

The Scarcity of Women Judges and Lawyers in India and the Escalation of Crime Against Women: An Investigation from a Judicial Lens

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Abstract: "Similar to how a bird is unable to fly with only one wing, a Nation cannot progress if the women are excluded."

In the present-day context, there is a significant emphasis on the promotion of gender equality and justice. However, certain issues continue to impede progress in these areas. Nevertheless, it is apparent that we are currently experiencing a significant change in the history of women. Over the past decade, women's voices have gained widespread recognition. They are currently experiencing the entitlements that have been owed to them for an extended period of time. Women are demonstrating exceptional performance in various domains, including Parliament, Courts, and companies. In the Western context, women had a prolonged struggle spanning almost a century in their pursuit of fundamental rights, including suffrage. Conversely, India's Constitution inherently conferred to women equal rights alongside their male counterparts from its inception. Nevertheless, as a result of low literacy rates and entrenched cultural norms, a significant portion of women in this country lack awareness regarding their rights. Throughout generations, women have endured oppression in the country, making it exceedingly challenging to witness a seamless transition overnight. However, our current process is taking longer than what is legally required.

This study provides a critical analysis of the current state of women in the country, using various legal views and relevant facts. The judiciary is significantly lagging behind and its lack of progress is impacting the court's rulings on sensitive matters concerning women. These topics have been interconnected and elucidated in terms of their mutual influence.

Keywords: women, violence, lawyers, India, crime, judiciary, constitution, and empowerment.

I. INTRODUCTION

India has been an active participant in the resolutions of the United Nations since its establishment. The agenda for sustainable development was collectively approved by the member states of the United Nations in 2015. The agenda comprised a total of seventeen distinct objectives. Among the seventeen Sustainable Development Goals, one of the primary objectives was to "Attain Gender Equality and Empower all women and girls." These goals served as a pressing reminder for governments worldwide, regardless of their level of development, to form a global partnership. India, the world's largest democracy, is a member of the United Nations and has consistently played a significant role in attaining all its goals. Nevertheless, it is noteworthy that India, a nation of considerable historical significance, obtained a ranking of 140 out of 156 nations in the Global Gender Gap Report 2021, a publication by the esteemed World Economic Forum. Since the previous year's index, India has experienced a decline of 28 positions. In addition to the several rights afforded to women to ensure equality across all domains, India lags behind in this regard. It is a noteworthy observation that approximately. Women constitute 48.04% of India's extensive population, although their contribution to the nation's overall GDP stands at a mere 18%. In instances where societal patriarchal mindsets, stereotypical beliefs, and entrenched misogyny present obstacles, it becomes imperative for the court to assume a paramount role in bolstering the status of women, redefining patriarchal concepts and legislation, and facilitating progress for women.

The initial section of this research paper centers on the historical background of the nation and elucidates the status of women in India during the preceding centuries. The subsequent section pertains to the current state of affairs from a legal standpoint. The subsequent section of the study provides an elucidation of the escalating instances of domestic abuse and their pending status within the judicial system. This research has interconnected two highly significant concerns and has examined the influence of each. Despite having extensively studied and been exposed to topics such as gender equality, equal opportunity for women, and gender justice since our childhood, why do we continue to engage in conversations about these issues? The solution to this inquiry can be located in the forthcoming publication. The author also presents other suggestions. The existing data has been utilized to conduct a comparative analysis and draw a conclusion based on the required information.

Glance over the Historical Events

India has a long and extensive history of disparity and the subjugation of women. For decades, women in our nation have been subjected to objectification and treated as enslaved individuals. There was a prevailing belief that women were subordinate to men and their responsibility was to serve their husbands, raise children, and manage household responsibilities throughout their lives. In our nation, where female deities are revered, ordinary women have been subjected to severe mistreatment. In the past, there was a notable era when women were not allowed to pursue education and employment, since it was exclusively reserved for men. Traditionally, men were expected to pursue education and obtain employment, while women were expected to remain at home and handle domestic tasks. Nevertheless, there have been instances in history where brave women have defied societal expectations and overcome these obstacles.

