way back in 1923, the profession is still not conducive for women's participation. In such circumstances, this paper examines the different challenges confronting women in the contemporary legal profession ranging from legal education, mentorship, work-life balance, employment opportunities, remuneration, promotions and various other aspects related to professional development. The paper also seeks to explore various prospects for bridging the gender divide that has been plaguing the profession for so long.

Keywords- *Gender discrimination, Legal System, Mentorship, Patriarchy, Work-life balance*

INTRODUCTION

In the present world, employment opportunities for women are manifold, which paves the way for them to work as equal partners with their male counterparts and contribute to the nation's progress. While we may find solace in the fact that sectors that excluded women are now a thing of the past, recent statistics of women's representation in many of these sectors are disheartening. The legal profession is one such example. Ironically, even as we have a Goddess of Justice, Themis, the legal profession is predominantly male-dominated. Across the world, the battle for women's entry into the legal profession was never easy; the success is the fruits of hard-won efforts by women who envisaged an inclusive legal system as a

prerequisite for social development. Even while the law is equally applicable to all, irrespective of their caste, colour, creed and sex, the impact of the law on each varies. In such circumstances, an inclusive and well-represented legal profession is of paramount significance to ensure that the concerns of people belonging to different caste, colour, race or sex are adequately represented. It would not be far-fetched to assume that equality in the legal system can play an instrumental role in ensuring equality in other areas. Our Constitution envisages equality as one of the edifices of our democracy, so the legal system which seeks to uphold the equality principle in the country has to invariably embrace gender equality even within its own structure.

The legal profession, across the world, including India, remained the reserve for the elite men for a long time. As regards India, the male monopoly in the legal profession was abolished with the enactment of the Legal Practitioners' (Women) Act, 1923, which paved the way for women's enrollment and right to practice as legal practitioners. Although the domain of the legal profession was opened to lady practitioners way back in 1923, the legal system is still infamous for its abysmally low women representation. While there were around 400 odd male senior advocates, there were less than 20 women senior advocates designated in the Apex Court in 2019 [1].

The skewed sex ratio speaks volumes about the unfavourable working conditions for the lady practitioners in the legal profession. According to a study conducted by Harvard Law School, India and China have the lowest representation of women in the legal profession [2]. Interestingly, India waited for around forty years after independence to see the first lady judge adorning a seat in the Supreme Court of India [3]. Even presently, India has only two lady judges in the Apex Court, while we have only 80 lady judges across the high courts in the country, which constitutes a meagre 11.6% of the total workforce [4].

However, even as we speak of low women representation in the Bench (judgeship), we must understand that it is a reflection of the status of women as members of the Bar (advocates). In such a context, this paper seeks to understand the challenges faced by women in the legal profession and explore ways to ensure conducive working conditions for lady practitioners in the legal profession.

CHALLENGES FACED BY WOMEN IN LEGAL PROFESSION

India offers both 3-year and 5-year law courses. The three-year course is available for those who completed their graduate studies, while the five-year course is open to those who cleared their XIIth class exams. The long duration for the completion of legal education is a mixed blessing. While the longer duration of the course will help increase the legal knowledge and mould the law students into capable officers of the court, the downside is that the age of the students will roughly be 24-28 years as they complete their law degree, and for most of the girls in the country, the wedding bells begin to ring around that age. Often, the familial and societal expectations of caregiving and raising up children takes precedence over the career progression. Additionally, establishing oneself in the profession of law is a time-consuming process and often time is a luxury that many women cannot afford. Indra Nooyi once said that the biological clock and career clock of women are in total conflict with each other [5]. Many women stall their practice to devote time for pregnancy, child-rearing, etc. However, the dynamic nature of law that transforms itself on a nearly daily basis and the low pay-scale, especially for those on the lower rungs on the career ladder, deters women from making a come-back after the break. Unfortunately, since there is no assurance of long-term commitment in the case of lady advocates due to varied reasons, many senior advocates and law firms are quite sceptical of having lady advocates in office and make investments for training them.

India has some of the finest women advocates who can inspire the young entrants as role models. But

the significance of mentorship in the profession cannot be overlooked. One of the greatest challenges confronting lady legal practitioners is finding the right mentorship. A good lawyer is never born but groomed. While legal education exposes the different areas of law, a mentor teaches the practical aspects of the law. The mentorship focuses on providing guidance in the areas of client handling, courtroom etiquette, drafting skills, field practice, research, and skills useful to build a successful professional career. As John Crosby rightly remarked that, 'Mentoring is a brain to pick, an ear to listen, and a push in the right direction.' The mentor can expand the career opportunities of a woman legal practitioner by helping her to acquire strong leadership qualities, desired social skills, networking opportunities, and crisis handling mechanisms for taking any challenges that come her way as she makes professional advancement. While most of the successful women advocates are associated with family firms, there are only a handful of women advocates pursuing independent practice. In many such family-run law firms, young women advocates are generally not preferred due to the late-night working demands, long-term commitments, etc. With very few independent women practitioners who are willing to mentor the young women advocates entering the profession, the young lady entrants are often left in the lurch.

