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Indian Judiciary System: Is a Platform for...?

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ABSTRACT

The era is a garland of moments, the circumstances were different in each era, but the bitter truth is that women in each era were not given equal opportunity to represent herself. It has been 72 years after independence, still Indian judiciary depicts that representation of women in judiciary is too low as compared to men. India is second most populated country in respect of women and it is around 48.5. However, the percentage of women judges, is only 7% in higher judiciary and overall its is 29%. Equality is not only needed in granting voting rights but also in this sphere. The article talks that why there is inadequate representation of women, with an emphasis on the strict appointment process and the gender bias atmosphere in the courtrooms. Some remedies are given which could be brought in effect to prevent the same.

I. INTRODUCTION

"I was a worthy candidate, not as I'm a woman," said the justice Malhotra who in April 2018 became the first woman to be directly appointed to the supreme court from the bar.

Since 1950's i.e since the institution's establishment, Justice Indu Malhotra was the only 7th woman who was appointed as female judge and who give out in nation's apex court and it can be concluded that it the supreme court took almost 70 years to have its first directly scheduled woman judge.

As custodian of individual liberty, the Indian judicial system holds the responsibilities of upholding fundamental rights, supportive of society's morals, and all-inclusive, ensuring the quality of life for each individual. Society benefits from it, and it serves as an omnipotent, stabilizing force. In view of the judiciary's role as a bona fide defender and healer of the concept of justice, it becomes important to take an analysis of this aspect of the judiciary into account. Even so, the judiciary in India is not flawless when it comes to the institutionalized and structured Brahmanical patriarchy. In addition to being questioned over its adjudications and opinions of numerous benches, the judiciary is also questioned about its composition.

It is not only opinion that determines jurisdiction, but objective analysis, but still possible to

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add up the biases as instincts. No matter what, the ethical objectiveness of a verdict is in consequence determined by the level of justice. The objective, unprejudiced mind is often preferred to the subjective, traditional and generally harsh lens when judging cases regarding women. In the effort to preserve paternalism, a woman's rights as an independent are sacrificed. In this paper, which examines historic landmark cases, we explore the dire consequences of the Indian judiciary's lack of representation of women and how its discriminatory practices harm the Indian people. In this day and age, women have the right to hold leadership positions, so recommending oppressive, male-dominated ideals, and their deep conflict with society, is imperative. As a conclusion, the paper reviews common redressal measures and makes recommendations for future policy. According to the current global agreement, gender diversity is extremely important. Providing decision-making and capacity to the public increases confidence in the courtroom.

II. STATISTICS

The maximum number of judges are in the Madras High court with 13 judges and this statics is followed by Punjab and Haryana High court that is they have 11 women judges. There are some States too in which there are no lady judges at all like High court of Patna, Manipur, Meghalaya, Telangana, Tripura and Uttarakhand. The sanctioned strength is of 34 judges and against to it there are only two women judges in the tip court. Only 8 judges have been appointed in supreme court since its inception.

The attorney general of India also battled for additional women in judiciary and this happened not long ago and attorney stated that as compared to 403 men, minuscule number of 17 women older advocates are present in top court. It is additionally important to notice here that this dearth of feminine judges in Asian nation exists, at constant time with the vacancies within these positions. There are and 411 vacancies out of the licensed 815 judges of HCs and four vacancies out of the sanctioned thirty-four positions in the SC in line with the information free by the Department of Justice in Jan 2021.

The vital of gender diversity is inflated by the role of the judiciary as people's representative in society and making certain equality of likelihood for ladies among the bar. The lower courts confirm this opinion by the currency of reservations, but the higher court because of the absence of such system, refutes the idea. There are exceptions for low quotes of girls as district judges and one of these elements is the condition of a minimal exercise experience of 7 years as a suitor or advise is the condition. In cases like *Sushma Suri v. Govt of National Capital Territory*

of Delhi³ 1999 and other cases named as Deepak Aggarwal v. Keshav Kaushik⁴ 2013, the court interpreted Article 233 of charter needs no less than 7 years of exercise and the court interpreted this as seven years of continual exercise.

