

**DEARTH OF WOMEN JUDGES AND LAWYERS IN INDIA AND INCREASING
CRIME AGAINST WOMEN: A JURIDICAL PERSPECTIVE**

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ABSTRACT

“Just as a bird cannot fly with one wing only, a Nation cannot march forward if the women are left behind”

In the contemporary era, we are hearing so much about women equality and justice but there are still some factors that keeps pulling us back. However, it is evident that we are in the middle of a major revolution in women’s history. From a decade, women’s voices are being heard everywhere. They are finally enjoying the rights that were due on them since forever. Be it Parliament, Courts, or the corporations, women are excelling everywhere. The women in the West had to battle for nearly a century to get certain basic rights, such as the ability to vote, but India’s Constitution granted women equal rights with males from the very beginning. However, owing to illiteracy and restrictive tradition, most women in this nation are uninformed of their rights. For centuries, women have been oppressed in the country so it is very difficult to observe a change-over night but we are taking more time than what’s legitimate.

This paper critically examines the present situation of women in the country by taking into account some of the legal perspectives and data available at hand. How the judiciary is lacking way behind and how it is affecting the judgements of the court in the sensitive issues regarding women. These issues have been interlinked and explained how one can affect the another.

Keywords – Women, Violence, Lawyers, India, Judiciary, Constitution, Empowerment

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INTRODUCTION

India is a part of the United Nations have been actively participating in the resolutions since its inception. In 2015, the member states of the United Nations altogether adopted an agenda for sustainable development. This agenda had Seventeen different goals. One of these seventeen Sustainable Development Goals was to – “*Achieve Gender Equality and Empower all women and girls.*”¹ All of these goals were an urgent reminder for the nations over the globe, whether developed or developing into a global partnership. India, the largest democracy of the world is also a member of the United Nations and has time and again effectively participated and contributed in achieving all the goals. However, it is quite ironical for a nation like India that it was ranked at 140 out of 156 countries in the Global Gender Gap Report 2021 which is published by the World Economic Forum.² India has slipped 28 places since the last year index. Besides all the Rights guaranteed to women for equality in all spheres, India lacks behind in this race. It is a surprising fact that approx. 48.04 % of India’s vast population are women but they contribute only 18% to the over-all GDP of the nation. When patriarchal mind sets, stereotypical notions, and deep-rooted misogyny in society pose a barrier, the judiciary has to play the most significant role in strengthening women’s status, redefining patriarchal ideologies and laws, and paving a way forward for women.

First part of this research paper focuses on the history of the country and explains the position of women in India in the last few centuries. The second part deals with the present situation with a juridical perspective. In the third part of the paper, the increasing domestic violence cases and their pendency before the courts have been elucidated. The two very critical issues have been interlinked in this research and impact of the both have been discussed. It’s been decades since we have been studying and listening so much about gender equality, equal opportunities for women, gender justice etc. since our childhood then why are we still discussing it. The answer to this question can be found in this paper ahead. Some suggestions are also put forth by the author. The data which was already available has been used to make a comparison and a conclusion for what is needed.

¹ United Nations, <https://sdgs.un.org/goals> (last visited Jul. 1, 2022).

² Ministry of Women and Child Development, Global Gender Gap Report, Dec. 17, 2021, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1782628>.

A GLANCE OVER THE PAST

India had a vast history of inequality and women oppression. In this country women have been objectified and have been treated as slaves for centuries. It was a mindset that women are inferior to males and their duty is to serve the husbands, raise kids and handle the household chores for life. In our country, where women goddesses are worshipped on one hand, normal women have been treated dreadfully on the other. We have had a significant period in the past where studying and working was not something for the women of the society but only for the men. Men were supposed to study and gain education and then go off for jobs and work while the woman was supposed to stay back at the house and engage herself in the household chores, however there have been examples of some courageous women in the past who have broken all the barriers.

