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Women's Participation in the Legal Profession – Issues and Challenges in India

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ABSTRACT

This research paper seeks to highlight the plight of women in various facets of the legal profession, unveiling the role of women in every position offered by profession, such as a student, a teacher and a career person. It also mentions a few of the fundamental challenges women face in the profession. It is based on several statistics and articles as scoured by the author to fully understand and analyse the participation of women in the legal profession.

Keywords: *women lawyers - sexual stereotyping – male-dominant - long working hours.*

I. INTRODUCTION

Rousseau's *Social Contract* (1762) and the French Revolution introduced the idea of modern civic society but restricted it to the male sex, and the grand legislative projects of the nineteenth century didn't do anything to rectify this imbalance. Instead, women were systematically denied necessary civic rights and were legally subordinate to their male counterparts, be it, fathers or husbands. They had no access to higher education and the professions on the grounds that women's natural disposition made them unsuited while eminently qualifying them for a key role in domestic life.

It was the early women's movement's struggle for civil rights for women in the late nineteenth century that paved the way for them to be allowed to choose a legal career. While this was the case in the European and later the Western countries after World War I, Granting women access to legal professions was delayed even longer in countries where the move towards an industrialised economy and a modern state occurred at an even later stage. In Venezuela, the first woman was awarded a law degree in 1936. As such, the third world countries didn't progress much until the later twentieth century.

With that background information, This work mainly concentrates on the issues faced by the female population in general with regard to the legal profession in India. To analyse the existing data and statistics to find out the trend of participation of women and to understand the

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difficulties they face in the field at various stages - as a law student, as a law teacher and also as a lawyer, from the educational, academia and professional point of view. Further, the purpose of this work would be to examine the feasibility of the recommendations and suggestions of the experts of law and various other fields in achieving gender equality in the legal arena.

II. WOMEN IN THE LEGAL PROFESSION IN INDIA

Feminism in India may be said to have arrived during the second decade of the twentieth century, with the establishment of the Women's India Association (WIA) in 1917 to promote the suffrage movement. The same decade also witnessed the first few Indian women qualifying to pursue the legal profession in India.

The pioneer of the movement that secured entry of women to the legal profession, Dr Hari Singh Gaur, moved the following amendment to the resolution adopted by the Central Legislative Assembly of India to remove the sex disqualification against women for the first time in India. The purpose was the inclusion on the electoral roll for the elections to the Legislative Assembly, on 1st February 1922: "And the Government be further pleased to remove the sex bar held to disqualify women from enrolment as legal practitioners in the courts of this country"².

Holding time and again that the enrolment as an advocate is only limited to the male population starting from *Regina Guha*'s case in India, it was held that the courts could not make a deviation (referring to the instances of other countries in the cases of *Bebb v. Law Society* and *Bradwell v. Illinois*). In that period immediately following the establishment of the Allahabad High Court, the legal profession in Uttar Pradesh was mainly dominated by men. *Cornelia Sorabji* was the first woman allowed by the Allahabad High Court to practise. At the time when a woman law graduate was duly enrolled and practising law in Allahabad as equivalent to that of a man, women in Calcutta or Patna still did not have this prerogative. Hence, women's participation in the legal profession in the state still remained at a low level and saw a noticeable increase only during the last decade of the twentieth century.

The Government of India was thus forced to initiate legislation to remove any disabilities that might be attributed to women subsequently seeking enrolment in the legal profession provided that they possessed the necessary educational qualifications. As such, the Government of India passed the *Legal Practitioners (Women) Act, 1923*, enforced across India, prohibiting discrimination based on sex in the matter of enrolment.

² <https://journals.openedition.org/eces/1976>

Until recently, women were not involved in India in significant numbers among law graduates, legal professionals, or any occupation involving legal work, however loosely defined. This notion changed in the 1970s after the acceptance of women in university education and the simultaneous development of the increasing role of the universities in training Legal professionals.

III. OBSTACLES FACED BY WOMEN IN THE LEGAL PROFESSION OVER TIME

When the configuration of the legal profession changed, many issues faced by the female lawyers of the society came to the foreground, including *modernity*, *professional mobility* and *income inequality*. The women entering the profession came to face the traditional mindset of their families that also posed innumerable challenges to both the single as well as the married women aspirants. In addition to their *marital status*, their *caste and religious identity* also played a significant role in demoralising the new entrants. Adding to their woes were the *gender discrimination* and *sexual harassment* in the court premises, especially in the lower Courts.

