

Women and the Indian Legal Profession: A Study of Women in Litigation Profession in the District Courts of New Delhi, India¹

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Abstract

The Legal Profession is one of the most crucial limbs for administration of justice. The Profession from its inception has been recognised and claimed as a Gentlemen's club. But, in the recent years, the legal profession has undergone significant change, with rapidly rising numbers of women enrolling and seeking legal education. However, though there has been significant rise in the number of women in law colleges but one finds a very disappointing number of women in law courts. Thus, it becomes very imperative to understand the factors that contribute to such a scenario. Therefore, the present study is undertaken to understand the plight of women in the Indian Courts. Further, the study attempts to analyse the challenges and the difficulties faced by the women in the litigation profession. The study is based on the Courts in Delhi as it, being a metropolitan city, is believed to be conducive to the working environment for women class with relatively fair socio-economic conditions. For the sake of effectively studying the grass root level, the researcher has targeted only on the city's District Courts.

INTRODUCTION

The bar has always been a crucial limb for Administration of Justice. Without the Profession of Law, the Courts would not be in a position to administer and provide justice efficiently. India has world's one of the largest pool of people practising litigation as a profession. Women's entry and rising representation in the legal profession is one of the most remarkable, some claim "revolutionary"² changes to the legal profession over the past 150 years. But the most unfortunate thing is that Women in the Profession still remain under represented both in the Bar and the Bench. The disparity between men and women in the courts remain startling despite the achievement of nearly equal numbers of male and female law school graduates. The fact that most Women Professionals not getting enough cases, and consequently having low earnings, is a disturbing fact. In addition, for women legal professionals, marriage and family raising tend to be major obstacles. Although a number of women join the Legal Profession as a career of first choice, most of them opt out of it too soon. It is really shocking that very few women are able to continue after the age of forty. This is the stage the Legal Practitioners would have gained experience and would be at the height of success.

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² (Abel 1988, p. 203),

Women, in India, had to wage a relentless war for their emancipation from the age-old bonds. In the profession of law the competition was extremely tough between the best of men in the mid-19th Century when the number of Indians at the Bar was not much. The educated women of India, though very few in number, did assert their right of equality in the forensic field to compete with men, but man-made law did not permit the entry of women in the profession of law. The citadel that was sought to be breached was the impenetrable legal profession, and the 'Bengali lady' was Regina Guha, of Jewish Bengali ancestry, who after completing her MA in 1913 and a Bachelor of Laws in 1916 from Calcutta University, submitted an application to be enrolled as a pleader of the Court of the District Judge of Alipore. The newspaper's characterization of Guha's application as the 'latest attempt' was perhaps an allusion to the currents of transnational struggles by women to enter the masculinist public sphere as professional citizens on equal terms. Simultaneously, the rise of modern professions created ripples for the legal profession. This included reforms in legal education, establishment of new professional organizations and an expansion of the idea of legal work. The time was ripe for the emergence of women lawyers as professional citizen subjects. In India, the story of this emergence is, however, fraught with the dilemma of these women fighting imperialism and demanding equality at the same time. Inevitably the legal profession was in the public domain and was regulated by the 'gentleman's club,' which was very hesitant to let the ladies in. The reluctance was reflected in a series of popular 'person cases' in which judges ruled that women were not 'persons' to join the legal profession, even though the relevant legislation under scrutiny would use a gender-neutral 'person' rather than a gender-specific 'he' or 'him.' The case of Regina Guha has been India's first 'persons case.' Subsequently, The Legal Practitioners (Women) Act was finally passed in 1923³, removing the disqualification affirming that "no woman shall, by reason only of her sex, be disqualified from being admitted or enrolled as a legal practitioner or from practicing as such". Thus, giving the statutory right to the women to practice law. After independence, equality of individuals before law is clearly enshrined in the Constitution of India. Since 1923 many women joined the profession but only a few of them have been given the recognition they deserve.

The Supreme Court records reflect that only 12 women have been designated as Senior Counsel so far. Gender discrimination experienced at the workplace by the ladies Legal Practitioners may be a serious issue. Thus, the Profession of Law, whose aim is to provide justice to everyone, is not free from discrimination and harassment, often of a sexual nature, meted out to its own women fraternity. The inclusion of women in the profession inclusive of both Bar and the Bench is justified on many grounds apart from Equality provisions i.e. women judges would speak in a different voice. They would understand diverse emotional and social complexities better than their male counterparts and thus substantially improvise and feminize the quality of justice. The lack of female judges within the courts primarily Supreme Court brings into focus the necessity for more female voices to reform a primarily patriarchal society.

