

# The Issue of Gender Stereotyping within the Indian Judicial System: with Reference to Study on Women Advocates and Judges

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**Abstract:** *Women's pursuit of justice is hindered by patriarchal, cultural, and caste traditions. The notion of "compromise" is prevalent in Courts, even in situations involving rape. Despite the widespread existence of well-structured substantive and procedural elements within the legal system, the constitutional commitment to gender equality remains elusive for women. In India, the pursuit of justice for women is hindered by various intersectional issues, including tradition, caste, religion, and culture. Indeed, the criminal justice administration is afflicted by gender bias. This study utilizes significant legal cases as evidence to illustrate the inherent prejudices displayed by judicial systems in cases involving sexual assault and rape. The study will additionally utilize feminist concepts to emphasize the necessity for the legal system to comprehend the profound historical and socio-political circumstances from which gender-related concerns stem. The report finishes by providing recommendations on how courts can eliminate gender bias. In order to achieve gender justice, the law must serve as a catalyst for transformation. It is imperative for lawyers and judges to exercise caution and refrain from being swayed by personal biases and prejudices, while simultaneously demonstrating societal sensitivity when dealing with instances involving crimes against women.*

**Keywords:** Discrimination, gender justice, intersectionality, patriarchy, sexual crime, victims, women judges, gender stereotyping

## I. INTRODUCTION

Gender justice pertains to the equitable treatment of individuals of both genders within the framework of criminal justice administration. The authors believe that the denial of justice to women is mostly attributed to the patriarchal mindset prevalent among legislators and justice practitioners, who often fail to transcend the conventional gender roles imposed upon women. According to Justice K. Ramaswamy, women have historically faced instances of prejudice and persistently endure their hardships without vocalizing their concerns. Even in the contemporary era of the twenty-first century, the circumstances for women have remained mostly same. The high incidence of numerous instances pertaining to domestic violence, sexual abuse, human trafficking, child marriage, and dowry murders serves as a conspicuous indication that the constitutional rights and benefits afforded to women remain elusive to a significant portion of the female population in India. In countries characterized by patriarchy, women are frequently perceived as the individuals responsible for the creation, reproduction, and dissemination of culture and the establishment of a novel social structure (Kannabiran, 2012, p. 317). The advancement of women is frequently impeded by social, cultural, and religious constraints. In her book "Sex and Social Justice," Martha Nussbaum asserts that every individual, regardless of their gender, possesses inherent worth that warrants recognition from legal and societal establishments (Nussbaum, Citation1999, p. 5). However, frequently, the very establishments that are supposed to safeguard women are observed to be perpetuating disparities. This study employs the doctrinal approach to examine significant legal precedents, covering a timeframe of four decades (1979-2021), in order to comprehend the inherent bias present in judgments, remarks, and directives issued by trial and appellate courts pertaining to various forms of sexual offenses committed against women. It is imperative to address this issue promptly in order to ensure the triumph of gender justice.

## **II. PATRIARCHY, CULTURAL BELIEFS, AND JUDICIAL SYSTEMS**

The renowned French philosopher and feminist, Simone de Beauvoir, astutely observed, "The state of being a woman is not innate, but rather acquired through social and cultural factors" (Bordo, Citation2015), so emphasizing that it is the socio-cultural context that confines women to a subordinate status. Despite the long-standing feminist movements and the advancement of women in several areas of life, Indian Courts have not yet recognized the gravity of concerns pertaining to crimes and injustices against women. In her book entitled "Recovering Subversion: Feminist Politics Beyond the Law," Nivedita Menon highlights the presence of gender bias within legal institutions, wherein legal practitioners tend to interpret legislation in a manner that aligns with patriarchal norms (Menon, 2004, p. 4). As per her assertion, despite the legal provisions advocating for equality among all individuals, practitioners of the law often overlook the disparities that result in women being subjected to social, cultural, and economic disadvantages in comparison to their male counterparts. According to Carr (1994), Martha Nussbaum asserts that judges ought to examine the "asymmetry of positions" while addressing matters pertaining to women. Therefore, it is common for the law and the state to overlook women's personal encounters with oppression and violence. In her essay titled "Dominance, Suppression and the Law," Nandita Haksar asserts that legal reforms alone, without a comprehensive comprehension of the socio-political and cultural factors contributing to gender injustice, will prove ineffective in addressing the needs of women experiencing distress (Sarkar, 1995, p. 24). In her book titled "Caring for Justice," Robin West presents a model of judging and legal arguments that emphasizes the equal significance of justice and care. She argues that the prevailing patriarchal foundations of law, legal theory, and culture contribute to the perpetuation of harm, particularly in relation to women. Therefore, it is frequently observed that courts do not accord the appropriate level of severity to matters pertaining to sexual assault of women (NYU, Citation1999,97).

In his book "Lokayata: A Study in Ancient Indian Materialism," Debiprasad Chattopadhyaya correctly asserts that the mind responsible for interpretation is not a blank slate, nor is it merely a computational device or an electronic brain. It is inevitably shaped by a set of beliefs and traditions (Chattopadhyaya, Citation1959, xi-xii). Judges, being human beings, are susceptible to interpreting laws through a range of variables, rather than only relying on the examination of legal facts. This is evident in the examples examined in this paper. Common biases observed in Courts encompass disbelief towards women, accusations of women's legal misconduct, and an inability to accurately assess the gravity of the offense. Moralistic presumptions and gender stereotyping are primarily observed in instances pertaining to domestic abuse, hence exerting a significant influence on judicial deliberation. Customary laws have frequently exhibited gender bias against women.

