

Gender Equality: The changing dynamics in the Indian legal fraternity

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Abstract:

This research paper is exploring the gender equality in terms of challenges, opportunities, and workable resolution to mitigate gender disparities more particularly women in the legal fraternity particularly judiciary and majorly focusing the contemporary scenario. The gender equality is a subject which is ever-evolving; however, it is of a grave importance how the legal fraternity is evolving in order to maintain the gender balance. Logically, the Legal fraternity should be at the hotbed of revolution and should set a benchmark for the rest of the field. This research paper is an attempt whether practically the legal fraternity can achieve the balance among the gender more particularly among the women.

The world has been technologically well advanced but still today the gender equality is a sensitive and debatable topic and there still persist a great amount of inequality. The two words “gender equality” even in the 21st century, the countries are coping with the inequalities meted out to the minority or physically delicate gender the women and the third gender. Even today, the physical capacity is accounted for rather than the mental faculties. The legal fraternity is field wherein the physical capabilities should be least accounted as it is all the game of mental strength. Here, the gender does not come into picture as it is mental faculties, knowledge is not linked with any gender.

Traditionally, the legal profession has been a male-dominated profession owing to the socio-political scenario, which has created several impediments to women in pursuing a career in this field. In this 21st century as well, there is visibly no balance in maintaining the gender gaps, however, it is pertinent to say that there are definitely changes which are welcoming but long way to go. There is an onus on each one of us to establish a just society and for that many able hands are needed be it men, women, and transgenders together. The key is able hands who are able to deliver result to the society to establish peace and harmony among the people. The matter of fact is education is key to churn out a civilized society and education can be imparted to anyone irrespective of gender differences.

Keywords:

Gender Equality, Women Lawyers, education, legal profession, women representation, Bar Council

Introduction:

India has been a pluralistic country in terms of culture, religion, language, caste, race, and several others. India is also a place with several historical significance. The present socio-economic, political, and cultural changes is the result of years of continuous revolution. Indian legal system is the result of the British colonial rule which has evolved over the years. Even the British viewed women with traditional roles and therefore, even before Indian Independence there were hardly any women Judges or Lawyers. The Legal Practitioner's (Women) Act of 1923 (now repealed) is the Act which granted women the right to enrol and to practice as legal practitioner.³ Till 1923, women were barred from practicing law in India, as was the case of Cornelia Sorabji, the first female graduate of the Bombay University and the first woman from Oxford University to study law who was not recognized until the 1923 Act. Followed by Mithan Jamshed Lam who became the first Indian women barrister and first women lawyer from Bombay High Court, later she also became the first women Sheriff of Bombay.⁴ In the list of first, a name to be mentioned is of Anna Chandy who became the first female judge in India in the year 1937 notably the first female judges in the British Empire. The dearth of women representation during those days can be noted by the fact that while enlisting as well there are only few women whom we can cite. No doubt, over the years, the number of women representations have increased considerably, however, comparatively to men it is way below the mark. The sources for this research paper is secondary which includes articles, journals, reports from the Government website and other secondary sources.

Women Representation in the Indian Court:

Despite the Constitutional commitment of principles of equality under Articles 14 and 15, the National Judicial Data Grid till July 2024 shows disparaging report. It has been reported that only 14% is the strength of the sitting women judge across all the High Courts of India. As per reports there are only 106 women judges out of total 754 judges across the High Courts of India⁵. Considering the last decade, there has been increase in the number of women representations, however, the increase is not significant though. Similarly, the women representation in Supreme Court and all other Courts of India is deficient as per the National Judicial Data Grid.

As far as the women lawyers are concerned, the study conducted by Department of legal affairs till the year 2021 of around 15 States which showed 15.31% of women lawyers⁶. This clearly shows even in the 21st century in the era of technological advancement, there is a clear struggle to maintain gender equality. This disparity has to be eliminated to some extent and there should be constructive effort in this regard.

The number of female students enrolling for the law degree is high but by the time the course gets over the rate of students dropping is alarming. Furthermore, once the course gets over the number of female practicing is further declined owing to several challenges faced by them.

³ (Sharma, 2024)

⁴ (wikipedia, 2024)

⁵ (Rijju, Lok Sabha Unstarred Question No. 2187, 2022)

⁶ (Rijju, Rajya Sabha Unstarred Question No. 123, 2023)

Challenges:

There are several challenges faced by the women in building a successful career in legal field. In Indian household, there is predominantly preference is given to the male members. If there is a male and female child, the family prefers the male to be educated and there is a tradition and stereotype in the society that the male child would eventually become the primary providers and the female child will be married off to another family and raise the other family. The hurdle itself begins at home, due to the social temperament in the Indian system. Further, even if the female child manages to get education again there is a hurdle that of getting marriage at an early age due to social pressure. The Indian social system still follows the traditional patriarchal system. The change is moving at a snail pace which has to be accelerated by the Government and Institutional interventions.

The challenge is not only at the home front even at the professional front. Despite facing challenges in completing and getting a degree and reaching the courts, there again the women are marred by politics and male domination. Women are not the natural choice when it comes to assignment and payments too. They have to face discrimination in the law firms and Courts as well-being. Even for the client, men are the natural preference while entrusting their work. Women have to prove their mettle repeatedly. Seniors in the profession has to be more inclusive and understand that women who have reached after completing a law degree and standing before them after a long way and should be given equal chance and pay at par with the men. For the first-generation women lawyers, the challenges are even more grave and considerably take long time to establish themselves, and therefore, most of the time these women opt corporate practice. There is a need in the Indian courts to tackle the number of cases pending, the women advocate if channelized effectively can resolve the issue of the pending cases.

