

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 7 | Issue 3

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2024

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# Gender Bias in the Indian Judicial System: Challenges Faced by Female Prosecutors

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AAYUSHI SINGH<sup>1</sup> AND ABHIRANJAN DIXIT<sup>2</sup>

## ABSTRACT

*The article delves into the pressing topic of gender discrimination within the Indian judiciary, and sheds light on the nature of discrimination that female prosecutors face. The provided information not only explores the historical biases but also analyses the structural and institutional barriers as well as the legal frameworks that impede gender equality. Constitutional safeguards such as Articles 14 and 15 protect women's rights while legislations like the Indian Contract Act and Indian Penal Code are in place to ensure the same. However, given the implementation of these laws, women are still treated as inferior, lower class due to the growing gender disparity. The provision of special aids and training programmes are suggested by the author to bring about a much-needed reform in sensitizing the judiciary. The enforcement of the existing laws will result in a philosophically more equitable judicial system free of gender biases.*

**Keywords:** Gender bias, Female prosecutors, Institutional discrimination, Gender sensitization.

## I. INTRODUCTION

Gender bias is a problem the world over, but the way women are discriminated against in India is quite specific to the Indian context because of the overall Indian socio-cultural and legal framework that has historically been highly patriarchal, with a strong and deeply entrenched patriarchal culture and ideology that tends to place women at a disadvantage and relegate them to a secondary and subordinate position across all walks of life. Such societal bias against women has made its way into the judiciary and other institutions through embedded hallowed norms and traditions, in ways that impact not just the work life of women lawyers but also the way female litigants are treated by female legal practitioners.

Indian history has long been littered with scant regard for sexual equality. For centuries, women were regarded as inferior and bound to the authority of men. This was laid down in old laws or smriti such the Manusmriti, said to date back to 1500 BCE, which defines a woman as 'a man's

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<sup>1</sup> Author is a student at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

<sup>2</sup> Author is an Assistant Professor at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

field, his Pegasus, his bow, his weapon of war, his seed; no man sets her free from his control'. This helped to entrench attitudes for a millennia, so much so that, even today, modern, forward-looking India still bears the residue of generations of men's domination over women.

One of the most immediate ways that India veered dramatically towards a positive and transformative past was adopting its Constitution in 1950, and the fact that it guaranteed principles of equality and non-discrimination on grounds of sex. Article 14 provides for equality before the law, and Article 15 of our Constitution prohibits discrimination on grounds of sex, among others. Further, Article 39(a) of our Constitution, in the 'Directive Principles of State Policy,' commands the state to ensure that men and women should have 'equal rights to an adequate means of livelihood'. Nevertheless, old habits die hard, and laws, including the Constitution, do not easily sanitize entrenched prejudices, especially in such subtle areas as the judiciary.

Gender bias in the judiciary is important to study for several reasons. The judiciary is a key organ in the rule of law and upholding the rights of the accused. Bias in this organ undermines the rule of law and weakens the impact of the highest source of justice and equality in the land. The importance of female prosecutors as a vital part of the judiciary renders it important to study the challenges they face, as these would be unique to them. Bias against them is likely to impact their professional progress, performance, and the quality of justice they deliver.

Adopting and resolving these biases will further work towards making the judicial process more respectful and reliable, helping female prosecutors to feel comfortable at work and the public to trust in the judicial system. A judicial system that upholds a true gender equality will send a strong signal to the public about the appropriateness of respect for men and women.

Additionally, the study of gender bias in the judiciary is important because it can impact the lives of female victims of crime. A bias-free judiciary is more likely to deliver fair and impartial justice to female victims of crime so that they are heard, and their cases are adjudicated without bias. This is important in countries such as India where intra-family violence, sexual harassment and rape are rampant.

Further, quantifying gender bias in judicial outcomes can inform the development of legislative policy or training programs aimed at reducing such bias, leading to a more efficient and effective judiciary (since more outcomes are based on merit and justice, not gender prejudices).

## **II. GENDER BIAS IN THE INDIAN JUDICIAL SYSTEM**

Gender bias is the prejudice based on gender and consequent unfair practices. There are two

types of gender bias: explicit and implicit. Explicit gender bias is overt and conscious discrimination. It refers to direct acts or expressions that reflect stereotypical prejudice. Examples include sexist language, such as commenting on a woman's appearance or questioning her ability to do her job. It also includes overt discrimination in promotions and assignments, where men are overtly assigned important tasks while women are omitted.

Unlike implicit bias, explicit gender bias is overt and sometimes conscious. It consists in attitudes or stereotypes that influence one's thoughts, behaviour or choices in a manner that is largely or entirely subconscious and unconscious. For example, when one converses with a female prosecutor and holds that she's probably less competent or assertive than male prosecutors, or that she's likely unable to engage in vigorous prosecutions because of her childrearing obligations, you're exhibiting explicit bias. Indeed, unconscious bias is often the most nefarious kind of bias because it's typically quite challenging to identify.