There needs to be a collective effort to reform and strengthen the position of women lawyers in the legal profession.

³ The Legal Practitioners (Women) Act 1923

ssion worldwide. A gender diverse bar will strengthen the standards of social justice and function a benchmark for other professions. Through this study the researcher proposes to investigate the Current Status of women in the Litigation Profession. The researcher aims to determine whether our country has adequate safeguards in place to protect Women Lawyers' rights and interests. The study also aims to find out why women still face discrimination and obstacles in the legal profession, even after several years of independence and having an independent constitution that provides for equality and fundamental freedom to profess and practice. Further, the researcher has selected Delhi's National Capital Territory for conducting the study, and for the sake of effectively studying the grass root level, has targeted only on the city's district courts. Delhi, being a metropolitan city, is believed to be conducive to the working environment for women class with relatively fair socio-economic conditions. However, the results of the research turn out be very concerning, and unexpected.

RESEARCH METHODOLOGY

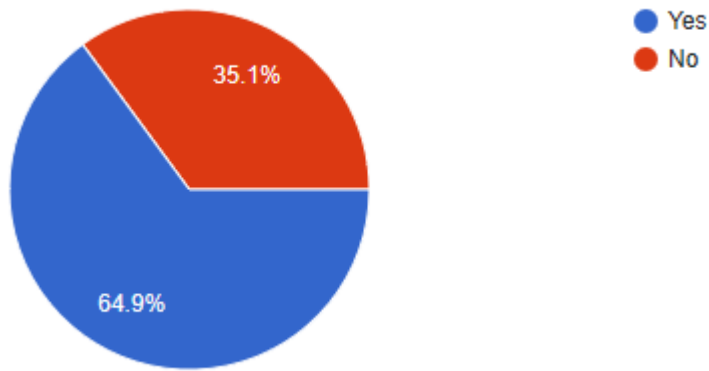
This section undertakes an *in-depth explanation* of the research methods that the researcher will espouse to use in the prospective study. The research primarily includes the study of a particular set of people, which in this context involved women in litigation profession practicing in the District Courts of Delhi. Through this study the researcher would analyze the factors which deter women to continue with litigation profession and the challenges faced by them in the profession.

Methods used

The methodology that the researcher adopted for the study was based on *Exploratory Research*. Both secondary data and primary data on the subject was collected and analyzed and the final report highlighted the major findings and suggested recommendations for future policy implications. What do mean by *Exploratory Research*? Exploratory research, put in nutshell, is a form of research that is performed to assess the nature of the problem; this type of study is not intended to provide definitive evidence, but to help us understand the problem better. In other words, it is an investigation into a problem or situation which provides insights to the researcher. The questionnaire approach was the primary method that encouraged the entire Empirical research project. A set of questions by questionnaire method were asked from the women practicing litigation in Delhi District Courts. Also, Observation Method was one of the significant tool in the study.

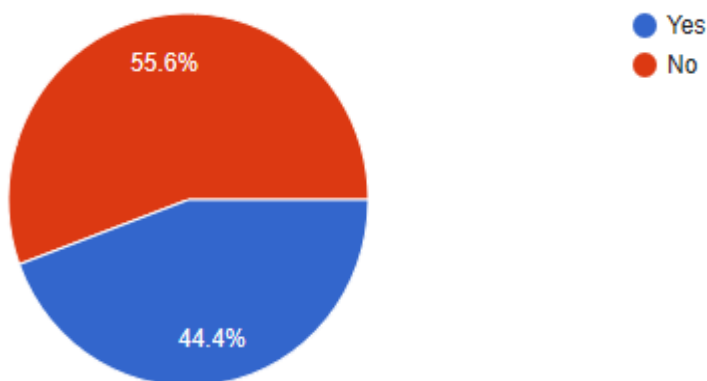
RESEARCH FINDINGS

Figure 1-Family Encouragement to female advocates to choose litigation as a profession (in percentage)

