



Is Justice a right of her? Challenges being faced by women within the system of criminal justice in Sri Lankan context

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Abstract

Criminal Justice **procedure** is established for the security and existence of human society without gender disparities, in any country. The administrative system of justice procedures are in legal bondages not only with the victims in a crime but also the offenders, and overall society. Also, the judicial system is merged with police, courts, and prison and rehabilitation centers. The objective of this research is to study to which degree the process of justice is disrespected the gender balances between male and female. This attempt is made since the lesser concerns or respect on women is a doctrine still rooted in the social structure hence, to analyze the research problem of whether the said disparity is ensuing even in the judiciary institutions. Research sample is comprised by 200 women (100 from rural and 100 from urban setting) those who had gained experience during their life time on the above problem in any capacity. Data collection was proceeded through questionnaire, discussions, group based discussions and through observations. The unique experience merely shared by 71% of women irrespective of their living status whether urban or rural, expressed that they had to face fear and alarm than enjoying justifiable decision. Also disclosed that seeking justice or equity on women is a challenge compared to the male. One other controversy was that the majority of the staff in the respective agencies were male officials. Across the study which was accomplished through the responses of 200 women between the age ranges from 18 to 60, it was possible to diagnose possible action to avert gender disparities happening in the Sri Lankan society.

Keywords: Crime; Disparities; Fear; Gender; Justice; Women

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1. Introduction

Women in much of the world lack support for fundamental functions of a human life. They are less well-nourished than men, less healthy, and more vulnerable to physical violence and sexual abuse (Allen and Macdonald, 2013). They are much less likely than men to be literate, and still less likely to have pre-professional or technical education (Mosse, 2005). Should they attempt to enter the workplace, they face greater obstacles, including intimidation from family or spouse, sex discrimination. In many nations, women are not full equals under the law: they do not have the same property rights as men, the same rights to make a contract, the same rights of association, mobility, and religious liberty (The Institute for Criminal Policy Research, 2009). Burdened, often, with the 'double day' of taxing employment and full responsibility for housework and child care, they lack opportunities for play and the cultivation of their imaginative and cognitive faculties. All these factors take their toll on emotional well-being: women have fewer opportunities than men to live free from fear and to enjoy rewarding types of love especially when, as often, they are married without choice in childhood and have no recourse from a bad marriage (Wijewardhana, 2015). In all these ways, unequal social and political circumstances give women unequal human capabilities. One might sum all this up by saying that, all too often, women are not treated as ends in their own right, persons with a dignity that deserves respect from laws and institutions.

It is a common feature in the context of South Asian countries to identify women with discrepancies based on the concepts of male dominance or parental attitudes which are turned into common elements not only in the history but also in the present context. In each family setting either the mother or another woman performs specific sequences of tasks eg: giving birth to a child, or to fulfill sexual needs etc. In such context, father became the income earner or the breadwinner as well as the chief of the family. One unaffected feature is the continuous chieftainship of male, not only within the family but within the total social structure as well. A prevailing perception is that woman must live always under the behest of males is not yet distant from the modern society too. When the annoyance and varied aggravations affecting women are concerned, those are happening in varied fashions. Certain irritations are built in for women in particular eg: subjection for sexual harassments, discriminative identity in the society, domestic irritations etc., there are plenty of cultural barriers as well against women compared to the male. Not only the Virginity, and Dowry but also the issues such as divorcing are elements fabricated in a countries like Sri Lanka, being disadvantages for women.

Feminists have struggled for many years to equalize gender in many different aspects. Gender issues are socially constructed and it is about the reality of women's lives and the contexts in which women live. Meaning, the criminal justice system has to work harder to equalize their policy with gender differences, since current laws are based on male characteristics and male crime and fail to take into account the reality of women's characteristics, responsibilities, and roles in crime. The male model of justice may be fair treatment, however equal treatment may not be perceived as fair treatment because the social reality is, that women may have different economic needs, may have been victimized, and may in other ways be in different situations than males (Nussbaum and Glover, 1995). There is debate about whether equality under the law is necessarily good for women, due to equality in this sense is the only way to guarantee that women will be treated as equal partners in economic and social realms. However, since women are not the same as men, the use of a male

standard to measure equality means that women are disproportionately disadvantaged in comparison to their male counterparts.