It is widely acknowledged that the ethical principles governing behavior in cultures can occasionally be recognized as rights, and in certain cases, even legally binding. Romila Thapar elucidates the origins of societal attitudes towards women, attributing them to the adoption of traditions. Uma Chakravarti asserts that in Hindu society, the mythical character Sita personifies the ideal womanhood, which is transmitted across generations. Sita symbolizes ideal marriage, female chastity, and infidelity, all of which serve to reinforce the image of the ideal woman within a patriarchal society. Legends and myths frequently depict women as the embodiment of tolerance and resilience in the face of adversity. Therefore, the denial of a woman's right to a dignified existence is sometimes justified on the grounds of tradition and culture. Sita has long served as the archetype of a pativrata, or ideal wife, among households for ages. The body and experiences of women have historically been regarded as inconsequential and without significance. Frequently, long-standing customs that have been engrained for centuries result in women themselves endorsing their subordinate position. Culture plays a significant role in shaping women.

Currently, the status of women in society is determined by public morals. Regrettably, courts frequently adhere to the same position, refraining from challenging the existing state of affairs, even in situations involving rape. In her book Tools of Justice, Kannabiran makes reference to the manner in which:

The efficacy regulations pertaining to women lack constitutional legitimacy, unlike the provisions outlined in Article 335 of the Constitution of India, 1950, which apply to scheduled castes and scheduled tribes. Instead, they are based on the rules of relationships or the connection between sex and other factors that represent the main premise of patriarchy. These factors are subjectively assessed, without any respite or constitutional basis or justification (Kannabiran, Citation2012, p. 356).

This unequivocally illustrates the involvement of Courts in perpetuating the State's bias against women. Simon de Beauvoir elucidates this concept with clarity by asserting that despite the legal recognition of women's rights in theory, deeply ingrained conventions hinder their complete manifestation (Bordo, Citation2015). She claims that the majority of these biases are justified by the religious veil, ensuring that no one would have the courage to challenge them. In her essay titled "Seeing like a Feminist," Nivedita Menon highlights the societal tendency to prioritize "masculine" traits over "feminine" ones, resulting in the ongoing subjugation of individuals who deviate from societal norms (Menon, 2004, p. 7). Kimberly Crenshaw's intersectional theory emphasizes the interconnectedness of race, class, caste, and religious group in order to comprehend specific challenges concerning women (Crenshaw, Citation2017, p. 11). The authors of this study assert that it is imperative to examine these elements when Judges render verdicts on matters pertaining to violence against women.

In her article "Jurisprudence and Gender" (1988, *Jurisprudence and Gender*. University of Chicago Law Review 55:1–72), Robin West asserts that modern legal theory is fundamentally and irreversibly influenced by masculine ideals of selfhood. Consequently, she argues that law does not adequately represent women's lives and experiences, nor does it adequately acknowledge and safeguard them from the unique harms they endure (West 1988, 2, 60). In her work "Law and Gender Inequality," Flavia Agnes elucidates the conspicuous manifestation of gender bias against women in the context of family laws, which have undergone a transformation from a patriarchal stance. The responsibility for upholding the integrity of social class, caste, and clan lies with women, and this is frequently enforced through the imposition of stringent sexual regulations on women (Agnes, 1999, p. 203). Frequently, instances of rape remain unreported due to the influence of religious standards that associate rape with immorality. The family laws of India impose significant limitations on women's autonomy in relation to divorce, child custody, and other related problems. Therefore, the advancement of women's rights is contingent upon a multitude of socio-political, economic, and religious issues, which are frequently overlooked by the judicial system.

### **III. THE IMPACT OF MISOGYNY ON INDIAN COURTS**

The institutionalization of gender stereotyping occurs when the State actively enforces and sustains such practices through the implementation of laws and regulations. It is necessary to have an understanding of the stereotyping associated with laws in order to eradicate it, as it unfairly limits women to societal expectations and penalizes them when they deviate from them (Cook & Cusack, 2010). Adopted in 1979, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) mandates that States undertake suitable actions to address gender stereotyping. According to Article 5(a) of the CEDAW, States are obligated to alter cultural and societal trends that perpetuate gender stereotypes. There have been occurrences in which the legal system has assigned women a subordinate position in comparison to men, influenced by biases and stereotypes during the process of interpreting the law. Regrettably, these principles are confined solely to the legal and statutory realms, with minimal implementation in practical cases. The Indian judiciary is entrusted with the responsibility of upholding justice and serving as a catalyst for the enforcement of human rights. Regrettably, a significant disparity exists in the administration of justice pertaining to women's matters within the District and High Courts. In cases involving rape and sexual offenses, judges tend to prioritize the character and behavior of victims over the legal facts. These victims typically perceive these aspects as unsuitable for women who are considered "cultured." Several of the incidents mentioned below will provide evidence to support this claim.