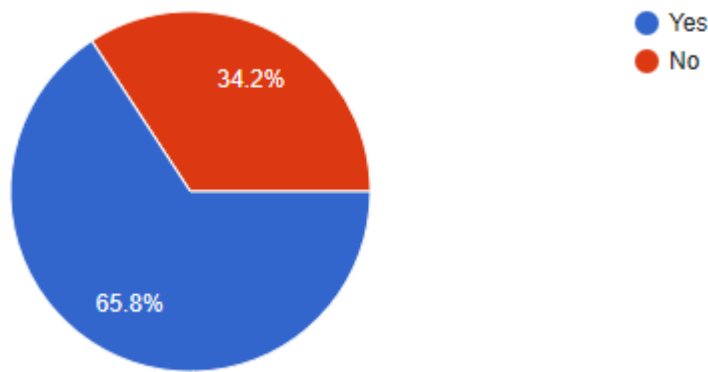


Out of the 150 women legal professionals included in the research, 64.9% accepted that they received family cooperation and encouragement, while only 35.1% complained of not getting cooperation from their families to join litigation as a career. The cooperation was in the form of both moral support and understanding towards their professional responsibilities, as well as distribution and division of their household responsibilities which is traditionally considered as the woman's domain in India. But, a significant number of females are still not getting the required family encouragement even after living in the era of so called "Modernized World" and that too in the capital of the country.

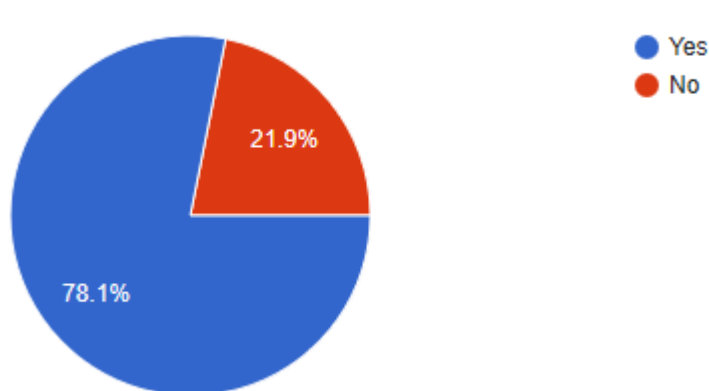
Figure 2 -Experience of Gender Discrimination by Women Legal Professionals (in Percentage)



Out of the sample population of 150 women legal professionals, as many as 44.4% accepted to having experienced some kind of gender discrimination, whereas 55.6% had not experienced any gender discrimination.

Figure 3-Female Advocates facing hardships in the profession (in percentage)

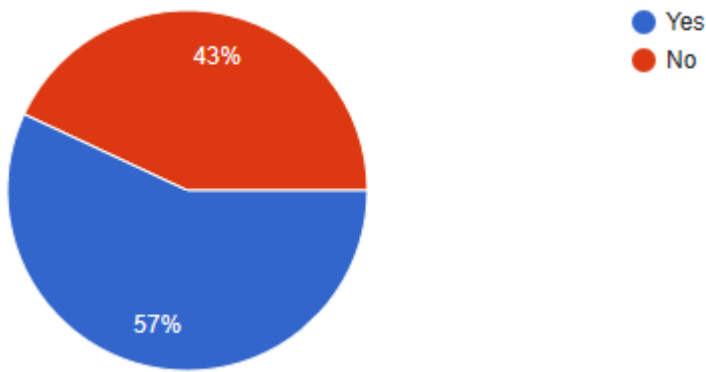
Although, majority of women i.e. 65.8%, out of the sample population are satisfied and are not facing any hardship in the profession, the number of those who do is still significant.

Figure 4-Choice of Legal Profession as a Career Option for the Offspring and Female Relatives (in percentage)

The majority of the women legal practitioners surveyed, i.e. 78.1%, were willing to allow their daughters to join the legal profession as a career. The number of unwilling women legal practitioners was 21.9%.