The struggle in recent years is no longer towards the external obstacle but rather the psychological problems and the tug of war between the family and work go on throughout their lives. Most working, professional and career-oriented women face real problems, and their going out of home is a more significant challenge. *Commuting long distances*, while travelling in *crowded buses*, in addition to the long *working hours in courts*, *tolerating indecent remarks* of male colleagues in the court premises and on public transport, and *eve-teasing* are some of the problems faced by the women, adding to their personal and family problems, *work schedules*, *working hours* and *work timings*.

IV. WOMEN AS LAW STUDENTS IN LEGAL EDUCATION

The enrolment percentage as a student in higher education marks the beginning of the blooming of a particular section in any profession, and the legal profession is no different, starting from the point of Total exclusion to reaching Parity in terms of the number of male and female law students being achieved. In exceptional cases like the countries of France and New Zealand, the number of female law students has surpassed the number of their male counterparts.

The academic qualifications of the female students tend to be as good as or even better than the male jurists. The findings of experts show that Women's motivation to study law shows similarities across national boundaries. In particular, there is a stronger emphasis on *altruism* (Deborah Rhode) as well as a *desire to promote justice* (Leny de Groot)³.

³ Schultz, Ulrike and Shaw, Gisela, *Women in the World's Legal Professions*, Onati International Series in Law and Society, Hart (2003), p.40

Despite the removal of any formal barriers to access to legal education, women continue to feel the disadvantage by mechanisms of rejection and marginalisation by their contributions in class being treated with less attention and such, thus proving detrimental to their professional self-confidence. The traditional law school curriculum, the patriarchal structure of law and the ideology of the male tutors ignoring the female experiences and perspectives add to the sense of alienation. A review of public schools syllabi shows that no feminist critique has been incorporated into the primary curricula.

Further, the lesser number of reputed law schools in the country and the lack of freedom for women to travel long distances to receive legal education that is mostly enjoyed by the elitist class or the ones fortunate enough to already have a family member as a lawyer, discourages them from pursuing legal education, given the scope of the same to turn it to a successful career for a woman largely depends on their status in the society. Thus women basically do not turn up to legal studies under the presumption that they may not make it big owing to the pressures of society, family and marriage. Adding to this presumption is the set-up of the system that takes time to achieve a name for themselves or to make a successful career out of it for those opting for the legal profession.

V. WOMEN AS A LAW TEACHER IN LEGAL ACADEMIA

The problems faced by women in legal academia as law tutors can be said to be a reflection of the problems faced by female law students. Their work is not being given due recognition, suffering from isolation, marginalisation, and underrating their achievements. Most of these female tutors enter into the lower levels of the faculty hierarchy, leaving the higher up *Glass ceiling* to their male counterparts. Though law professors enjoy high prestige and potentially higher incomes, it has been particularly difficult for women aiming for top positions in the industry. It is easier for them to enter into the law faculties having lower reputations and do not have a market value higher than that of the male law professors.

Income inequality is a persisting challenge faced by them, and their income can be on par with that of men only in a male-dominated faculty, which is difficult for them to enter. Also, incomes remain lower where the share of women is higher, and successful women frequently end up taking on less conspicuous and less profitable tasks than their male colleagues, as they invest more time and energy in improving their teaching and have less to spare for purposes of enhancing their incomes and prestige through additional activities. This is mainly because of the non-participation of the men in taking care of the family even in recent times, which is seen as the responsibility of the women, owing to the patriarchal mindset of 'Men being the breadwinner of the family.'

Further studies reveal that the emergence of the new law schools since the later twentieth century, including that of NLUs, do not represent women professors on par with men. The current survey of faculty listings among top law schools of the country shows that women do not occupy the senior-most positions. Despite being really good for female law students, these schools do not prove favourable for the women law faculties, and the number of full-time law professors in the NLUs almost being close to nil shows the fate of women taking up legal academia.⁴

This inequality needs to be addressed as this representation of women is essential in response to the changing demographics of the female law students, whether they enter into practice or not. The women faculties confirmed gendered hurdles like fewer mentors, difficult work environment and having to prove themselves over and over again and gender identities.

VI. WOMEN AS A LAWYER IN THE LEGAL PROFESSION

The statistical data of women lawyers engaged in the legal profession finds that there is a steady rise in the woman listing in India from 12.5 percent in 2010 to 17.34 percent in 2015, according to the Chambers & Partners, which ranks lawyers and firms. The reason that drives the demand for women lawyers is to *improve the diversity ratio*, especially after the Corporates have been given the mandate to hire more women lawyers for the same⁵. But studies from a recruitment firm specialising in legal talent state that the Average pay rise for women was 26 percent when they changed firms, compared with the 36.25 percent for their male counterparts. While there have been urgent mandates from financial services companies, drug makers and ventures capital funds coming in for the lawyers, flexible working conditions need to be set up for women working in their conglomerates to retain their participation.