### **IV. NOTABLE INCIDENTS IN THE MATHURA RAPE CASE**

The origins of insensitive and abhorrent rape judgments can be traced back to the landmark case of *Tukaram v. the State of Maharashtra* (1979). In this case, the Supreme Court exonerated the police officer accused of the crime, asserting that the victim's testimony was characterized by a significant degree of falsehood and improbability (*Tukaram v. the State of Maharashtra*, 1979). According to the Court, a significant distinction exists between sexual intercourse and rape. The minor victim was subjected to character assassination, wherein she claimed that she engaged in sexual intercourse with one of the accused individuals voluntarily, and that the police officer had physically touched her due to her "habitual sexual intercourse." Additionally, since there were no visible injuries on the girl's body, it is not possible

to infer whether she had experienced any form of fear or coercion. In the case of *Tukaram v. the State of Maharashtra* (1979), the court held the belief that engaging in such an action would warrant the deduction of "passive submission."

#### **V. REDRESSAL FOR RAPE CASES IN INDIA: MARRIAGE AND MEDIATION**

Despite more than four decades since *Tukaram's* egregious statements and several efforts to improve the criminal justice system, Indian courts have not yet succeeded in enforcing gender equality. In contemporary Indian courts, the principle of equality, as stated in Article 14 of the Constitution (1950), is merely a declaration of freedom and does not encompass safeguards against prejudice or offenses against physical well-being. Nevertheless, despite its fundamental role, the Judiciary has failed to defend the principles and guidelines of gender equality and women's rights. The statement made by former Chief Justice S.A. Bobde on 1 March 2021, wherein he inquired about the willingness of a government employee seeking protection from arrest in a rape case to enter into a marriage with the survivor as a form of settlement ("... if you marry her, we can provide assistance; otherwise, you will face unemployment and imprisonment"), can be interpreted as a form of ridicule towards the justice system itself (*Mohit Subhash Chavan v. State of Maharashtra*, 2021). It is perplexing why the Court would consider marriage as a remedy for rape cases in any situation. Furthermore, it has been previously revealed that the individual accused of rape and the mother of the survivor had made an attempt to resolve this issue by a mutual agreement. In the case of *Mohit Subhash Chavan v. State of Maharashtra* (2021), a prior determination was made that the individual accused of rape will enter into matrimony with the girl at her attainment of the age of 18. In the case of *Mohit Subhash Chavan v. State of Maharashtra* (2021), the Court noted that the accused should have considered the consequences of "seducing and raping" the young girl before taking action. The act of seduction specifically excludes the use of force and intimidation, whereas rape unquestionably encompasses one or both of these elements. The act of combining seduction and rape and proposing marriage as a resolution raises a significant inquiry on the fundamental essence of justice. Furthermore, the relevance of the young girl's agreement regarding her contemplation of marrying her rapist was considered inconsequential in this particular instance.

The statement made by the former Chief Justice of India (CJI) in relation to the case of *Mohit Subhash Chavan v. State of Maharashtra* (2021) elicited significant public outrage and anger. An important issue highlighted in this remark is the perception of Indian society and courts regarding marriage as a remedy for rape perpetrated against minors (Pandey, Citation2021). Furthermore, the union between the victim and her perpetrator might be likened to a verdict of lifelong rape for the victim, as established in the case of *Mohit Subhash Chavan v. State of Maharashtra* in 2021. Justice Bobde's statement has the potential to provide a detrimental interpretation of the concept of "consent" in cases involving rape and its potential avenues for recourse.

In the year 2015, the Madras High Court issued a bail order to an individual who had been convicted of the crime of raping a 15-year-old girl. Additionally, the court subsequently referred the case to a Mediation Centre (Jesudasan, 2016). The objective of this mediation was to facilitate the union between the perpetrator and the target. The irony lies in the fact that in India, the act of rape, when accompanied by marriage, can potentially absolve the perpetrator of the crime, hence obviating the necessity for punitive measures. Moreover, the concept of the ideal rape survivor is a distorted representation that is rooted in the masculine ideals of how woman should behave, respond, conduct herself, and sleep.

#### **VI. MARITAL RAPE**

The Former Chief Justice of India made a contentious statement on a rape complaint against a cohabiting partner. Justice Bobde made a statement regarding the cohabitation of a man and a woman, expressing the question of whether engaging in sexual activity between them can be classified as rape, notwithstanding the man's potential for brutality and misconduct. The source cited is Roy (2020). The vocal endorsement of marital rape by an individual at the highest echelon of the Judiciary serves as a significant indicator of the presence of sexist inclinations inside the judicial system. It is noteworthy to mention that India is among the 36 nations where the act of a man sexually assaulting his wife is not considered a criminal offense (Makkar, 2019). The Indian judiciary has largely disregarded the patriarchal perspective regarding the definition of bodily integrity violations and the interpretation of consent. Within this particular setting, the perception of sexual relationships within the institution of marriage as an enduring and unchallenged form of consent

can be attributed to a detrimental mindset that normalizes the act of torture perpetrated by intimate partners (Makkar, 2019).