#### **(A) Structural and Institutional Biases**

Structural and institutional biases are examples of the more insidious types of bias that operate at the institutional level. Bias within an institution is systemic and would exist even absent the presence of individual biased individuals. This might stem from organizational policies and practices, such as pay disparities, lack of suitable mentorship opportunities, or a culture within the workplace that is gendered overall. Within the judiciary in India, some structural and institutional biases against women include lower posting as senior-level judges, restricted access to influential networks and pathways, and pronouncement norms with discrimination on account of caste/class.

For example, the glass ceiling effect for women prosecutors reduces the number of good women who are able to reach senior positions; work-life balance policies that are insufficient to meet women's needs – from poor maternity leave right through to inadequate flexible working hours – are examples of institutional biases. They are often the primary carers of their families.

### **III. HISTORICAL CONTEXT**

The struggle for women's rights in India has witnessed galloping changes as well as continuous hurdles. In India, the history of women's life was widely characterized by compulsory restraints relating to their rights to education, profession, public presence, etc. The independent India facilitated tremendous changes in the legal and social structures to uplift the position of women. Significant legislative changes include the Hindu Succession Act, 1956, which granted women equal rights in inheritance; the Dowry Prohibition Act, 1961, to end the dowry system; and the

Domestic Violence Act, 2005, to put an end to violence against women. While there has been state and popular acceptance of women's rights, their implementation has been uneven: individually and collectively, to greater and lesser extents these laws are rolled back by patriarchal social values.

From the very beginning, Indian law has thus reflected and bolstered the gendered prejudices of wider society. For instance, until the Code of Criminal Procedure, 1898 was changed in 2004, a woman's testimony was deemed inadmissible in certain classes of cases; property laws also traditionally favored men, and a woman was entitled to only a fraction of inheritance rights (often subject also to conditions relating to relationship with male kinsmen and/or marital status).

Judicial pronouncements have also been plagued by prejudices. For instance, in the landmark case of *Tukaram v State of Maharashtra* (1979), more popularly known as the Mathura rape case, the Supreme Court let off the cops accused of raping a 17-year-old girl on the ground that the victim was not a 'chaste' woman who would definitely resist any sexual advances made by a stranger. In that case, the police tried to establish the victim's sexual history to cast doubt on her credibility, which eventually led to a shocking judgment. In Mathura's case, she had a turbulent sexual past and the accused cops were Edinburgh-educated hailing from 'good families. Justice Krishna Iyer felt that Mathura resembled 'a prostitute masquerading as a virgin', and described her refusal to stay quiet in a secluded place as a 'sweetener for later fraud of ravishment'. This led to widespread revulsion and ultimately forced the state to legislate reforms in rape laws to make judicial interpretation gender-sensitive.

### **(A) Contemporary Context**

The position of women in the Indian judiciary represents the push and pull of the same times. On the one hand, the number of women representing the judiciary and as prosecutors have increased. On the other, women are still underrepresented in terms of numbers in the higher judiciary. As of 2023, women make up around 11 per cent of the judges in the Supreme Court and 13 per cent of the judges in the High Courts. The ratio of women in the subordinate judiciaries though is better but not proportionate to the gender demographics of the country.

Beyond being a disservice to the large number of women in the legal profession, and contrary to what equity trades on, their under-representation at senior levels has profound consequences for judicial decision-making and professional development of female lawyers. It perpetuates the perception of the judiciary as the bastion of the patriarchy by constraining the 'bounty of human experience' that would otherwise inform judicial pronouncements.

### *Societal Attitudes Toward Women in Law*

Legal culture is often dominated by gender stereotypes of women's positions in society, and female prosecutors are subject to doubts about their abilities and their commitment. The combined professional and family burden only exacerbates these attitudes.

Female advocates have reported bullying at the workplace, including instances of sexual harassment, failure to refer to them by name in the courtroom or exchanging pleasantries, lack of support from their colleagues, clients and the judiciary, and other such biased attitudes and behaviour. The judiciary itself is far from immune. A number of judges reportedly have their own patriarchal beliefs.

For instance, in 2019, a senior judge of the Delhi High Court made sexist remarks in a hearing: 'She doesn't argue. She emotes and alludes. She should go home. She should take care of her home and leave the courts to us. She should tell her husband if she is not happy with the heating arrangements at home.' Such incidents reflect the pervasive issues that women face in legal practice and the systematic changes needed to remove entrenched gendered bias.

## **IV. LEGAL FRAMEWORK ADDRESSING GENDER BIAS**

### Article 14: Right to Equality

The right to equality – guaranteed in Article 14 of the Indian Constitution – is the basis of the Indian legal system's commitment to non-discrimination and equality before the law. The provision reads: 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.' Thus, every person, man and woman alike, has the right to be treated equally under the law. It is an entitlement that aims to end the 'silly whims of arbitrary power' – to ensure that laws do not favor one woman over another, that there is no arbitrary discrimination based on gender in their application.

