Educational Administration: Theory and Practice

2024, 30(6), 5047-5053 ISSN: 2148-2403

https://kuey.net/

Research Article



Advancing Gender Equality In Law: Initiatives By The American Bar Council For Women Lawyers

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Citation: Swati Pandita, et.al (2024). Advancing Gender Equality In Law: Initiatives By The American Bar Council For Women Lawyers, Educational Administration: Theory and Practice, 30(6) 5047-5053

Doi: 10.53555/kuey.v30i6.9452

ARTICLE INFO

ABSTRACT

The American Bar Council (ABC) is taking meaningful steps to advance gender equality within the legal profession, focusing on empowering women lawyers and addressing systemic barriers. Through targeted initiatives, the ABC is working to close the gender gap in leadership roles, promote equal pay, and create more inclusive work environments. The paper examines the initiatives spearheaded by the American Bar Council (ABC) to promote gender equality, such as mentorship programs, leadership development, and advocacy for equitable workplace policies. By evaluating the effectiveness of these efforts, the study highlights both progress made and areas requiring further attention. Additionally, the paper explores the broader cultural and structural changes needed to address implicit bias, close the pay gap, and ensure equal opportunities for women lawyers. Through this analysis, the paper underscores the importance of sustained commitment and innovative strategies to create a more inclusive and equitable legal profession for future generations.

Keywords: American Bar Council, Gender Equality, Gender Diversity, Bar and Bench, Women Representation

1.1 Introduction

The legal profession espouses principles of equality and inclusion, the reality often falls short of these ideals. The movement towards increased gender diversity within the legal profession persisted at a gradual pace both in India and USA.

Bella Lockwood, faced numerous challenges on her journey to become the first female lawyer of the USA. She had limited access to legal education, as most law schools at the time were exclusively for males, forcing her to study privately. She was initially denied licensure for being a female. It did not stop at that. She encountered widespread skepticism and prejudice from male colleagues and judges who questioned her competence and legitimacy as a lawyer solely on the basis of her gender. They refused to recognize her as a practicing attorney or even permitte her to represent clients in a court of law (Norgren (2007).

In a case against her practising in Maryland, a judge remarked that "Women are not needed in the courts. Their place is in the home to wait upon their husbands, to bring up the children, to cook the meals, make beds, polish pans and dust furniture."

In 1879, Belva Lockwood's efforts to advocate for women's rights in the legal profession saw success when Congress passed legislation allowing women to practice law in federal courts. This law, titled "An Act to relieve certain legal disabilities of women," marked a significant milestone.

14 years later, Cornelia Sorabjee overcame similar barriers and started practicing before the Allahabad High Court becoming the first female lawyer of India. In 1923, the colonial government passed The Legal Practitioners (Practice) Act to remove any gender-based disability prohibiting women from practicing law (Brodsky, 1994)

In contemporary times, the female representation in law colleges and universities across states is higher than the male. A report by ABA states that "The gender gap at ABA-accredited law schools widened yet again in 2022. For the sixth straight year, most students pursuing a juris doctor degree were women, 55.7%. The number of male students at the 196 ABA-accredited law schools has dropped every year for the past 12 years, from 78,516 in 2010 to 50,969 in 2022. Meanwhile, the number of female students has increased each of the

past six years, from 55,766 in 2016 to 65,073 in 2022. That means there were 14,000 more women than men in accredited law schools in 2022 (ABA, 2023).

At present, The United States of America has 1,331,290 lawyers practising in 50 states, with an average of one lawyer per 245 residents. Over the past few years, the legal profession has grown at a snail's pace with a 0.3 % increase in new enrolments. Regardless, the shift in number of women lawyers over the past 70 years is significant. It increased from 3% in 1950 to 39% in 2023. In contrast, in India only 15% of the total lawyers are women (NALP, 2020).