### **VII. DEPICTION OF A VICTIM OF RAPE**

The code of conduct and behavior exhibited by individuals who have experienced rape has consistently been shaped by patriarchal norms. The Indian judiciary not only adheres to a fictional framework of expected behavior for a rape victim both before and after the incident, but it has also issued some verdicts based on this set of guidelines on how to be considered a victim. An in-depth analysis of some of India's most horrifying instances of rape, in which the perpetrator was acquitted on the grounds of "insufficient evidence," exposes the distorted interpretation of supporting evidence in a trial, which relies on the victim's prior experience and mental condition, both before and after the rape. These callous interpretations have eroded the judicial definition of a "rape victim".

Rape myths exhibit bias, perpetuate stereotypes, and contribute to erroneous beliefs on rape, rape victims, and perpetrators. The Courts analyze the victim's statement by considering the descriptions of rape that she is capable of providing, and thereafter elucidate in their decisions the appropriate response that a typical woman should adopt in the event of rape. Nevertheless, in most cases, Courts use a prescriptive approach by prescribing the appropriate course of action for a woman following a rape incident. The interpretation of rape cases through an outdated perspective on consensual sexual relationships among adults contradicts a diverse range of lived experiences. An example of this phenomenon occurs when a woman provides consent for a particular sexual act, but withholds consent for subsequent acts (Makkar, 2019). The judiciary also expresses disapproval towards women's experiences by categorizing them as "promiscuous," "socialite," "loose," "easy-going," and "low morale," asserting that the accused would have presumed the woman's willingness to engage in such behavior (Kotiswaran, 2001).

The phenomenon of stereotyping rape victims, as highlighted by Kotiswaran (2001), has been observed in a significant number of testimonials throughout the trial proceedings. Due of these aforementioned attributes, the individual in question is compelled to engage in a relentless struggle until ultimately succumbing. The responsibility lies with the victim to prove that she retaliated without giving consent. It is imperative that this becomes apparent throughout her trial evidence. Notwithstanding the legal abandonment of the resistance requirement in India in favor of the consent criterion proposed by the Js Verma Committee Report (Citation2013), the persistence of misconceptions and stereotypes continues to exert impact on the process of rape adjudication (Satish, Citation2016).

### **VIII. DEFECTIVE MANUAL OF THE IDEAL VICTIM**

The establishment of guidelines by the Supreme Court of India in 1983 pertains to the examination of a rape victim's evidence in order to ascertain the veracity of the claims (Bharvada GohinbhaiHirjibhai v. State of Gujarat, 1983). Paradoxically, despite the passage of fifty years, the concept of constructing a prototypical rape victim has remained relatively unchanged. In the case of Tarun Tejpal v. State of Goa (2019), the Goa Trial Court acquitted the suspect based on the victim's revealed photographs, which appeared to be "joyful," "not disturbed," and clearly did not involve any rape behavior (Pandey, Citation2021). In the present scenario, the defendant faced charges for engaging in sexual assault against his female coworker within the elevator of a luxury hotel located in Goa. The Tejpal ruling highlights the absurdity of how a victim should respond to a rape committed against her, which serves as a recent example of the Indian Court's "Flawed Victim Manual". The Government of Goa has lodged an appeal against the Tejpal ruling (State of Goa, Thr. CID CB. v. Tarunjit Tejpal, 2021), contending that the lower Court's failure to comprehend the post-trauma conduct of a rape victim, as well as its use of her prior sexual history and educational background as legal prejudice against her, is unjust. Furthermore, the government further asserted that the accused did not adhere to a comparable level of conduct, suggesting that the lower court had a patriarchal tendency in their observation of violence against women (Tejpal case, 2021).

The prevailing tendency in several observations and evaluations pertaining to sexual assault or rape is to primarily emphasize the response and conduct of the victim following the assault, rather than delving into the appropriate administration of justice. In June 2020, in the case of Rakesh B v. State of Karnataka, Justice Krishna S. Dikshita of the Karnataka High Court granted bail to the accused. Justice Dikshita emphasized that the rape survivor did not present herself as a victim and that it was inappropriate for an Indian lady to sleep after experiencing rape. In 2017, a division



bench of the Punjab and Haryana High Court, consisting of Justice Mahesh Grover and Justice Raj Shekhar Atri, granted bail to three individuals convicted of gang-rape. The court's rationale for this decision was based on the victim's confession being deemed philandering and morbid. In the present scenario, the individual who fell victim to the incident was a student of OP Jindal Global University located in Sonapat. In the case of Vikas Garg v. State of Haryana (2017), the court determined that the victim's testimony constituted a "misadventure resulting from a promiscuous disposition and a voyeuristic mindset."

In the case of Mahmood Farooqui v. NCT of Delhi (2017), the victim alleged that Mahmood Farooqi, the co-director of Peepli Live (a 2010 Bollywood movie), coerced her while under the influence of alcohol and disregarded her repeated refusals. The Delhi High Court remarked that the accused incorrectly interpreted a weak "no" as a "yes" (Safi, Citation2017). These comments create confusion and misinterpret the concept of permission in India, a nation where women are already facing challenges due to sexual violence, widespread assault on the streets, and deeply ingrained patriarchal beliefs about sexuality (Safi, Citation2017).

