

Implications of the Shortage of Female Representation in Indian Judiciary with Reference to Real-Time Cases

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Abstract: *In the context of a vast democracy like India, the concept of representation plays a pivotal role in safeguarding its fundamental principles and values. This representation serves as a means of directing the collective voice of the general public, which is then manifested in the socio-political and economic establishments. Nonetheless, the underrepresentation of 48% of the population in these organizations indicates a concerning state of India's democratic structures. This study examines the various variables that contribute to the insufficient representation of women in the Indian judiciary, as well as the resulting legal and societal consequences. This paper examines potential factors contributing to the relatively low figures, focusing particularly on the rigorous recruitment procedures and the prevailing sexist environment within the courtroom. By examining past cases, we may compare and analyze judgments that consistently support patriarchal and sexist attitudes that are prevalent in society. The presence of an endeavor to uphold the existing state of affairs is evident, underscoring the pressing necessity for a more gender-inclusive panel that can effectively include multiple perspectives and life experiences.*

Keywords: Patriarchy, collegium, judiciary, reservations, constitution, gender equality

I. INTRODUCTION

Justice Indu Malhotra, who became the first woman to be directly appointed to the Supreme Court from the Bar in April 2018, stated that she was a deserving candidate, not solely based on her gender (IIC lectures, 2020). Justice Indu Malhotra's appointment as the seventh female judge in the nation's highest court, since its creation in 1950, was a significant milestone. It took 68 years for the Supreme Court to appoint its first woman judge directly. The current state of female representation in all levels of the judiciary is a cause for concern, as seen by the appointment of only 82 women judges out of a total of 1,079 judges to High Courts (GANESAN, 2020).

The Indian court system is seen as the guardian of individual liberty, as it is responsible for enforcing fundamental rights, upholding societal morality, and providing a high quality of life for all individuals. It embodies the societal interest and serves as a potent and stabilizing force. However, akin to the prevalence of anarchy in a system where the government prioritizes the interests of the majority over those of the minority, the absence of gender diversity in the courts fosters a patriarchal attitude in judicial judgments and precedents.

Although the judiciary is often seen as a legitimate contributor and protector of 'justice', it is important to analyze and evaluate this aspect of the judiciary. Throughout the course of constitutionally protecting the rights of individuals, the Indian court has effectively and legally served as the guardian of the populace's interests. Regarding the systemic and institutionalized Brahmanical patriarchy in India, it is evident that the judiciary is not exempt from its influence. The manifestation of male chauvinistic attitudes within Indian society is a subject of apprehension when observed within democratic institutions. The judiciary is subject to scrutiny not alone based on its judicial decisions and the perspectives of different panels, but also due to its inherent structure. There have been numerous discussions over the influence of 'gender diverse benches' on rulings. This inquiry pertains to the extent to which an individual's ideas are influenced by their sense of identity. Jurisdiction encompasses more than subjective viewpoints; it involves objective analysis. However, it is important to acknowledge that deterministic prejudices may still be considered instinctive. The objective morality of a verdict is contingent upon the justice that is administered.

When addressing issues related to women, there is a tendency to employ a subjective, traditional, and often oppressive perspective in the adjudication of cases, rather than adopting an objective and impartial mindset. The preservation of the societal 'patriarchal order' results in the erosion of a woman's individual rights. This study seeks to examine the severe consequences of the lack of female representation in the Indian Judiciary by analyzing significant historical cases. It strives to comprehend how this biased approach negatively impacts society. This paper aims to offer an understanding of the gender makeup of the Indian Judiciary and potential causes for its underrepresentation. It will utilize qualitative and quantitative secondary research methods to examine the collegium system and the prevailing sexist environment. This text delves into the harmful consequences of promoting oppressive, male-dominated principles, their profound influence on society, and the urgent requirement for female judges. The study finishes by providing an overview of existing redressal measures and offering recommendations for future policy.

Analysis of the gender composition of the Indian judiciary

The prevailing global agreement indicates that gender diversity holds significant importance in enhancing public trust in the judicial system, empowering individuals to make decisions, and upholding justice for the most marginalized segments of society (Reddick et al., 2009, p. 1).