During the early twelfth century, Queen Raziyya Sultan, who possessed superior qualifications compared to her brothers, was bestowed with the crown following her father, Sultan Iltutmish. Nevertheless, the inhabitants of her realm refused to embrace her. It was asserted that a female monarch opposed the divinely established ideal social structure. This provides insight into the mindset of the individuals throughout that period. The acceptance of a female ruler was not possible. An further instance pertains to Queen Rudramadevi, who reigned during the 12th century. She assumed a male identity on her inscriptions with the intention of avoiding future condemnation or criticism of her governance. These historical narratives provide insights into the societal position of women. These queens possessed such immense power that they were capable of assuming the role of a monarch, contrary to popular belief, but not everyone had the ability to do so. Additionally, we have been informed about Rani Laxmi Bai of Jhansi, the most renowned and influential queen in Indian history. She actively opposed the British and initiated a struggle for independence in India. In addition to her, there were numerous other women of great fortitude, like as Sarojini Naidu, Begum Hazrat Mahal, Annie Besant, and Madam Bhikha Ji Cama, who actively participated in and made substantial contributions to the war for independence.

However, these figures are significantly insufficient when compared to the male contribution. Certain women were fortunate enough to receive permission from their families to pursue education or engage in employment, while others shown bravery by actively advocating for their rights. In the past, girls were often wedded to men who were older than them, either before the beginning of puberty or even earlier. The individuals were compelled to get into matrimony at a young age and bear offspring to the male partner and his relatives. We are fortunate to have been born in a historical period characterized by the partial eradication of these phenomena, as well as the provision of education and a good upbringing by our families.

Following its independence in 1947, India implemented a series of progressive legislation and policies that have contributed to its current state. The constitution of India, which was ratified in 1950, granted equal rights to both genders and ensured equality throughout all aspects of life. Moreover, the legal age for marriage in India was established at 18 years old for girls, and the practice of child marriage was prohibited. Presently, the age requirement for females has been modified to 21. Numerous legislative measures, such as the "Dowry Prohibition Act," were implemented on May 1, 1961, with the primary objective of prohibiting the exchange of dowries. The following legislations were enacted in India to improve the status of women: The Commission of Sati (Prevention) Act, 1987 (3 of 1988), Protection of Women from Domestic Violence Act, 2005, The Sexual Harassment of Women at Workplace

(PREVENTION, PROHIBITION and REDRESSAL) Act, 2013, The Criminal Law (Amendment) Act, 2013, and The Indecent Representation of Women (Prohibition) Act, 1986.

The Role of Women Judges and Lawyers in India

"You have the right." The issue at hand is not one of charity...Enough of the prolonged period of suppression spanning thousands of years..."

The judiciary in India is considered one of the three fundamental institutions of democracy. The judicial institution is responsible for ensuring the provision of justice and fairness to all individuals, while also preventing any infringement upon the rights of others. While it promotes justice for all individuals, it fails to provide equitable and fair treatment for women in the nation. It is noteworthy that there exist about. India has a total of 1.7 million advocates, with women comprising only 15% of this figure. The proportion of women among the elected delegates of the State Bar Councils is about 2%. Regarding the Bar Council of India, there is a complete absence of female members. Women judges make up 11.5% of the total in the High Courts. Currently, there are only four female Justices out of the 33 sitting Justices on the highest court, accounting for only 12%. While this statistic may be unsettling, it is also disheartening to acknowledge that despite 75 years of independence, the world's largest democracy has not made significant progress in eliminating gender inequality.