### **IX. EVALUATION OF VICTIM BEHAVIOUR**

The Indian judicial system encounters challenges not just in addressing the victim's emotional state but also in addressing their limited ability to respond positively. Women's testimonials are sometimes disregarded as useless due to their perceived weakness. The Farooqui case exemplifies the court's illogical anticipation of a victim's impact evaluation, emphasizing the requirement for clear opposition and absence of "participation" in the action from the victim's perspective. It has been noted that a significant number of instances of rape perpetrated by acquaintances remain unreported due to the absence of substantiating proof of victimization (Bell & Wolff, 2021). The Court in the case of Raja v. State of Karnataka (2016) expressed the view that the behavior exhibited by the victim during the purported experience does not align with that of an unwilling, fearful, and distressed victim of coerced sexual intercourse. In the aforementioned scenario, this was deemed as admissible proof to exonerate the perpetrator of the rape. Furthermore, the Madhya Pradesh Court, in the case of Dilip v. State of Madhya Pradesh (2001), expressed the view that the survivor ought to have retaliated against the appellant in a manner akin to that of a feral creature. However, the absence of any resistance from the survivor implies a lack of consent. The Courts have established a subliminal victim manual as a consequence of these artificial categories, compelling victims to conform to specific behaviors. The Courts have employed a well-established cultural narrative to foster self-doubt among rape survivors, so impeding their ability to classify the perpetrating act as a crime, unless it aligns with the institutional definition of rape. The majority of rape cases in India are often overlooked or underreported due to the presence of antiquated and ideologically biased preconceptions. In actuality, Courts have incentivized women to present themselves as vulnerable victims in order to demonstrate that they did, in fact, decline a perpetrator's request for sexual intercourse and thus meet the criteria for being labeled as "raped." Consequently, the patriarchal narrative undermines the credibility of most victims' accounts, convincing them to disregard rape as a "error" or "all in their minds."

### **X. INSIGNIFICANT PENALTIES FOR RAPE**

There exist several instances in which courtrooms duly recognize the commission of a crime, yet impose inconsequential and troublesome resolutions and penalties. In November 2019, a youngster aged 15 was subjected to molestation by three individuals in the state of Bihar. The Court mandated that the defendant offer an apology to the underage individual for a continuous period of 15 days, followed by an 8-day period of community service at the victim's educational institution. In the case of Vikram v. State of Madhya Pradesh (2018), the Madhya Pradesh High Court required the rape accused to obtain a "Rakhi" from the survivor, which is a festival that celebrates the bond between siblings. In this festival, the sister ties a sacred thread around the brother's wrist, symbolizing lifelong protection. The purpose of this requirement was to ensure the survivor's lifelong protection. Fortunately, the Supreme Court saw the insignificance of the ruling and, in nullifying it, established seven principles for subordinate courts to follow in instances of sexual assault (Mathur, Citation2021).

These are:

It is not necessary, obligatory, or allowed for the accused to have contact with the victim as part of the bail conditions. Under certain circumstances, it is imperative to ensure the protection of the complainant from further harassment by the accused.

The examination of protection's characteristics will be conducted independently, and suitable directives will be issued, along with a directive to the defendant to refrain from any interaction with the victim, in situations where the Court has reason to believe that there may be a potential risk of harassment towards the victim, or upon receiving reports from the police.

In every instance where bail is granted, it is imperative that the complainant is promptly notified of the accused's bail status and is provided with a copy of the bail judgment within a period of two days.

It is imperative that bail conditions and orders adhere strictly to the stipulations outlined in the Criminal Procedure Code (CrPC) and refrain from perpetuating stereotypical or patriarchal notions regarding women and their societal roles. Put simply, the verdict granting bail should not include any conversation on the prosecutrix's clothing, conduct, or past "behavior" or "morals".

When presiding over cases pertaining to gender-related offenses, it is imperative for the courts to refrain from proposing or considering any ideas (or promoting any actions) that may lead to compromises between the victim and the defendant, such as marriage, mediation between the defendant and the victim, or any other form of compromise. Such actions fall beyond the purview and authority of the courts.

Judges must consistently exhibit empathy, ensuring that the victim is not subjected to any distress during the procedures or by any statements made during the arguments.

It is imperative for judges to refrain from employing any remarks, whether verbal or written, that have the potential to erode or disrupt the survivor's confidence in the court's fairness or neutrality.

## **XI. CHARACTER ASSASSINATION**

Furthermore, the case of Varun Hiremath v. State of NCT Delhi (2021) documented instances of judicial insensitivity, when the opposing counsel engaged in character defamation by subjecting the victim to slut-shaming and humiliation through the use of false and derogatory remarks. Justice Sanjay Khanagwal, rather than exercising restraint, joined the lawyers in degrading the woman. In this instance, Justice is clearly contravening a minimum of two of the aforementioned criteria, namely (vi) and (vii). Nevertheless, it is uncertain whether these judges will face legal consequences, as Justice Bobde, the former Chief Justice of India, has failed to establish adherence to the principles he established in the case of Mohit Subhash Chavan v. State of Maharashtra (2021).