In early twelfth century, there was one Queen Raziyya Sultan who was more qualified than her brothers and hence was given the throne after her father – Sultan Ilutmish. However, the subjects of her empire did not accept her. It was said that a women ruler was against the ideal social order created by God. This tells us the thinking of the people at that time. They could not even accept a Female Ruler. Another example is of one Queen Rudramadevi from 12th century. She pretended to be a man on her inscriptions just so that people in the future do not condemn or criticise her rule. These stories of the past tell us the status of women in the society. These queens were powerful that they could at least try being a ruler besides what the people think but not everyone could do so. Further we have heard about the most Famous and powerful queen in the history of India – Rani Laxmi Bai of Jhansi, who fought against the British and marked the beginning of a freedom war in India. Besides her there were many other courageous women like Sarojini Naidu, Begum Hazrat Mahal, Annie Besant, Madam Bhikha Ji Cama who took part and played a significant role in the freedom struggle.

But these numbers are way too small in comparison to the Male contribution. Some women were lucky enough that they were allowed by their families to study or to work and some women were courageous enough to have fought for their rights. Earlier, girls on the onset of puberty or sometimes even before the puberty were married off to men older than their ages. They were forced to consummate the marriage at such an early age and give kids to the man

and his family. We are lucky to be born in an era where these things have been wiped out to an extent and our families raised us with education and gave us a healthy childhood.

After India got independence in 1947, many progressive laws and policies were made that led us here. Firstly, India's constitution adopted in 1950 gave equal rights to both men and women and equality in all spheres of life. Further, age for marriage in India was fixed at 18 for girls and child marriage was made illegal. Currently, this age has been changed to 21 for female. Many pieces of legislations like the "Dowry Prohibition Act, was enacted on May 1, 1961, intended to prevent the giving or receiving of a dowry. Then came the, 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, The Indecent Representation of Women (Prohibition) Act, 1986." All of these legislations were made and implemented for the betterment of the status of women in India.

WOMEN JUDGES AND LAWYERS IN INDIA

"It is your right. It is not a matter of charity...Enough of these thousands of years of suppression..."³

Judiciary is one of the three institutions of Democracy in India. Judicial Institution ensures that justice and fairness is provided to everyone and nobody violates other person's rights. It upholds justice for everyone but could not be equal and just for the women of the country. It is a shocking fact that there are approx. 1.7 million advocates in India, and only 15% out of this number are women. From the elected representatives of the State Bar Councils, only 2% are women. And if talk about the Bar Council of India, there is no woman member at all. In the High Courts, women judges constitute 11.5% of the total. In the apex court, there are currently four women Justices out of the sitting 33, which is just 12%. As much as this figure is disturbing, it is equally sad to realise that after 75 years of Independence, the largest democracy in the world, is nowhere near eradicating Gender Disparity.

In 2021, the then Chief Justice of India N.V. Ramana, talking at a felicitation ceremony supported and called for 50 % reservation for women in judiciary. While giving the speech he also said that he strongly advocates "reservation of a significant percentage of seats in law

³ The Hindu, <https://www.thehindu.com/news/national/cji-voices-support-for-50-representation-for-women-in-judiciary/article36681345.ece> (last visited on July 1, 2022).

schools and universities for women, as a first step. Ultimately, inclusion of women judges and lawyers will substantially improve the quality of justice delivery.”

Till date, there is no law and policy for the reservation of women in the judicial offices and neither for the Law colleges of the country. As per the Constitution of India, “Appointment of Judges of the Supreme Court and High Courts is made under Articles 124, 217 and 224. These provisions do not allow the reservation for any caste or class of persons. Therefore, the present collegium system of appointment of Judges to the constitutional courts, puts the onus to provide social diversity and representation to all sections of the society including SC/ST/OBC/Women/Minorities on the Judiciary.” A High Court Judge must have the approval of the Supreme Court Collegium and the High Court Collegium in order to be appointed by the government. For a fact, the Government is still committed to ensuring social diversity while making the appointment of judges in the Higher Judiciary. It has been trying to obtain that Chief Justices of High Courts give qualified candidates from “Scheduled Castes, Scheduled Tribes, Other Backward Classes,” Minorities, and Women due consideration when sending propositions for the appointment of judges. Women judges, according to the “International Association of Women Judges (IAWJ), a non-governmental organization with around 4,000 members in 100 nations, are unique in furthering women’s rights globally.”