India, being a predominantly patriarchal society, the entire household work remains a space 'reserved' for women; this poses a greater challenge for the lady advocates. Apart from the frequent travel commitments as part of work, advocates' offices and law firms often try to manage a voluminous number of cases with a

limited number of young practitioners. This can be mentally and physically excruciating for the young practitioners, especially the women advocates, who will have to manage the house-work as well. Justice Joseph Story of the US Supreme Court rightly remarked that the law is a jealous mistress and requires long and constant courtship. Most often, the women advocates are pushed to the point of exhaustion to maintain the work-life balance. For a very long, the profession has failed to attract the best brains of legal education primarily due to the low remuneration. It is an open secret that most of the young advocates, especially those practicing under senior advocates, are not well-paid. Hence, hiring extra helping hands is beyond the means of many lady legal professionals working in the lower or the high courts. Without little or no help coming from their spouses or families, some women are left with no choice but to prioritise one over the other. This explains the reason why many women advocates do not choose to remain in the profession after marriage, albeit there are higher chances of women advocates staying in the profession if their spouses are also advocates. The low remuneration, coupled with the highly demanding nature of the profession, has also dissuaded many women who have taken a break from practice due to any reason to rejoin the profession. In simple words, the retention rate of the profession is very poor.

Since the legal profession remained the preserve of the males for far too long, there is some inherent gender bias. No doubt, we have seen women leave their mark in many fields; however, there is some misconception that women are not best suited for the legal profession. Since aggression is considered a 'virtue' in the profession, many

believe that the legal profession is beyond the league of women. It is sad but true that women need to confront gender bias at different levels to make progress in their careers. Nearly on an everyday basis, women advocates encounter gender bias and stereotypical attitudes first at the hands of the clients, the male counterparts, and then judges, who are also mostly males.

Although women advocates are equally competent as their male counterparts, what is most often lacking in the case of women advocates is confidence. The confidence gap often deters women from plunging into and taking different risks which will help their career progress. Unfortunately, we see many competent women advocates refusing to apply for the Senior Counsel designation for the fear that they will lose their clientele because most of the clients would not prefer women counsel to represent them. We hardly see any women's appointments to key governmental posts like the Attorney General, Solicitor General, Public Prosecutor, etc., primarily because appointments to these positions are generally the outcome of intense lobbying, which generally women do not readily engage in. It appears that many of the women advocates have knowingly or unknowingly internalised gender bias.

The contours of the legal profession are changing, and networking is one of the determinants of success in the profession. While male advocates readily approach different MNCs/corporate bodies to build a strong clientele, this is something most women think twice. Even women working in law firms are not generally permitted to associate with large companies, which are considered unsavoury. This essentially leaves little or no choice for

women advocates as regards the choice of area of practice, and they end up confining to family court matters and other civil matters, which leaves a serious dent in their professional progress. Since criminal and commercial matters are highly paying areas of practice, excluding women from venturing into these areas of law due to the societal bias indirectly impinges on the earning ability of the women advocates.

WAY FORWARD

Theoretically, albeit women are assigned a high position in society, it is far from the truth in many elitist professions [6]. Although some fields like medicine, academics, etc., can boast of higher women representation, the legal professions cannot despite the fact that many law schools are earmarking a significant percentage of seats for female students [7]. Women's representation in the legal system has not been given much serious thought until lately. Apart from the economic or feminist angle of women's representation in the legal system, the subject needs serious thought from the standpoint of democracy. For a very long time, the legal system has been criticised for being exclusionary, elitist and oblivious to the changes in society [8]. In the field of feminist jurisprudence, the legal profession becomes feminised by internalisation of the feminine qualities of women such as collectiveness, empathy, nurturance and relatedness [9]. Contrary to this, we do not notice any feminine attributes in our day-to-day legal profession. The recent news of the initial hesitance on the part of the judiciary to intervene in the matter of the migrant workers during the COVID days raised the eyebrows of many [10]. The legal system will lose its legitimacy in the eyes of the people if they feel that cases are not decided in a

fair and just manner. Women's participation will help enhance the legitimacy of the courts; their mere presence signals to the outside world that the legal system is open and accessible to all. Additionally, they contribute to the quality of judicial deliberation and decision-making, which impacts the quality of justice administration in the country [11]. In the backdrop of rising cases against children and women, it is essential to have women's representation to bring a gender perspective to the administration of justice.

Even while hope to see a difference in the women representation in the legal system, the observations of the Apex Court in *The Secretary, Ministry of Defence Vs. Babita Puniya and Ors.* [AIR 2020 SC 1000] assumes significance. The Court rightly observed that if the society holds strong beliefs about gender roles and views women as primary caretakers confined to the domestic atmosphere, we will not necessarily see any changes in society. Since we are all the products of society, its impact on us is manifold; it is important that society evolves its attitude towards women before we witness any change in the gender representation regarding the legal system. Additionally, to witness a positive transformation as regards the women's representation in the legal system, along with attitudinal changes, especially amongst the lady legal practitioners, it is important to have systemic/institutional changes.