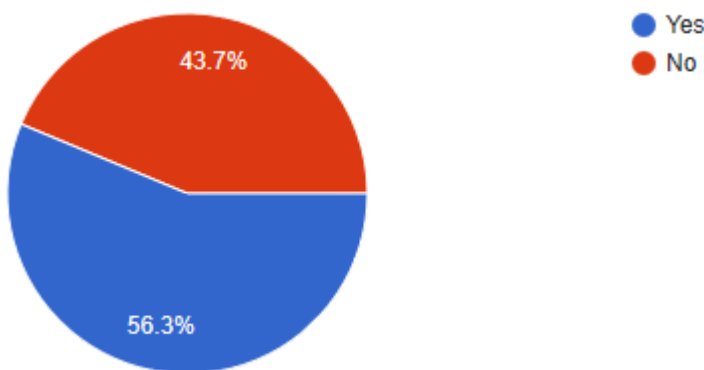
Clearly, most women legal professionals being satisfied with their profession, want to have their daughters and female relatives join this profession. This is also because, there is a very low no. of female legal professionals in litigation and there is a need to encourage more females to join. However, 21.9% of them would not like their children or female relatives to enter this arena. This again shows that, despite their professed satisfaction, there are many things which are not all that good for women in the legal profession.

Figure 5-Female Advocates facing issues with their clients (in percentage)



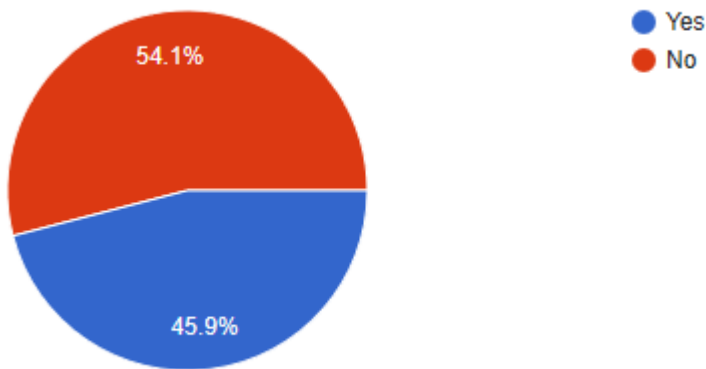
Out of the 150 women legal professionals included in the research, majority of them i.e. 57% face issues with their clients. This is based on our already found inference of many women facing hardships in the profession, particularly because of inherently low pay given to them, and them steering through the problem of insufficient clientele, which worsens the problem.

Figure 6-Sufficiency in number of Ladies Bar Rooms in the court premises (in percentage)

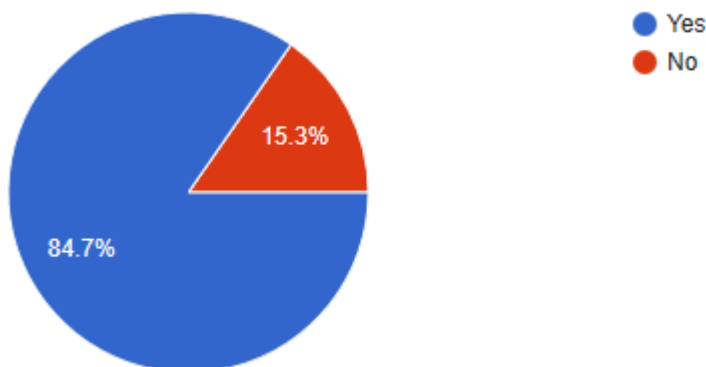


Although the majority of the women legal practitioners surveyed, i.e. 56.3%, believed that there were sufficient number of Bar Rooms in the Court Premises, the number of women legal practitioners who hold the contrary view was 21.9%.

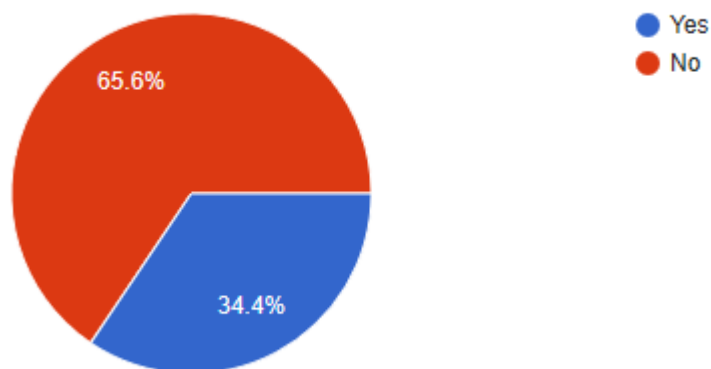
The negative response not being insignificant, highlights that while there are many district courts which do have satisfactory amenities, there are many courts which do not.