Article 14 is actually being used, in practice, to take on the entrenched gender biases in the judicial bureaucracy. For instance, female prosecutors can draw upon Article 14 to challenge discriminatory practices and policies that prevent them from advancing in their careers or subject them to differential treatment. For example, if a female prosecutor is denied a promotion or assignment to a particular case on the basis of her sex, she can take her case to court for judicial review under this constitutional rule.

### Article 15: Prohibition of Discrimination on Grounds of Sex

Article 15 prohibits 'discrimination on grounds only of religion, race, caste, sex, place of birth or any of them'. The first part is clear: the state must treat everyone the same (the interesting

question is whether caste is seen as an individual characteristic when it comes to civil rights – the answer is ‘No’, as shown by certain laws). The third part specifies that ‘nothing in this article shall prevent the State from making any special provision for women and children’. These two parts of the article go in different directions. The second part commits the state to gender equality. The third part provides a justification for gender-specific law. To understand the purpose of Article 15(3), it is necessary to recognize the ways in which women and children have been historically disadvantaged.

Article 15 goes to the heart of the judiciary and has been used to devise laws and policies for gender justice such as making gender-sensitization programmes (such as sensitizing the police to recognize violence against women) or for setting up internal complaints committees to tackle sexual harassment at the workplace. Female prosecutors may begin with this provision to demand, for instance, a more gender-sensitive and equitable working environment for women in the judiciary.

#### Article 16: Equality of Opportunity in Matters of Public Employment

Art 16 reads: ‘There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.’ It enshrines the right to non-discrimination on a number of grounds: ‘[O]n the ground only. of religion, race, caste, sex, descent, place of birth, residence or any of them’. Particularly, it commits to preventing discrimination against women – including women public prosecutors – when trying to access or secure employment, or to progress in their occupation.

Since the judiciary is a large public employer, the jurisdiction of Article 16 includes an obligation to ensure that employment policies are non-discriminatory. Any female prosecutor may complain of discriminatory employment policies, unequal pay practices or other employment discrimination under Article 16, enforced by the constitutional court. To enhance the diversity of the judiciary in terms of gender composition, as well as in terms of fundamental values of equality, it is crucial to enforce this article against any forms of known discrimination throughout the judiciary.

#### **(A) The Criminal Law (Amendment) Act, 2013**

It was considered a legal response to the horrific gang rape on a cold December night in Delhi in 2012, which led to the Criminal Law (Amendment) Act, 2013, colloquially known as the Nirbhaya Act. An Amendment to the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC) and the Indian Evidence Act, its objective was to reform law completely to ensure victims of sexual violence can find justice in the courts of our land.

Since the Act adds a new dimension to the substantive law concerning the crime against women, it also increases the need to pay attention to the significance of gender, as far as sensitization in the judicial mechanism goes. The Act strategically beefed-up penal provisions pertaining to rape and other sexual assaults against women, expanded the meaning of the term rape and granted provisions for the safety and protection of the women victims and witnesses. Crime against women is one of those categorical crimes, which tends to be difficult and painful to investigate and prosecute. Crimes of violence against women by men requires legal practitioners who display exceptional sensitivity in handling such cases, in order to effectively secure justice for victims. The lawyer, by adding new, beefed-up provisions under the Act, contributes towards the realization of these goals of victims of gender-based crimes as well.

### **(B) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (also known by the abbreviation POSH Act) is an Indian legislation that helps to ensure safety of women at the workplace. It prescribes the inclusion of Internal Complaints Committees (ICC) or Local Complaints Committee in all the workplaces mandatorily and outlines the process of redressal of the complaints of sexual harassment at workplace.

The POSH Act will also help female prosecutors who are most at risk of sexual harassment inside their office space. The judiciary is liable to be sued for not complying with POSH Act provisions that require them to set up the ICC and take action on or before three months from the date of receiving the complaint. The Act furnishes female prosecutors with a legal lifeline they can use to seek redress and protection from sexual harassment.

### **(C) Other Relevant Statutes and Amendments**

Such biases reflect sex discrimination and must be combatted by a number of other statutes and amendments that advance gender equity and justice on the bench. For instance:

The Equal Remuneration Act, 1976: Mandates equal pay for equal work for men and women. It also provides that any differences in wage rates between men and women, including the number of shifts, shall be removed and comparable employment having similar skill, responsibility and working conditions shall be accorded the same rate of wages or pay. A female prosecutor can invoke this law to challenge any pay disparities within the judiciary system.

The Protection of Women from Domestic Violence Act, 2005: broad and holistic protection for women against domestic violence (though confined largely to domestic spaces, this can, and must, become a decisive precedent for judicially gender-sensitive approaches in other areas as



well).