## **XII. SEVERE VERDICTS IN CASES OF SEXUAL ASSAULT AGAINST MINORS**

In 2021, a ruling pertaining to the interpretation of the definition of sexual assault against a minor under the Protection of Children from Sexual Offences (POCSO) Act, 2012, was rendered, presenting more challenges. In the case of Satish Ragde v. State of Maharashtra (2020), Justice Pushpa Ganiriwala of the Nagpur Bench of the Bombay High Court rendered a ruling stating that the act of sexual assault or violence necessitates the presence of "skin to skin contact" accompanied by sexual intent. Additionally, she determined that the act of groping alone did not meet the criteria for a crime to be recorded under section 7 of the POCSO Act, 2012. In this particular case, the complainant was identified as the mother of the minor victim. The Supreme Court, in response to extensive public criticism, suspended the entire order issued by Justice Pushpa (Rajagopal, Citation2021).

The request of a young rape victim to marry Robin Vadakkumchery, a convicted Catholic priest who had impregnated her, was dismissed by the Supreme Court in August 2021. According to Anand (2021), the Court granted the priest's plea for a reduction in his sentence, contingent upon his marriage to the victim. In the year 2019, Vadakkumchery was convicted of the offense of rape and impregnation against the victim during her juvenile years, as stipulated by the POCSO Act of 2012. He is presently incarcerated for a period of 20 years. The Kerala High Court, in February 2021, dismissed the appeal of the 49-year-old former priest to be granted bail in order to facilitate his marriage to the woman. The Kerala High Court's verdict was challenged by both Vadakkumchery and the woman to the Supreme Court. The woman asserted her desire to wed him with the intention of granting legal recognition to the kid she had following the rape. The Supreme Court, upon denying the appeal for marriage, declared that the duration of the punishment would be

shortened, provided that the priest weds the victim upon their release (Mahapatra, Citation2022). This ruling will now be regarded as a negative aspect of minor rape, as it does not recognize the assent of those under the age of 16 as legally valid. Consequently, the act in question will not be deemed voluntary. The Supreme Court approved the legislation, providing marriage as a remedy for the rape of a minor. Bishop Franco Mulakkal was cleared of rape accusations by Judge Gopakumar of the Kerala High Court in January 2022. Judge Gopakumar's rationale for this decision was based on the nun's actions and testimonials, which were deemed "hard to believe" (Vishwanath, Citation2022).

### **XIII. SYSTEMIC MISOGYNY**

The Judiciary, like many other institutions, is plagued by pervasive sexism and misogyny. In 2018, the National Law University Delhi did a study (Duggal, 2018) that examined 50 rape cases that were brought before the Supreme Court. It has been found that judges frequently possess a stereotyped perception of those who have experienced rape. Additionally, the study revealed that the inclusion of a female judge on the Bench can lead to a significant reduction in instances of sexist remarks.

In order to exercise caution and mitigate potential personal prejudices (Capurso, Timothy, Citation1998), it is necessary to consider whether a female judge would approach the interpretation of the statute in a distinct manner. The primary inquiry pertains to whether the hetero-patriarchal institution may achieve equality through the integration of a greater proportion of female judges (Hunter, 2008). Indeed, the response is affirmative. The judiciary's approach to women's issues will undergo a transformation. Women-inclusive benches have a higher likelihood of bringing attention to women's issues and presenting fresh viewpoints on gender roles, as well as their comments on societal norms that are deemed socially unacceptable, rather than solely criticizing actions that are legally illegal. Thus, the presence of a greater number of women on the bench is likely to result in verdicts that exhibit greater gender sensitivity. In response to Rupan Deol Bajaj's inquiry over the absence of a female judge in her sexual harassment lawsuit in 1995, her legal representative, Indira Jaising, asserted that the Supreme Court does not now have any female judges. After a span of twenty-five years, the Indian Supreme Court has exhibited a mere eight instances of female judges, with a mere two women having ever been included in the esteemed collegium of the highest court.

This is a major problem because this ingrained bias is never extended to a male equivalent. Typically, women decline such employment due to their familial obligations and the necessity to attend to their children. There exists an implicit consensus that male colleagues exhibit a lesser degree of concern over the welfare of their offspring, thereby relegating the major responsibility of child-rearing to women. Furthermore, it has been observed that women have a tendency to decline prospects for judicial positions and instead opt for employment within corporate law firms or in-house roles that involve litigation or transactional tasks (Roy, Citation2020).

### **XIV. THE BIASED DESIGN OF THE JUDICIARY: A STUDY ON WOMEN ADVOCATES AND JUDGES**

The existence of subtle and pervasive bias throughout the legal system is supported by empirical evidence. Based on the 2019 report provided by the Department of Justice in the Ministry of Law to the Standing Committee of Law, it is evident that a total of twenty-six High Courts nationwide are presently under male leadership. Out of the total of 1079 judges serving in the diverse High courts, a mere 82 individuals are female. Furthermore, the number of women appointed as senior lawyers in the Supreme Court is only 17, whereas there are 403 men in the same position. Within the Delhi High Court, there are eight women who hold the position of seniors, whilst 229 men are assigned this designation. According to the 15th Report of the Parliament of India in 2006, the Bombay High Court is comprised of 157 senior male advocates and a mere six women senior lawyers.