Figure 7-Facilities of day care or crèche in the court premises (in percentage)

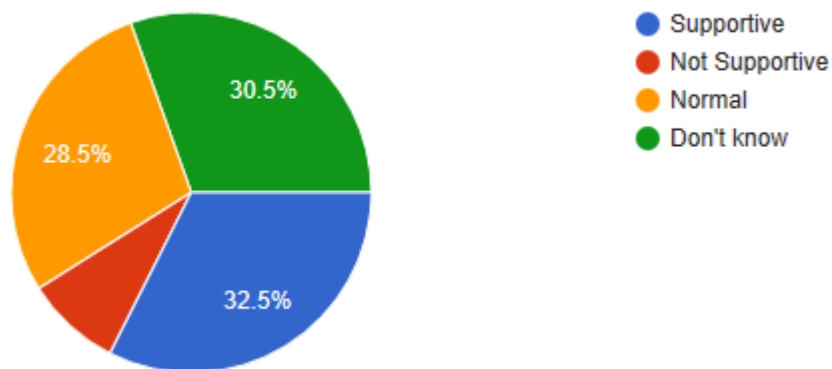
Majority of the female advocates surveyed highlight that there are no provisions for day care or crèche facilities in court premises. While 45.9% of the data highlights that there are such facilities, but, they are still insufficient as compared to the contrary result, and there is a need to have more motherhood friendly facilities in courts.

Figure 8-Separate washroom mark for women on each floor of the court premises (in percentage)

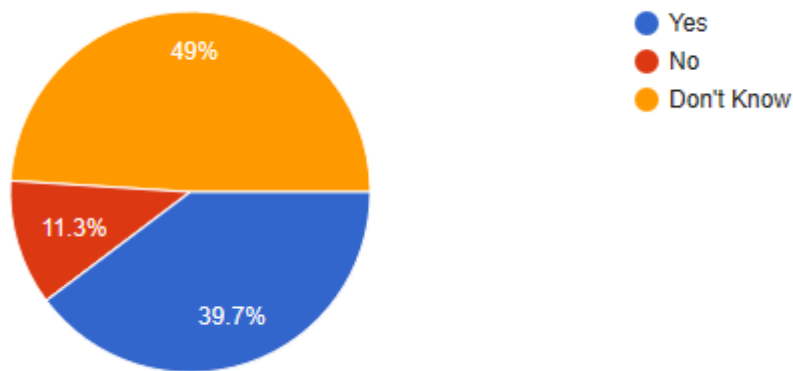
Although, a majority of 84.7% women legal professionals are satisfied and have affirmed existence of separate washroom mark for women on each floor, the number of those who have not is also of concern. Such differentiation at a place where one expects a lot of general public access is indeed a cause of grave concern.

Figure 9-Satisfactory conditions of the washrooms in the court premises (in percentage)

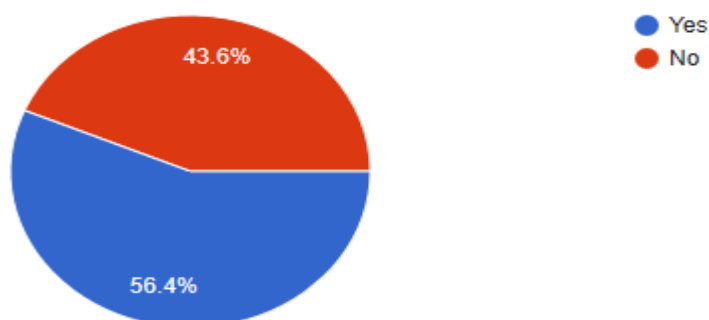
65.6% of the Female Advocates surveyed, complained of the unsatisfactory and unhygienic conditions of washrooms in court premises. Only 34.4% women were satisfied with the conditions of washrooms. This is alarming because it has detrimental health consequences. Proper hygiene and sanitation measures must be followed in washrooms at courts, which is visited by thousands of people on a daily basis.

Figure 10-Attitude of the judges towards pregnant female advocates (in percentage)

Out of the 150 women legal professionals included in the research, 32.5% witnessed pregnant female advocates receiving support from judges. 28.5% experienced wanted support from the judges, and only 8.5% complained of experiencing non-supportive attitude from the judges towards pregnant female advocates. Thus, while 61% of the women legal professionals' surveyed experienced positive attitude, 30.5% women legal professionals responded ambiguously and, 8.5% were not so fortunate. It is ruthless that judges working in the bureaucracy of law, who are not expected to be hypocritical, showcase hostility towards them.