However, the fact that just 7% of the total number of judges in all 25 high courts of the country are female makes it challenging to establish a fair and unbiased judiciary (Sharma, 2019). According to Ravi Shankar Prasad, the Law Minister of India, in a written response to a query posed in the Lok Sabha, it was stated that the Madras High Court possesses the largest cohort of female judges in the nation, comprising 13 judges. Following closely behind is the Punjab and Haryana High Court, which boasts 11 female judges. Conversely, the High Courts of Patna, Manipur, Meghalaya, Telangana, Tripura, and Uttarakhand lack any female judges. The numerical representation within the Supreme Court is notably bleak. The number of female justices in the highest court is only 2, which is much lower than the authorized number of 34 judges (Gupta, 2020). Since its establishment, the Supreme Court has only appointed a total of 8 female judges. The Attorney-General of India recently advocated for increased representation of women in the judiciary, highlighting the alarming disparity between the number of 17 women senior lawyers and 403 men in the top court (Sarda, 2020).

Furthermore, it is crucial to acknowledge that the scarcity of female judges in India is concurrent with the vacancies in these roles. Based on the data published by the Department of Justice in January 2021, there are now 4 unfilled jobs out of the 34 positions that have been approved for the Supreme Court, and 411 unfilled positions out of the 815 judges that have been approved for the High Courts. Regrettably, accurate data regarding the makeup of subordinate courts and tribunals is not readily accessible due to the Center's lack of statistics on female judges in these courts. According to a report by the Vidhi Centre for Legal Policy, the proportion of women serving as judges and magistrates in 17 states from 2007 to 2017 was 36.45%. According to Kohli (2018), in 2018, there were a total of 15,806 lower court judges, with 4049 of them being women. Although these data provide some optimism for the declining situation, it has been noted that it is exceedingly difficult to reproduce these figures in the superior courts.

Appointments Subordinate Courts

The appointment of judges in subordinate courts is also open to criticism due to its subjective nature. The variation is observed among the various State Public Service Commissions throughout India. The absence of standardized criteria for their selection creates an opportunity for prejudice and opposition to reform. According to a research paper published in 2018 by the Vidhi Centre of Legal Policy, it is posited that in the absence of any form of bias, assuming equal merit for both men and women, it can be assumed that the representation of women judges will remain consistent across all levels of the judicial hierarchy within a given group of judicial officers.

The process of admission to the upper judiciary is governed by a collegium system, but the recruiting process for the lower judiciary is subject to state-specific flexibility. The subordinate judiciary comprises three levels of judges: (i) district/sessions judges, (ii) civil judges (senior division), which includes the chief and assistant metropolitan and judicial magistrates, and (iii) civil judges (junior division), which includes first-class judicial magistrates and metropolitan magistrates. The job of junior civil judge requires an entry-level examination, while senior civil judges are

directly promoted. According to Chandrashekar et al. (2020), recent law graduates have the opportunity to participate in the entry-level test.

Potential factors contributing to inappropriate female representation

The condition of a minimum practice experience of 7 years as an advocate or a pleader is a significant contributing reason to the low representation of women as district judges. The interpretation of Article 233 of the Constitution, which stipulates a minimum of 7 years of practice, has been construed by the Supreme Court as 7 years of uninterrupted practice. This interpretation is evident in notable decisions such as *Sushma Suri v Government of National Capital Territory of Delhi* in 1999 and *Deepak Aggarwal v Keshav Kaushik* in 2013. The presence of inherent prejudice becomes apparent as women encounter several societal and familial pressures due to the intertwined social obligations of marriage and motherhood, which hinder their ability to engage in uninterrupted practice for a duration of seven years (Ray, 2020).

The concept of the "Leaking Pipeline," which refers to hired women who choose to leave their job for various reasons, can also be extended to the judiciary. This conscious choice conceals the implicit agreement given to gender roles dictated by patriarchy.