Furthermore, the existing recruiting process, which involves an entrance examination, facilitates the selection of a greater number of female judges at the first stage of the lower judiciary. Nevertheless, the procedure at the superior courts diverges, as it relies on suggestions, potentially diminishing opportunities for advancement (Vidhi Centre, Citation2018). The collegium system employed in the higher judiciary is characterized by its lack of transparency and its manifestation of prejudice (Roy, Citation2020). The selection of women judges for the High Court is based on their experience and acceptability by their peers, rather than purely on merit, resulting in a filtered population. Based on the findings of Chandra and Hubbard (2019), it is recommended that the Indian Supreme Court consider increasing the



representation of female judges in High Courts as a means to enhance gender diversity and broaden the pool of potential candidates for the Apex Court.

In the context of India, the pursuit of gender equality necessitates active engagement not only within domestic spheres but also inside political arenas. The prevalence of misogynistic statements is expected to rise due to the lack of gender equality among the judiciary and the exclusive control of the veto power in matters of justice by an all-male elite. In order to foster true inclusivity, it is imperative to intensify endeavors aimed at increasing the representation of women on the Bench, ensuring that they are not deprived of chances under any circumstances.

#### **XV. SEVERAL POSITIVE TRENDS**

The prevalence of gender-sensitive verdicts and gender-neutral courts in India is quite low; nonetheless, certain recent judgments suggest a shift towards a more progressive stance regarding women's concerns. In the case of *Santhosh v. State of Kerala* (2016), the Kerala High Court, in August 2021, made a ruling stating that the act of manipulating the legs and inner thighs of the victim with the intention of inducing stimulation can be considered as rape. This ruling was made despite the fact that the conventional definition of penetration, as outlined in Section 375(c) of the Indian Penal Code, 1860, may not have been fully satisfied. In the case of *XXX v. XXX* Thr. Adv. In 2021, a division bench of the Kerala High Court, Sri Millu Dandapani Mat, rejected a husband's application for divorce. The court said that if a husband treats his wife's body as if it is his own and engages in sexual activity without her consent, it constitutes marital rape. Subsequently, the Court determined that marital rape was a valid basis for pursuing divorce. The Court further highlighted that the absence of legal recognition of marital rape as a criminal offense does not preclude the Court from perceiving it as a form of cruelty leading to the granting of divorce. These rulings have become established criteria for future cases and the development of law.

The realization of the Constitution's requirements necessitates a transformative shift in the Judiciary's pronouncements, alongside the facilitation of increased representation of female judges within the judicial system. The heart of India's philosophy of independence, liberty, and justice is encapsulated in Article 14 of the Constitution of India 1950, which emphasizes the principle of equality. According to Article 15(1) of the Constitution of India, 1950, it is stipulated that the state is prohibited from engaging in any form of racial discrimination against any person. Furthermore, the act of establishing a differentiation regarding this section would be deemed unlawful. The objective is to bestow a life of dignity upon the citizens, to which they are rightfully entitled. The ultimate objective of all judicial pronouncements should be to establish such a provision, which should function as a mandate.

#### **XVI. RECOMMENDATIONS AND SUGGESTIONS**

In the case of *State of M.P v. Babulal* (2008), the judge expressed the view that a judge who possesses a heightened awareness of social issues is more effective in addressing crimes against women compared to lengthy clauses of penal rules that include intricate exclusions and complex requirements. This concisely encapsulates the objectives that the Courts should aim to accomplish in matters pertaining to women and minorities. To ensure the efficacy of enforcing existing rules and safeguarding a woman's dignity and rights, a shift in the judicial mindset is necessary. Justice Cardozo, in his book "Nature of the Judicial Process," explicitly states that his responsibility as a judge is to impartially interpret the law, without being influenced by his personal viewpoints or ambitions, but rather by the perspectives and goals of the individuals of his era (Cardozo, Citation2010).

It is imperative for the state and legal frameworks to actively engage in the promotion and enforcement of gender justice. The current imperative to attain gender justice necessitates an analysis of the Constitution grounded in the principles of constitutional morality, as opposed to being influenced by personal patriarchal ideologies. It is imperative to interpret the legislation in a manner that is impartial, so guaranteeing equitable treatment for women. The Constitution of India, 1950, specifically outlines in Article 15, clauses (1) and (2) the principle of non-discrimination by the state with regards to race, caste, gender, religion, and place of birth. The concepts of masculinity and femininity are socially constructed. Only by dislodging these structures can a change in perspective occur. The patriarchal society is characterized by entrenched asymmetrical power relations, which are further reinforced by the use of violence. The judiciary is granted a framework by the Constitution to strive for the administration of justice that is free from public moral considerations. The case laws examined in this study clearly illustrate how the language used by Courts is

influenced by patriarchy, which continues to view women as possessions that must be owned. In order to achieve adequate redress, particularly in cases involving sexual assault against women, it is imperative for courts to interpret the provisions of the law in an insurgent manner. Patriarchal inclinations frequently impede male judges from comprehending the context of women's subjugation and anguish, hence impeding impartial judgments. Therefore, the inclusion of a greater number of female judges in courts is of utmost importance. In the Bhanwari case (Vishaka and Ors. v. State of Rajasthan, 1997), the trial court's ruling serves as a prime illustration of this phenomenon. The judge, prior to acquitting the accused, asserted that Indian culture has not descended to such a level that an individual raised within it, an innocent and rural man, would transform into a male of malevolent behavior, disregarding caste and age distinctions, and resorting to acts of violence against women (Kannabiran, Citation2012, p. 398).