During a felicitation ceremony in 2021, the former Chief Justice of India, N.V. Ramana, expressed his endorsement and advocated for a 50% reservation for women in the court. During the address, he expressed his strong support for the implementation of a substantial reserve of seats in law schools and universities for women, as an initial measure. Incorporating women judges and lawyers will significantly enhance the caliber of justice administration. Currently, there is a lack of legislation and policy pertaining to the reservation of women in both judicial offices and law colleges inside the country. The appointment of judges for the Supreme Court and High Courts in India is governed by Articles 124, 217, and 224 of the Constitution. These regulations prohibit the inclusion of any caste or class of individuals in the reservation process. Hence, the current collegium system for appointing Judges to constitutional courts places the responsibility on the Judiciary to ensure social diversity and representation for all segments of society, including SC/ST/OBC/Women/Minorities. In order to be appointed by the government, a High Court Judge must obtain the endorsement of both the Supreme Court Collegium and the High Court Collegium. Indeed, the Government remains steadfast in its dedication to upholding socioeconomic diversity during the process of appointing justices in the Higher Judiciary. There has been an ongoing effort to ensure that Chief Justices of High Courts give appropriate attention to suitable applicants from "Scheduled Castes, Scheduled Tribes, Other Backward Classes," Minorities, and Women when submitting proposals for the appointment of judges. The International Association of Women Judges (IAWJ), a non-governmental organization including over 4,000 members across 100 nations, asserts that women judges possess a distinctive ability to advance women's rights on a worldwide scale.

According to Attorney-General KK Venugopal, enhancing the presence of women in the judiciary has the potential to significantly contribute to a more equitable and compassionate approach in instances pertaining to sexual violence. The American Bar Association performed a poll which revealed that 38% of lawyers in the United States of America are female, whereas 62% are male. Considering the vast population of India, this ratio is far superior than that of our country. In addition, the American Bar Association has undertaken numerous projects aimed at educating women and promoting long-term careers for women in law. These initiatives specifically focus on thoroughly examining promotion and retention challenges faced by women attorneys of color. The bar also advocates for the implementation of universal and transparent protocols that facilitate accommodations for lactating individuals within organizations responsible for bar admissions, law schools, bar associations, and employers in the legal business.

According to data from 2018, 50.1% of the 139,624 practising certificate (PC) holders in the UK and 48% of the 93,155 solicitors in private practice are women. This represents a significant achievement that we should strive for.

Constitutional rights

The Constitution of India has several articles that aim to promote the advancement and equitable treatment of the women's community -

According to Article 14 of the Indian Constitution, it is mandated that the State must not deprive any individual of equality before the law or equal protection of the laws within the territorial boundaries of India. This provision explicitly prohibits any form of discrimination based on religion, race, caste, sex, or place of birth.

Article 15(1) and (2) of the constitution prevent the state from engaging in any form of discrimination against any person solely based on factors such as religion, race, caste, sex, place of birth, or any combination thereof.

According to Article 15(3), the state has the authority to establish certain measures aimed at safeguarding the welfare of women and children.

Article 15(4) grants the State the authority to establish specific measures aimed at advancing the interests and well-being of socially and educationally disadvantaged segments of the population.

Article 16 of the legislation ensures equal opportunities for all individuals in relation to employment or appointment to any position within the State.

According to Article 39, it is mandated that the State must align its policies with the objective of ensuring equal access to a sufficient means of living for both men and women [Article 39(a)].

According to Article 39(d), it is imperative to ensure equal compensation for equal work for both men and women.

Article 243 D (3) and Article 243 T (3) stipulate that a minimum of one third of the total seats in Panchayats and Municipalities should be reserved for women. These seats will be allocated to different Constituencies through a rotational process.

According to Article 243 D (4) T (4), it is mandated that a minimum of one third of the total chairs of the Panchayat and Municipalities at each level must be allocated for women.

The Constitution explicitly permits reservation for the purpose of uplifting and improving the disadvantaged community. This can also be achieved within the Judicial system through the implementation of a novel amendment. It is necessary in the present day. Despite the passage of several decades, women continue to face challenges in obtaining their rights. A modest intervention by the government can have a significant impact.