The Maternity Benefit (Amendment) Act, 2017: Extends the duration of maternity leave to six months from three months, and launches initiatives to provide working women with lactation breaks and arrangements to nurse their children at their workplace. By doing so, the Act allows female prosecutors to continue practicing their vocations after they become mothers.

## **V. LANDMARK SUPREME COURT AND HIGH COURT JUDGMENTS ADDRESSING GENDER BIAS**

By issuing judgments, the courts are helping to create a jurisprudence interpreting and strengthening law against gender discrimination. Many important judgments have helped to move the judiciary towards gender equality and to address the problems facing female prosecutors.

In the case of *Vishaka v. State of Rajasthan*, the Supreme Court issued far-reaching guidelines on preventing sexual harassment at the workplace (now known as the Vishaka Guidelines) after the Supreme Court ruled in this landmark case. Eventually, because of this precedent, the POSH Act, 2013 was passed. The Vishaka case reflected the judiciary's will to acknowledge that there needs to be a safe place for women to work and to move forward in correcting systemic bias in the workplace.

In the case of *Apparel Export Promotion Council v. A K Chopra*, the Supreme Court confirmed the disposal of a senior government officer accused of sexually harassing a female subordinate. Sexual harassment in the workplace was explicitly identified as a violation of women's fundamental right to equality, their right to life and personal liberty. This judgment once again demonstrated the judiciary's commitment to combating sexual harassment and upholding women's rights at work.

In the case of *Laxmi v. Union of India*, Judgment regarding an acid attack victim in which judicial directives mandating strict regulation of the sale of acid as well as monetary compensation and rehabilitation of acid attack victims were issued. This case, while not directly dealing with female prosecutors, highlights the judiciary's evolving gender-sensitivity and its protectiveness of the rights of women.

*State of Maharashtra v. Madhukar Narayan Gardikar*: This case involved a female prosecutor working in a state-level prosecution office, who was sexually harassed by the senior police officer in charge of the same office. The Supreme Court accepted the principle that the 'minor or imaginary faults in character or conduct cannot be availed of as justification' for harassment,

establishing that an employee's chastity cannot be made a precondition for employment or, for that matter, judicial service.

## **VI. CHALLENGES FACED BY FEMALE PROSECUTORS**

There continues to be an ignorance of the fact that the female takes of legal education increased significantly since the 1980s, and yet gender disparities still persist in the profession. In a practice that was once the 'province of men', law schools have steadily become an overwhelmingly female domain. Notwithstanding that women now constitute the majority at law schools, both in terms of student-teacher ratio and total numbers, these professions and environments still have not been fully transformed, and women continue to face unique challenges that their male counterparts do not. These include lack of mentoring opportunities, gender bias in class participation, and societal expectations that might further discourage women from pursuing demanding legal careers.

Studies show that female law students routinely experience evaluative conditionals that undermine their confidence and ambitions to practice law. Stereotypes regarding the 'natural' suitability of women for some areas of law rather than others can lead to inadequate professional exposure and development: for instance, the stereotype that women are less suited than men for criminal law will continue to encourage recruitment into prosecutorial positions.

### **(A) Recruitment Biases and Challenges in Entering Prosecutorial Roles**

Implicit biases are also plentiful during the hiring process for prosecutorial positions. Some of these can come from external sources, such as the hiring officer's preference for male candidates due to social stereotypes about male availability, physical stamina and suitability to high-stress work environments. Others come from within, where the varied times for legal and family responsibilities create networks of peers that are much more available to men, thus making networking less available to women.

Women applicants can also face outright and subtle discrimination at the recruitment stage. Examples include questions about marital status, number and age of children, and family commitments that, whether overt or subtle, are believed to influence hiring decisions. In addition to keeping women out of the prosecuting arena, these and other factors contribute to a vicious cycle of underrepresentation and gender disparity in judicial offices and constituencies.

### **(B) Gender Discrimination and Harassment in the Workplace**

When in the workplace, female prosecutors have to contend with gender discrimination and harassment, which can manifest itself in different forms, for instance unequal payment, lack of

support, exclusion from key meetings or decision-making processes, unequal performance appraisal and evaluations, and sexual and non-sexual harassment, to name a few.

It paved the way for *the Vishaka v. State of Rajasthan* judgment that prescribed guidelines for the prevention of sexual harassment at workplace, which eventually translated into the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Implementation continues to be haphazard, and many female prosecutors continue to remain mute and miserable in hostile workspaces.

In the case of *Vishaka . State of Rajasthan*, On 13 August 1997, the *Vishaka* judgment formally ushered in India's modern era in the fight against sexual harassment in the workplace. The Supreme Court decided that the absence of any legislation hitherto to specifically address it proactively ought to influence how such harassment was handled, in tandem with otherwise applicable laws such as the Indian Penal Code (1860), the Code of Criminal Procedure (1973), and the Evidence Act (1872). It formulated far-reaching guidelines that required the comply-or-explain model to be adopted by every employer in India. The guidelines stipulated that employers should establish ICCs to handle grievances and raise awareness.