Women often withdraw from the labor due to extended and rigid working hours, as well as insufficient familial support. In order to ensure impartiality in legal decisions, there exists a constitutionally sanctioned transfer policy for high courts, as outlined in Article 222 of our Constitution. The judges in junior positions undergo transfers at intervals of two to three years. The court's failure to acknowledge the patriarchally prescribed duties of women, such as child-rearing and procreation, is evident in this case. This phenomenon not only presents a quandary for women who have opted for this occupation, but also engenders an inherent prejudice in the selection of female judges. According to the judicial regulations of the majority of states, the minimum age requirement for direct recruitment as a district judge is 35 years. Moreover, it is stipulated that those who are under the age of 55 are ineligible for appointment as judges in the Supreme Court (Chandrachud, 2013). At this juncture, women have already entered into matrimony and would bear substantial obligations.

According to Schultz and Shaw (2013), there is a prevailing belief that the lower tiers of the judiciary tend to have a higher representation of women. This can be attributed to the presence of formal qualifications and examination results, which are considered more rational and transparent compared to the recruitment process for higher judicial appointments. The recruitment process for higher judicial appointments is characterized by opacity and reliance on subjective factors such as professional viability, favorable evaluations, professional achievement, and networks. The underrepresentation of women, including only 15% of practicing advocates, greatly diminishes the opportunities for direct advancement to higher positions within the judiciary. A significant proportion of girls choose to pursue a career in law. According to the Common Law Admission Test for National Law Universities 2019, women accounted for 44% of the eligible applicants. However, there is a noticeable dearth of women in the litigation profession, indicating a certain degree of reluctance in pursuing this area of law.

The presence of a hostile and sexist atmosphere within the highest courts poses significant challenges for female litigators in their professional development. In her study titled 'Structural and Discretionary prejudice: recruitment of Women Judges in India', Aishwarya Chouhan conducted interviews with 13 out of 19 judges who admitted the presence of gender prejudice in the recruitment process of judges to the Supreme Court and the High Courts. During the interviews, a female judge said that upon being selected as one of the initial female judges of a lower court, she was often perceived as 'incapable' due to her gender and physical appearance. This observation highlights the presence of deeply ingrained biases against women.

According to Indira Jaising, the inaugural female additional solicitor-general in India and the first woman to attain a senior attorney position in the 154-year-old Bombay High Court, the prevalence of sexual harassment within the Supreme Court is widespread. Notwithstanding her seniority and age within the legal profession, she experienced sexual harassment from a male colleague within the premises of the Supreme Court (Mishra, 2016). The pervasive misogyny among the old boys' club becomes apparent when the arguments presented by their female counterparts are not accorded equal significance. The floor is consistently allocated to male lawyers for the purpose of presenting their arguments initially. According to Mishra (2016b), Malvika Trivedi, a lawyer representing the Supreme Court, asserts

that women tend to withdraw from litigation as a result of the lack of cases assigned to them. Despite the fact that case files are authored by female lawyers, clients express a preference for male lawyers to fight for their cause. The acceptance of women lacking connections to a judge's chamber or a 'godfather' is limited.

Numerous instances of sexism encountered by female judges remain unaddressed due to the elevated status that the judiciary has always held. Their other magistrates frequently request them to retract their complaints (Dr. P. Ganesan et al.). According to Bipasha Bandopadhyay, a former justice of the Supreme Court, her rulings underwent heightened scrutiny and were deemed acceptable alone if they received support from a bigger panel of judges. Insufficient provision of services, such as inadequate infrastructure for amenities like toilets and maternity leave, further contributes to a significant attrition rate among female lawyers. Many women opt to pursue careers in the business sector instead (Vidhi Centre for Legal Policy et al., 2018).

An evaluation of the consequences arising from the scarcity of female litigators and judges. In contrast to jurisdictions governed by civil law, where judges assume the role of impartial interpreters of the law and render judgments on behalf of the state or the populace, common law jurisdictions such as India afford judges more latitude in their decision-making process by delineating the specific case at hand from established legal precedents. Therefore, the judges' personalities have a significant impact on the judgments (Schultz and Shaw 2013). Given the extensive historical record of women's oppression, it is unsurprising that Indian judges' judgments are influenced by misogynistic and biased sentiments. In August 2020, the High Court of Madhya Pradesh issued a bail order to a perpetrator of molestation, contingent upon the victim's compliance with the requirement of obtaining a rakhi. The defendant was requested to accompany his spouse to the residence of the plaintiff, accompanied by a container of confectionery, in order to secure the rakhi. The court additionally instructed him to pledge to safeguard her to the utmost of his capability indefinitely (Sinha, 2020). Women advocates filed a petition against this order, highlighting the judge's lack of empathy.