Criminal Justice in any country is a mechanism to endeavor justice for the civilian exclusive of any breach or division, under which, police, courts of law, prisons and centers for rehabilitation are established (Jayasundere and Valters, 2014). It is a common feature within Sri Lankan community that constant challenges with varied nuisance, when associate with above institutions. It is a common feature of grievances of women in Sri Lankan society when they are happened to access the said institutions. A principle question is that why the disadvantageous experiences are encountered on women. Is it because they are women? If so, in what nature of experiences gained. How and which way those happenings affected women when the justice is attained. Both rural and urban women were used as the sample to get analyzed data

2. Research problem

Conception of uneven cognizance on women in concern with gender equality prevails in all the societies in the world in sliding scales. Similarly, there are ideologies to elucidate that similar incidences happen in criminal justice authorities as well which are bound to testify equality and justice. In this respect, the focused problem addressed in this research is to ascertain to which degree the female has to face challenges in comparison to male in cases of seeking justice and if so, in what nature.

3. Literature review

Varied research accomplished in Europe as well as in Asia highlighted that women find hardship in justice proceedings, including in Sri Lanka. According to the study of Women's Experiences of Local Justice: community mediation in Sri Lanka states that "Both women and men often face similar challenges in accessing justice – such as physical distance from justice service providers, poor infrastructure, and high costs. However, women often experience additional or different "barriers" (Jayasundere and Valters, 2014). Similarly, a famous legal professional Beth E. Richie, Ph.D., University of Illinois at Chicago found that "On average, the female prison population grew more than 11 percent annually since 1985, while the male prison population grew 8 percent at the same time.³⁹ This precipitous increase is tentatively attributed to a change in both arrest policies and crime patterns.⁴⁰ Most criminologists take these changes seriously and are interested in exploring their underlying causes (Kottegoda, 2010)." Jenny Earle from the Prison Reform Trust, reported that "Women who are offenders are very likely to be victims of crime themselves. 53% of women prisoners have experienced emotional, physical or sexual abuse. Furthermore, female offenders are very likely to have troubled and chaotic lives – 31% having spent time in the care of the local authority, 25% having symptoms indicative of psychosis and almost half having attempted suicide at some point" (Allen and Macdonald 2013).

Birdsall and Sabot argued from their book on (1991) "Unfair Advantage: Labour Market Discrimination in Developing Countries", the law is assumed to be gender-neutral when in fact it may perpetuate gender discrimination, being a product of a culture with oppressive gender ideologies. Even where constitutional or

national legal provisions uphold gender equality principles, religious or other customary laws that privilege men may take precedence in practice. However, the law, when reformed with women's input, can be a potent tool for challenging discrimination, if combined with other strategies, including capacity-building to overcome barriers to claiming rights (Birdsall and Sabot, 1991). The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) in 1979 brought into international focus the rights of women as human rights, including the right to be free from discrimination. Women activists regard this convention as a key tool to support their struggle against discrimination in all spheres, pushing governments towards attaining these internationally recognized minimum standards.

When researchers argued about Justice for women they examined Hierarchical relations of power between women and men that tend to disadvantage women. These gender hierarchies are often accepted as 'natural' but are socially determined relations, culturally based, and are subject to change over time. They can be seen in a range of gendered practices, such as the division of labour and resources, and gendered ideologies, such as ideas of acceptable behaviour for women and men. Analyses which focus on gender relations differ in emphasis from those which take 'gender roles' as a starting point (Pearson and Jackson, 1998). They give more prominence to the connectedness of men's and women's lives, and to the imbalances of power embedded in male-female relations. They also emphasized the interaction of gender relations with other hierarchical social relations such as class, caste, ethnicity and race. But whether gender relations act to alleviate, or to exacerbate other social inequalities, depends on the context (Razavi and Miller, 1995).

