

Representation of Women in Indian Judiciary

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Abstract: India is one of those countries in the world where women are treated like a goddess and worshipped. This tradition is been followed for a very long time. With the formation of society and social norms, eventually, every person's role in the society also gets decided and they were expected to work accordingly. For example, the women restricted themselves to the household taking care of the family and raising children while the men earned wealth and bread. Unfortunately, this practice created a misconception in people's minds that the women's place is within the boundaries of her home. Even the people of the twenty-first century cannot digest the contradictory ideology. Although, in India, many politicians, writers and social activists have tried their best to completely eradicate this evil practice from our society. Moreover, in this process, the judiciary in India has played a remarkable role. The true essence of equality became reality when the courts punished people practicing discrimination based on sexual orientation of any person. It struck down unneeded and biased laws to save the dignity of women. Although, there are some places where the effectiveness of these laws lacks like the laws regarding marital rape, property rights etc. The judgements given by courts affect people because these decisions become a new norm that must be followed by them, the fear of punishment makes the people follow the court's rules and regulations. The crimes against women have not decreased despite the effective working the three pillars of our country. Apart from these crimes women and girls also have to go through discrimination in the family, offices and workplaces. One drawback of the courts is that it lacks the required representation of women. Moreover, if more women started litigation and get appointed as judges, the perspective of other people will also change. It will empower them as well as other women. A stereotype that women cannot effectively practice their power or that men are superior to women will also eradicate in no time.

Keywords: Women in Indian Judiciary.

1. Introduction

The concept of equality is one of the core features of our constitution. The fundamental rights, the preamble of the constitution, fundamental duties and directive principles of the state policy makes sure no citizen of India is discriminated against based on gender, race, caste, place of birth, ethnicity or colour. There were many steps taken by the government to completely uproot discrimination and give more opportunities to the deprived classes or sectors. For example, the reservation system was introduced in the educational institutions and government jobs of scheduled castes and scheduled tribes, to give them equal job opportunities and uplift their economical and social positions. Similar steps were taken to promote women's participation in politics and mainstream professions.

The women got 33% reservation in the Panchayati Raj system and municipality. It leads to increased participation of women and also helped to increase the pace of women empowerment. They became self-sufficient and also inspired others. The reservation for women has majorly benefited the females living in rural areas. Over the years, due to many government policies and judicial changes the conditions of women have improved. A large population of females have stepped out of their houses to gain high education and get jobs of their choice. Their contribution to the country at the national and international levels is remarkable. Although, despite such changes, many girls have to go through crimes like rape, molestation, child marriage, acid throwing, dowry death, bride burning, marital rape etc. Women in some professions also suffer from the problem of unequal payment or discrimination. The government has tried its best to eradicate these problems. Moreover, the judicial system of India has interpreted laws related to women in such a way that it enhances the dignity of women. The judiciary also helps in empowering women. Through various judgements and decisions given by the courts, it has strengthened constitutional values of protection of rights of women. The laws and acts passed by the Legislature are interpreted in such a manner that it neutralizes gender disparities. Decisions and judgements given by the courts act as an unseen barrier, if any person crosses this boundary is liable to due punishments or fine. People become bound to work according to the latest decision given by the apex court. Therefore, these judgements affect the lives of all the people who comes under the jurisdiction of India.

2. Meaning of Women Empowerment in India

Women Empowerment refers to that situation of social and cultural acceptance in the society where girls and women have the freedom to decide their own will. They have the power to exercise their rights and act as equal members of the family as well as the society. This includes decisions like whom to marry, when to get married, how many or no children to conceive, where and how to work, what and where to study and how to spend their money. Most parts of the world are yet to understand and enact the true ideas enshrined in the concept of women empowerment. In India, the population of women roughly makes 50% of the total population of the country, it is not possible to achieve development without women's contribution in various fields. The development of Indian society also lies in women's empowerment as they are the core of growth. India

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has seen a historic change in trend of women empowerment. The women and girls in different decades stepped out of their homes and contributed to the growth and development of the nation. The special contributions of women leaders in fields like mathematics, science, astronomy, medicine, creative arts, literature and many more suggest the participation of women and girls and take these fields ahead. Moreover, if she decides not to opt any career after completing her education; even though the well-educated mothers raise knowledgeable and tolerant sons and daughters that eventually become capable of educating other people about the need and importance of women's empowerment.