A similar trend is visible in judiciary also. In India it is largely dominated by men with only 11 females serving as justices of Supreme Court since 1950. In lower judiciary also the women representation is 28% only. However, in the USA, 32% of women are serving as Federal Judges and 42% as Supreme Court Judges. It is less than their population of almost 50% but the upward trajectory is something commendable (ABA Commission on Women in the Profession, 2021).

The data provided suggests that Indian women lawyers face significant underrepresentation in the legal profession, particularly in leadership roles within law firms and corporate legal departments. In contrast, the representation of female lawyers in the United States is on an upward trend.

1.2 Measures taken by The American Bar Council (ABA)

In recent years, the demand to lessen the gender gap in the legal profession has risen from various corners of the society. In United States, the participation of women in law has been undergoing a positive change. ABA's efforts have been concentrated on encouraging diversity and making the workplace more inclusive for women lawyers.

1.2.1 Goal III Reports

The American Bar Association's Goal III focuses on eliminating bias and enhancing diversity and inclusion. It comprises of 9 entities, namely, Diversity, Equity, and Inclusion Center; Diversity, Equity, and Inclusion Advisory Council; Coalition on Racial and Ethnic Justice; Commission on Disability Rights; Commission on Hispanic Legal Rights and Responsibilities; Commission on Racial and Ethnic Diversity in the Profession; Commission on Sexual Orientation and Gender Identity; Commission on Women in the Profession; and Council for Diversity in the Educational Pipeline to encourage initiatives and actions to address systemic barriers resulting in exclusion in the legal fraternity. The report comprises of demographic data on representation of marginalised groups (ABA, 2023).

1.2.2 360 Commission

The 360 Commission is established with the purpose of conducting a comprehensive review of the status of diversity and inclusion in the litigation and judiciary. Its primary objective is to formulate effective methods, policies, standards, and practices aimed at encouraging representation of marginalised groups (ABA, 2016). The commission's work can be summarized as followed

- i.The National Pipeline Diversity Initiatives Directory was launched as an online database suggesting pipeline programs available across the USA
- ii.To make aware the law students about various career options available after law school, a collaboration was done with Judge Advocates General Corps to brief them about the recruitment procedure and practices.
- iii.Prepared a draft of Model Diversity and Inclusion Plan
- iv.A web portal, created by 360 commission, serves as a centralized platform showcasing the extensive diversity and inclusion programs, resources, and information available across the American Bar Association. This comprehensive platform is designed with the agenda of promoting awareness, accessibility, and engagement with initiatives aimed at advancing diversity, equity, and inclusion within the legal profession.
- v.Developed a repositories of training videos along with a toolkit to proactively raise awareness among lawyers, judges and juries about the prevalence of inherent implicit bias and how to avoid it during trial.
- vi.It also called for revision of the ABA Principles for juries and jury trial to include people having different gender identities to sit for jury trials.
- vii.Amended ABA Model Rule of Professional Conduct to designate sexual harassment or discrimination as a professional misconduct

1.2.3 Diverse Directory

To fulfil the objectives mentioned in Goal III report, ABA has compiled a directory of attorney's coming from diverse background who can be referred for delivering lectures, being resource person at a seminar or conference etc. They take into consideration professionals who have been underrepresented because of gender, race, ethnicity or disability.

1.2.4 Diversity, Equity and Inclusion Plan

ABA has adopted a proactive approach to address the issue of inequality in the legal profession and in this plan, the phrases "diversity" and "historically underrepresented communities", refer to individuals from racial or ethnic minorities, women, LGBTQ+ individuals, and people with disabilities (ABA, 2010).