The judiciary in India is entrusted with the responsibility of safeguarding the populace and ensuring the preservation of the Constitution and the principles of the rule of law. An optimal scenario entails a courtroom that prioritizes justice and actively combats oppression. However, the implementation of hierarchical, conventional, masculine principles is evident in everyday choices, directives, conversations, jokes, logical thinking, and presumptions that are rooted in the ideology that completely oppresses women. The Supreme Court and some High Courts have consistently recognized the "behavioral ethics" of Indian women in several rape cases. These judgments are based only on the concept of a woman's ideal dignity, rather than the illegal character of the act itself. The tendency to selectively uphold standards when women are the key stakeholders implies a hypocritical disposition among certain committees. The Karnataka High Court's observations in June 2020 (DHONCHAK, 2020) provide an example of this hypocrisy.

The rapist was granted bail based on the argument that the victim's post-rape conduct does not align with the expected behavior of a rape victim, in accordance with the traditional beliefs of India. The aforementioned decision was rendered by a solitary panel of Justice Krishna S. Dixit. In the case of Raja & Ors vs State Of Karnataka (2016), Justice Pinaki Chandra Ghose and Justice Amitava Roy granted bail to the perpetrators based on the court's determination that the victim's actions following the incident were questionable, as she did not hastily flee from the crime scene in a state of distress, humiliation, and devastation (Roy, 2016). In another distressing instance involving Mohd. The Delhi High Court, in the case of Habib v. State, rendered a verdict stating that there were no evidence of resistance on the accused's organs. This ruling disregarded the injuries sustained by the 7-year-old victim, which encompassed a torn hymen and bites on her body (Desai, 2003).

When a litigant seeks justice in court, the ruling judges adopt a superior perspective that involves a 'giver'. In his work, Dr. Shalu Nigam argues that the pursuit and administration of justice necessitates the resolution of a multifaceted emotional, psychological, and social framework encompassing human emotions, subjectivities, conflicting egos, aspirations, harm, distress, apprehension, deprivation, repercussions, and achievements, all in an impartial manner (Nigam, 2017). Therefore, a litigant is requesting a subjective court to examine their individual subjective matter with the objectivity and rationality of the law, where a judge uses their own subjective prism to adjudicate. The inherent misogyny within courtrooms is exacerbated when judgments are based on a woman's previous sexual history, absence of physical evidence of resistance or injuries, differing personal standards of consent, and pre-incident contact between the victim and perpetrator. The courts assume the role of custodians of the prevailing patriarchal order, rather than

prioritizing the provision of socio-legal remedies or justice to the complainants. Frequently, the rights of a woman are disregarded and her personal social and economic status is considered prior to resolution. In 1988, a squad of policemen in Bihar perpetrated gang rape against 19 women. As a kind of compensation, the state government granted the women Rs 1,000 as an ex-gratia payment. As a result of inadequate police investigation, there was insufficient evidence to secure a conviction against the accused. Considering the women's doubtful reputation due to their involvement in menial job, the court stated, "It is possible that these women may have lied in order to obtain a substantial sum of Rs. 1000, which was considered a significant amount for them" (cited in Baxi, 1995, p 128).

It is evident in this situation that a positive result is certain when the lady is regarded as a 'woman of honor', where honor is determined by the conventional standards of society. Gender stereotypes are prevalent in social institutions across the nation, with a significant concentration noted in rural areas. It might be argued that while a portion of the urban population in India has begun to recognize and address gender bias, rural India continues to fall behind in this regard. The female demographic residing in rural areas of India experiences significant oppression, leading them to refrain from pursuing legal recourse in cases involving domestic violence, sexual assaults, and similar offenses. This could be attributed to factors such as limited legal knowledge, apprehension of societal consequences, or a lack of confidence in the judicial system. The absence of trust arises from the presumed conduct of certain male judges, particularly in situations involving women.