3. Role of Indian Judiciary in Women Empowerment

The Indian judiciary is responsible for protecting the rights of all the people who come under the jurisdiction of India. Different judgements and observations given in various cases are meant to uplift the sense of security and personal well-being of the sufferer. The concept of separation of power ensures independent and effective decision-making power of the courts. The judiciary in India is also responsible for resolving disputes, upholding the laws and fundamental rights of the citizens and contemplating judicial review. These cases changed the way people looked at women and laws related to women. The interpretation of these laws gave girls more opportunities and a feeling of security in our male-dominated society. During the British India legislations like Bengal Sati Regulation Act 1829, Female Infanticide Prevention Act 1870, Hindu Widows Remarriage Act 1856 and Age of Consent Act 1891. The British rule at that time also made sure that the defaulters are punished accordingly. Moreover, women also played an appreciable role during the time of independence. They participated in national movements and strikes to free the country. Therefore, the nation as well as the people owes them a lot, which can be returned by educational girls, giving them equal opportunities and making them feel safe and secure in their own home and also the streets. It's not the women's or any girl's need to be empowered but it's the society's basic duty towards humanity. The Indian constitution has also protected women under articles 14, 15(1), 16, 39(d), 42, 51(A) and 243(d)(3). Many civil and criminal cases of judicial activism lead to the formation of rules and guidelines to protect the dignity of women in workplaces, offices and homes. The courts, while keeping the concept of gender equality in mind, struck down many pre-existing social norms and opened the doors of age-old temples for women without any discrimination.

4. Case Laws

A. Molestation and Rape Cases

Ruchika Girhotra Case 1990 - In this case an Inspector General of Police of Haryana, SPS Rathore molested a 14-year-old girl. The name of that girl was Ruchika Girhotra. After filing the complaint the victim's family and friends were continuously harassed by the state police. Eventually, the series of these incidents lead the victim to commit suicide. In 2009, that is after 19 years and more than 400 hearings the court found

SPS Rathore guilty under section 354 of IPC.

B. Workplace

Vishakha vs. State of Rajasthan 1997 - In this case, the divisional bench of the Rajasthan High court defined sexual harassment as an unwelcome course of conduct. It is one of the most widely known cases of judicial activism. Moreover, it also led to the formation of guidelines to stop and minimize the act of sexual offences of women in workplaces.

C. For Prostitutes and Marital Rapes

State of Punjab vs. Gurmit Singh 1996 - While stating the judgement in this case, the constitutional bench of Punjab and Haryana High court stated that the prostitutes or women of easy virtue or loose moral character cannot be raped or molested for this very reason. The consent of women in red lights area is also a matter of fact and they cannot be forced to have sexual intercourse.

D. Muslim Women

1. *Shayara Bano vs. Union of India 2017* - The concept of talaq-e-biddat or popularly known as triple talaq was declared unconstitutional. This protected the Muslim women's right to equality like the women of other religions.

2. *Shamima Farooqui vs. Shahid Khan 2015* - The judges, in this case, declared that the money given for the maintenance of divorced women is her absolute right. Moreover, this also extends to Muslim women. This is also covered under section 125 of CRPC. Therefore, all divorced women will not be protected under the same laws and those who are not capable of self-sufficient must be provided with monthly alumni by their irrespective husbands.

E. FEMALE FOETICIDE PREGNANCY

Centre for Enquiry into Health and Allied Themes (CHEHAT) vs. Union of India 2003 - In this case, major guidelines were issued by the apex court to control female foeticide. Moreover, after the strict guidelines from the supreme court, the National Monitoring and Inspection Committee inspected in this regard regularly. A faculty or parent performing female foeticide or selective birth were punished by the court.

