

‘Tokenism’ In the Recruitment of the Women Lawyers Is a Continuous Reality-A Theoretical Critique

Jayeeta Basu

Ph.D Scholar at University of Calcutta

Abstract: The study focuses on the negligible representation of the women lawyers. The official figures reveal that around 8.25 percent of the total judges of the 21 high courts in India have women. However, no female judge has been appointed as the Chief Justice of India yet. A modest number of studies do exist on women in legal profession but in India there is hardly any work relating to concept of a glass-ceiling. The study tries to locate the factors behind such experiences of the women lawyers.

Keywords: Stereotyping, token, networking, male-dominated profession.

1. INTRODUCTION

There was a time especially in India, when women did not have an access to the formal education. ‘Women take care and men take charge’ (Boardroom Issues, Discrimination and leadership; Women & Work Oct, 2005), this form of stereotyping at the workplaces can have devastating effects on women’s career advancement. Their potentiality is totally undermined in this conventional idea which has been internalized by many members of both the genders and it is often difficult to break it.

2. PRESUMPTIONS ABOUT THE GENDER ROLES FOR THE WOMEN

To the feminists, biology is destiny and they have always tried to demarcate between sex and gender and to them gender is a social construction. Geddes and Thompson argued that social, psychological and behavioral traits were caused by metabolic state. (1889) Women supposedly conserve energy (being ‘anabolic’) and this makes them passive, conservative, sluggish, stable and uninterested in politics. The attributes of women’s caring, nurturing skills have always been regarded as their biological distinctiveness. These differences are ‘deceptive distinctions’ according to Epstein are referred in 1991. The legal profession has always been segmented and stratified. Different works are differently evaluated. The division of labour leads to one’s different status and visibility in the profession.

Sally Haslanger argues that gender is a matter of occupying either a subordinate or a privileged social position. Haslanger’s analysis of gender begins with the recognition that females and males differ in two respects: physically and in their social positions. Societies in general tend to privilege the male bodies for their higher social positions than social positions of those with female bodies. This generates persistent sexist injustices. (Stanford Encyclopedia for philosophy, May 2008) International Criminal Court (ICC) make up just 4 percent of the women lawyers which is like “A drop of water in the desert” as put by Sylvia Arbia. (Michaud, 2010)

When this is the common picture almost everywhere in the world, then, some Caribbean countries have cases of concern for the marginalization of the young men as the culture of the region asserts and relies upon the potentiality of the women. This shows that certainly the barrier for the women in the rise of her career in any professional field is more due to the socially constructed value-system than her potentiality. (Fox, 2006) It has often been difficult to accept women as leaders

because of the stereo typing of the women's accepted gender role. The women's role as followers get even more strengthened in the absence of female leaders. It is strange to note that, if the women are found to confirm to their gender role, they are not being able to be good leaders. Conversely, if they are being good leaders the women are not performing their gender roles properly. This implies that leadership in the corporate houses are framed in favour of their male colleagues and they find it really difficult to accommodate themselves there. ((Jain , et al .2010)

3. SEVERAL HINDRANCES TO THE WOMEN LAWYERS IN THE INDIAN SCENARIO

The study was conducted in the Calcutta High Court. 60 women lawyers were interviewed for this and it was discovered that many women lawyers showed a tendency to quit the profession after a certain period of time. This reason to quit is often responsible for their marital obligations and their child bearing and rearing practices.

The data shows that all the respondents had the crisis of time after the Court gets over. It is because of their distance of their houses from the chamber or family obligations 36.6 percent of the married women interviewed for this study said that they are able to give even lesser time to their profession after their childbirth.

Table 1

| Women Lawyers(Number) | Number of Hours they can give to the profession |
|-----------------------|---|
| Married (48) | 2-3 Hours after the Court Timings. |
| Unmarried(12) | 5-6 Hours after Court timings. |

Participation of women as judges in India's higher judiciary is less than 10 percent.