According to Davies, M., (ed), (1994) on his study of *Women and Violence: Realities and Responses Worldwide* says, gender relations constitute and are constituted by a range of institutions, such as the family, legal systems or the market. They are a resource which is drawn on daily to reinforce or redefine the rules, norms and practices which govern social institutions. Since historically women have been excluded from many institutional spheres, or their participation circumscribed, they often have less bargaining power to affect change who institutions operate. So, for example, where they are perceived to transgress their accepted roles, women can be physically or sexually abused by male partners with relative impunity. In many cultures, beatings or rape in marriage are considered acceptable in the existing legal framework. Even where, following lobbying of women's groups, rape or violence within marriage is outlawed, women may be reluctant to seek redress because the male dominated judicial system is unsympathetic, or because they fear ostracism. Where women retaliate, they become criminalised themselves. However, change is possible: in a few recent cases, following sustained campaigns, women have been acquitted of 'crimes' against violent partners and new laws have been passed to respond to such attenuating circumstances. Hierarchical gender relations constrain development efforts. For example, rigidities in the gender division of labour limit the effective mobilization of women's labour to support export production. Poverty reduction efforts are hampered where men use their authority to usurp control over resources targeted at women. Development strategies need to be informed by an analysis of gender relations and to support women's own attempts to change the rules and practices which reinforce these gender hierarchies.

4. Objective of the research

To study the problems and challenges to be faced by women specifically when they confront with criminal justice processes.

To study whether gender equality principles are enunciated within the criminal justice processes, too.

To study the processes being followed by criminal justice authorities in concerned on women when they seek judicial solutions for their problems.

Acquaintance with details of surrounding factors of women and the degree of influence of same on judicial proceedings.

Identify the operational modality which could evolve in the processes of criminal justice with excluded gender related disparities.

Through above objectives of this research are to study to which degree the process of justice in Sri Lanka is fostered to dispense with disparity that creates adversities on women when they confront with judiciary procedures and to perceive whether gender disparity is ensuing even in the judiciary institutions.

5. Research methodology

As Best and Khan (1993) Explains, a research is considered to be the more formal, systematic and intensive process of carrying on a scientific method of analysis. This definition itself confirms that the methodology and the scientific disposition of it remain within the process adopted. The information necessitated, within the specified theoretical framework, was on the Challenges being faced by Women within the system of Criminal Justice in the context of Sri Lanka. Challenges being faced by women in the existing processes of Criminal justices and the impact of same are the key variables. The database build on facts has followed an authentic method following both qualitative and quantitative data

This section focuses on detailed description to the methodology applied. Designing the practical aspects of Research methodology was followed by several key points viz; determined strategy on the study and justifying the conceptual framework of same,

Theoretical knowledge in the field of challenges of women within the criminal justices pursuance too, was accumulated through literature review as a vital part of research methodology. Although this topic has been taken for varied levels of discussions those are not directly linked to the facets of the women However, researcher could evolve certain teachings gathered through Literature Review, in designing the methodology in this research.

5.1. Field of study and the sample

The field of study and the sample for this research is selected within mixed geographies of urban and rural areas. First category of the Sample of 100 women (between 18-65) were selected from urban townships of

Colombo, Rathnapura, Matara and Anuradhpura while balance 100 respondents (between 18 – 65) were enrolled from rural villages in same provinces. (Refer Table No. 1)

Table 1. Locations of Study and the sample

Province	Urban locations n = 100	Rural locations n = 100
Western Province	Colombo 25	Wetara 25 Bulathkohupitiya
Southern province	Matara 25	Neluwa 25 Deniyaya
Sabaragamuwa Province	Rathnapura 25	Kotakethana 25 Weligepola
North Central province	Anuradhapura 25	Medawachchiya 25 Saliya wewa