F. Rights of Daughters in Parental Property

Danamma @ Suman Surpar vs. Amar 2018 - The daughter born in a Hindu family also has a part in the parental property. This judgement was passed in a retrospective effect. It means that the women and girls born before the enactment of the Hindu succession act, 1956 can also claim for their part in the parental property just like sons in the family.

5. Representation of Women in Indian Judiciary

Indian society has gone through many remarkable changes after independence. The constitution of India is framed to include all the sectors of society. Here even the deprived classes get equal opportunities and justice. The growth and development of any nation depend on the growth of all the sectors including women. After independence, the country has

witnessed female prime ministers, chief ministers, high court judges, governors, astronauts etc. It shows that women's participation in various workplaces and fields has increased. The social environment of a place can be judged based on educated, self-sufficient and working women in that society. Many service sectors are yet to witness women as their head and few of these lack female participation. The seat of Chief Justice of India remains untouched by any female judge. Although, few high courts witnessed female judges in different years. The high courts of Tripura, Meghalaya, Manipur, Patna, Uttarakhand and Telangana have not yet got any female judges since the day of establishment. It took forty years for Justice Fathima Beevi to become the A female high court judge, followed by Justice Sujata V. Manohar in 1994. More than 68 years since independence for the supreme court of India to get its first directly appointed female judge, Justice Indu Malhotra. According to the data published by the judiciary and legislature of our country on the judges of high courts and supreme court, it was found that the percentage of female judges was only 30% before the coronavirus pandemic. At present, the only female judge in the Supreme court of India is Justice R. Banumathi. In 2020, the strength of supreme court judges was 1113 out of which only 80 seats are taken by female judges. The women in the supreme court hardly mark 7.2% of the total strength. Since the CJI appointed based is done by the President of India according to the seniority of judges, there no changes of having any female CJI until 2025. In the recent past, the Supreme Court Women Lawyers Association (SCWLA) wrote to the CJI, SA Bobde considering the need to elevate the experience and established women lawyers to the apex court. Chief Justice of India, NV Ramana in a press conference stated, that women's representation must be increased to 50% in the lower and the higher judiciary also including the practising lawyers.

6. Importance and Need of Women in Indian Judiciary

1. Biased statements in rape cases will not be stated - It was seen in many cases that the judges passed such comments or statements that shakes our trust in the Indian judiciary, especially in the cases of rapes or molestation. In such, the judiciary seems a little unfair towards women. Although, tremendous work was done by the judiciary to deliver justice to the sufferer. The courts have also played an important role to glorify the dignity of women in all possible places and create a safe, home-like environment. It has constantly aimed at equality and meeting girls' rights. Some comments stated by different high or lower courts shadows the true essence of the honourable courts. For example, in the case of Bhawani Devi vs the state of Rajasthan, it was first stated that a lower caste woman couldn't be raped by an upper-caste man. Once Bombay High court stated that sexual assault is not conducted without skin to skin contact in the case of a minor. Moreover, one wonderful gift of Bollywood to Indians for women empowerment is the statement "No Means No". In one high profile case, the Delhi High court said that "feeble no may mean yes". Also, CJI SA Bobde while delivering his judgement asked the accused if he will marry the girl he had raped. If the representation of women is increased in this system, there will be very limited number of

sexist remarks given by other people.

2. Female victims will have faith in courts and its judgements - The are endless places committed in this world every single minute. In the least possible time, some girl becomes the victim of domestic violence, rape, honour killing, bride burning, molestation, rape or marital rape, blackmailing, dowry death and many more. Surprisingly, majority of these crimes are not even reported. Main reason for not reporting such crimes by the victims include pressure from parents or relatives, social awkwardness, slander in the neighbourhood etc. Some women also fear that the male-dominated and patriarchal society will not give an ear to their words. Although, it will take time for the women to open up against the crime and injustice suffered by them, but having a female judge or lawyers in local courts will build a sense of trust among them. The victims will feel safe and secure in confronting the pain they have to go through in their households, workplace, offices or public places.

