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## Gender Bias in Legal investigations

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*In the modern world, people fight for equality in all fields and yet we see how it is indeed a man's world. Gender bias is a phenomenon that has been prevalent for decades, not just in our country but globally. In the pre-independence era, women had neither many rights nor much freedom. During British rule, although the British were hesitant about interfering with the social and religious customs, Indian freedom fighters fought for the abolishment of customs such as sati, the education of the girl child, etc. It was very clear how sons were preferred over daughters and under the Indian (family) laws, women faced a great deal of unjust in the matters of property and inheritance, workplace discrimination, unjust social practices, etc. In the last three to four decades, the number of women participating to be a part of the legal field has increased. Although it is a man's world, there are quite a few discriminations against men as well which will be discussed below.*

**Keywords:** *gender bias, discrimination, inheritance right, social practices.*

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### INTRODUCTION

*“Gender equality implies that women and men, and girls and boys, enjoy the same rights, resources, opportunities, and protections. It does not require that girls and boys, or women and men, be the same, or that they are treated exactly alike.”*

- UNICEF.

The profession of advocacy has been a male-dominated profession almost all the time until the development when women were a part of it. The reason was that they were not so strong to handle the cases held in the courtrooms. According to, the Anti Suffrage Argument, “women were too sentimental for jury duty”. And despite various developments, women were never allowed to choose law as a career. In the areas of other expertise, women have always proven that they should be allowed to enter into the practical world of the legal fraternity, it must be changed according to performance, and the females must establish their place within these different fields. Gradually, the world where only men used to work became a place of work for both genders equally. The women broke different stereotypes of thinking, as women were commanded to be polite and assumed as incapable to handle the pressures and challenges lodged with this profession. Women of this time have more interest and put more effort into efficiency by studying, practising, adjudicating, researching, and whatnot in the field of law.

### **WOMEN WORKING IN THE FIELD OF LAW**

Female lawyers face a lot of bias in the workplace. It is a well-known fact that females are paid less than their male counterparts in every field of work and law is no different. There is also a preconceived notion about women that they are not competent enough or lack a work-life balance. It took about 40 long years for our country to appoint its first female judge at the Apex Court, Justice FathimaBeevi.<sup>1</sup>The occurrence of sexual harassment towards women is very much habitual in the legal sector. The definition of the word sexual harassment has been expanded in the Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act yet the applicability of the Act is constricted as when the term “workplace” is construed, courts are explicitly excluded from the definition.

### **JUDICIAL STEREOTYPING IN INDIA**

Judicial Stereotyping is the practice of Judges detrimentally stereotyping a social group by attributing certain characteristics to them which ultimately results in a justice barrier. When these stereotypes are used continually by the judges, this creates an atmosphere where

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<sup>1</sup> Daksh Ghai, ‘A contradiction of gender in the field of law’ (*Ipleaders*, 20 October 2021)  
<<https://blog.ipleaders.in/a-contradiction-of-gender-in-the-field-of-law/>> accessed 20 June 2022

accountability lacks. In 2020, the Karnataka High Court granted anticipatory bail<sup>2</sup> to an accused rapist, their reason for doing so was that it was “*unbecoming of an Indian woman*” to “*fall asleep*” after the rape and that it is not the way “*our women(Indian women) react*” when they are “*ravished*”. The latter part of the order given by Justice Krishna S Dixit was expunged as it drew criticism from lawyers and civil rights activists.<sup>3</sup> Judicial Stereotyping needs to be addressed and to do so, there needs to be awareness created. This can be done through research that is based on evidence. An example of this would be the Feminist Judgments project in India. This project drew inspiration from a project that started in Canada and the object of this project is to write alternate judgments to the ones mentioned above and these are done from a feminist’s perspective. This helps create awareness against the wrongs of stereotyping.<sup>4</sup>

## CHALLENGES FACED IN THE LEGAL PROFESSIONAL BY WOMEN

Discrimination of the gender biases comes to them at different levels. The present article has highlighted two such discriminatory grounds.

