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Are Women Getting a Fair Chance in the Legal Profession? Unveiling the Challenges of Women's Inclusion into the Indian Legal Profession

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Abstract

Discrimination of women in the workplace, primarily based on their gender identity, is an issue which has become quite common at present. Women have been treated as weaker subjects for a long time, their roles are traditionally understood as being confined within the premises of their house and familial orbit and their status in the workplace in a patriarchal society is no better. The legal profession is also not immune from the vice of discrimination, where despite significant strides, gender disparities continue to persist, with women encountering obstacles in their entry and progression within the profession. This paper endeavours to investigate gender inequality in the Indian legal profession, juxtaposing the increasing number of working women in the legal arena with the stark realities of limited opportunities and biases they face primarily owing to their gender identity and sexual orientation. In India, the Legal Practitioners (Women) Act of 1923, marked a watershed moment in granting Indian women the right to practice law. Also, notable figures like Justices Anna Chandy, Leila Seth, and Fathima Beevi, broke gender barriers to become influential in the judiciary. However, despite these developments, the representation of women in the legal profession remains disproportionate, highlighting the need for ongoing efforts to enhance gender equality and contain discrimination.

Keywords: *Gender Discrimination, Gender Disparities, Gender Equality, Indian Legal System, Legal Profession*

1.0 Introduction

Discrimination of women based on gender has manifested itself in the legal sphere as an enduring challenge in India. Gender bias, having its roots spread in customary behavioural expectations, cultural values, and learned patterns of conduct, varies considerably from one social context to another, reflecting a complex interplay of historical, social, and economic factors (Wayne, 1995). Bias towards women in the legal profession is common, which is traditionally a male-dominated profession in India (Sharma, 2024; Saraswat, 2022). Discrimination, thus may be reckoned as a crucial phenomenon with two major manifestations, firstly, with overt discriminatory actions based on sex or age, and secondly, with subtler, but impartial veiled practices with consequences generally unintended (Ahmad & Naseer, 2015). Globally, it is worth mentioning that despite women constituting half of the world's population, their remuneration has remained substantially lower in comparison to their male counterparts (Balabantaray, 2023). Women procrastinate in effectively utilizing their opportunities to advance in their careers and upgrade their capabilities, as they face the double load of looking after their domestic chores and their professional responsibilities. These impediments are faced by working women from all occupations. These in turn lead to the formation of various prejudices against women, and these prejudices ultimately manifest themselves in the form of discrimination in terms of treatment, pay, work allocation, rewards and promotions.

These discriminations as a whole create a harsh work environment for women at their workplaces. Moreover, empirical observations within occupational settings disclose a pattern of concern, where women continue to be grossly under-represented across all hierarchical levels at the workplace (Metz, 2011; Sahoo & Jena, 2023). Women's contributions in the workplace are most often overlooked by the employers and the society in general. In India, even the criminal justice administration has been plagued by gender bias, which has adverse overreaching effects (Tannvi & Narayana, 2022). Through the doctrinal method of research, this paper tries to analyse the challenges faced by women in the legal profession in India and the possible ways to realise the potential of women in the profession to ensure the prevalence of gender justice.

Gender justice aims to uphold the complete realisation of rights and opportunities for all genders in an equal manner (Latiff, 2024). The same is not only confined to the man-woman binary but includes a variety of gender identities which are expressed. It seeks to ensure equal rights, opportunities and equal responsibilities for all genders alike. In this context, the paper confines itself to the challenges faced by women in the Indian judiciary, and effective measures to ensure greater diversification of women in the judiciary in India. "Globally, women account for 27% of all judges, with there being less than 10% women judges in the South Asian region."

2.0 Research Question

Do the existing barriers within India's social and legal system lead to lower representation of women in the higher judiciary and the legal profession in general?

The UN Women's most recent report, titled 'Progress on the Sustainable Development Goals: The Gender Snapshot 2021;' together with the UN Department of Economic and Social Affairs (UN DESA) has come up with data concerning equality based on gender all across the 17 Sustainable Development Goals (SDGs). This report emphasises the positive trends made in achieving global equality in terms of gender since 2015, and also the impact of the post-COVID-19 pandemic on the health and sustainability of women and the future challenges that lie ahead. It has been found that in terms of the Goal of Gender Equality, there has been negative progress in the expansion of women's rights and opportunities, with an increased workload upon women both at their professional and domestic fronts, thereby forcing many of them to quit the labour-force altogether (UN Women, 2021).