3. Empower Young Female Lawyers - The sight of more women in higher positions will inspire the young girls that aspire to establish themselves in the law field. We can assume that more girls will enroll themselves in law school. Moreover, the young girls willing to practice in the high courts will feel secure and protected because of the high representation of women in the courts. The female victims will also feel safe to share their problems and experiences in front of female advocates knowing that they will be able to understand their needs. The girls pursuing law from different law school will also aim of becoming judges in future and this is frame a friendly competition among them leading to the betterment of this field.

4. Representative Bureaucracy - This theory suggests that people of similar ethnicity, race, or sex understands the needs, requirements and problems better than any other section. In simple words, women can understand other women in a better manner as compared to men. For example, the committees set up for the betterment of scheduled castes and scheduled Tribes consisted of people of the ST and SC community. It is based on the belief that they have a better understanding of the problems faced by them and can also come up with reliable solutions. A similar thing was observed while framing laws for the LGBT community. Moreover, representative bureaucracy is one of the most common theories used in the country's legislature. The same perspective must be applied in case of judicial services. In our country where maximum crimes are committed against women, are sometimes misinterpreted and misevaluated by the courts. The major reason of this loophole is lack of representation and improper sex ratio of female advocates in the judiciary.

5. Achieving Sustainable Development Goals - Goal number five of sustainable development goals framed in 2021 deals with the concept of equality, gender discrimination in home and workplaces and aims in raising voice against violence. The increased participation of women in the judiciary will help us reach this goal. Moreover, their participation will also inspire women in other fields to come out of their homes and may lead to increased participation of females in the legislature and execution. By increasing the representation of women, these

goals can be achieved. Also, it was earlier stated by Justice NV Ramana that the Indian judiciary must aim of having 50% women representatives. Since the Panchayati Raj system and legislative assembly has reserved 33% seats for women, the judiciary doesn't have reserved seats. It may lead to delay in achieving the required goals, but both girls and boys will get equal opportunities and go through a similar selection procedure for becoming senior lawyers and later judges.

6. Equality and Increased Representation of Women - The reports published by the Indian legislature shows that the total representation of some females in courts was less than 10% in 2021. The only way to achieve gender equality is to promote girls in all the sectors like fashion, sports, science and technology, politics, defence services and others. Moreover, it is the woman's choice to decide her own will like to work or not or where to work. The so-called responsible males must not have a say in such situations. The "matter of choice" in the hands of females is the true essence of women's empowerment that must be enshrined in the minds of both boys and girls. The easiest and fastest way of achieving equality is by giving more opportunities to them and promoting girls in these deprived professional fields. Moreover, more effective judgments might be given by the female judges in cases related to marital rapes, dowry cases, domestic violence, sexual assault at the workplace etc.

7. Breaking Gender Stereotypes - The patriarchal concept prevailing in our society believes that the man is dominant, more capable and more intelligent. This can be seen in the families, Tribes, some professions etc. For centuries only male was considered as the head of the family, the same concept got carried forward in the professional lives of the people. In many places, whether rural or urban, it is believed that only men are capable of having higher education, earning a salary, and becoming head or boss in a firm, corporation or company. The Indian judiciary has not witnessed any female at the top, for this very reason, many people have assumed it to be a male-dominated profession. The chair of CJI, when filled by women, will break this old school thinking of the people that women cannot effectively practice their power as compared to men. One brilliant example of this is Prime Minister Indira Gandhi. She broke many stereotypes that a lone woman cannot efficiently make decisions or practice power as compared to male leaders.

Reasons why representation of women is less in judicial services

- The maximum population of our country is rural. By rural, here it means that the patriarchal concept is more prevailing in these places. The main causes of dispute among these people are related to property or land. Moreover, these rural people come from a kind of background where women don't show much involvement in the family or business issues. Therefore, due to this feudal mentality, these people also prefer to have male advocates instead of female advocates. In simple words, the clients are biased in choosing their litigators. Most practising female lawyers don't get good-paying clients which makes it difficult for them to survive in this field

for long.