Ref. Field study

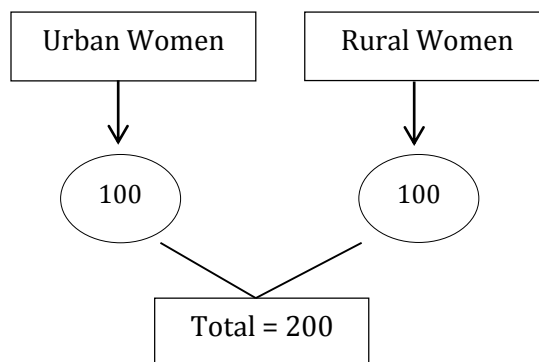


Figure 1. Respondents and their living status
 (Note: One of the criterions adopted when the respondents were selected was to ensure that each selectee had connection with institutes of criminal justice processes.

5.2. Process of data collection

Compilation of primary data of the study was attended in several steps. In view of the higher volume of the study more emphasis was paid by the researcher to collect data through primary sources. Exclusive effort was made to choose effective methodological tools for the data collection since the essence of basic research composites through the primary data. In this regard, instead of applying popular but simple methods, more trustworthy, qualitative and quantitative data were congregated by evolving a well defined data collection methods.

This was accomplished in several stages.

Stage 1: The study sample was selected followed by a research attended through a questionnaire. The decisive indicator followed was to confirm whether the respondent within the age range of 18-65 had involvement with

institutions of; police, courts, prison being a complainer, accused or a witness. Also considered whether she was summoned on a case in pertinent to her or of a relative.

Stage 2: Data gathering was accomplished via questionnaires, interviews and observations on 200 respondents.

Stage 3: Attention was paid on Case studies of 20 respondents in the sample, those living in both rural and urban settings.

5.3. Data analysis

Data analysis was brought about through quantity based analysis as well as the quality based analysis. In the process of data analysis a qualitative content analysis was chosen as the analytical method of the descriptive information obtained from the participants based on their diverse views. Qualitative content analysis aimed at grasping the evidences and concealed messages of respondents.

6. Results

Since, the focused problem aim of this research is to ascertain to which degree the female has to face challenges in comparison to male in cases of seeking justice and if so, in what nature, the outcomes of the study have elaborated the disparities in clear terms.

Criminal Justice in any country is a mechanism to endeavor justice for the civilian exclusive of any breach or division, under which, the police, the courts of law, prisons and centers for rehabilitation are established. In contradictory, the mixed experience shared by 71% of women irrespective of their living status whether urban or rural have shared their vicious experiences. Majority of respondents expressed that they had to face fear and alarm rather than justifiable decisions. Also revealed through the study that in certain proceedings the challenges were to be faced by female were in a higher volume compared to the male. Majority of female respondents expressed their predilection to see at least 50% of staff in the judicial offices to be female staff.

Since, the research problem is that why the detrimental experiences encountered by women than men even within the judicial authorities, the findings of the study have sufficiently provided information with verifiable indicators. Also a set of key suggestions made by the respondents to the study team to change the situation.

6.1. Key findings

- Often females face varied social-cultural barriers to bring-forth whatever disputes to mediators for actions.
- Mediators in the judicial sector as revealed during our research often try to maintain un-biased intervention yet, certain official's act differently creating uneasiness for women.
- Desire of some officials to resolve cases according to their own interpretation or without adequate concern on gender equality through which some of these initiatives have benefits to some women, but may also discriminate against others. (Eg: Women prisoners feel comfortable being detainees because they need not to struggle for daily earnings for their survival.)