Though the *Vishaka* guidelines and the subsequent POSH Act have been important milestones, their application to the judiciary has been erratic. Many female prosecutors feel disinclined to lodge complaints for fear of backlash, lack of faith in the procedure, or damage to their professional image.

### **(C) Implementation and Effectiveness of the Sexual Harassment Act, 2013**

The Sexual Harassment Act, 2013, aims to provide a thorough framework for combating sexual harassment in the workplace. Courts and police often serve weary plaintiffs with dismissals, on grounds of delay when, in fact, the delay had been caused by the inefficient systems of the two institutions. None of this, however, fully explains why a larger number of women who suffer the indignity of sexual harassment choose not to seek redress under the Act. An *Amaanat* (conditions to ensure safety) issued by the chief justice of Bihar probationary services at a circuit bench. At a top court in northern India, an executive's hand snaked around my waist and, within seconds, his wants were explicit. I was focused on an important case, had never experienced anything like it at the workplace before and didn't want to fall afoul of the appellate judge by making a big deal out of it. On the same day, another woman at the court was threatened by an official. She fell ill and left, declaring herself unavailable to work until the official was moved out of the department. The formal procedures against sexual harassment require a complainant to approach the internal complaints committee of her organisation, where matters would

initially be considered informally, and only if there is no desirable outcome, could a complaint be made to a magistrate, who would carry out an inquiry under Section 118A of the Code of Criminal Procedure. Usually, men at courts and police stations often serve weary plaintiffs with dismissals on grounds of delay – which often means filing a complaint at a much later stage than legally prescribed. But in reality, they are playing ball because no intervention from the legal sector is likely to be prompt. Courts and police often serve weary plaintiffs with dismissals, on grounds of delay when in fact the delays had been caused by the tardiness of the two institutions. Courts and police personnel remain only partially compliant with the mandatory provisions of the prevailing Sexual Harassment Act, 2013, rarely setting up the required internal complaints committees or registers for hearing out complaints.

It's also not lost on female prosecutors that hierarchical structures may place these protections out of reach, as well as a culture of unawareness and, often, enormous stigma related to reporting harassment at the office. Ensuring that the rules are enforced and adhered to is not only a matter of adhering to the strict letter of mandates. More importantly, it's a cultural change to the judiciary as an environment, to ensure it is conducive to a respectful and supportive working environment.

#### **(D) Promotion and Career Progression Barriers**

Professional development and career advancement is vital in any legal career, but female prosecutors face many obstacles. Many promotion processes are opaque, and decisions are often made by informal networks and subjective assessments, rather than by any meritocratic criteria. For example, women might miss out on important assignments or leadership positions, due to conscious or unconscious views about how capable they are, or about how committed they are.

In comparative studies of career trajectories, male and female prosecutors often receive very different answers. In particular, far fewer women than men reach the senior ranks, or hold influential positions within the prosecutorial pyramid. Part of the reason why is that women lack the same opportunities for mentoring and sponsorship, key components of career success in the legal profession.

#### **(E) Comparison of Career Trajectories of Male and Female Prosecutors**

It turns out that the career paths of male and female prosecutors can be very different indeed. Where men move up the career ladder fairly smoothly, women sometimes face interrupted or bumpy progress to more senior positions, due to the effects of the double burden of work and home, their relative lack of networking opportunities, and negative stereotyping of their professional capabilities.

Without talking about how an air hostess is very different from other jobs, the Supreme Court judgment in *Air India v. Nergesh Meerza* exemplifies a commonly faced issue of denying women promotional opportunities due to gender alone. The judgment put into words that discriminatory service conditions can be proved against an employer to ensure an equal chance and opportunity for professional advancement.

In the case of *Air India v. Nergesh Meerza*, the Supreme Court found that the DOT had unlawfully imposed discriminatory service requirements on female flight attendants (imposing, for instance, mandatory retirement on marriage or first pregnancy). The Court sent a message to female employees that they should not be treated as second-class workers. It also set a legal benchmark for challenging discriminatory practices against women in judicial office and other occupations.

For female prosecutors, this case reminds us that, as corporate employers and managers, we are obliged to strive for a workplace without gender bias and consciously tailor work policies and practices to support the professional development of women, and that the courts can play a part in combatting systemic discrimination at work and in promoting gender equality.

#### **(F) Treatment of Female Prosecutors by Judges, Defense Attorneys, and Clients**

Courtroom dynamics present a worthy adversary for female prosecutors: they are more vulnerable to bias from judges, defence attorneys and clients. This differential treatment can threaten their professional authority and ability to succeed. Judges can adopt condescending or dismissive behaviour toward the women, questioning their ability or treating them with contempt in other ways, or interrupting them more frequently than similarly situated male prosecutors.