Attorney-General KK Venugopal had said that *“improving the representation of women in the judiciary could go a long way towards a more balanced and empathetic approach in cases involving sexual violence.”*⁴

As per a survey conducted by the American Bar Association, there are 38% Female lawyers in the United States of America and 62% Male lawyers.⁵ This ratio is far better than our country, considering the huge population of India. Besides this there are many initiatives that have been taken over by the American Bar Association to educate women and to Achieve Long-Term Careers for Women in Law, to fully examine advancement and retention issues among women attorneys of colour. The bar also urges on organizations responsible for bar admissions, law schools, bar associations, and employers in the legal industry to implement universal, transparent procedures that allow for accommodations for lactating people.

⁴ The pioneer, <https://www.dailypioneer.com/2021/columnists/give-justice-to-women-lawyers.html> (last visited Jun. 28 2022).

⁵ American Bar Association, National Lawyer Population Survey, 2022, https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2012-2022.pdf.

In UK, which is the second largest legal market of the world, “50.1% of the UK’s 139,624 practising certificate (PC) holders, and 48% of the 93,155 solicitors in private practice are women, as per the data available from 2018.”⁶ This is a figure that we need to thrive for.

CONSTITUTIONAL RIGHTS

The following Articles have been provided in the Constitution of India for the upliftment and equal treatment of Women community: -

- “Article 14 - Equality before law -The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”⁷
- Article 15(1) and (2) prohibits the state from discriminating against any citizen only on the basis of any one or more of the aspects such as religion, race, caste, sex, place of birth or any of them.⁸
- Article 15(3) makes it possible for the state to create special provisions for protecting the interests of women and children.⁹
- Article 15(4) capacitates the State to create special arrangements for promoting interests and welfare of socially and educationally backward classes of society.¹⁰
- Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.¹¹
- Article 39 requires the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood [Article 39(a)],¹²
- and equal pay for equal work for both men and women [Article 39(d)].
- Article 243 D (3) and Article 243 T (3) provide for reservation of not less than one third of total number of seats in Panchayats and Municipalities for women to be allotted by rotation to different Constituencies.¹³

⁶ Legal Business, <https://www.legalbusiness.co.uk/blogs/the-future-is-female-women-lawyers-outnumber-men-in-uk-as-the-in-house-boom-continues/> (last visited Jul. 1, 2022).

⁷ INDIA CONST. art. 14.

⁸ INDIA CONST. art. 15, cl. (1) & (2).

⁹ INDIA CONST. art. 15, cl. (3).

¹⁰ INDIA CONST. art. 15. Cl. (4).

¹¹ INDIA CONST. art. 16.

¹² INDIA CONST. art. 39.

¹³ INDIA CONST. art. 243, D (3) & 243 T (3).

- Article 243 D (4) T (4) provides that not less than one third of the total number of officers of chairperson in the Panchayat and Municipalities at each level to be reserved for women.”¹⁴

Reservation is allowed by the Constitution itself for the upliftment and betterment of the oppressed community. This can be done in the Judicial system as well with a new amendment. It the need for today. Decades have passed and women are still struggling for their rights. A little push from the government can go way long.

INDIAN COURTS AND THE CASES OF CRIME AGAINST WOMEN

Indian courts are heavily burdened with cases. There are more than lakhs and lakhs of cases pending in the courts, out of which a huge pile belongs to the crime against women. We have data of past two decades. Approximately, “1,548,548 cases were reported under cruelty by husband or his relatives in India from 2001 to 2018, with 554,481 (35.8%) between 2014 and 2018. The reported rate of this crime in India was 18.5 in 2001 and 28.3 in 2018 per 1,00,000 women aged 15–49 years, marking a significant increase of 53% over this period. The rate of reported dowry deaths and abetment to suicide was 2% and 1.4%, respectively, in 2018.”¹⁵ Further A total of 3,71,503 cases of crime against women were registered during 2020, showing a decline of 8.3% over 2019 (4,05,326 cases). Majority of cases under crime against women under IPC were registered under ‘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 crime rate registered per lakh women population is 56.5 in 2020 in comparison with 62.3 in 2019.”¹⁶ This data was taken from the from the annual reports of the National Crimes Record Bureau (NCRB) which was released under four domestic violence crime headings – “cruelty by husband or his relatives, dowry deaths, abetment to suicide, and protection of women against domestic violence act.” Does this figure seem to belong from a country which is trying to protect women and rights from the dreadfulness of the society? One more fact adding to the problem is the poor response of a formal system to reduce domestic violence. The legal recourse system is not efficient in providing justice. Only a handful of cases filed completed trials in 2018. And the majority of

¹⁴ INDIA CONST. art. 243 D (4) & T (4).