The official figures reveal that, out of the total number of 630 judges working in 21 high courts of the country, only 52 are women. Out of the total sanctioned strength of 895 judges in the high courts, the number of women judges working there, falls to an insignificant level of 5.8 percent. Delhi High Court has the maximum number of women judges, which is of 8, compared to the total the working strength of 42. (Ajit, 2010)

A report referred by Sujaya Basu, published in The Times of India on May 2006, shows most ministers denies to have a female secretary in his department even when that job of the IAS officials are a dream come true for any Indian to become so, but, the study complained of the gender bias.

Basu further states that the top Management Institutes have 10 percent female teachers to 90 percent male teachers and the women are associated with "soft areas " like the Human Resource Management and men certainly in Finance, Production and Operation Management referring to the gender-stereo typing . (Basu, 2008)

It connection to this, it is important to mention that the gender of the token affects the status of the token. '*Men resist allowing women and men to work together as equals because doing so undermines differentiation and male dominance*'(Yoder 1999). Tokens often act as threats to the dominant group. It is because of their unfamiliarity with work habits of the tokens. They never want to take the risk of their authority and dismissal.

Kanter's theory of tokenism, offers a theoretical discussion of the consequences of tokenism whereby she mentions about the Boundary Heightening. It refers to how the small numbers of them in a minority category feel isolated from the informal social and professional networks and feel that their differences from the male peers are exaggerated. Discrimination in the jobs along with other forms of sexist experiences is higher in the private settings than in the public sectors. The women are vulnerable to over- performance under severe surveillance, and at times, to sexual harassment also. Due to the advent of the women in the male- dominated occupations, they are often forced into less prestigious sub-specialties of the female-dominated 'ghettos' within the occupations.(Yoder 2001) Apart from it, the theory of intrusiveness show that sexual harassment, wage inequalities and blocked mobility are the other forms of gender discrimination experienced by the women. Kanter suggests that for the 'tokens', stereotyping is often perceived as a barrier. Similar to the effects of high visibility, the emphasis on difference often make women feel self- conscious about their gender, which can lead to a heightened sense of isolation. In this connection Lively suggested in 2000 that the subordinate status of the women in the legal profession is often due to her 'invisibility' and the typical 'othering'. (As cited by Francis, 2006) It helps the men to maintain the subtle hierarchies that already exist in the legal profession. They encounter a second -class status everyday because they are snubbed by the other legal experts and professionals.

In many cases women are generalized to be incompetent after a certain time period. This affects their career. Their marital status and child bearing and rearing practices affect them even more. It cannot be denied that women were not allowed to enter the Bar Council till the 1920s. Though with time their numbers grew yet United States experienced acute shortage of the lawyers in the country during the Second World War. It was odd to read that during the Second World War, US relied on the women lawyers on important cases like finance and others whereas these women competent lawyers were out of their positions on return of the male lawyers. (Bowman, 1999)

Out of all the 60 women lawyers of the Calcutta High Court who were interviewed, respondent number 23 said “ It cannot be denied that women were not allowed to enter the Bar Council till the 1920s. Though with time their numbers grew yet United States experienced acute shortage of the lawyers in the country during the Second World War. It was odd to read that during the Second World War, US relied on the women lawyers on important cases like finance and others whereas these women competent lawyers were out of their positions on return of the male lawyers. (Bowman, 1999)

The respondent, no. 23 said, “It is totally a male profession. To fit in here we girls really need to be like them. We might try hard to be like them but we are seen differently and that is mostly because of odd timings of the chamber.”

The study showed that late night conferences are regular and common amongst the advocates. The conferences often take long to get over. More than any other problem, the commutation gets very difficult. The factor of security cannot be denied in this case. The families get bothered, so does the senior which ultimately limits the prospects of a capable and flourishing lawyer. It is because the conferences do not take place always in the same lawyer’s chamber that is when solicitors and other advocates sit on same matter. This leads to several biases and which even influences the women lawyers regarding their lady juniors and on asking them, all have showed the same reason of security factor of the young lady juniors.

Table 2:

| Total number of women lawyers | Number of women lawyers having junior | Number of lawyers having female juniors |
|-------------------------------|---------------------------------------|---|
| 60 | 14 | 11 |

Only 31.11 percent of the women lawyers have juniors and most of them have a female junior. Some have full faith in the responsibility of her juniors; some said on basis of performance, cases are allocated to them. Some showed striking biasness, like:

Narrator (32) said, “Till now, she is good, you wait, let her get married.”