The plan requires ABA to fulfil the following objectives:

- i. Wide dissemination of the Diversity, Equity, and Inclusion Plan within the ABA, and public availability of the Diversity, Equity, and Inclusion Plan;
- ii. Promote and track diversity within the ABA's leadership, membership, and law schools;
- iii.Promote and track diversity, equity, and inclusion in the ABA's and its entities' leadership nominations and leadership development processes;
- iv.Require all ABA entities to adopt a diversity, equity, inclusion plan that is consistent with the objectives of this Diversity, Equity, and Inclusion Plan;
- v.Promote diversity in ABA membership;
- vi. Promote diversity, equity, and inclusion in CLE and other programming, both live and virtual;
- vii. Promote diversity, equity, and inclusion in all ABA publications, both hard copy and electronic;
- viii.Promote diversity, equity, and inclusion in all ABA events, including "marquee" events (e.g., annual awards dinners, luncheons, receptions);
- ix.Urge ABA entities to develop or enhance mentoring programs that target newer lawyers and law students and are designed to advance diversity, equity, and inclusion within the Association
- x.Encourage ABA entities to develop, partner with, or co-sponsor pipeline programs targeted to college and K-12 students designed to advance diversity, equity, and inclusion in the legal profession
- xi.Encourage ABA entities to partner with law firms, corporations, and courts on internships, fellowships, clerkships, and mentorship programs that advance diversity, equity, and inclusion
- xii.Promote the ABA's diversity, equity, and inclusion accomplishments, and encourage collaboration and communication within the ABA.

1.2.5 ABA Diversity Equity and Inclusion CLE Policy

The ABA advocates for proactive measures to guarantee that individuals from diverse backgrounds have equitable opportunities to engage in CLE programs. All CLE programs supported or co-supported by the ABA will align with the goals of Goal III, aiming to eradicate bias and promote diversity.

SCOCLE will establish a subcommittee comprising representatives from SOC and the Diversity and Inclusion Centre. This subcommittee will oversee the Association's CLE programming to ensure alignment with this policy. It will also have the power to support and guide any ABA entities found to be non-compliant. SCOCLE will present the subcommittee's observations at the Board of Governors' routine meetings (ABA, 2022).

1.2.6 Model Diversity Survey

As per Resolution 113, the legal services providers have an obligation to provide career opportunities to candidates coming from diverse backgrounds. It further encourages the use of Model Diversity Survey. The survey is a mechanism devised for law firms to report their diversity metrics annually. This helps the stakeholders in formulating benchmarks for their law firms.

Through 2022 survey it was revealed that the higher positions in the law firms had an over-representation of White men with 42% of them holding position of Equity Partner and on the other hand and under representation at lower levels. It also highlighted another discriminatory trend of women attorneys, specially of colour being historically under represented on Government Committees (ABA, 2023).

1.2.7 Diversity Scholarship

To honour the dedication of Jeanne Gray, Director of ABA Centre for Professional Responsibility, ABA has set up a diversity scholarship namely, 'Jeanne P. Gray Diversity Scholarship Program'. This scholarship aims to encourage inclusion by acknowledging a licensed member of the diversity bar and promoting the participation of members who face barriers due to their gender, or sexual orientation in Centre activities (Centre for Professional Responsibility, ABA, 2020).

The recipient of scholarship gets benefits like, "lifetime complimentary membership to the Center for Professional Responsibility, recognition at a Center Coordinating Council meeting and the invitation to share professional responsibility; one-year appointment as liaison to the Center's Diversity Committee and ABA Standing Committee on Professionalism; active participation in committee meetings and teleconferences; opportunities to assist on projects, including developing educational programs and resources for diverse members of the legal community relating to ethics, diversity and professional responsibility issues; complimentary conference registrations, recognition of the recipient in an issue of the Center's Pulse e-newsletter."

1.2.8 Commission On Lawyer Assistance Program-COLAP

A survey done by Betty Ford Foundation in collaboration with ABA revealed that legal professionals have a higher inclination of substance abuse and alcoholism. Henceforth, COLAP was established to work towards

the well-being of law students, lawyers and judges. Under this program support and assistance is provided to any member of the profession dealing with mental health issues, stress due to work-life balance, or substance abuse. It has committees researching in this field, advancing knowledge, furthering policies to curb the menance. COLAP's website offers plethora of resources like "directory of lawyer assistance program, toolkits, articles, reports, and event information" for the victims to seek help (CoLAP, ABA, n.d.)