Sen (1999), In her extensive work concerning the challenges and potential of employed women professionals across cultural barriers, portrays the adverse issues faced as well as the achievements of women in the Indian legal profession.

3.0 A Bare Perusal of the Challenges Faced by Women in the Legal Profession

The inaugural international day of Women's Judges, i.e. 10th March, 2022, led to the adaptation of the initiative 'Women in Justice' to foster gender parity in the arena of justice delivery. Esteemed participants at the forum voiced the pivotal role played by women as catalysts bringing about a major transformation in the realm of justice dispensation, duly propagating their inclusion into the system to facilitate a smooth dispensation of justice. A society envisioned upon the ideals of liberty, equality and democracy necessarily requires adequate representation of women in the judiciary. However, this necessity is yet to be fully realised in India owing to certain structural impediments in the judicial appointment process.

4.0 Challenges in the Judicial Appointment Process

With the establishment of the Supreme Court of India on 28th January, 1950 (D'Souza, 2023), the major responsibility as regards the appointment of judges rested with the executive wing of the State. The collegium system of judicial appointments came into the picture in 1993 (All India Reporter, 1994). At present, the Supreme Court Collegium is presided over by the Indian Chief Justice and four other senior-most judges of the Supreme Court. The names considered as "suitable" by the collegium are recommended to be appointed as apex Court judges (Mahajan, 2021, para. 4). It has been witnessed that around 69% of judges are appointed in India from the bar, and the rest 31% are appointed from the judicial services (Kumar, 2016, p. 10). It thus becomes apparent that women generally encounter a lot of challenges at the bar, and are appointed to lesser judgeship than their male

counterparts. Women lawyers, even those who rise to prominence, face wide discrimination and this hampers their capacity to aspire and apply for judicial posts (Ghosh et al. 2018, p.15). There are certain stereotypes associated with women's gender, and this encourages the society members to hold certain prejudices and biases against women. There are sadly many instances where women have been looked down upon vis-à-vis their male counterparts as a consequence of inherent bias against them in the Indian judiciary. In this regard, there is a lacuna in dispensation of due justice to women to ensure their basic human right of not being discriminated against by their gender identity.[1] This lacuna is more pertinently visible at the level of the district judiciary and below. This leads to a dearth of representation of women in the higher judiciary in India (Ghosh et al. 2018). It has been found out that women representation in the upper hierarchy of judiciary in India has been largely symbolic and in concept. In India, Former Justice Ruma Pal was the third woman appointed to the Supreme Court as a judge in 2000, after Justices M. Fathima Beevi (1989) and Sujata V. Manohar (1994). It is claimed that she could have been the first Indian woman Chief Justice if she had not been sworn in after her male colleagues, who all were appointed on the same day. This was a subtle move to make sure that by the seniority principle, she would have to retire as the second-senior most Justice of the Indian Supreme Court, while her male counterpart would be sworn in as CJI (Mittal & Jain, 2023). At present, out of the total, only 4% justices of the Supreme Court and 11.5% justices of the High Courts are women (Anand, 2023). Additionally, women judges have to face a lot of adversities owing to their gender, especially concerning grant of maternity leaves with pay, in promotional avenues and terms of scrutiny and critical appraisal (ICJ, 2013). Structural barriers to the appointment of women exist particularly in the lower judiciary in India. In a research study conducted in February 2018, it was revealed that only 28% of the judges in the lower judiciary are women (Ghosh et al. 2018). In addition, the methods for appointment of judges in the higher judiciary are further non-transparent and the representation of women judges there is also abysmally low. The Supreme Court in the cases of Sushma Suri v. Government of National Capital Territory of Delhi (1999) and the case of Deepak Aggarwal v. Keshav Kaushik (2013) has interpreted the minimum qualification for a person to be a district judge to mean an Advocate or a pleader with at least seven years of continuous practice as experience. This set of criteria is prima facie discriminatory, as it omits to consider specific obligations ascribed to women with their role of nurturing in family, role in marriage, child-rearing and care, and other household responsibilities in the Indian context. Lack of uniformity in the judicial appointment process nurtures discrimination and invites confrontation towards transformation. It is thus an urgent call of the hour to increasingly address this problem in the Indian higher judiciary and bridge the gender gap to achieve the 5th Sustainable Development Goal (SDG) which talks about gender equality and empowerment of all women and girls, and the 16th SDG which talks about building inclusive, accountable and efficient institutions across all levels (Tahir, 2024).