- Many legal firms hire female lawyers as their assistants. It means their work is limited to assisting the senior advocate and obtaining adjournments. During the case hearing, strong arguments are presented mostly by the male advocates who have authorised that legal firm. The first generation of female lawyers after independence has tended to survive in this field mostly by assisting senior male lawyers. Moreover, many female faces took the lead in the second and third generations of lawyers.
- The graduation and post-graduation in law take much time as compared to other fields. Also, the cost of studying in law schools is a little high. For this reason, the children of low-income families fail to get enrolled in law school. Even though, after graduation, it takes years to get established as experienced litigators and get promoted as judges in high courts. Most females fail to complete this long procedure because of family and social pressure to get married or look after the family and kids. In our society, most people think that it is the female's responsibility to look after the family and become the child's nurture. Due to these businesses most women fail to look after their career and state opting for part time jobs or family businesses.
- There have been few instances of harassment of young female lawyers by either male advocates or judges. One such instance happened in Madras High court which was encountered by Madam Kiruba Munusamy in 2015. She is also the founder of Legal Initiative for Equality. One of the judges of the Madras High court commented on the hairstyle of the female lawyer, saying that her short hairs are more attractive than the arguments presented by her. This shakes other people's will and faith in the judiciary.
- In an interview, Justice Leila Sethi stated the issue faced by her when she was the sitting judge in the High Court of Himachal Pradesh. She was the chief justice of the Himachal high court. She said that many male lawyers and judges, can not digest that a woman is in a higher position than them. The main reason for this kind of mentality is that they were not used to seeing a scenario like this. Although, this incident took place in the Himachal High Court, but this type of mentality is commonly seen among the people of our country. This interview was recorded by the Hindu in November 2014.

Gender ratio in bar council of India:

The Indian Judiciary lacks required representation of women due to many reasons. A similar condition of women is seen in the Bar Council of India. According to the report given by the Chief Justice of India, RV Ramana stated that the representation of women in the Indian Judiciary is 15% out of which 2% of women are elected by the Collegium. The fact that surprises us is that there is no representation of women in the Bar Council of India. There had been some women advocates who were part of the State Bar Councils during different times. Although, at a higher level, only nine females are part of the Bar and Bench Council among 441 total representatives in 2021. The major cause of this increasing gender gap in the judicial services in

India is that most women don't go for litigation after graduating from law school. There are many reasons which are constantly stated and mentioned by the senior advocates and judges at different levels, but strong steps are yet to be taken. For example, in the same report Justice NV Ramana said that in the lower judiciary, the recent survey found out that out of the 6000 trial courtrooms, more than 22% of them lack separate restrooms for women and girls. It is highly shameful for us to expect women to work all day in such conditions. Moreover, many courtrooms lack necessary infrastructure like separate and safe restrooms for both men and women, untidy and congested workplaces make it a little unsafe to work. Another reason why there are fewer women in Bar and Bench associations is the socializing and networking issues.

Unlike the judiciary, the members of the Collegium are appointed based on the election procedure. Also, the election process of the Bar and Bench Council of India is a little prodigal which cannot be afforded by all the people. For these reasons most female advocates fail to be the part of elected collegium. In this regard, senior advocate Indira Jaisingh said the ruling ideology existing in the field of law is that a woman's place is in the household. The majority of men are in the favour of this thinking. So, even if the female advocates contest and stand in the election for Bar and Bench councils they don't receive many votes. Practices like this make the law field male-dominated and it takes much more time for female advocates to establish themselves in this field.