There also exist the problems of *Long-Hours Culture* and the *Dual Burden of Profession and Family* for the women that need to be addressed. Owing to these reasons, a lot of women tend to opt-out of the profession after marriage, and by the time they're settled professionally, they are considered too old for marriage; thus, women are discouraged from taking up law as a career. For instance, Tata Sons employ women in the ratio of 2/3rd compared to their male counterparts, holding senior positions, having encouraged them with flexi-timings, work from home (especially for those with new born babies), and car drop during late hours that make it comfortable for the women lawyers to have a work-life balance, along with their safety concerns being addressed.

⁴https://www.researchgate.net/publication/325217060_India's_Women_Legal_Academics_Who_They_Are_and_Where_You_May_Find_Them

⁵<https://www.legallyindia.com/india-unleashed-editorial/women-in-indian-law-firms-in-a-growing-minority-20190601-11000>

Studies show that Gone are the days of the then-existing concept of “*Credibility theft*” as the female lawyers get recognition for their work as much as their male counterparts who used to get away with the credit for the same idea propounded by the female lawyer.

While this may be the case seen from the corporate point of view, rejuvenating the mindset of women is the pressing issue here. Most women do not wish to opt for a profession where they won't be able to achieve the same status as their male colleagues. This *defeatist attitude* of the women lawyers at the start of their career already assuming they cannot become partners of a firm or a successful one, as they are dependent on the male lawyers for advice on their legal career, is a problematic one.⁶ The idea that the legal profession can be a selfish and brutal one is revolting to the very nature of the females, who are seen to have a female sense of innocence and the sanctity of their sex, thus subscribing to the view that the woman's role in the society precludes her from the practice of law.

VII. CHALLENGES FOR WOMEN IN THE LEGAL ARENA

Though the number of women in the profession has been growing steadily, their proportion in the total population of legal practitioners is still less. While rates of actual entry to legal education are quite high, rates of actual admission to the bar and rates of actual participation in the profession are lower. It is pertinent to note that merely only 10-15% of the enrolled advocates in the Bar Councils across the country are women.⁷

Matters relating to sexual harassment in the workplace; judicial treatment of domestic violence and marital rape; sexual relations between attorney and client; sexual stereotyping, and other forms of bias and discrimination in both the courts and the other practice settings are part of a lawyer's professional life and the challenges faced by a female lawyer lest women in general.⁸ The aforementioned concerns of women lawyers may have effectuated conscious efforts in identification of issues pertaining to the established structure of the practice of law: the work/family conflict, the rigidity of the established practice model, flexibility of the work schedules, including working part-time, hiring of lawyers temporarily or on a contractual basis and alternative tracks for career advancement.

Further, studies have shown that Women actually represent the ‘working class of the legal services market, where the distribution of work and clients is subject to strategic planning aimed at defending one's own turf. Women in such a market are more likely to be encouraged to concentrate on such matters that have lower visibility, profile and financial rewards. While

⁶ Barnes, J. (1970). WOMEN AND ENTRANCE TO THE LEGAL PROFESSION. *Journal of Legal Education*, 23(2), 276-308 available at: www.jstor.org/stable/42892080

⁷ <http://lawtimesjournal.in/gender-disparity-in-legal-profession/>

⁸ https://shodhganga.inflibnet.ac.in/bitstream/10603/29299/12/12_chapter%204.pdf

in the case of Men, they are more inclined as well as being encouraged to focus on work which offers a greater prestige as well as better opportunities to develop their legal skills and client contact and correspondence, which is all the more essential to develop a client base and secure future prospects.⁹

VIII. CONCLUSION

There has been no doubt that women are facing and have experienced discrimination on the grounds of their sex in the legal profession. Law has been central to feminist projects, and female lawyers have been indispensable in reshaping the legal discourse and culture. Law schools in India have been very much male spaced – the gendering of incoming students has not changed the gendering of those who train them. But the main reason for the continued male dominance in the profession is because of the lower number of women law graduates seeking to enter the profession. This could be changed by the law schools and the women currently in practice to help dispel the masculine image of the profession, and the old barriers will gradually disappear. To achieve Equal opportunity for women and Freedom from gender bias are goals that the legal profession as a whole struggles for.

⁹ Schultz, Ulrike and Shaw, Gisela, *Women in the World's Legal Professions*, Onati International Series in Law and Society, Hart (2003), p.43