Reforms can begin at the university level itself; it is essential to undertake the training of female students in networking and advocacy skills by encouraging more participation of women in co-curricular activities such as mooted competitions, debating, and colloquiums. The universities need to focus on curriculum development with special

emphasis on intensive and community-based advocacy and leadership skills. Although lady legal practitioners are equally competent as their male counterparts, they often lack self-confidence, which often hampers their progress in the profession. In this connection, honing the advocacy skills at the university level itself with the active participation of industry interface provides a scope for the women lawyers to create a robust mechanism for women's professional growth as legal practitioners in the future. No doubt, the young lawyers do not earn much, but the position of young women lawyers is even more worrisome.

We need to create more opportunities for engaging young lawyers, especially women practitioners. For instance, the universities can invite women lawyers to teach some practical-oriented subjects and industry, and service sectors can invite them to work on live projects, etc. All this goes a long way in ensuring financial stability for the lady legal practitioners, especially during the initial years of practice.

In a male-dominated world, it is important to ensure a safe workplace for women. It is an open secret that the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013 is not significantly enforced in the legal system [12]. The issues related to mental health and sexual harassment at the workplace pose a threat for not only the women from Muslim, Dalit, and backward communities but also for lady legal practitioners from the upper castes. In an interview with *The Week*, Indira Jaisingh, the first female Solicitor General of India, says that sexual harassment is the "hidden dirty secret" of the legal profession in India which

is faced not only by women lawyers but even by women judges also [13]. This shows that higher educational levels and socio-economic conditions do not insulate women from sexual harassment. Hostile working conditions will deter many women from continuing their practice of law and discourage the new entrants into the profession. So, it is important to have a robust Internal Complaints Committee that is dedicated to bringing justice to its victims.

Although having reservations for women judges is not the ideal way of addressing the abysmally low women representation in the higher judiciary, it is important to sensitise the collegium and all stakeholders. Recently, the misogynistic remarks made by a Karnataka High Court Judge while dealing with a rape case hit the headline, which reflects the lack of gender sensitisation of the stakeholders [14]. Women's clothing, their marital status, their professional competence are often publicly ridiculed by stakeholders. Worse still is the fact that the issues are often downplayed as humour and naturalized [10]. It is essential to impart gender sensitisation to all stakeholders, including the judges. Apart from regular training programmes in this regard, even the Bar Associations can play an instrumental role in ensuring gender diversity in the position. It is important to encourage women's representation in the leadership positions within the Associations; this can pave the way for women-friendly working conditions. Additionally, the Bar Associations can conduct specialised training programs with a particular focus on women; in some instances, they can also encourage different programmes to build a healthy rapport between the different sexes for professional advancement.

We also need to ensure that our workplaces have facilities that make women feel welcomed as a part of a single coherent ecosystem. In this connection, the infrastructural facilities at different court complexes across the country require serious attention. A study by the Vidhi Centre for Legal Policy reveals that 15% of the 16,000 court complexes in the country do not have lavatory reserved for women [15]. Even the setting up of crèche facilities within the court complexes is often riddled with controversies [16]. It is crucial to have such facilities open to the children of the judicial officers, legal practitioners, and the court staff.

The recent pandemic has shown the sorry state of affairs amongst the legal fraternity. The absence of adequate social security nets and lack of governmental support makes their situation particularly worrisome. In such circumstances, the position of women lawyers is particularly precarious. One of the pathbreaking laws for women is the Maternity Benefit Act, 1961, but unfortunately, the women legal practitioners have not received the benefit of the law. Regarding maternity leave, it is essential to devise measures to reduce the burden on employers, like having a fully government-sponsored maternity benefit as in Australia or Canada. It will still be wiser to think of innovative alternatives like sharing mechanisms between the employer, employee, and government as in Brazil or even put in place a social insurance scheme sponsor the maternity benefit cost as in France.

CONCLUSION

As Justice Indu Malhotra rightly said that though we are speaking about the appointment to the public offices as that of a Judge, merit cannot be

overlooked even while we speak about representation. In such circumstances, it is important to ensure a conducive work environment for our lady practitioners with adequate security and support structures at all levels. This can go a long way to ensure that the legal system improves the retention rates amongst the lady legal practitioner while continuing to attract many young female entrants. Resultantly, we can see more women representation at the Bar, who can eventually be elevated to the Bench. From the above discussion in the preceding sections, we can conclude that four areas need to be focused on in order to ensure the participation of women in the legal profession. Firstly, there is a need for the quantitative improvement of women participation in various legal positions, infrastructure facilities, and separate association halls with the court premises for women lawyers, including facilities such as crèches, food courts and other worksite facilities for the women. Secondly, need to bring qualitative improvement in the practice of law to ensure enough cases for a financially rewarding career for the women. Thirdly, the behavioural and societal changes towards the work-life balance, the family members, along with spouses, need to be sensitised for the same. Lastly, the institutional safeguards to address issues of gender discrimination, sexual harassment and mental health, all of which form the reasons for women lawyers opting out of the legal profession. Unless the participation of women in the legal profession improves, it becomes difficult for a country to progress in the right direction.

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