Table 2. Responses on the debriefing - on; Age differences; Level of Education; Occupation; Monthly Income (SLR); Civil status; Parenthood; Judiciary institutions accessed by the respondents; Process of contact; Problems encountered; levels of satisfaction on the judiciary processes

<<Represented by>>

	Urban setting - 100		Rural Setting - 100	
	Number	Percentage	Number	Percentage
(1). Age categories				
18 - 24	10	(10)	22	(22)
25 - 35	33	(33)	24	(24)
36 - 45	41	(41)	31	(31)
46 - 55	12	(12)	17	(17)
56 - 65	04	(04)	06	(06)
(2). Level of Education				
Upto 1- 5	01	(01)	11	(11)
Upto 6- 10	04	(04)	15	(15)
Upto O' level	06	(06)	13	(13)
Passed O'level	09	(09)	14	(14)
Upto A'level	07	(07)	07	(07)
Passed A'level	39	(39)	21	(21)
Graguate: Post Graduate	23	(23)	06	(06)
Not attended school	00	(00)	06	(06)
Other : Diploma Certificates)	11	(11)	07	(07)
(3). Occupation				
Government	21	(21)	24	(24)
Private Sector	39	(39)	09	(09)
Self Employed	16	(16)	21	(21)
Businesses	06	(06)	13	(13)
Agriculture	00	(00)	22	(22)
Domestic Work	14	(14)	08	(08)

Other	04	(04)	03	(03)
(4). Monthly Income Rs.	Number	Percentage	Number	Percentage
Less Than 1000	00	(00)	00	(00)
Between 1001 To 10,000 w;r	06	(06)	39	(39)
Between 10,001 To 20,000	11	(11)	40	(40)
Between 20,001 To 30,000 w;r	19	(19)	10	(10)
Between 30,001 To 40,000 w;r	26	(26)	06	(06)
Etween 40,001 To 50,000 w;r	23	(23)	04	(04)
More than 50,001	15	(15)	01	(01)
^5) Civil status	Number	Percentage	Number	Percentage
Married	60	(60)	61	(61)
Un married	19	(19)	11	(11)
Divorced	09	(09)	06	(06)
Separately living	04	(04)	08	(08)
Woman headed	08	(08)	14	(14)
(6). Parenthood	Number	Percentage	Number	Percentage
Have Children	71	(71)	77	(77)
No Children	29	(29)	23	(23)
^7& Institutions in which the bearer could gain experience on criminal justice process.	Number	Percentage	Number	Percentage
Police	88	(88)	92	(92)
Courts	36	(36)	44	(44)
Prison	14	(14)	25	(25)
Probation Centers	11	(11)	03	(03)
^8& Nature of the process of contact with justice institutions	Number	Percentage	Number	Percentage
As a Complainer	18	(18)	41	(41)
As an accused	11	(11)	39	(39)

As a Witness	21	(21)	28	(28)
To appear on behalf of a member of the the family	30	(30)	69	(69)
For a close friend or a relative	42	(42)	55	(55)
On an other purpose	61	(61)	72	(72)
Other	12	(12)	11	(11)
^9& Problems encounte-red in proceedings at the justice institutions.	Number	Percentage	Number	Percentage
Faced mental depression	42	(42)	51	(51)
Exposed for Malicious and indecent words	14	(14)	55	(55)
Had to listen absurd jokes	32	(32)	16	(16)
Asked for sexual bribes	09	(09)	10	(10)
Attempted love affairs, or trying to create anomalous relationships.	11	(11)	04	(04)
Attempts to evolve False charges	16	(16)	41	(41)
Subjected for biased treatments?	22	(22)	56	(56)
Be subject for physical harassments	04	(04)	11	(11)
To face problems due to inadequate knowledge on Law, in general	29	(29)	62	(62)
Asking for monetary bribes	31	(31)	14	(14)
Get caught by fraudulent	05	(05)	07	(07)
Other	04	(04)	06	(06)
^10& Level of satisfaction on the outcomes of desired proceedings	Number	Percentage	Number	Percentage
Not satisfied at all	06	(06)	09	(09)
Satisfied to some extent	24	(24)	16	(16)
Satisfied	12	(12)	21	(21)
Satisfied to an higher degree	04	(04)	08	(08)
Not satisfied	54	(54)	46	(46)

7. Discussion

The above findings followed by analytical assessment with the revelation of challenges those were confronted by women respondents in the processes of searching for justice, irrespective of their geographical differences. Also, it is required to consider the socio-economic and academic backgrounds of the respondents which goes in line with their day to day events.