Figure 11-Senior Counsel's Sensitivity towards pregnant female advocates (in percentage)

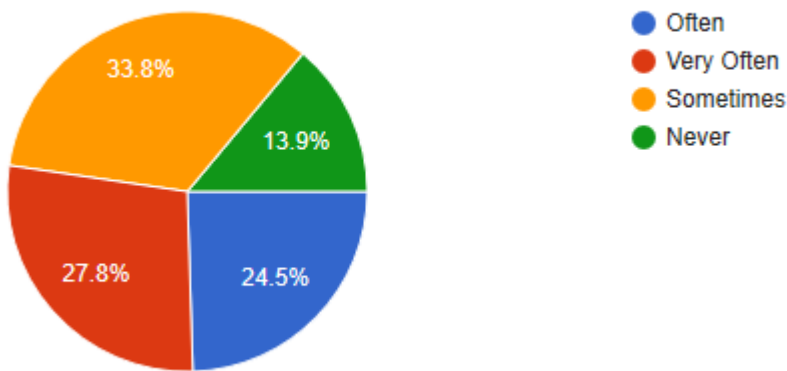
While out of the 150 women legal professionals surveyed 49% didn't know the attitude adopted by senior counsel towards pregnant female advocates, most of them being new to the profession. 39.7% opined that the senior counsels adopted a sensitive approach. However, 11.3% of the women legal professionals surveyed complained of the insensitivity meted out to pregnant female advocates by their senior counsels. The insensitivity complained of, included indirect pressure and changes in the attitude of the senior counsels both before and after the maternity leave. The 11.3% of the sample complained of prejudicial attitude of senior counsels towards pregnant female advocates and the mental trauma pregnant female advocates are put to, during the maternity leave, which must not be excused.

Figure 12-Income Tax Payee Women Legal Professionals (in percentage)

The striking finding was that, out of the 150 women legal professionals surveyed, as many as 56% paid income tax, and 43% women did not come in the tax-paying slabs. This data brings out a positive response that a fair number of women legal practitioners are getting enough cases, and consequently their income levels are increasing; however, most of the women who do not fall in tax paying slab are junior lawyers working under senior male lawyers in the capacity of an assistant. Thus, they have very limited income of their own if at all, and do not come under the taxable bracket. Another reason for their low income is that women lawyers

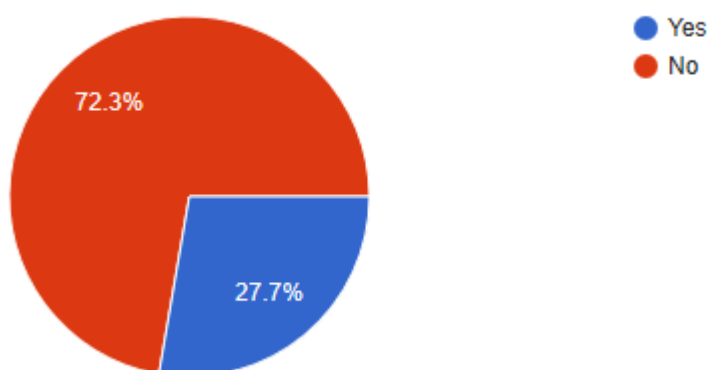
tend to get low paying cases as the clients don't repose confidence in them, as also many of them aren't leading or well-known legal practitioners in the civil and criminal cases and have a limited area of practice. Moreover, most of the cases finding their way to female lawyers involve petty family disputes. Similarly, few female lawyers find land dispute cases because they require making field visits to the disputed sites, which is socially stigmatized.

Figure 13-Opportunities given to be the lead counsel in a case (in percentage)



Out of the 150 women legal professionals included in the research, 24.5% accepted that they received opportunities to be in the lead counsel in the case, 27.8% received opportunities very often, and only 13.9% complained of receiving no opportunities. Thus, while 61% of the women legal professionals surveyed experienced positive attitude, 30.5% women legal professionals responded ambiguously and, 8.5% were not so fortunate. However, the fact that some women professionals are not getting enough opportunities, is a disturbing fact. Qualitative Improvement in terms of the number and nature of cases as well as earnings, is the need of the hour which would go a long way in changing the attitudes of husbands and in-laws.