5.0 Existing Institutional Bias in the Legal Profession

It has been demonstrated by feminist theory that specifically for women, their access to and control over the resources and their overall entitlements are lousy at every level (Kannabiran, 2009). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) vehemently emphasizes what is meant by discrimination. It includes acts which impair the equal utilization of the rights of women (UN Women, 1979). Thus, it can be said that the dearth of equal representation of women in their professional surroundings, especially where these surroundings shape the formulation of the rights of women, constitutes discrimination which necessitates remedial actions. In general, there has been a dearth of representation of persons from diverse backgrounds in the Indian judiciary, based on gender, age, caste, religion, and ethnicity, economic and physical capacity. Women in our country have to continuously strike a balance between their professional and personal lives, especially as the roles are gendered (Evans et al. 2022). Litigation, especially for women, becomes challenging as it requires dealing with a heavy professional workload even on weekends and at random hours, coupled with the fact

[1] Article 5(a) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) lays State Parties are to take all appropriate measures to modify the social and cultural patterns of conduct of all men and women. Article 2(f) reinforces Article 5 which requires States to take all appropriate measures to modify, abolish laws, regulations, customs which are discriminatory against women.

that they are required to observe certain gendered familial and societal obligations. The same often manifests itself in the form of an intermission of work life balance (Pandita, 2022). In a study in Lucknow, India, it was found that the significant disparity between the substantial proportion of unmarried women lawyers in comparison to the inadequate representation of their married counterparts reveals a discomfiting observation. This inconsistency portrays that women within the legal profession often deal with substantial familial obligations, frequently leading to their leave-taking from the field following marriage (Mishra, 2015). The prevalent biasness in the profession is so apparent that even senior advocate Indira Jaising in an open correspondence directed to the then Chief Justice of India (CJI), Ranjan Gogoi in early 2019, disclosed an incident wherein, inter alia, one of her senior male colleagues at the bar referred her at "that woman" while he referred to his other male colleagues as "my learned friend", while she was representing the Central Bureau of Investigation (CBI) as the Additional Solicitor General of India. She pleaded before the CJI to abandon the use of sexist vocabulary in the court premises (Jaising, 2019). This depicts that woman, despite their seniority and position in the profession, are not immune from sexist remarks, bias and discrimination.

6.0 Infrastructural Deficiencies

A bare review of the lower representation of women in the higher judiciary necessitates an understanding of the existing infrastructural shortcomings in the institution. It is one of the reasons as to the existence of major gender disparity in the legal profession. As women had a much insignificant presence in the court complexes, the court architecture has been deficient in housing the requisite infrastructural facilities necessary for catering to the unique requirements of the women gender.

Gender obliviousness is quite apparent from a dearth of operational toilets for women, no mechanisms for maternity leaves, with proportionate payments, deficiency of proper sanitation facilities and sufficient social security measures, inter alia, for women. This has driven women to prefer carriers in the corporate settings than a long-term carrier in litigation practice (Ghosh et al., 2018). Former CJI, Justice N.V. Ramana of the Hon'ble Supreme Court of India, while delivering a speech at a felicitation event organized by female advocates of the apex court, noted, inter alia, the dearth of infrastructure in courtrooms unduly affected women professionals, both lawyers and judges, where in particular, he spoke that only 22% of the 6,000 trial courts in India have functional washrooms for women (Roy, 2021). Further, gender disparity in the Indian judiciary is also noticeable in the form of absence of crèche facilities for catering to the needs of women mothers. Notably, the first crèche facility on the Supreme Court premises was only inaugurated in 2018, according to the efforts of Senior Advocate Indira Jaising, who petitioned the court through a public interest litigation urging for a crèche facility within its premises to aid employed parents (Rajagopal, 2018). However, a lot more needs to be done for the courts at the lower hierarchy, such as for the courts subordinate to the district judiciary, to ensure gender disparity is checked and there is a holistic approach is adopted to ensure gender justice.