The challenge is also the infrastructure in the Courts, the basic facilities for the women should be given prime importance. This is not a luxury but basic inherent human rights to provide with clean drinking water and clean washroom facility. Many women advocates had to quit the profession to join the corporate owing to the absence of the basic clean washroom facilities in the Court. It was reported few months ago, in one of the Indian Courts the women lawyers had to fight for the basic toilet facility⁷, this is the condition of the Indian Courts even in 21st century.

Another challenge for any working women is harassment at workplace. The sexual harassment at workplace has been covered under the Act the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, still the harassment is prevalent more particularly for female interns and they do not muster courage to report⁸.

Yet, another challenge is violence on the women in judiciary, the disgruntled client violates the women advocates presuming that women are weaker section and can easily be threatened. A robust law protecting women in the legal field is the need of the hour, there are several proposals for the Advocates Protection Act, which stills stand a long way to go.

Constructive Implementation of the Affirmative Actions:

The reason for giving such a heading is that there are several interpretation as far as affirmative actions are concerned, however, these actions must be constructive and must be implemented. The makers of the Constitution of India has especially carved out Article 15 (3) which allows the State to make special provisions for women and children considering the then socio-political scenario but still after 78 years of its making the implementation in constructive way is lacking and thus the progress in the area of gender equality is moving at snail space. The legislators and judiciary must press the need to bridge the gap in gender disparity which will help the nation build faster and bring global recognition.

There are several affirmative actions brought by the Government like the National Vocational Training Institutes, the Women Industrial Training Institutes, Regional Vocational

⁷ (Roy, 2023)

⁸ (Deswal, 2021)

Training Institutes, Sukanya Samridhhi Yojana and many others. The Government has recently given importance to gender equality in the new National Educational Policy, 2000 which has focused on equitable and inclusive education learning for all, thereby constituting “Gender Inclusion Fund” to provide equal opportunities for girls and transgender children⁹. These affirmative actions have to be assertively implemented by the all the stakeholders responsibly looking at the larger benefit to the Nation in general. The implementation must be a joint effort instead of being mere piece of paper. Starting from the education, for example the Government in the new National Educational Policy, 2000 has incorporated to constitute a Gender Inclusion Fund for providing *inter alia* basic facilities for girls and transgender children, which will pave way to many girls and transgender children attending schools, colleges and universities, thereby, reducing the number of dropouts.

The Government has provided for affirmative actions with regard to women generally, however, the judiciary is neglected domain. The onus in the judiciary cannot be entirely placed upon the women, the men equally must practice inclusivity to have a holistic progress in judiciary and effective and timely disposal of pending cases and to uphold the effectiveness of justice delivery system¹⁰.

The working women in general has to cope up with the work-life balance, particularly the women who is working professional then the initial career building process is highly challenging as not only she has to deal with the rigour of the career building but also on the personal front if she is married then child birth and child upbringing is a daunting task. The women in judiciary during the delivery of the child inevitably has to take break and then again rebuilding or re-entering the profession is another herculean task. This is when the affirmative action if implemented for the women in judiciary will be definitely bring relief. The relief in terms of monetary aid and tie up with insurance agency the Bar Council can provide support to the needy women advocates which will bring immense relief so that she sustains through the child delivery period. Further, the Bar Council can support the needy women advocates by assigning initial work which definitely give impetus while starting anew after the delivery break.

The Bar Council must actively engage in empowering the women within the legal profession and serve as a model for other sectors to follow. The matter of fact is that the Bar Council is sparsely represented by women, the change should begin there first. The Bar Council of India currently has zero women representation¹¹. Similarly, there are also no women representation in Bar Council of Maharashtra and Goa¹². The Chief Justice of India while addressing the High Court Bar Association of Nagpur categorically stated that still the Bar Associations are “Old Boys Club” emphasizing the poor women representation¹³. A decent representation of women in the Bar Council of India and in the States is the need of the hour. This changes itself will pave way for many reformations in the judiciary as this will avoid gatekeeper bias and there would more deserving and meritorious women at the bar and the bench.

A mere comparison about the women representation with few global legal counterparts like the Bar Council of United Kingdom¹⁴, Australian Bar Association¹⁵, American Bar Association¹⁶, gives a clear picture that their judiciary is well represented by women. Indian Jurisprudence is the culmination of best practices of the World, likewise, the legislator, the judiciary and significant stakeholders must adopt and practice inclusivity in more dynamic manner for better and robust judicial system focusing on just, fair and quick justice delivery system.

Conclusion:

⁹ (Development, 2020)

¹⁰ (Banerjee, 2018)

¹¹ (India, n.d.)

¹² (Goa, 2024)

¹³ (Shrivastava, 2024)

¹⁴ (Council, 2024)

¹⁵ (Association, 2024)

¹⁶ (Association A. B., 2024)

This research paper has touched upon the primary concerns in the legal fraternity with regard to gender disparity, however, there are several in depth causes which has to be addressed and investigated in a scientific manner to resolve the issue of the gender gap. The gender inequality not only restrict women but also third gender. This research paper has focused on women, there is invariably gender inequality with regard to transgender as well which in itself requires a in depth study, the recognition of third gender in India has been the recent achievement. The fact that the women themselves are taking several years to establish in the legal fraternity, the third gender has a long way to go. It is, however, a matter of uplifting each other for reaching a milestone and serving the nation. The focus in legal fraternity is mental faculties of an individual rather than gender, caste, race, etc. these disparities must be eliminated to achieve a global recognition for India.

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