Defence counsel might manipulate stereotypes to attack the prosecutor's credibility through sexist commentary or by challenging her professionalism; clients might be bolstered by those same stereotypes, and might express distrust of a female prosecutor to the prosecutor, interfering with the relationship between prosecutor and client, as well as how the prosecutor plans to approach the case/trial.

#### **(G) Impact on Case Outcomes and Professional Reputation**

The fact that female prosecutors receive different treatment from their male counterparts in the very heart of the courtroom can have important consequences on case outcomes and their professional image. Prejudice and bias are likely to affect judicial decisions, whereby judges may afford less attention to the arguments advanced by female prosecutors than those of male prosecutors. This has knock-on effects not only on the judgments delivered for the specific case,

but on the perception of the prosecutors' competence and effectiveness.

Judicial bias also undermines the confidence of female prosecutors leading to a less effective performance and reduced career advancement. Steps to reduce bias against requiring a more gender-sensitive training for judges and other legal personnel in the courtroom would help in making this environment more appreciative and respectful to female prosecutors or indeed any other group of stakeholders.

Here is some of the bias that female prosecutors face in the courtroom: In the *Sheela Barse v Union of India* (1988) case, a journalist and activist who brought to attention the conditions in which women prisoners were held faced robust and severe criticism and animosity from the judiciary. This case is one of many that highlight judicial sensitivity towards a gender-sensitive judiciary, and the bias which prevents women from being prosecutors.

Another is the *State of Maharashtra v Madhukar Narayan Mardikar* (1991) in which the Supreme Court affirmed the right to fair treatment of the female prosecutor who had been pressured and subjected to abuse from employers. These cases demonstrate the responsibilities of the judiciary to female prosecutors – and the authority of the judiciary to act to correct gender bias.

### **(H) Challenges of Balancing Professional and Personal Life**

The perception that balancing work with family is an issue uniquely facing female prosecutors is false. Long hours and intense workplaces of prosecutorial work often conflict with the family and social responsibilities placed on women. Those who shoulder both can lose motivation, burn out, and fail to progress professionally.

But societal expectations only make these issues harder. Women's roles tend to be dominated by their roles as family members and carers, leading to reduced availability and interest in taking on challenging new business assignments. There's often a lack of enabling policies that allow women to make the most of their expertise, such as 'return ships', working flexible hours, or good maternity leave.

### **(I) Societal Expectations and Their Impact on Professional Roles**

While overall we examine a number of barriers that female prosecutors face throughout their careers, here we're going to concentrate on three personal-level barriers: expectations about the role of women as caretakers; hostile workplace climates; and the negotiation of job demands. 1  
Expectations about caretaker roles One threat faced by women in the careers of female prosecutors is the expectation that women will inevitably be limited in their ability to commit

fully to work because of their caretaking responsibilities. These expectations play a large role in shaping the paths of female prosecutors' careers. Currently, family leave policies are educated guesses at the needs of new parents based on biological necessity. Such policies imagine that new mothers must be excused from work for childcare. Research on caring preferences and perceptions for new fathers tends to be based on funder biases. While today's fathers will spend roughly 100 times as much time with their children than they did in the 1960s, the idea that fathers would want to (or even might) perform much caretaking is one that seems to make many people profoundly uncomfortable.

These broader social biases need to be tackled head-on with a multipronged approach – including promoting gender equality in domestic work, providing supportive workplace policies, and creating a culture of respect and equality in the judiciary.

### **(J) Impact of Gender Bias on Judicial Outcomes**

Because most impacts manifest years later in life and are subliminal, they gnaw away at a juror's subconscious, and can influence case outcomes, often in subtle and complex ways. For example, the gender of the prosecutor can raise distinct issues about gender bias, whether implicit or explicit, in the way that judges, juries and even defence attorneys perceive female prosecutors. Some empirical studies and anecdotal evidence suggest that female prosecutors often get the lion's share of scrutiny or enquiry from judges and jury members into their legal arguments and demeanor.

In reality, research suggests that, as a result of the male predominance in this profession, female prosecutors can be interrupted more while standing to argue before the judge, or their arguments can be given less credence than the arguments of their male counterparts. These factors could affect the performance of female prosecutors and, in turn, the decisions made by the judge and the impressions formed by the jury.

It might also be the case that stereotypical views about women's emotional character or intellectual competence lead the jury or judge to react less favorably to the prosecutor in court, confusing her sex with her character. For example, imagine a female prosecutor who is forceful, passionate and committed, but credible. On this account, her behaviour could easily be misinterpreted as a sign of defensiveness, reactivity, temperamental volatility – a general lack of composure; while a male prosecutor displaying the same characteristics might be deemed assertive, confident and competent.

### **(K) Sentencing Disparities Based on Gender of the Prosecutor**

While the evidence shows both that case outcomes depend on gendered biases and that biases

about female prosecutors can unwittingly shape sentencing decisions, only the latter counts. Did women prosecutors level the playing field for defendants or unwittingly make judges sentence differently, merely because they had to look at the prosecutor?