1.2.9 Skill Enhancement Initiatives

ABA under its Diversity, Equity, and Inclusion Centre's Affirmative Action Policy regularly conducts workshops and webinars with the intention of fostering insightful dialogue regarding the future trajectory of initiatives aimed at advancing diversity, equity, inclusion, and a sense of belonging in the legal profession. Each session is tailored to address the gender specific barriers encountered by different marginalsied groups. The primary objective of this initiative is to disseminate knowledge, stimulate discourse, and provide suggestions to remove the obstacles (American Bar Association, 2022).

1.2.10 ABA Model Rules

House of delegates in 1983 approved a Model Rules of Professional Conduct, overriding the 1969 *Model Code of Professional Responsibility*. The document defines the standard to which a lawyer's conduct should abide by in his professional capacity. It elaborates on his role as an advisor, counsellor, lawyer, or a third party neutral, partner or manager or supervisor of a law firm. It also lays down rules with respect to membership of legal service organisation and probono litigation. In case of non-compliance with the provisions, a disciplinary action can be taken against the erring lawyer (ABA, n.d.).

1.2.11 Well Being Pledge Program

ABA launched this pledge in 2017 to address the issue of rampant substance abuse and mental health problems in the legal profession, focusing on assisting legal employers in fostering a positive and sustainable workplace environment.

This pledge is an initiative to urge the legal bodies to "recognize that substance use and mental health problems represent a significant challenge for the legal profession and acknowledge that more can and should be done to improve the health and well-being of those in the legal community (including judges, lawyers, staff, and students); and to support and prioritize the Pledge's seven-point framework for building a better future."

Law firms, legal aid organisations and other bodies can become signatories of this pledge and showcase their commitment towards promoting well-being in their employees.

1.2.12 3-Year Diversity, Equity and Inclusion Plan

Centre for Professional Responsibility devised a 3-year DE&I plan to promote equal representation in the profession. Its objective is to raise awareness about Goal III and robust adoption of Rule 8.4(g) of ABA within the fraternity. It intends to do so by circulating pamphlets and posting about the information on its website, asking the position holders in firms to support the cause. Every year at least one workshop, training program or conference is conducted to promote CPR's above-mentioned mission. It also collaborates with leaders of diverse national bar associations to establish synergies, build relationships, and create joint programming opportunities aimed at promoting Jeanne P. Gray Diversity Scholarship. In addition to this it also collects data to ensure that each specific objective outlined in the DE & I Plan is achieved by the different assigned bodies or not. Also, which strategies are working and which don't have much impact and make necessary changes in their modus operandi (ABA, 2020).

1.3 Lessons for India

Bar Councils play an integral role in shaping the modern-day legal profession as they control legal education and the functioning of the courts and law firms. Henceforth, a statutory body, the Bar Council of India was established by the Parliament to protect and promote the interest of lawyers and create funds or welfare schemes for such purposes whenever necessary.

Similarly, under the Indian High Courts Act, 1861 and other statutes, 25 High Courts across 28 states and Union Territories were created. For each High Court there is a Bar Council, discharging its statutory duties of enrolling new lawyers and maintaining standards of professional conduct. In addition to this, Supreme Court Advocates on Record Association and Supreme Court Bar Council also play a crucial role in advancing the interests of lawyers practising in Supreme Court. All these bar associations derive their funds from membership fee from newly enrolled lawyers and annual fee from the existing lawyers too.

Legal profession in India has been historically dominated by upper caste men. The lack of gender representation had a regressive impact on the courtroom experience and judgements.

Female lawyers from varied backgrounds and experiences enrich the courtroom experience, specially for victims from the marginalised backgrounds, as well as the decision-making process thorough consideration

of diverse perspectives. In the legal realm, a diverse representation mirrors societal demographics, thereby enhancing public confidence in the fairness and effectiveness of the judicial system.