Women respondents were in the age ranges from 18 – 65. When the educational standards were concerned, it was 1% of those studied up to 5th. Grade in the urban setting, and it was 11% studied up to 5th grade in rural sector. Correspondingly 15% had studied upto O'level in urban sector while 13% from rural areas showing deficit of the level of education in different geographies. Furthermore, 39% of women in urban sector had succeeded in A /level and it was 21% in rural settings. Also, non-schooling percentage was 0% in urban areas and in rural areas it was 6%.

Comparably, the status and the nature of employment of the women those were subjected for academic sample too, was analyzed. Findings are illustrated through the table, below.

7.1. Nature of the employment

Table 3. Employment status of women in both Urban and Rural sectors

Prioritized status of employment	Urban Sector	Rural Sector
Government sector	21 %	24 %
Private sector employment	39%	09 %
Agriculture	16%	22 %
Trade and marketing	06%	13 %
Self-employment	16%	21 %

- As shown in the table 3 there are certain anomalies and inequalities of the nature of employment involved by the sample respondents in different geographies. One factor is that 39% of urban women had given higher priority for private sector jobs whereas, women in rural areas had given higher option for Agriculture, sales & marketing, and self-employment which were represented by 22%, 13% and 21%, in respectively. Employments in private sector and within Govt, sectors opted by urban women was 39%, 21%, respectively, it was 24% and 09% in the rural sector.
- The sample (figure 2) exemplifies that the respondents of the overall sample represent varied status of social, economic and educational milieus. In consequent of varied factors to join the selected sample the respondents might have associated with criminal justice processes having connected to the justice institutions such as; police, courts, prisons or rehabilitation centers on whatever reasons. The graph above exhibits the nature of the interaction of women from rural as well as urban settings in relevant institutions.

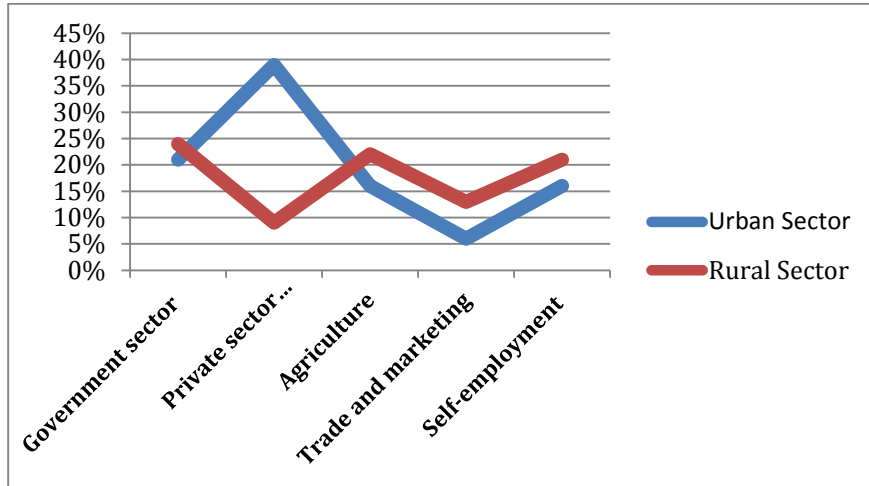


Figure 2. Employment status of women in both Urban and Rural sectors

Table 4. Criminal justice Institutions conversant with interviewees

Institutions in which the bearer could gain experience on criminal justice process.	Urban/Number	Percentage	Rural/Number	Percentage
Police	88	88	92	92
Courts	36	36	44	44
Prison	14	14	25	25
Probation Centers	11	11	03	03