The Role of Indian Courts in Addressing Crimes Against Women

The Indian judicial system is confronted with a significant caseload. The courts currently have a substantial number of ongoing cases, with a significant portion of them pertaining to crimes committed against women. We own data over the last twenty years. Between 2001 and 2018, there were about 1,548,548 documented incidences of cruelty by husbands or their relatives in India. Among these occurrences, 554,481 (35.8%) occurred between 2014 and 2018. The documented incidence of this criminal activity in India was 18.5 per 100,000 women aged 15-49 years in 2001 and increased to 28.3 per 100,000 women aged 15-49 years in 2018, indicating a substantial rise of 53% throughout this timeframe. In 2018, the incidence of reported dowry fatalities and instances of abetment to suicide were recorded as 2% and 1.4%, respectively. In 2020, there were a total of 371,503 reported cases of crime against women, indicating a decrease of 8.3% compared to the previous year's figure of 405,326 cases. The majority of instances involving crimes against women under the Indian Penal Code (IPC) were recorded under the category of 'Cruelty by Husband or His Relatives' (30.0%), followed by 'Assault on Women with Intent to Outrage her Modesty' (23.0%), 'Kidnapping & Abduction of Women' (16.8%), and 'Rape' (7.5%). The annual reports of the National Crimes Record Bureau (NCRB) reveal that the crime rate per lakh women population in 2020 is 56.5, compared to 62.3 in 2019. This data pertains to four categories of domestic violence crimes, namely "cruelty by husband or his relatives, dowry deaths, abetment to suicide, and protection of women against domestic violence act." It is worth considering whether this figure is representative of a country that is actively striving to safeguard women and their rights from the perils of society. Another contributing factor to the issue is the inadequate response of a formal system in mitigating domestic violence. The efficiency of the legal recourse system in delivering justice is questionable. In the year 2018, a limited number of cases successfully concluded their trials. The majority of individuals who were accused were acquitted. The gloomy circumstances of waiting, protracted trials, and low conviction rates contribute to a heightened deterrence among women in reporting events.

In the recent case of *We the Women of India v. Union of India*, the Union government submitted a report to the Supreme Court stating that Uttar Pradesh had the highest number of domestic violence cases in the first half of 2022, with 65,481 complaints filed by women in the state. The data from other states indicates that there were 38,381 cases of

violence against women in the state of Rajasthan, 3,564 cases in Delhi, and 37,876 cases in Andhra Pradesh. Kerala reported 20,826 complaints, MP reported 16,384 cases, Maharashtra reported 16,168 cases, Assam reported 12,739 cases, Karnataka reported 11,407 cases, West Bengal reported 9,858 cases, Punjab reported 8215 cases, and Haryana reported 7715 cases under the Domestic Violence Act.

Nevertheless, there is a limited number of courts available to address such complaints, specifically 6289 courts, 807 shelter homes, and over 700 stop centers dedicated to providing care for women. In the aforementioned instance, the petitioners have made reference to the situation of the Protection Officers in Delhi, who are experiencing excessive workload and insufficient staffing. They have emphasized the necessity of appointing additional Protection Officers (POs) and ensuring they are equipped with appropriate supporting equipment. Furthermore, it is imperative to build aid networks in a well-informed manner, as mandated by the Domestic Violence Act. The aforementioned legislation is a comprehensive measure aimed at safeguarding women in India against various manifestations of domestic violence. It encompasses women who have been or are currently involved in a relationship with the perpetrator and are inflicted with any form of violence, including physical, sexual, mental, verbal, or emotional harm. The primary beneficiaries of these support networks are Protection Officers, Service Providers, Shelter homes, and medical facilities. In addition, it is desirable to have a female judge present in court for cases involving domestic abuse, rape, and sexual harassment. This would allow for a comprehensive understanding of the seriousness of the matter and consideration of the woman's suffering. Nevertheless, it is indisputable that in recent years, numerous praiseworthy rulings have been rendered by various male judges pertaining to these delicate matters, thereby affirming the rights of women. However, there have also been peculiar rulings that elicited both astonishment and revulsion. In the case of *Mukesh Bansal v. State of UP*, Justice Rahul Chaturvedi of the Allahabad High Court was presiding over a complaint filed by a woman under Section 498A. During his ruling, Justice Chaturvedi expressed his strong condemnation of the graphic description presented by the woman in her First Information Report (FIR). The First Information Report (FIR) serves as the platform where the informant provides a narrative that brings together the State Machinery involved in the perpetration of a cognizable offense. The FIR is seen abhorrent and filled with filth, as it does not pertain to soft pornography. The judge's decision to intervene in this matter can be attributed to the woman's complaint, whereby she said that her father-in-law and brother-in-law had solicited sexual favors from her, coerced her into undergoing abortions, and compelled her to engage in sexual activities under the influence of her husband. Engaged in sexual intercourse with her during her pregnancy and exposed her to uncomfortable actions, such as peeing in her oral cavity.