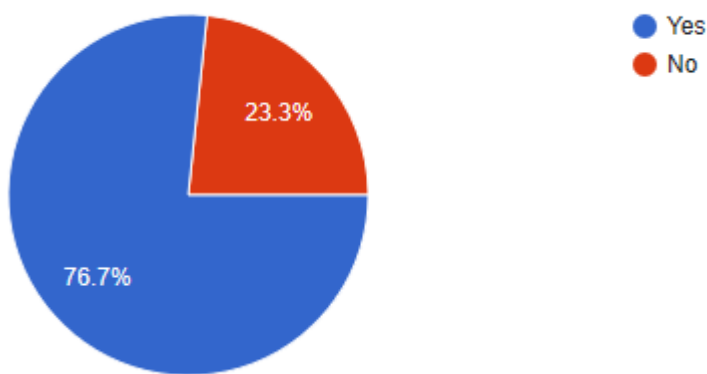
Figure 14-Number of Female advocates labelled because of the way they acted in Court which was not "ladylike" as they say (in percentage)



Tolerating indecent remarks of male colleagues in not only the court premises but also on public transport, and eve-teasing are some of the problems that women face, in addition to their personal and family problems, work schedules, working hours and work timings.

Out of the sample population of 150 women legal professionals, as many as 27.7% accepted to having been labelled because of the way they acted in court, whereas 72.3% had not experienced any such situation. Thus, although the majority of women legal professionals have not been labelled in any form, the number of those who have is still substantial. In fact, such labelling is likely to be a major reason for women opting out of the profession themselves, or being compelled by their family members to do so. Gender discrimination is a widespread problem, not specific to the legal profession.

Figure 15-Satisfaction with the Profession among Women Legal Professionals



Considering the earlier inference of low income levels, unsatisfactory amenities etc. for women lawyers, the satisfaction of the overwhelming majority of 76.7% women, comes as a pleasant surprise. Obviously, the attractions of the profession are other than money. The most likely explanation for their sense of satisfaction could be that the profession provides them with a sense of identity as well as a feeling of helping the people to get justice.

ANALYSIS ON THE FINDINGS

The results of the study were both disquieting and hopeful. As predicted, we found that majority of the women in the profession faced various challenges like lack of support from senior male colleagues, derogatory remarks, unsatisfactory infrastructure of the court complex etc. while pursuing the profession. The results of the remaining studies offered hope, however as the women class of the profession are very keen and enthusiastic to contribute to the development of the profession if the challenges faced by them are removed considerably.

The research findings suggest that though most of the women are encouraged by their family to join litigation profession but they are not satisfied in the profession due to various factors.

The first and the foremost reason for the prevailing dissatisfaction is the lack of infrastructural facilities in the court premises. Though most of the court complex have different washrooms marked for the Male and Female Advocates but they are in very unhygienic state which is a very disappointing finding. This is alarming because it has detrimental health consequences. Proper hygiene and sanitation measures must be followed in washrooms not only for female advocates but also for the general public as court complex is being visited by thousands of people on a daily basis.

Further, majority of the female advocates surveyed highlight that there are no provisions for day care or crèche facilities in court premises. The biggest problem for married advocates is that at the age when their biological clock demands motherhood and they have to make a choice whether to go the family way or pursue the "career". Once she goes the "Family way", after she returns, the equations would change and then she would have to start all over again. Therefore, finding the ideal career-family balance is a challenge for most women, which can be accomplished by day care facilities, crèches and other facilities in court premises to facilitate work-life balance.

Although the majority of the women legal practitioners surveyed agreed that there were sufficient number of Bar Rooms in the Court Premises, the number of women legal practitioners who hold the contrary view was also not insignificant. The negative response not being insignificant, highlights that while there are many district courts which do have satisfactory amenities, there are many courts which do not.

Apart from the lack of infrastructural facilities, another contributing factor for the dissatisfaction among females in litigation profession is the prevailing gender discrimination in the profession. Though Women are no strangers to gender discrimination. During the semi structured interview a female practitioner revealed that the office staff had a patronizing attitude towards women while having a mindset that favoured male lawyers. Another female lawyer confirmed that at some point in her professional career she and some other female lawyers also suffered sexual harassment. Although the findings suggest that majority of women legal professionals have not experienced gender discrimination in any form, the number of those who have is still substantial and not insignificant. Such prejudice at a place where justice is anticipated is also a cause of deep concern. And also, the majority of women have faced hardships in the profession.