There are many societal and familial pressures in girls and due to thus severe problems which girls face, the intrinsic prejudice is clear. This social responsibilities of marriage and motherhood doesn't permit them to have seven years of Persistent exercise. Women are frequently falling out from workplace not because they don't want to work or can't compete with men but because they have to deal with homely affairs and also their occupational work. Family is not supporting such women and the working hours are too inflexible. This becomes the main reason for women falling out of work. It is vital to maintain the impartiality from the judgements and for the same there have been provided policies. One of which is the move policy that is constitutionally permitted under Article 222 of our constitution. Woman have been loaded with patriarchally assumed duties like children bearing and incorporate rearing and the rule to shift junior judges every two to three years fails to accept these duties of women.

The environment of apex courts makes it more tough for a woman to work as an office employ. Many interviews confronted about the bias that's ongoing in the system and exists inside the appointment route of justice of supreme court and other courts. Due to this history, and a long-extended history, it's a no surprise that the prejudices that they show for women lays a great effect on their judgment. In 2020 August, a case⁵ came up in which a molester was granted surety if he gets a Rakhi tied by the complainant. He was asked to go with his wife to the complainant' house with a sweet box.

Judiciary is recognised as a branch which guarantees rights and it's the epitome of law which guarantees justice. These are the people of judiciary which are considered as the light to uphold the constitution. Courtroom are the places where oppression is battled but the conventional masculine values are visible in daily order which lowers the girls completely. The judgements now a days are not based on the act rather it is based and moreover confined to the proper respect and dignity of a lady. This hypocrisy is not opaque and hard to distinguish rather can be seen in many cases.

One example was seen in the judgements of year 2020 in the high court of Karnataka when the accused was granted bail on the mere reason that his after rape behaviour was different from

³ 1993(3) S.L.J 34 at p. 38

⁴ (2013) 5 SCC 277

⁵ (2021) SCC 230

what it should be.⁶ The most nerve-wracking case of Mohd. Habib vs state⁷, in which bench stated that there are no signs of resistance and dismissed the accidents of a seven-year-old sufferer ignoring the broke hymen.

In these circumstances, the most possible outcome is that honourable women is not defined by her characteristics but by the way the society sees her. These gender biases not only occur in rural part of our country, but it can be established throughout the nation. But the difference here is that people in urban areas at least are honest enough to accept that gender bias exist, but rural people still deny this miserable fact. In today's world, there exist many crimes against women but they are so oppressed and harassed that they decide not to take any legal action against such offences due to which most of the crimes go unreported. These people who don't want their women and girls to report such crimes doesn't have a bad intention but they lack their trust in judiciary, they are not legal aware and most important they fear from public opinions as whether today's society prime facia judgement is always that there must be some wrongdoing on the part of women. When we talk about trust, either we decide to believe someone or we decide not to believe them is not because of our personal reasons but because of those person's actions only which changes our perception of them. Here also, this lack of trust of people in judiciary is because of certain male judges in cases regarding women. If we take for example, then in 1980, a police constable raped a high school tribal girl. The justice Koshal of Supreme Court rejected the victim's testimony only because there were lack of injuries in medical report. In his judgement, he delivered that as the casualty was not virgin before the rape and also has⁸ a boyfriend, so he dismissed the case.

Today, women are no less than men. Women are also achieving great heights in different areas of profession and trying to depict themselves not as someone who is inferior to men. In such situation, if there could be a women chief justice of supreme court of India, then it will definitely bring glory to country and add one more victory in the list. But then everyone thinks, that will this ever happen or is just a simple, empty, plain talk under the mask of equality or a lady judge could really help in propelling for important changes. When there is talk about female depiction in court, then there are many different opinions by different scholar people. Equal representing of women in courts is not only important because it will help our country to be an illustrative democracy but it is necessary also because it endorses the representative cohesion of judiciary. Thinking of man and women are completely different. A man can never perceive things from a

⁶ Rakesh B v. State of Karnataka 2020

⁷ 1988 CC 401(HC)(DB)

⁸ AIR (1980) SCC 249

viewpoint of women, so this will also help weaker section of society to express themselves and help the court in gaining different interpretations on the same point. Rachna Chaudhary, an associate professor at Ambedkar University whose research focuses on the treatment of women within judicial discourse says that 'Diversity brings in alternative and inclusive perspectives to statutory interpretations'.