The case's merits remain unresolved, however, is it appropriate for a High Court judge to dismiss the woman's account of the torture and harassment she alleges to have endured as unclean and unclean? Could you please provide an explanation of the specific type of sexual abuse that was performed upon her? Is this the method by which we will ensure the safety of women in our country? These types of judgments deeply disturb us as human beings.

In January 2021, the Bombay High Court made another emotionally distressing remark. The act of touching a minor's breast without direct skin-to-skin contact cannot be classified as sexual assault according to the definition provided by the Protection of Children from Sexual Offences (POCSO) Act. Furthermore, the act of groping the kid without removing her clothing does not meet the criteria for sexual assault. These rulings highlight a significant deficiency in the judicial system. The trauma experienced by the victim is frequently dismissed, so exposing the underlying regressive ideologies that permeate our nation's collective consciousness. Subsequently, the Supreme Court overturned this ruling. In addition, the Chhattisgarh High Court has recently made a troubling statement, asserting that any sexual act between the plaintiff and the accused, regardless of whether it is forced or against her will, will not be considered rape. This statement regarding the marital rape case has generated a significant and justified public response. This assertion holds particular validity in light of the provision that defines rape as the act of engaging in sexual intercourse without the explicit consent of an individual.

If women judges are present during hearings of instances involving violence and sexual harassment against women, it is quite likely that the judgments will be based on a different perspective. In addition, the processes may continue at an accelerated pace due to the woman's comprehension of the anguish and distress experienced by another woman, enabling her to engage in rational and effective decision-making in such situations. Women judges have the potential to establish precedents for future offenders and serve as a societal role model.

The impact of our past on society is indelible, since it has resulted in a patriarchal, male-dominated, and hazardous environment for women. Nevertheless, it would be inaccurate to assert that there has been no advancement, as the magnitude and populace of the nation suggest that the level of progress achieved appears insufficient. Indeed, we are making significant progress and achieving exceptional results in various domains, including science, defence, and production.

Recommendations

This research study establishes a connection between two significant challenges within our nation. The dearth of female judges and lawyers, coupled with the growing incidence of crimes targeting women. Although these challenges may appear unrelated, it is essential to recognize the interdependence between them.

Female leaders are essential in all domains to create a secure atmosphere for the society. The law is a potent instrument in contemporary society. When a girl is sent to pursue education and acquire knowledge in the field of law, she gains empowerment. It enhances her self-assurance. Only a woman possesses the capacity to comprehend the gravity and horror of a crime perpetrated against a woman. An educated and knowledgeable female lawyer possesses the capacity to not only assert her independence and sense of empowerment, but also to provide assistance to women experiencing hardship. She possesses the ability to amplify the voices of women and provide assistance to those who require it. She will assume the role of a judge and, when presiding over cases of rape or sexual harassment, will not be influenced by elements that divert attention, mislead, or cause delays. Instead, she will be able to render a prompt and logical ruling. The incidence of judgments, as previously examined in the research, would not be prevalent. The women's sorrow would be comprehended with greater efficiency. There is an urgent need for women to advocate for reservation in judicial positions.

Initially, it is imperative to advocate for the implementation of reservation in law schools. In addition, the government will offer scholarships to deserving female students, alleviating the financial burden on their families while considering their education at a legal school.