How women can affect judicial decisions:

- The Indians are yet to witness a female Chief Justice of India. Surprisingly many high courts have not got female judges after independence. If any woman gets to take this lead it is engrave a positive and healthy feeling in the people's minds. Moreover, it will also make the judicial survives for transparent and reliable. It will send a powerful message to all the suffering women of India that the courts are more approachable and gender sensitive. The increased representation of women as litigators and judges in the Indian Judicial Services will collectively represent of the most deprived sectors of the Indian society.
- The girls and women living in rural areas will be most affected by the increased number of female litigators and judges in the lower Judiciary. These females will feel safe and have more faith in sharing their problems with the female litigators. It seen millions times before that the girls who have to through sexual assault don't feel safe to open up in front of family members, police and even during the hearing. It is more likely to expect that the female litigators can easily console them and help them overcome the fear of not been heard in the society. This will help the judiciary to take effective decisions based on facts and background of the case in less time.
- The criminal cases related to robbery, murder, kidnapping etc. will not be much affected with the increase or decrease of either males or females in this sector. Although, since women show more sensitivity an sympathy the crimes against women might be thoroughly

punished leading to speedy trials while been in the definite boundaries of the law. The sudden increase of females in this service will also neutralize gender roles, and it is also expected for their male colleagues to become gender sensitive over time. The female judges will be more approachable specially for the crimes committed by husbands on their wives.

- Women judges can more efficiently resolve the matter related to inequality faced by rural women in marriage and parental property. The judgements given by them will be more precise in certain cases. This will fasten the pace of women empowerment with the help of Indian judiciary.
- Women advocates and judges are more likely to work for the deprived section of the society, among which females are one of them. The natural character of a women is that they care for all the people and some of them can also feel their pain. Therefore, it is possible that female advocates will file petition sis courts seeking to protect the suffer or the female judges will often opt for suo moto to deliver justice to those people who are not likely to approach the court for any reason. This is will make the concept of "justice for all" a very realistic and clear concept.

7. Conclusion

The Indian judiciary has gained a lot of shining gold medals by delivering strong and unbiased decisions. All the spheres of a society go through some kind of disputes in its day-to-day life, an effective and efficiently working Judiciary is responsible of maintaining the smooth functioning of a society. India is the vast landform that provides habitat to hundreds of ethnicities, cultures etc. which eventually lead to formation of thousands of differences among the people. It is obvious that neither the government nor the judiciary can fulfil or satisfy the needs of all the people at a time. Therefore, the judiciary focuses on doing justice with the deprived or the sufferer by being in the boundaries of the Indian constitution and other laws. One of these deprived sectors at large is that of women. Over the years the judiciary has played a vital role in protecting the rights of women and help them conquer their goals without any discrimination based on sexual orientation. The recent judgement given by the high court or the apex court forms a guideline or may start a new norm for the people that must be followed by them. The judiciary of India has given many judgements that hereby declared discriminatory laws as unconstitutional as it was violating article 14 and 15 of the Indian constitution. Moreover, these decisions also declared that the true essence of development of our nation lies in the empowerment of women. Also, any sort of crime or offense against women will not be tolerate. Although, there are some incidents that shakes are belief in the Indian judiciary, but these are minimal incidents which were later changed by the apex court. Despite this high-level understanding of need of women empowerment and their role in building the strong base of the society, our country is still lagging in accomplishing gender equality. Many girls are forced to get married early, or they can not choose their preferred area of study, leave jobs after

marriage, unequal pay, dowry, marital rape etc. There are many sectors that lack proper representation of women. The male dominated society believes that female are only capable of looking after the family or they cannot manage to work after marrying or having children. Such thinking represents the feudal thinking of our society. Today, everyone needs to understand that the women are not the only nurturer of children. The true essence of women empowerment lies in the choices made by the women. These choices must be made solely by the girls and women without any pressure. Like, what to study,

what to wear or buy, when and where to work, when to get married etc. The judiciary help in women empowerment by promoting equality and making schools, colleges and workplaces for them to work comfortably. If they go through any time of harassment the courts are approachable, protecting their basic fundamental rights.

References

- [1] <https://blog.ipleaders.in/>
- [2] <https://www.lawctopus.com/>
- [3] www.jurist.org