The lack of a Uniform Civil Code and the predominance of personal rules based on religion can pose significant challenges for women in their pursuit of justice. The contrast between community values and Court verdict is prominently highlighted in the Supreme Court ruling of the Shah Bano case (Mohd. Ahmed Khan v. Shah Bano Begum, Citation1985). Given the frequent disparity between societal standards and legal requirements, it is clear that the rights of women are not only determined by the law. Therefore, it is imperative to consider the social, cultural, and religious influences that impact a woman's life while making decisions pertaining to women's rights. Furthermore, males exert a significant influence over the criminal justice system in terms of law enforcement, legal proceedings, defense, and judicial proceedings. Increasing the presence of women within the system will undoubtedly enhance its responsiveness to matters pertaining to women and contribute to the eradication of gender-based bias.

If the judiciary aims to achieve fairness and justice, it is imperative to decentralize the power dynamics within patriarchy, particularly in matters pertaining to women. The goal of Article 15(3) of the Constitution of India 1950 is frequently subject to debate and significant misinterpretation. Consequently, the purpose of achieving social fairness, as outlined in Article 15(3) of the Constitution of India, 1950, is frequently undermined. In the cases mentioned in this article, it is evident that Courts frequently lack a comprehensive understanding of the concept of discrimination and its implications for women in terms of their rights and freedoms. Courts cannot base their verdicts on public morality when dealing with cases involving women. The adoption of a pragmatic approach, grounded in legal reasoning and acknowledging the inherent "asymmetry of position" experienced by women, has the potential to significantly contribute to the attainment of justice for women. This is particularly crucial given the pressing necessity for law and legal institutions to adopt a more gender-sensitive stance. The legal system must not succumb to the pressures exerted by the prevailing faction. Instead, it should aid in safeguarding the rights of individuals who have been rendered impotent by powerful factions. Judgments must incorporate social sensitivity into their legal reasoning. Cook and Cusack (2010) argue that our ability to expand our thinking is what enables us to truly evaluate and transcend our personal quirks and preferences. This can be achieved by considering several perspectives, so mitigating personal biases and preconceptions. As the number of perspectives increases, the level of subjectivity decreases. According to Cook and Cusack (2010), the ability to "enlarge of mind" is what enables individuals to engage in independent and impartial assessment. Undoubtedly, it is imperative to undertake reforms in family law, shifting away from the current patriarchal foundations. The perpetuation of patriarchy is facilitated by economic systems, thus necessitating a focus on addressing the subjugation of women within the framework of economic structures and the obligations of states towards women within these structures (Cook & Cusack, 2010).

In the case of Anuj Garg v. Hotel Association of India (Citation2008), the Court made the first application of the "anti-stereotyping principle" to accusations of sex discrimination. In 2018, the Supreme Court of India ruled that the accused cannot be granted the right to commit rape, even if it is presumed that the victim is a sex worker. In the case of National Legal Services Authority (NALSA) v. Union of India (2014), Justice Sikri raised concerns regarding the conventional categorization of gender into two distinct categories. Similarly, in Secretary, Ministry of Defence v. Babita Puniya (2020), Justice Chandrachud contested the prevailing gender norms that assign women with domestic responsibilities. Nevertheless, it is imperative to acknowledge that the utilization of negative stereotypes by the Judges themselves constitutes a manifestation of prejudice. As exemplified in the aforementioned instances, the act of discovering and emphasizing Court rulings that question stereotypes can also aid in dispelling misconceptions and prejudices.

Moreover, in order for individuals to depend on a justice system that is not influenced by gender, it is crucial to consider the issue of representation in the judiciary. Professor Kate Malleson contends that having a diverse bench can

help mitigate gender bias. However, the absence of diversity in the judiciary undermines the democratic legitimacy of the institution (Russell & Malleson, Citation 2006). The inclusion of intersectional perspectives and the promotion of diversity within a predominantly male judiciary are of significant importance.

### XVII. CONCLUSION

Misogyny is a longstanding phenomenon within Indian society, deeply entrenched in the patriarchal structure, and the judicial system is not exempt from its influence. Nevertheless, when courts exhibit misogyny by neglecting to acknowledge the violence perpetrated against women, the administration of justice becomes a disgraceful spectacle. In an era characterized by significant advancements in technology and scientific growth, the advancement of remedies addressing the subordination and oppression of women appears to be occurring at a sluggish rate. Typically, the excessively long duration of the court system, degrading interrogations throughout the trial, and animosity during the investigation process dissuade women from reporting incidents of sexual violence and abuse. Judges assume a pivotal role in facilitating the gradual societal transformation through the provision of impartial verdicts devoid of personal biases and prejudices. It is imperative for them to refrain from engaging in collusion with a system that fosters a culture of impunity. The implementation of constitutional morality in the administration of justice can significantly contribute to the empowerment of women, as it fosters a sense of trust in the court system among victims of abuse. It is imperative that courts abstain from perceiving women as offspring of a subordinate deity.

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