A woman doesn't only help in bringing new and sympathetic interpretations to a point but she also provides a better court room atmosphere to these victims⁹.

Justice Gita ensured that a woman was very easily able to share her testimony about what happened to her and how all the incident took place in cases when she was not asked to have a face to face contact with accused while delivering her testimony as she thought it was a more preservative environment¹⁰.

In a case, sexual harassment of women at workplaces was considered as a violation of the fundamental right to life¹¹. If a woman is harassed at her workplace, then not only her right to life is violated but also her right to live with dignity is violated and this was ruled by supreme court in the same case. It has to be made sure by the employer and employees that a woman is provided with a safe and comfortable workplace. In this case there was a bench of male and female judges that were Justice Sujata and Justice Manohar and this case made sure that when there is diversity in bench then justice is delivered through legal measures that helps to make the society an egalitarian one. In a case¹², there was an all-women bench containing Justice R. Banumathi and Justice Indira Banerjee and in that case, it was ruled that being of an 'easy virtue' doesn't mean she can't refuse to carnal intercourse, everybody has this right to refuse. To infer that the women or victim if habituated to sexual intercourse then is of 'loose moral character' is wrong and it cannot be done.

III. REDRESSAL MEASURES AND RECOMMENDATIONS

It was suggested to Supreme Court in December 2020, certain measures that it could take to deal with the situation of low representation of women in Indian judiciary¹³. It was said by him, that when judges deal with a case of sexual violence then they shouldn't decide that keeping in mind that they are doing it in capacity of a judge, but they should put themselves in the shoes of victim. He pointed out that in our law schools there is not a single gender course subject that

⁹ Rosy Hunter

¹⁰ vulnerable witness project head by Justice Gita Mittal

¹¹ Vishakha v. State of Rajasthan

¹² State (Govt. of NCT of Delhi) vs Pankaj Chaudhary

¹³ K.K. Venugopal (the Attorney General of India)

is compulsory to be educated and even Bar council of India doesn't put a single question on this subject.

What matters is the dwelled commitment of marginalization and constancy of social change and not the gender if the person. The former mentioned are going to change the legal conduct of our nation drastically. What we need and what is required in India is a committee that mainly targets on making Indian judiciary inclusive much the same as the Gender Bias Task Forces in the USA which analyses the connection among gender orientation and court structures¹⁴.

Younger peers can be guided by senior women judges and lawyers who can hold up and then guide them. This was held to be a mentorship system which was put forward by a report on Women and Judiciary by Geneva Forum Series No. 1. There can be held meetings of women judges and lawyers and the main agenda of such regular and informal meetings can be to discuss challenges faced in today's world including valuable opportunities and key support identification¹⁵.

It is well established that to prevent gender disparity from growing, what is needed is that society has to surrender its strict gender rules and cliché standpoint¹⁶.

Court has to be sympathetic to the conditions of women and the family pressures which they face and while making the rules, they should make them in such a way so that even after marriage more females can continue court practice and can maintain their home tasks side by side as well.

IV. CONCLUSION

Not only in India, but today, shortage of female representation can be witnessed in various sections of society whether rural or urban, whether developed country and under developed or developing country. Earlier it seemed idealistic to change this thinking of people and changing this institution and it is not only written in books but history has witnessed it that revolution have changed it in such a way which would otherwise look utopian. When we dream of a more inclusive and egalitarian society and take steps towards it, we will find that some sections are deeply entrenched. If we wish to make a radical and gradual change, what is required is judiciary and optimism. Judiciary is the protector of constitution and constitution derives its power and authority from people, so it should be independent and need some review and it should be absolute so that it is ensured that justice is brought to the people.

¹⁴ International Association of Women Judges, 2019

¹⁵ The International Commission of Jurists, 2014, p.39

¹⁶ Nirmal Kumar Mohandoss, an advocate at the Madras High Court