Narrator (55), “They come, work, learn. But mostly leave the profession after they have their kids. That gets difficult for me. It takes time to train her and then when she leaves after learning my every detail, it becomes a problem.”

This shows the women lawyers themselves after attaining seniority do not prefer women lawyers and apprehend their performance after their marriage.

In the contrary, narrator (36) said, “I give my keys of my car to them, if there are late conferences. I have asked them to learn driving and carefully drive else I do not think women are incapable of doing anything today.”

The study showed that there is a mixed view amongst the seniors about their lady juniors.

The women lawyers in their post –pregnancy period are often generalised that they would not be interested in more of cases because they are new mothers but that is never so for the new- fathers. This often acts as a trouble for the capable women lawyers. The flows of interesting and challenging cases often get limited to the women.

As networking is very important to grow the number of clients and cases, the women lawyers face a setback. This might happen immediately after her marriage or childbirth. The unspoken disapproval by the clients and the colleagues take place when the women lawyers remain absent. This affects their career.75 percent of women working in law firms say that maternity breaks had an adverse affect on their careers.(Makhija,2015)

The study showed that late night conferences are regular and common amongst the advocates. The conferences often take long to get over. More than any other problem, the commutation gets very difficult. The factor of security cannot be denied in this case. The families get bothered, so does the senior which ultimately limits the prospects of a capable and flourishing lawyer. It is because the conferences do not take place always in the same lawyer's chamber that is when solicitors and other advocates sit on same matter. This leads to several biases and which even influences the women lawyers regarding their lady juniors and on asking them, all have showed the same reason of security factor of the young lady juniors.

Table 3:

| Total number of women lawyers | Number of women lawyers having junior | Number of lawyers having female juniors |
|-------------------------------|---------------------------------------|---|
| 60 | 14 | 11 |

Only 31.11 percent of the women lawyers have juniors and most of them have a female junior. Some have full faith in the responsibility of her juniors; some said on basis of performance, cases are allocated to them. Some showed striking biasness, like:

Narrator (32) said, "Till now, she is good, you wait, let her get married."

Narrator (55), "They come, work, learn. But mostly leave the profession after they have their kids. That gets difficult for me. It takes time to train her and then when she leaves after learning my every detail, it becomes a problem."

This shows the women lawyers themselves after attaining seniority do not prefer women lawyers and apprehend their performance after their marriage.

In the contrary, narrator (36) said, "I give my keys of my car to them, if there are late conferences. I have asked them to learn driving and carefully drive else I do not think women are incapable of doing anything today."

The study showed that there is a mixed view amongst the seniors about their lady juniors.

The women lawyers in their post –pregnancy period are often generalised that they would not be interested in more of cases because they are new mothers but that is never so for the new- fathers. This often acts as a trouble for the capable women lawyers. The flows of interesting and challenging cases often get limited to the women.

As networking is very important to grow the number of clients and cases, the women lawyers face a set back. This might happen immediately after her marriage or childbirth. The unspoken disapproval by the clients and the colleagues take place when the women lawyers remain absent. This affects their career. 75 percent of women working in law firms say that maternity breaks had an adverse affect on their careers. (Makhija, 2015)

Ridgeway argues that certain norms govern the inter-personal interaction processes for generations. Thereby, the organizational actors categorize and assign tasks on basis of sex, thereby cuing gender stereotypes. (Kleinbaum et al. 2011) In turn, this automatic categorization scheme serves to reproduce gender inequality, even as formal roles change. A group composition on gender differences occurs because gender becomes a more salient aspect of social identity as an organizational context becomes imbalanced with the sex ratio. These gender dynamics lead men and women to adopt different networking strategies. As cited by Klienbaum et al (2011), McGuire argued that men might perceive ties with women to be less valuable than ties with the other men. Therefore, they show a tendency to invest less in women as sources of social capital and may be less willing to provide task-related help to the women. It is important to mention that the difference in the career outcomes does not result from one's own career choices but from organizational practices of the hiring policies and job allocation decisions. Studies show that men and women lawyers with similar human capital attributes do not often compete for the same jobs by the virtue of those qualities alone. It is seen that the positions below the top positions is based on automatic job performance and seniority but the promotion to the top positions involve politics and the 'old boy's network' which often disadvantages the women. (Roach, 1990) The criteria for top position are subjective and arbitrary but for lower positions it might mean increased salary and new title. This again does not mean that it always adds more responsibilities to their positions. It is because the management which is mostly occupied by the men is effectively controlling the skills for the varied legal departments.