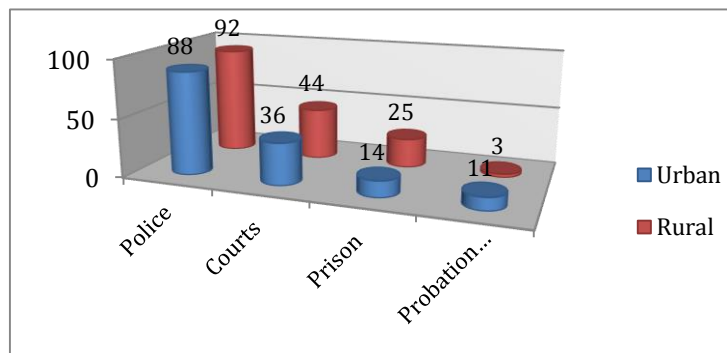


Figure 3. Criminal justice Institutions conversant with interviewees

7.2. Women respondents to attend institutions

The next vital aspect is the causes affected for women respondents to attend these institutions. It was identifiable that the needs were in different segments and over different causes. Let's focus on few straight forward comments shared by some of the respondents.

- *“Police is not a place for a woman to go” - (Female of age 25). “Going to police or judiciary institutions for a help means that person needs to face several unexpected problems. When I had to go to police to relieve my husband who was arrested over an incidence of quarrel I was to confront with varied episode. One police officer came to my house too, in searching me” - (Female in a rural setting aged 44).*
- *“If someone goes through some contacts the task can be achieved quickly. I too, had to go to police to obtain a police certificate and I went through one of the chiefs of the police. Otherwise nothing will produce” - (urban female aged 31)*
- There were several other incidences to highlight that the biggest challenge be faced by a woman in contact with institutions is the mental depression due to abominate treatment and partial support. Views shared by respondents also articulated that due to unawareness of legal processes a majority of women face degrading events. As per the data revelation 29% of urban women had faced these events while 62% had faced the same from rural areas.
- *“There are possibilities that when a complaint is lodged in a police it can be ended up in courts. If it happens to us we do not have any idea on what to do next. Because of these knowledge gaps there is no other option than paying off bribes or to be subjected for misguidance of relevant officials.*
 - *We strongly feel that such things cannot happen if the regulations are imposed in simple format. Therefore an arrangement has to be there to support those who do not understand the procedures Isn't it? - (A female aged 39 from urban sector)*
- Discussions disclosed that demanding sexual or monetary bribes, causing mental depressions, entangles on false allegations etc., are frequent occurrences and the women were under the impression that they are to be suffered within the said atmosphere due to the reason that they cannot be responsive for certain demands of some officials.
- Discussion continued and one other woman said *“ If one had gone to sleep with them all the problems are settled” - (Rural women aged 50)*
- *“Also, some women know well and have the practice on how to hang on the male! so by blaming the male alone cannot hide self-errors. - (Rural woman in age of 46).*
- *“Even in a case of divorce filed by a women there are no female officials for women to share their grievances. This is one other reason for us to suffer.” - (43 years old urban women)*

8. Conclusion

When a woman joins criminal justice process for any of her needs or a problem there is 50% of probability for her to face whatsoever problems or crisis, which is a noticeable fact. Also divulged that a segment of respondents who appreciated positively the quality of services rendered to them had hidden fact that they had involved in the matter with the help of a secondary persons, hence, it cannot be concluded substantiating the quality level of the services Also, due to the fact that the majority of staffs in judiciary institutions are male and

the impressions of some of them towards women are not much pleasing to them hence, it was revealed that females face unexpected problems. Also can conclude that women irrespective of their origin, face varied complications and difficulties in judiciary proceedings mainly due to the inadequate knowledge on the modus operandi of legality and the law.

9. Suggestions

- 1- Empowered authoritarian control on judicial proceedings is obligatory. It is apparent that due to inadequate knowledge on legal proceedings the community faced complications.
- 2- It is appreciable if actions are initiated to deploy female staff wherever possible mainly to deal with matters related to women.
- 3- Community centered programmes be initiated and conducted to raise awareness among the public on gender discriminations while also empowering women be considered as priorities.

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