Another significant factor is the attitude of the clients towards the female advocates. This factor has its root in the stereotypical approach of the society towards females. Women are often considered weak as against their male counterparts. Clients often assume that a female solicitor may be too soft to manage an aggressive negotiation or a complex litigation.

The results of the study regarding attitude of the judges and senior counsels towards pregnant women do not depict a clear picture as most of the women surveyed were not aware of the same. But whatever data has been collected suggests that the attitude of the judges and senior counsels towards pregnant women is very normal and they are not really very sensitive towards them. During the data collection process, it was observed that there were significant number of Female Advocates who didn't have Chamber to work. Majority of chambers

are allotted to the male counterparts in the court premises. Thus, having inadequate work stations hinders the efficiency of work, which a matter of great concern.

CONCLUSION & SUGGESTION

The ongoing challenges and inequalities that women face in the legal profession need to be challenged and addressed. One of the best ways to remedy the situation is to reduce the obstacles faced by the women's class that affect their work performance and deter them from entering the litigation profession is to provide them with the necessary infrastructural facilities to make their workplace more comfortable and convenient. The role of the Indian Bar Council in fostering a conducive working atmosphere is of great importance in addressing the said problem. Section 7 of the 1961 Advocates Act mandates the Indian Bar Council to safeguard the lawyers' rights, privileges and interests. Also, the State Bar Councils are expected to safeguard advocates' interests on their roll and to hold seminars. It is therefore the Bar Council's primary and most important duty to provide the women's community with basic infrastructural facilities through the provision of clean and hygienic washrooms, bar rooms etc. The Bar Councils should also regulate the procedure for allocating chambers in the court complex, as most Female Advocates do not even have one chamber while in some cases their male counterpart has two or even more. Thus, by providing chambers women will have conducive working environment which would lead to positive impact on their efficiency.

Unlike the women lawyers working in organized sectors like companies who have certain maternity benefits, Women in litigation do not enjoy the same benefits and therefore are compelled to join the work quiet early to meet their financial demands. In such a situation the facility of day care or crèche becomes indispensable. Thus, a crèche facility accessible to all within the court precincts would make the profession a lot more conducive for women by striking work-life balance as in the absence of the same women are compelled to take long breaks from the litigation which ultimately hamper their growth in the profession. Also the support from their seniors at this particular stage of their life would ease the challenges faced by them.

Additional facilities, such as baby changing-rooms and a room where women could breastfeed their children, are also critical infrastructural requirements for the conducive working of Female Advocates. The Bar Councils should also conduct seminars to address the issues regarding gender inequality and biases prevailing in the profession. The Male class of the profession should be encouraged to have sensitive approach towards the pregnant women advocates and also provide adequate opportunities to the young female advocates to showcase their legal skills. Senior Advocate Pinky Anand has recommended that the Bar Council of India should extend support to young women lawyers at the start of their careers by encouraging the empanelment of women in various organizations. The Bar Council of India and State Bar Councils should undertake measures to promote women's entry and development in litigation to further their legislative mandate. There should be more representation of the women in the District, State and All India Bar Councils so that they can raise their voices and address the concerns of the Female Advocates. Sexual harassment is also one of the main reasons women opt out of the profession themselves or are compelled to do so by members of their family. Hence, setting up Sexual Harassment Committees in the courts will be of great help in remedying this

problem. Strict implementation of the anti-harassment provisions of law, would help make the profession more propitious to women. The study highlights that, in the legal world, women in Delhi remain unequal partners. And if this is the scenario in the capital of the country one can imagine the plight of the women in other urban and rural areas of the country. It is incorrect to assume that socio-economic factors such as literacy and urbanization contribute to increased women's participation in the legal profession. There are only a few women who have been able to come in prominence or are pleased in this field. It has been famously remarked that *“The best way to predict the future is to invent it.”* Alan Kay.⁴ Thus, on this positive assertion one can hope that the future will come with better conditions and on less discriminatory terms for women litigants by the collective efforts of the society in general, and the stakeholders of the profession, in particular.



⁴ We can only invent it. We cannot predict the future, but we can invent it—and we had better start now. Alan Kay has stated that he originated the maxim of the form: The best way to predict the future is to invent it. He began to use the saying in 1971.