Moreover, it promotes equitable access to legal services for marginalized and underrepresented communities. Additionally, a diverse legal workforce serves as a source of inspiration, offering role models for aspiring lawyers and challenging societal stereotypes and biases. The bar associations in contemporary times are sensitive towards this requirement of gender equity and are working towards it. However, these steps have proved to be insufficient as women still face barriers. ABA has a proactive role in ensuring diversity.

1.3.1 Tackle Sexism and Sexual Harassment

Gender stereotypes prevalent in the society also has effect on the experience of women lawyers in the courtroom. They face sexism, demeaning remarks, bullying, patronising behaviour and sexual harassment as the hands of their fellow male lawyers, judges and other court staff too.

Multiple complaints of sexual harassment have been filed by interns and lawyers but recently a judge from Banda district court of Uttar Pradesh wrote a letter to the CJI asking "Kindly permit me to end my life" (Sharma, 2023).

In a survey conducted in 2021 has 57.1% of the total respondent believe that POSH guidelines were not being adhered strictly (Palemo, Mc, Kulshreshtha, 2020).

Taking note of the increased reporting of cases of Sexual Harassment, Patna High Court inaugurated its POSH website in 2022. However, addressing this issue requires a multifaceted approach, combining legal reforms, effective enforcement, and continuous advocacy. There should be a visible and prominent tab on the website to report incidents. The members of ICC and Minutes of Meeting should also be published online. Furthermore, POSH training sessions for judges, advocates and other staff of the court should be carried out on an annual basis.

1.3.2 Reservation of Seats in Council Elections

Bar Councils are functioning as an Old Boys Club. There are only 9 women out of 441 executives across 18 bar associations (Ahmed & Suryam, 2021).

In 2021 a group of 300 women wrote to the then law minster, Mr. Kiran Rijiju demanding reservation of seats for women lawyers in bar elections (Hakim, 2021).

Reservation for women in Bar association elections will provide women lawyers an opportunity to be a part of the policy and decision-making process. Lived experience of barriers faced can help them to advocate for more inclusive policies for the collective empowerment of women in the profession. Furthermore, it can also can serve as a catalyst for cultural and institutional change, challenging existing norms and serving as a symbol of gender equality

1.3.3 Inclusive Infrastructure

Building Better Courts, a report by VIDHI Centre for Legal Policy revealed that "only 88% or 585 court complexes had washrooms, only 40% (266 out of 665 court complexes) had washrooms that were fully functioning. Although washrooms should be present on each floor, only 53% (354 out of 665 court complexes) met this requirement. Around 100 district court complexes did not have a washroom for women." The washrooms available for women are mostly unclean and female lawyers refrain from using them for fear of contracting UTIs.

The lack of adequate and hygienic washrooms in the courts complex presents systemic issue that violates dignity and the right to work of female legal professionals. It exacerbates existing gender disparities in the legal profession as inadequate sanitation facilities disproportionately affects women lawyers, and court staff, creating additional barriers for them to navigate in litigation. Additionally, accessibility report suggested that "Sanitary pad dispensers, and appropriate bins for diaper disposal and sanitary waste need to be installed."

1.3.4 Online Hearing and Flexible Working Hours

Women lawyers have a difficult time balancing work and personal life. Online hearings for women lawyers can serve as a transformative solution to this problem. It will provide them with greater flexibility and convenience. This would be particularly beneficial for those female lawyers who face difficulties in traveling to court due to geographical, familial, safety or cost concerns. Additionally, online hearings can help mitigate issues related to inadequate infrastructure, such as the lack of washroom facilities and drinking water in some court premises.

1.3.5 Maternity Support

Maternity often poses a significant challenge for working women and women lawyers are no exception. The demanding nature of litigation, with its long hours and constant travelling, can be difficult to manage with the responsibilities of pregnancy and motherhood. These barriers can result in women taking extended breaks from their careers, which may impact their career advancement, client retention, and overall perception. Recently 15 District Court complexes in Chhattisgarh inaugurated creche rooms named 'Kilkari.'