- The proportion of the female participants in the practice and the judiciary, and their presence in higher judicial posts.
- The degree of conducive environment provided to the female legal professionals at their workplace.

According to the experience shared by Justice Leila Seth (the first women Chief Justice of a State in India), “When I asked a question and my brother judge pointed out to them that they (the male lawyers) should say, My Lady, they thought the easiest way out was to say, My Lord and look at the male judge as if the question had emanated from him! Very rarely was I addressed correctly. Most of my brother judges, while introducing me to outsiders would say,

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<sup>2</sup> Code of Criminal Procedure, 1973, s 438

<sup>3</sup> ‘Karnataka HC judge expunges remarks on rape complainant after backlash’ (*The Indian Express*, 15 June 2022) <<https://indianexpress.com/article/india/karnataka-hc-judge-expunges-remarks-on-rape-complainant-6490350/>> accessed 20 June 2022

<sup>4</sup> Tiasha Mukherjee, Judicial Stereotyping in India and the Need to Combat Institutional Gender Bias, Article (*Jurist*, 19 October 2020) <<https://www.jurist.org/commentary/2020/10/tiasha-mukherjee-judicial-stereotyping/>> accessed 20 June 2022

'Meet our new lady judge', as if my sex was not apparent. They also wanted me to take on the tea arrangements when there was a celebration".<sup>5</sup>

Ratna Kapur (Director of the Centre for Feminist Legal Research) believes that "Gender biases are ingrained in the Indian judiciary. There is a lot of resistance to women entering the club of senior advocates and it's a hallmark of the Indian judicial system. This resistance is based on male insecurity. There is also a lot of rampant institutionalized sexism in the legal profession. I think if a man and woman have the same experience and merit when it comes to appointing senior advocates, then the woman should be given equal preference. This is a kind of affirmative action to correct age-old institutional biases against women in the legal profession." Justice P. Sathasivam stressed the need to correct the gender ratio in our country in this particular matter too. He moreover stresses that "The percentage of women among lawyers continues to be negligible in the Indian Bar even in the 21st Century, women lawyers have a greater role to play in the effective administration of justice and are vital for the transformation of future society so should be given equal chance to show their aptitude. There is an almost equivalent ratio of women and men in law schools and colleges, but when they move up in the ladder from students to lawyers and then Benches, the number of females in the profession drastically reduces."<sup>19</sup> Justice M.Y. Eqbal said that, "given their immense talent, enterprise and inherent sensitivity, it was not surprising that women had made their mark in the legal profession and, as a corollary, they had made inroads in the Indian judiciary at all levels, so their respect should be as same as that of male lawyers at Bar or male judges and for the outside world."<sup>6</sup>

A healthy environment should be of some the aspects like the freedom to work in a place without physical or mental harassment, and proper hygienic premises to develop a healthy staff. The matter of mental harassment comes into the picture when the female lawyers face various discrimination related to the pre-conceived matter of ability and aptitude, inequality in

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<sup>5</sup> 'When Leila Seth became a victim of gender bias!' (*Deccan Herald*, 23 April 2015)

<<http://www.deccanherald.com/content/473366/when-leila-seth-became-victim.html>> accessed 20 June 2022

<sup>6</sup> 'Women lawyers vital for the transformation of future society' (*The Hindu*, 16 March 2013)

<<http://www.thehindu.com/news/national/tamil-nadu/women-lawyers-vital-for-transformation-of-futuresociety/article4516487.ece>> accessed 20 June 2022