Sentencing differentials might result from implicit biases about the competence and authority of female prosecutors, reflected in the perception that a prosecutor's case is weaker or less compelling when a female is pursuing it. In some cases, this perception might lead to a bias to impose more lenient sentences; in other instances, the opposite perception of leniency from the female prosecutor might lead to a harsher sentence being imposed as a form of counter-bias.

For instance, in *State of Punjab v. Gurmit Singh*, the Supreme Court instructed those arguments in prosecution of the perpetrators of sexual violence – men or women – be taken seriously in order to do justice to the victims. But if women prosecutors are accorded less credibility, the impartiality sought could be compromised; and with it, the sentencing review patterns.

## **VII. HOW GENDER BIAS AFFECTS PUBLIC PERCEPTION OF FAIRNESS AND JUSTICE**

It is vitally important for maintaining public confidence in the rule of law because the public's perception of whether the judiciary treats men and women equally plays a significant role in determining whether they continue to believe the system is fair and impartial. Discrimination or bias against female prosecutors by the judiciary is particularly significant, because if the public witnesses it or hears about it, they are very likely to lose faith in the institution of the rule of law.

Views of unfairness can affect legitimacy of the judiciary. If female prosecutors are perceived as having been treated unfairly or hampered because they are women, broader disillusionment with the judiciary can ensue. Court proceedings can be viewed with greater skepticism and legal outcomes more likely to be seen as unfair, especially in the cases that do have gender-sensitive implications.

Such perceptions are likely to be heightened where high-profile cases are present, or where female prosecutors are publicly visible. If a female prosecutor in charge of a high-profile case is not taken seriously by her male colleagues or the judiciary, the public might become outraged and clamor for systemic reform, especially if the case has been covered in the media. Incidences of bias and discrimination can be publicized by the media.

### **(A) Role of Media in Shaping Perceptions of Female Prosecutors**

Depictions in the media of female prosecutors and the judicial system in general can perpetuate stereotypes and biases or dispel them by illustrating the experiences and successes of female



prosecutors. Sensationalism or ideological bias in reporting can lead the public to view female legal professionals through a skewed lens.

These women prosecutors not only need positive representations of themselves in the media, so that negative stereotypes don't hamper their careers, but they also need to have their competence and integrity portrayed in ways that endear them to the public. For example, television shows and films might represent female prosecutors as good, effective public servants, with a strong sense of purpose whose success overcomes formidable obstacles, thus fostering public confidence in them (and other women) as fair-minded problem-solvers who seek justice rather than 'winning'. Such stories seek to embed virtues of public service for the common good in the conscience of not only the protagonist and her peers, but the public as well.

At the other extreme, negative or biased media coverage can sustain stereotypes and reduce the credibility of the female prosecutor. Media stories that focus on personal elements such as appearance or personal life rather than professional accomplishments can diminish professional credibility and reinforce gender stereotypes.

For example, much of the media scrutiny that followed the high-profile Nirbhaya case highlighted the courage and professionalism of the two female prosecutors as they pursued the sex offenders with rigor, while also bringing to the fore the statistics of gender bias in the judiciary itself.

### **(B) Legal Reforms and Suggestions**

The legal framework can be further strengthened to combat gender biases. Some of the laws are already in place and can be more strictly implemented and put up for review on a periodic basis, with amendments to keep it up to date with the times, e.g., the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), and certain provisions of the Indian Penal Code (IPC) on crimes against women.

Implementation and monitoring, given the current implementation frameworks of the POSH Act is relatively feeble, we need to be stricter in reinforcing it. A regular audit of the compliance, mandatory trainings for all the employees and a stringent financial penalty for the offenders failing to comply with laws can go a long way towards motivating the safe working environments for the lady prosecutors in judicial offices.

Law needs to be refined periodically to keep up with the times and new emerging issues. For example, the IPC and CrPC can be amended to include stringent punishments for gender bias and harassment for the judiciary.

### **1. Proposals for New Legislation Addressing Gender Bias**

With this, laws designed to combat gender bias in courts and legal professions can be especially powerful.

There is, for example, a Gender Equity in Judiciary Act, which mandates that at least 30 per cent of judicial appointments be women, and clearly sets out how to make the judiciary more gender sensitive, including by requiring gender audits, mandatory reporting on gender equity, and fines for institutions that breach it.

An independent agency that would screen judicial procedures and appointments for gender bias, whereby impartially reviewing instances of complaints, issuing sanctions, and providing guidelines for judicial discretion free of bias.

### **2. Programs for Judges and Legal Professionals on Gender Sensitivity**

Specialized, judicially administered training and resource initiatives can empower a judiciary to become more gender sensitive, to identify and neutralize entrenched forms of gender bias within its procedures.