In the 1980 rape case involving a juvenile tribal agricultural laborer and a policeman, Justice Koshal of the Supreme Court dismissed the victim's testimony due to the absence of injuries in the medical report. The judge determined that the victim's lack of virginity and previous romantic involvement rendered any claims of strong resistance by the girl unfounded (Westmarland&Gangoli, 2012, p. 110).

The unwarranted and demanding procedures in sexual harassment claims create skepticism regarding the authority of appellate courts. Although the victim should be granted the benefit of the doubt in terms of mens rea, it is often the accused who benefits from this rule. When examining this element from the perspective of the culprit, it becomes evident that exonerative rulings based on evasive reasons undermine the judiciary's crucial function as the protector of the people. The judiciary's lack of strictness in handling gender-based offenses diminishes the sense of legal fear experienced by the culprits.

One intriguing aspect to investigate pertains to the interconnectedness between societal norms and the operational dynamics of the judiciary. The formation of laws is influenced by the prevalent mindset of the majority, particularly men. These laws play a significant role in shaping public policy and establishing the accepted standards within society. Therefore, in order to promote the well-being and development of society, it is crucial to ensure that laws are devoid of conventional and parental beliefs regarding women and their role in society. This can only be accomplished by promoting sufficient gender diversity within the judiciary.

Examining the necessity of gender diversity within the Judiciary There exist numerous scholarly arguments advocating for the inclusion of women in the judicial system. The maintenance of an equitable representation of women in the judiciary is of great importance in a representative democracy, as it serves to promote the representativeness of courts (Hunter, 2015, p. 1) and protect the democratic integrity of the judicial system. Additionally, it amplifies the voices of the most marginalized segments of society and introduces diverse experiences and perspectives to the courtroom. Rachna Chaudhary, an associate professor at Ambedkar University, asserts that diversity introduces various and inclusive viewpoints to the interpretation of statutes. Chaudhary's research specifically examines the treatment of women in judicial communication (RAY, 2020b). The inclusion of a diverse bench enhances confidence in the impartiality of the judiciary. Justice Leila Seth played a pivotal role in advocating for the amendments to the Hindu Succession Act of 1956, with a particular focus on securing the inheritance rights of daughters in relation to ancestral property. Additionally, she was a member of the Justice Verma committee, consisting of three members, which was established in response to the abhorrent 2012 Delhi gang-rape case. The committee argued for expedited trials and stricter penalties for sexual offenses.

According to certain perspectives, a judiciary that is more equitable will diminish unconscious biases in the process of making judicial decisions (Eyman 2015). According to Rosemary Hunter, women contribute a compassionate perspective in areas pertaining to gender and offer enhanced courtroom experiences for victims. The Vulnerable

Witness Project, established by a commission led by Justice Gita Mittal, guaranteed that the victim would not have any direct interaction with the accused and created a secure and safeguarded setting for her to offer her testimony.

The judgment rendered by Justice Sujata V. Manohar in the case of Vishaka vs. State of Rajasthan garnered significant acclaim due to its recognition of sexual harassment of women in professional settings as a breach of the fundamental right to life. The Court further determined that the act of sexual harassment in the workplace against women constitutes a violation of their fundamental rights to life and the right to live with dignity. Both employers and employees were responsible for ensuring a safe workspace, and it was imperative to ensure the effective implementation of this decision. This case demonstrates that benches with gender diversity have a tendency to administer justice that aims to develop a society characterized by equality through legal means.

The phenomenon of "gender sensitization" inside the judiciary occurs when women contribute a diverse range of life experiences during the adjudication process that are significantly distinct from those of men. In the case of State (Govt. of NCT of Delhi) versus Pankaj Chaudhary, a panel consisting of all women, including Justice R. Banumathi and Justice Indira Banerjee, determined that every individual, regardless of their perceived moral character, possesses the right to decline engaging in sexual intercourse. According to Banumathi (2018), it is not possible to make a conclusion of 'loose moral character' based on the victim's habitual engagement in sexual intercourse.