Apart from this, the problem of victimization of the women lawyers is more, where women work in token. Kanter(1977) refers to the effects of unbalanced sex ratios, including isolation and behavioural distortion. Formal rules and affirmative action policies are less effective in the private settings than in the public settings. In public settings, the chances of sexual harassments for the women are lesser within the strict measures work policies which the legal companies are bound to follow.(Rosenberg,1993) Often being married may provide protection for those women regarded as already 'taken' by other men who have legitimate claims to them as sexual property. The problem is pertinent when it comes to the survival of the competent women in their work fields but it is getting difficult to locate day by day in the studies. It is because many women cannot make it to the top levels. As new comers the women in the legal profession work under pressure to conform to the authority, professional norms, to avoid confrontation concerning women's issues. So their pressure, their socialization and ideologies have now equated political neutrality with professionalism. Many women have developed assimilistic and individualistic approaches to their professional roles. Thus they concentrate more on their individual strategies to be successful regardless of their systematic road blocks they may encounter in their professional advancement. Their career orientation makes them reluctant to report about or even acknowledge the existence of sexism at work. These are common and easy for the women to face mostly when they are working in tokens. These are often done to break their confidence at the work field. According to the explanation of dominance sexual harassment is way in which men maintain dominance over women at work and society more generally. (Padavic,1997)

An aspect of Gender Essentialism cannot be ignored here also for analyzing the status of the capable women who contribute to the workforce. The idea of gender essentialism refers to the idea that all women possess some traits in common. This further makes the acceptance of the eligible and capable women more difficult as it is often generalized that all women are incapable of handling tougher tasks, which might also be the scenario for the males but that, is usually not considered uniformly.(Torchia et al. 2011) Therefore, the idea of favoritism on basis of certain criteria is usual. A study show that in the period between 1989 to 1994, 30 percent female law graduates were absent from the competition of the full time legal profession by 16 years after that. Ramaswami and others argue that the disparity in representation of the female lawyers in the upper echelons is due to their absence after a certain period. So it becomes certain to find the male senior lawyers as the mentors to both the genders on starting of their careers. So they are working more as the employees in various firms mostly preferred in the lower rungs to their male colleagues.

4. CONCLUSION

The male exclusivity in the legal profession was challenged by the women lawyers during the Second World War It is more than fifty years today that the Civil Rights Act 1964 has been enacted. It is suppose to rise beyond all kinds of discrimination ie, beyond sex, race, religion etc.

It can be inferred from the observation that discrimination is existing in a subtle way even though there has been law passed against this form of gender discrimination in the 1970s. The Sex Discrimination Act (1975) and Equal Pay Act (1970) has heavily affected the aggressive form of gender discrimination in the workplace but to the experiences collected in the study and in the various other forms of secondary sources from across the world. This is important to mention that the expansion of the legislation took place with the European influence. With time the Human Rights Act in 2006 further encouraged 'Human Rights Culture'.

So the issue of discrimination is very pertinent here. The direct discrimination often happens because of unfair assumptions made about a certain person or persons with particular trait can or cannot do. Often this assumption for the women is baseless or based on certain incidents taken as a generalized situation for all women irrespective of their context, financial or educational background. The Equal Opportunity Act 2010 entails for equality for all the employees in the workplace.

It is an accepted ideal that rainmaking is a very important part of the legal profession. Knowing and interacting with more of people really helps in climbing their professional ladder which women lawyers often are forced by the societal situation to miss.

ACKNOWLEDGEMENT

I earnestly thank all the women lawyers of the Calcutta High Court who have given their valuable time for the interview with their details. I thank my husband for his support and reference to meet the senior women lawyers for the interview.