¹⁵ Indian Express, <https://indianexpress.com/article/cities/pune/domestic-violence-cases-in-india-increased-53-between-2001-and-2018-study-7893930/> (last visited Jul. 1, 2022).

¹⁶ National Crime Records Bureau, <https://ncrb.gov.in/en/Crime-in-India-2020> (last visited Jul. 1, 2022).

accused were acquitted. Women are considered to be even more deterred from reporting incidents due to this depressing situation of waiting, protracted trials, and poor conviction rates.

Recently in the case of, *We the Women of India v. Union of India*,¹⁷ a report submitted by the Union government before the Supreme Court stated that “Uttar Pradesh topped the chart of domestic violence cases by registering 65,481 complaints from the women of the state in first half of 2022. Data from other states - Rajasthan - 38,381, Delhi 3,564, Andhra Pradesh – 37,876 violence against women of martial life, other states like Kerala reported 20,826 complaints, MP- 16,384, Maharashtra -16,168, Assam – 12,739 Karnataka – 11,407, West Bengal – 9,858 Punjab- 8215 Haryana 7715 under the Domestic Violence Act.”¹⁸

However, the number of courts that are there to deal with a such complaints are only – 6289, 807 shelter homes and over 700 stop centres to take care of women. In the above-mentioned case, “the applicants have referred to the condition of the Protection Officers in Delhi who are overburdened and understaffed and highlighted the need for appointment of more POs and providing them with the adequate paraphernalia. Also, that there is the need for ‘informed establishment of assistance networks’ as provided under the DV Act. (This act is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who have been/are in a relationship with the abuser and are subjected to violence of any kind physical, sexual, mental, verbal or emotional.) These assistance networks are primarily for four stakeholders - Protection Officers, Service Providers, Shelter homes and medical facilities.”¹⁹

Besides this, in cases such as of domestic violence, rape cases and sexual harassment cases, ideally there shall always be a woman judge present in the bench to understand the gravity of the case and think about the pain of the woman. However, it is of no doubt that in the past few years there have been many commendable judgements that have been passed by different male judges regarding these sensitive issues and they have upheld the rights of the women. But there have been some bizarre judgements as well that gave us goosebumps and disgusted us at the same time. Recently in *Mukesh Bansal v. State of UP*, Justice Rahul Chaturvedi of the Allahabad High Court was hearing a complaint filed by a woman under Section 498A, wherein while giving the order he observed that “The graphical description portrayed by her in her FIR is deplorable to be condemned in its strongest terms. The FIR is the place where the informant

¹⁷ *We the Women of India v. Union of India*, Writ Petition(s)(Civil) No(s). 1156/2021.

¹⁸ *Ibid.*

¹⁹ *We the Women of India v. Union of India*, Writ Petition(s)(Civil) No(s). 1156/2021.

gives the story mobilizing the State Machinery engaging in the commission of cognizable offence. It is not soft porn literature where the graphical description should be made.”²⁰ And calls the FIR ever *abhorring, full of dirt and filth*. The reason for this pearl-clutching by the judge is that in her complaint, the woman had alleged that her father-in-law and brother-in-law had demanded sexual favours from her, she had been forced to get abortions, as well as that her husband had forced her to have sexual intercourse with her when pregnant and subjected her to acts she was not comfortable with, including urinating in her mouth.

The merits of the case have not been decided yet but is it correct for a judge of the High Court to say that the woman explaining the torture and harassment she is claiming to have been through is dirt and filth? Explaining what sexual violence have been inflicted on her, is it soft porn for the judge? Is this how we are going to make this country a safe place for the women? As a human being, these types of judgements disturb us to the core.