getting the same salary, the breaks in the carrier because of maternity leave is taken, and also a denial of promotions in job and due to this the behaviour in work-life while balancing between their household and their job commitments. Most corporate sectors view maternity leave and benefits as a drain of various resources, and they don't support working with women employees. Women in litigation don't have the required 12 weeks of maternity leave, under the court practice, hence to leave their place of work for such a long period haunts them and the consequences will be more difficult after a long period of break. According to senior advocate Pinky Anand, "Women in litigation have it harder as they have to face clients, lawyers, and judges, most of whom are male, daily. In a way, they have to confront gender bias at several levels. If a woman raises her voice to make a point, she is discerned to be cantankerous, not assertive. At times, this perception overshadows her merit and results in her being labelled aggressive." In corporate sectors, though they primarily provide the required equality but going deep it is realized that even their women lawyers are many times intrigued by the issues of marriage and having children. Most common matters like unequal salary, less trust in their work, and unchallenging jobs are at their peak. The legal provisions of a country are framed through the current beliefs of people and the stereotypes that are widely followed by the people. For notable changes to take place in our society, the provisions that are being implemented after the change need to be applied by the judges instead of turning to the older judgments. Laws in our country need to take the form of gender-neutrality. This can only be accomplished by demolishing the decade's worth of old thinking that patriarchy has set. People need to be educated so they are not as rigid in accepting change around them and understand more about equality. Gender neutrality can be inculcated by treating everybody, in all effects equally. Gender-neutral language must be used, there must be more laws protecting men, and provisions protecting women should be implemented. As the world around us grows and changes, it is high time that some big changes are made in the Indian Penal Code as well.<sup>7</sup> At present, the rights of the LGBTQ+ people must also be recognized and there must be provisions to protect them and to be a gender-just and equal society that is

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<sup>7</sup> Flavia Agnes, 'India's Family Laws Are Discriminatory. That's Why Judges Shouldn't Be 'Neutral' on Gender' (*The Wire*, 25 November 2021) <<https://thewire.in/women/indias-family-laws-are-gender-blind-judges-shouldnt-be-afraid-to-question-them>> accessed 20 June 2022

inclusive of all its citizens.<sup>8</sup> In the words of Chief Justice Marshall, “The fundamental aim of legal ethics is to maintain honour and dignity of the Law profession, to secure a spirit of friendly cooperation between the Bench and the Bar in the promotion of higher standards of justice, to establish honourable and fair dealings with the council, with his clients, opponent and witnesses and colleagues”. Hence, based on the facts the legal world is entirely responsible to maintain the legality, equality, and behavioural aspects of their employees, and stakeholders as well as the common practitioners. So, if people belonging to the same field discriminates among themselves then the objective of equality will be diminished somewhere, which is then not a decorum form of professionals. Hence, to achieve the objective for which law in any civilized society, i.e., administration of justice can only be achieved when the discrimination is not committed and attention is towards the achievement of taking everyone together. Sometimes it has also been accepted by the women law practitioners that, they can't give their complete output towards their legal profession when there is a requirement in both professional and family responsibilities, it cannot be taken casually because sometimes that casualness brings unfortunate results in shattering their career in many cases. So, ethics and morality are something considered to prevent biases and safeguard society from any sort of discrimination as a whole.

## CONCLUSION

It can be seen that our law is comprehensive but not so complete when it comes to protecting women in terms of gender biases. It is sometimes seen that not everyone is misusing the very law which is meant to protect them, but wherever it is misused that person shall be punished. This does not disregard any particular section of society but also includes the essence of various provisions. These situations often make it difficult for the officials to trust an aggrieved person. They are often viewed with suspicion and their complaint is not dealt with seriousness and is suspected to be a false complaint. And eventually, it leads to a failure of justice. The need of the hour is to make the existing legislations available for men as well. It

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<sup>8</sup> Harsh Kumar, 'Gender biased laws in India' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-3358-gender-biased-laws-in-india.html>> accessed 21 June 2022

cannot be overlooked that some men might also need such recourse. This particularly negative attitude toward female victims is seen under doubtfulness and lack of sympathy by the justice providers. Gender insensitive rules, such as the high cost of justice in courts, and taking evidence of the complainant's sexual history, discourages women from filing and pursuing their cases of sexual and physical violence. Under-representation of women and sexist treatment of women in the justice process is evident in the slow level of participation of women as police officers, prosecutors, lawyers, and judges. Women duty-holders, being few in the male-dominated justice system, are also vulnerable to sexist treatment. "Some gender norms are healthy, some are unhealthy - you must wake up from the patriarchal sleep to recognize which is which."