REFERENCES

- [1] Hanslanger S, Tuana N, O'Connon P, "Topics in Feminism"; Stanford Encyclopedia of Philosophy, 2003 ed.
- [2] "Gender stereotypes blocks women's Advancement"; Boardroom Issues, Discrimination and Work, Women and Work;<http://management-issues.com/2006/8/24/research/gender-stereotypes-block-women-advancement.asp>(May 10,2011)
- [3] "Women Judges in Supreme Courts and High Courts"; M2 Presswire; <http://www.highbeam.com/doc/IGI-74096107.html>. (Dec 11,2010)
- [4] Betty J ,Fox S; 2006;;*Successful Professional women of the Americas :from polar winds to the tropical breezes* ;Cornwall, UK; Edward Elgar Publishing Limited
- [5] Jain, Neera, Mukherji, Shoma;2010; 'Perceptions of glass ceiling in the Indian Organizations-An Exploratory Study'; *South Asian Journal Of Management*; pp. 3-8,[url:www.highbeam.com/doc/1P3-2039401371.html](http://www.highbeam.com/doc/1P3-2039401371.html) accessed on Jan11.2012
- [6] Ajit R;Mar, 7 , 2010;"Women less than 10 percent in India's Higher Judiciary"; Headlines India; <http://headlinesindia.mapsofindia.com/social-interest-news/women/women-less-than-10-percent-of-indias-higher-judiciary-41042.html> visited at Dec11,2010
- [7] Roach S.H;1990;'Men and Women Lawyers in In-House Legal Departments: Recruitment and Career Patterns'; *Gender and Society*; Vol.4,No.2,pp-207-219
- [8] Basu Sujaya;2008;*Gender Stereotypes in Corporate India-A Glimpse*; New Delhi; Sage Publication Pvt Ltd
- [9] Yoder J.D.,Barendsen;2001; 'Outsider within in the Firehouse: African American and White Women Firefighters'; *Psychology of Women Quarterly*;25(1);27-36
- [10] Yoder J.D.; 1999; ' Rethinking Tokenism: Looking beyond numbers'; *Gender and Society*;Vol:5;No.2;pp-178-192;[url www.nhh.no/files/Filer/adm/personal/Likestilling/rethinking-tokenism.pdf](http://www.nhh.no/files/Filer/adm/personal/Likestilling/rethinking-tokenism.pdf) visited on Dec 12, 2013
- [11] Francis A;2006; "I'm not one of those liber type people but...:Gender, Class and Professional power within the third branch of the English legal Profession";*Social and Legal Studies*;Vol-15, no. 4;pp475-493
- [12] Kleinbaum A.M,Stuart T.E,Tushman M.L.;2011; 'Discretion Within the Constraints of Opportunity:gender homophily and structure in a formal organization';[url: mba.tuck.dartmouth.edu/pages/faculty/adam.kleinbaum/docs/discretion_constraints.pdf](http://mba.tuck.dartmouth.edu/pages/faculty/adam.kleinbaum/docs/discretion_constraints.pdf) visited on Dec 12,2013
- [13] Torchia M,Calabro A,Huse M ;2011; 'Women Directors on Corporate Boards from tokenism to critical Mass';*Journal of Business Ethics*;pp299-313
- [14] Ramaswami A,Dreher G.F.,Bretz R,Weithof C;2010; 'The interactive Effects of gender and mentoring on Career Attainment :Making the case for female lawyers'; *Journal of Career Development*;Vol37;No. 4;pp692-716
- [15] Roach S.H;1990; 'Men and women lawyers in In-house departments :Recruitment and Career Patterns'; *Gender and Society*; Vol 4;No.2;pp 207-219;[url: http://www.jstor.org/stable/189612](http://www.jstor.org/stable/189612) visited on Dec 12,2013
- [16] Rosenberg J,Perlstadt H, Phillips R.F.;1993; 'Now that we are here: Discrimination, Disparagement and harassment at work and experience of Women Lawyers'; *Gender and Society*;Vol-7, No,3;[url: http://www.jstor.org/stable/189801](http://www.jstor.org/stable/189801) visited on Feb 14,2014
- [17] Padavic I;1997; 'Perceptions of Sexual Harassment in the Florida Legal system:A comparison of dominance and spillover Explanations '; *Gendr and Society*;Vol-11,No.5;pp-682-698