One such another heart wrenching comment was made in January 2021, by Bombay High Court. “*Groping a minor’s breast without skin-to-skin contact cannot be termed as sexual assault as defined under the POCSO Act.*” Since the man “*groped the child without removing her clothes the offence cannot be termed as sexual assault.*” Such judgements are a clear failure of judiciary. The victim’s trauma is often undermined and it also reveals the underlying regressive notions that are present in our nation’s consciousness. Later, Supreme Court quashed this judgement. Further in such incidents, there is Chhattisgarh High Court which recently issued a disturbing declaration, stating that because the plaintiff is the lawfully wedded wife of the accused, “any sexual act between them, even if forced or against her choice, will not be deemed rape.” This comment on the marital rape case sparked a massive and well-deserved public reaction. This is especially true given that the definition of rape is “*having sexual intercourse without a person’s permission.*”

There is a high chance that if women judges are present in hearing of cases of violence and sexual harassment against women, the judgements might come of a different discourse. Along with this, the proceedings might go a bit faster than usual because the woman understands the pain and suffering of another woman and will be able to think fairly and efficiently in such matters. Women judges might also set some precedents for future offenders and set an example in the society.

²⁰ Mukesh Bansal v. State of UP, CRIMINAL REVISION No. 1126 of 2022.

We can never forget what our past has done to the society, making it a patriarchal, dominated and unsafe place for women. However, it would be wrong to say that we have not progressed even a bit but taking into consideration the size and population of the country, it does not seem enough progress. It's true that we are developing and exceling in every field from science to defence to production.

SUGGESTIONS

In this research study, we have interlinked two very important issues of our country. The scarcity of women judges and lawyers and the rising crimes against the women. It might seem to you that these issues have not much in common but it's crucial to realise how one thing affects the course on another thing.

Women leaders are needed in every field to make the environment, a safe space for the community. Law is a powerful tool in today's times. When a girl is sent out to get education and learn about law, she gets empowered. It makes her confident. Only a woman can understand the severity and dreadfulness of a crime against a woman. An educated and learned women Lawyer would be not only be able to step out in the world and be independent, feel empowered but also, she would be able to help those women who are in distress. She would be able to raise voice of the women and help those in need. She will become a judge and while deciding the matter of a rape or sexual harassment would not be distracted by diverting, misleading or delaying factors but would be able to give a fast and rationale decision. Judgements like we studied before in the paper would not become a common occurrence. The pain of the women would be understood more efficiently. It is high time that women raise their voices for reservation in the judicial offices.

As a first step, reservation in law schools can be called for. Along with this deserving girl students shall be provided scholarship opportunities on behalf of the government so that their families do not think about the financial pressure to send them out to a law college.

It has also been reported many times that women lawyers are often treated badly by their superior male advocates, sometimes even harassed. A Commission shall be formed that would serve as a catalyst for change to help women lawyers overcome and fight the barriers they still confront. All we need is a number of informative and cutting-edge initiatives. A state wise commission shall be regulated to entertain the problems of women lawyers in litigation. We need properly regulated framework for this task to be done. The women of the society need to

be encouraged to join Judiciary and litigation as well. Some relaxation for them shall be provided.

Right now, in the country, the education of law is limited to big towns and cities and only handful of families send their children to study law. As per the reports, in 2022 CLAT – the law entrance exam for National Law Universities took place where approx. 80,000 students appeared for the first time and competed for the 2000 seats of the NLUs. Still, there is serious lack of awareness amongst people about how to pursue Law and other things related to it. Government should start a scheme for spreading awareness among rural areas and maybe give this task to the students of NLUs and other Private colleges to spread awareness in the nearby villages and small towns of the area.

Being treated equally is a fundamental right of every citizen of India but a fundamental right does not necessarily eradicate the unequal treatment. Words cannot be put into the mind of the patriarchal society. Just because something is written in the constitution does not makes it the reality.

CONCLUSION

Gender disparity is a problem which is observed all over the globe and as a human being it is our responsibility to curb this gap with our efforts. This world needs women to make it a better place and develop much faster. We cannot suppress the voice of the women in this era. There is an urgent need for implementing legislation in this respect and make every workplace, a safe place for women whether it's a corporate office or it's a court of law. As the protector of justice and fairness, it is the duty of the judiciary to make sure there is no problem to the women of the country and they are given equal opportunities in the field of judiciary and law as well. Legal profession has not been a popular choice for women because in order to understand this they need to have basic education and earlier in our country, due to social restrictions and patriarchal mindset the girls were restricted from studying. So, a large population of the female was largely left illiterate. But times have changed now. The mindset that legal profession is a male dominated society has changed to some extent but it requires more efforts and attention so that women chose to practice law more and more and also, opt to become judges.