Remedial Actions and Suggestions

In December 2020, K.K. Venugopal, the Attorney General of India, proposed to the Supreme Court various strategies to address the issue of female judges' under-representation and promote gender sensitivity in the Court's rulings (Rajagopal, 2020). The individual's remarks highlighted the necessity for courts to personalize some matters. It is imperative for individuals to have a victim-centric perspective while addressing instances of sexual violence. He proposes that the courts should keep comprehensive records regarding the allocation of women throughout various tribunals, court levels, and the number of women serving as senior advocates. Sinha (2020) emphasizes that law schools do not mandate the inclusion of a single-gender course, and the All-India Bar Examination does not incorporate any questions or sections pertaining to gender sensitization.

The International Association of Women Judges and similar organizations are now addressing this issue. The International Association of Women Judges (IAWJ) aims to create 'gender offices' that integrate a gender perspective into court proceedings. This is done to ensure fairness and equal access to justice. Additionally, IAWJ conducts judicial training to ensure that the interpretation of the law is free from any gender bias (International Association of Women Judges, 2019).

The initial stage is the compilation of fundamental data pertaining to the gender composition across all levels of the judiciary. The significance of establishing a comprehensive framework for the systematic surveillance of gender and consolidating all monitoring data into a centralized repository on a regular basis is underscored in a paper published by the Policy Department for Citizens' Rights and Constitutional Affairs for the European Union. The implementation of a methodical methodology for data collecting is necessary in order to facilitate a more thorough and comprehensive analysis (Galligan et al., 2017, pp. 89-90).

Rachna Chaudhary (Ray, 2020) argues that the lived experience of marginalization and prejudice, along with a strong dedication to social transformation, is more likely to have a profound influence on judicial behavior. There is a requirement for a body in the Indian judiciary that specifically addresses the issue of gender bias, similar to the Gender Bias Task Forces in the USA that investigate the connection between gender and judicial systems (International Association of Women Judges, 2019). The Geneva Forum Series No. 1 paper on Women and Judiciary suggests the implementation of a mentorship system, wherein experienced female judges and lawyers can provide assistance and guidance to their junior counterparts. Regular and casual gatherings of female judges and lawyers might offer essential occasions to deliberate and contemplate on encountered difficulties and the recognition of crucial assistance requirements (The International Commission of Jurists, 2014, p.39).

According to Nirmal Kumar Mohandoss, a legal representative at the Madras High Court, the persistence of gender discrepancy is contingent upon society's failure to relinquish its rigid adherence to traditional gender roles and conventional perspectives (Mohandoss, 2020). The court must demonstrate awareness of the societal and family pressures that women encounter and adapt its regulations accordingly in order to encourage greater participation of

women in court proceedings, both during and after marriage. The significance of leadership and independent monitoring of achievements in fostering a more diverse judiciary is underscored in a paper released by the OECD Gender Initiative.

Kiruba Mumuswamy, a lawyer currently working in the Supreme Court of India and the founder-executive director of Legal Initiative for Equality, advocates for the establishment of a dedicated diversity program and an efficient affirmative action strategy. This program aims to foster encouragement and motivation among women lawyers, particularly those from marginalized backgrounds (Munusamy, 2019). Reducing the minimum age criterion for the selection of a district judge has the potential to deter female advocates from choosing to withdraw from the legal profession and pursue careers in the corporate sector. In light of the revised gender ratio within the court, it is imperative to establish favorable conditions and sufficient avenues for women to thrive as lawyers and judges.

II. CONCLUSION

The lack of diversity in gender representation is evident in multiple societal organizations. Throughout history, there have been revolutions that have brought about transformative changes in these institutions, which first appeared utopian. As we strive for a society that is more inclusive and equal via growth, it is evident that certain polarizations and sectionalization remain deeply rooted. Therefore, this development serves solely as a form of concealment. The significance of the judiciary necessitates a prevailing inclination towards optimism in order to facilitate transformative yet incremental transformations. Sufficient emphasis has been placed on recognizing the necessity of these modifications; what is imperative is the execution of grassroots reforms. The need for a reevaluation of judicial independence and its absolutist character arises from the judiciary's role as the guardian of the Constitution, which draws its authority from the populace. Ensuring the adequate representation of individuals is crucial in facilitating the delivery of justice. The direction of reforms in the judgments of the judiciary will be determined by reforms in the makeup of the judiciary at all levels. Furthermore, these reforms would establish the gender-sensitive scope of the court, so positioning this institution as an exemplary model for the Indian populace in promoting egalitarianism.

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