- **Mandatory training:** All judges, lawyers and prosecutors and all personnel involved in legal processes should be required to take training programmes of gender sensitivity as a matter of course (e.g., on unconscious biases, etiquette and manners, gender equality in justice processes, etc).
- **Continuing education and training:** Judges can be encouraged, formally or informally, to participate in workshops and seminars on sexuality and gender-issues more broadly, as a means of keeping them abreast of developments pertaining to best practice. Invited input by gender studies experts and civil society organisations can be helpful in designing these programmes and for ensuring their quality.

### **3. Mentorship and Support Networks**

It is important to provide these women with support structures so that they can develop their professional skills by interacting with their fellow female prosecutors. Networking and mentorship will offer advice, encouragement and pragmatic tips.

- **Formal Mentorship Programs for Female Prosecutors:** Setting up formal mentorship programmes with senior judges and prosecutors with years of experience in the field for their professional growth and understanding their careers and being able to transcend certain obstacles in their careers.

- **Form Professional Women Associations:** Creating professional associations of women legal personnel will make the women feel more connected and can lobby for an equal place for women, to provide a platform for women to raise common problems and bring solutions, resources, advocacy and support for women lawyers and judges.

#### **4. Institutional Mechanisms for Addressing Grievances**

Good grievance redressal mechanisms can play an important role in addressing issues of gender bias and discrimination.

- **Independent Grievance Committees:** Complaints of gender bias and harassment should be investigated and handled by independent committees (grievance committees). These committees should have broad scope and authority to investigate complaints and make substantive recommendations for action.
- **Anonymous reporting:** If women can report instances of discrimination or harassment without having to be identified, they might be less hesitant to speak up. The reporting system must be anonymous (and third-party), which means that no one in the office/workplace can see who has filed what complaint. A detailed description of the complaint and circumstances would be attached to it. Remember the importance of confidentiality for the complainant.

#### **5. Initiatives to Encourage More Women to Pursue Legal Careers**

It can be started at the educational level, by provoking more women to join the fields of legal study.

- **Scholarships And Financial Assistance for Girls** to ease economic burden and more girls can delve into the study of law.
- **Awareness Campaigns:** Career prospects in law can be paraphrased in the schools and colleges.
- Awareness programs must be necessary for women and intelligent female students must be considered.
- This will inspire young women into bright careers though in law.
- Shining successful female lawyers will be a best example for them.
- It can impact upon the pain kill of such students.

#### **6. Gender-Sensitive Training Programs in Law Schools**

Law school's play an important role in molding the attitudes of future practitioners. Training

that is sensitive to gender issues can contribute to a more inclusive legal culture.

- **Curriculum Integration:** incorporating gender studies, and gender sensitivity training into the law school curriculum helps students when they are progressing in the profession. Course that would help include feminist legal theory, gender justice, and human rights.
- **Workshops and seminars:** Every now and then, it is important to take certain measures to incorporate latest skills and updates on gender issues. Conducting workshops and seminars by people in the field would be of great help to the students and have a more realistic view of things in today's times of law.
- **Student support services:** It is useful for female law students to have access to counselling services and career development support. This will help them fight against difficulties and complete their courses in return for a degree and will also find a job after graduating.

## **VIII. CONCLUSION**

The most profound obstacle to the career growth of female prosecutors - and hence the quality of justice - is the gender bias that permeates the judiciary, which stems from a judicial system and social attitudes inherited from preceding legal regimes. In more recent times, efforts have been made to introduce practices of inclusivity and equality, and while the Constitution provides the foundation of a strong equality framework, full implementation is slow because of institutional inertia and traditional mind-sets.

Discriminatory recruitment patterns often went hand in hand with systemic biases within the profession – lateral and vertical career moves out of prosecution remained few and far between, mentoring and network groups did not come into existence easily, judicial pronouncements and collegiums that characterized the courtroom environment were patriarchal and drew conclusions directly or indirectly from case decisions in a manner that affected the outcomes and also the professional reputation of the female prosecutor. The Mathura rape case is a popular example of judicial attitudes that replicated societal prejudices in the verdicts and the verdict delivered from the judgments, and also in the professional image of the investigating police officer.

Of course, we must have a three-pronged strategy to deal with this endemic problem. It requires application of robust gender-friendly statutes such as POSH Act, amendment of other existing statutes to address practical lacunas of the present times, and mandatory gender-sensitization

training for all judicial functionaries to create a progressive judiciary that is fairly sensible and responsive to women.

Lastly let us mention female lawyers who can benefit from a kind of female mentor network, as well as institutional mentoring programmes. The process of changing the attitudes of the society towards female professionals has to start from legal education and should extend until mass media.

Consequently, reform entails moving in multiple directions, including legislation reforms, improved training of judges, and a shift in the basic public perception, so as to create an inclusive space in which an unbiased gender-free Indian judiciary can make the work environment supportive for female prosecutors and ensure a better, fair and equitable judicial system for all, so as to instill people's trust on these judicial processes.

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