There have been numerous reports indicating that female lawyers frequently experience mistreatment from their male counterparts, and in some cases, they may even face harassment. A Commission will be established to act as a catalyst for change, assisting women attorneys in overcoming and combating the obstacles they continue to face. What is required is a collection of instructive and innovative activities. A commission at the state level will be established to address the issues faced by female lawyers in litigation. We require a well-regulated framework to carry out this mission. There is a need to promote the participation of women in the judiciary and litigation within society. They will be given with some form of leisure. Currently, the availability of law education in the country is restricted to major urban centers, with only a small number of families opting to send their children for legal studies. According to the reports, the CLAT examination, which serves as the law admission examination for National Law Universities, was conducted in about 2022. A total of 80,000 students participated in the inaugural event and vied for the 2000 available spots at the NLUs. However, there exists a significant deficiency in public understanding regarding the pursuit of Law and its associated fields. The government could initiate a program aimed at disseminating information in rural areas, potentially assigning this responsibility to students from National Liberal Universities (NLUs) and other private schools. This initiative would involve raising consciousness in the neighboring villages and small towns within the region.

Ensuring equal treatment is a fundamental entitlement for all citizens of India; yet, it is important to note that the existence of this right does not guarantee the complete elimination of unequal treatment. The patriarchal society is resistant to the influence of words. The mere inclusion of anything in the constitution does not automatically establish its actuality.

II. CONCLUSION

Gender disparity is a pervasive issue that is noticed on a global scale. As individuals, it is incumbent upon us to actively address and mitigate this gap through our collective endeavors. Women have a crucial role in improving and accelerating the development of our world. The suppression of women's voices in the contemporary day is not feasible. It is imperative to promptly enact legislation to ensure that every workplace, be it a corporate office or a court of

justice, is a secure environment for women. The judiciary, as the guardian of justice and equity, has the responsibility to ensure that women in the country face no obstacles and are afforded equal opportunity in the realms of judiciary and law. The legal profession has historically been less favored by women due to the requirement of a foundational education. Historically, in our country, social constraints and a patriarchal attitude have hindered girls from pursuing studies in this field. A significant proportion of the female population was predominantly deprived of literacy skills. However, the current circumstances have undergone a transformation. The prevailing perception that the legal profession is predominantly male-dominated has undergone a certain degree of transformation. However, further endeavors and focused attention are necessary to encourage women to increasingly pursue a career in law, including aspire to become judges.

REFERENCES

- [1]. MukeshBansal v.StateofUP,CRIMINALREVISIONNo.1126of2022.
- [2]. WetheWomenofIndia v.UnionofIndia,WritPetition(s)(Civil)No(s).1156/2021.
- [3]. WetheWomenofIndia v.UnionofIndia,WritPetition(s)(Civil)No(s).1156/2021.
- [4]. INDIACONST.art.243D(4)&T(4).
- [5]. Indian Express, <https://indianexpress.com/article/cities/pune/domestic-violence-cases-in-india-increased-53-between-2001-and-2018-study-7893930/>.
- [6]. NationalCrimeRecordsBureau,<https://ncrb.gov.in/en/Crime-in-India-2020>.
- [7]. Legal Business, <https://www.legalbusiness.co.uk/blogs/the-future-is-female-women-lawyers-outnumber-men-in-uk-as-the-in-house-boom-continues/>.
- [8]. INDIACONST.art.14.
- [9]. INDIACONST.art.15,cl.(1)&(2).
- [10]. INDIACONST.art.15,cl.(3).
- [11]. INDIACONST.art.15.Cl.(4).
- [12]. INDIACONST.art.16.
- [13]. INDIACONST.art.39.
- [14]. INDIACONST.art.243,D(3)&243T(3).
- [15]. The pioneer, <https://www.dailypioneer.com/2021/columnists/give-justice-to-women-lawyers.html>
- [16]. AmericanBarAssociation, NationalLawyerPopulationSurvey,2022,https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2012-2022.pdf.
- [17]. The Hindu, <https://www.thehindu.com/news/national/cji-voices-support-for-50-representation-for-women-in-judiciary/article36681345..>
- [18]. UnitedNations,<https://sdgs.un.org/goals>.
- [19]. MinistryofWomenandChild Development,GlobalGenderGap Report,Dec.17,2021,<https://pib.gov.in/PressReleaselframePage.aspx?PRID=1782628>.