This initiative represents a significant step towards creating more inclusive and equitable infrastructure that caters to the needs of women. Bandra Family Court also inaugurated a lactation room and Justice Bharti Dangare commented that "it is a most basic necessity for women with children." However, courts in India often lack lactation room or crèche for women lawyers. Bar Council should utilise its funds to build creche facilities and lactation room with air conditioning which are available for women lawyers (Deshpande, 2023).

1.3.6 Psychological Support

Litigation is one of the most demanding professions which makes lawyers prone to stress, anxiety, depression and substance abuse. In 2020 a 25-year-old female lawyer killed herself by hanging as she was sexual harassed by a senior lawyer. Another incident of a women lawyer jumping from 15tth floor of her building came to surface in 2023. Her family informed the media that she was suffering from depression from sometime.

The Bar Council should set up confidential counselling and mental health support services for lawyers. Regular workshops on stress management, and mental health awareness should also be conducted for the lawyers to create a stigma free environment.

It has been observed that women lawyers report more burnout and mental health issues than their male counterparts and one of the reasons behind this is work life imbalance. The bar should advocate for online hearings and flexible working hours to make the workplace more inclusive and less stressful.

1.3.7 Contingency Funds and Welfare Schemes

Various state bar councils provide monetary relief in case of contingencies. In case of death, a benefit of INR 4,00,000/- & Funeral expenses of INR 15,000/- is given to the nominees of the deceased Advocate. For retirement, INR 3000/- per year of practice or half of the death benefit amount is paid to the advocates who have completed 35 years of standing. Similarly, financial assistance to INR 60,000/- is given on medical grounds. However, no fund or scholarship is created specifically for women lawyers (Bar Council of India, 2018).

These funds can be used as financial safety nets to support women lawyers during unforeseen circumstances, specially to navigate challenges such as maternity leave, health emergencies, or setting up of their career. Such measures can significantly reduce the exit of women lawyers from litigation.

1.3.8 Collection of Data

Data about how many women are practising, empanelled, or designated as senior advocate or friend of the court in this country is not available. There is no accurate statistics on various aspects such as the number of Dalit or Muslim women entering and exiting the legal profession, their areas of practice, income levels, and the social legal challenges they face. Due to this, policymakers and legal institutions are unable to identify and address the issues hindering gender equity.

Bar Council should collect diversity data annually to get a clear understanding of the position of women in law and create policies for targeted intervention.

1.3.9 Career Counselling and Mentorship

Bar Council and other state bar associations should take proactive steps in raising awareness about varied career options. Special mentoring sessions for female students should be organised to foster a supportive environment that can help bridge the gender gap in the legal profession.

1.4 Conclusion

The foundation of India and USA both was laid by lawyers. From Babasaheb Ambedkar, and Dr. Rajendra Prasad to Thomas Jefferson were lawyers and lead the countries towards the goal of equality and freedom. Despite their immense contribution in societal advancement, members of the legal profession continue to struggle with the inequality that exists within their own field.

The American Bar Association (ABA) has openly acknowledged that current efforts to obtain diversity within the profession are likely to fail. Similarly in India, lawyers are pushing for reservation of women in Bar elections and higher judiciary (ABA, n.d.)

The need of the hour is to advocate for a fair and an unbiased field for women in all aspects of the legal profession, including recruitment, hiring, promotion, compensation, and access to training and development opportunities to freshers.

For these reasons, ABA asserts that diversity aligns with democratic principles. It emphasizes that diversity within the legal profession is crucial as lawyers and judges play a distinctive role in upholding a political system characterized by inclusive participation from all members of society.

Women who have been historically under represented because of their gender, should have the chance to climb the ladder based on their merit, skills, qualifications, and performance (Nalty, 2011).

This study highlighted the wide gap between concerning diversity in the legal profession in India and USA. Women still face substantial obstacles in attaining positions of Advocate on Record, Advocate, Panel Lawyers

etc. Indian bar associations have taken few infant steps to increase representation but a lot more needs to be done. Litigation needs to be diverse as well as inclusive.

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