7.0 Measures to Ensure Greater Representation of Women in Indian Judiciary

One of the notable steps taken by the Hon'ble Supreme Court in this regard is the introduction of a handbook titled as 'Combating Gender Stereotypes' in 2023. The CJI, Justice Dr. D.Y. Chandrachud, while endorsing the aforesaid handbook, accentuated the significance behind judges actively confronting and ousting ill stereotypical terms in their legal writings and decision-making processes. The main focus of this handbook is on the language employed in the court proceedings, replacing those ill terms that facilitate gender bias and branding (Anand, 2023).

There are also a host of measures which may be implemented to ensure greater representation of women, both at the bar and the bench. One of such measures is to take proactive steps to revamp the judicial appointments scheme, to ensure the representation of women, particularly those from the marginalized sections, at the bench, with due regard to objective standards for their selection. However, at the same time, due weightage is to be given cross-sectional impediments faced by marginalised women owing to their religious, caste, sex and class distinctiveness in their promotions in the judicial hierarchy. This will help to meet the 5th and the 16th SDG of gender equality through the holistic participation of women, with equal decision-making opportunities at

all levels that are all-inclusive and receptive (Goals 5.5 & 16.7 of 5th and 16th SDG Goals, respectively). Secondly, the judicial selection mechanism should be made more transparent, with the involvement of legal personalities and the civil society groups to increase its accountability to the common public in India (Mittal & Jain, 2023). Thirdly, there is an urgent need to further expand and equip the judicial infrastructure in India at all levels in terms of physical infra, personnel infra and digital infra, particularly with the prime focus on health, sanitation and child-care facilities in the courts, to ensure more propitious conditions for Indian women in the courts, encouraging their active inclusion and participation. Fourthly, early mentoring programmes and career development workshops for females should be encouraged in the legal education curriculum to help them navigate the challenges associated with the profession and facilitate their upward mobility. Fifthly, there is a need for a fairer implementation of the laws in a non-partisan manner, with an equivalent need for their just, fair and reasonable interpretation by the courts (Pandita, 2022).

8.0 Conclusion

Finally, it can be deduced that the dearth of women representation in the higher judiciary reveals a multifaceted interplay of aspects that deter women's inclusion and subsequent progression in the higher judiciary and the legal profession in general. There are indeed many structural challenges plaguing the Indian judicial system, coupled with many complex issues such as subjective evaluation of expertise, perpetuating bias and discrimination. The present collegium system in existence in India for judicial appointments in the higher judiciary is found not to effectively cater to the requirements of facilitating diversity and inclusivity in the judicial system. There is an urgent need for structural reforms at a larger scale to expressively address these systemic structural barriers. A well-founded argument in favour of boosting diversity in India is to democratize the judicial appointments, ensuring equal representation of women and marginalized members of the society, which will go to fortify the perception of judicial benches being fair, transparent and equitable, adducing confidence among the societal minorities that their interests will be duly considered. It is quintessential to recognize diversification of representation in the judiciary as being a prime necessity, as then it goes on to establish the law, which is moulded by human reasoning, is influenced by experiences from diverse backgrounds, values and knowledge. Appointments in the judiciary that challenge the existing patriarchal homogeneity are some revolutionary strides which will go on to ensure the balance of justice among and between the genders. The judiciary in our country is premised on principles of justice, equality and fairness, and its existence is appreciated on due observance of these principles. In the present 21st century, where our Indian society is characterized by rapid technological and scientific developments and solution-oriented growth, attending on the discrimination against women in the higher judiciary and the legal profession appears to be an over-amplified exercise. The need of the hour is for the Judges to shoulder, as agents of progressive societal transformation, the responsibility of facilitating a gender-neutral ambience in the courtrooms devoid of their personal biases and inclinations, in the larger interests of justice among the underrepresented. In the context of India, focused structural reforms within the bar and the bench, are authoritative to challenging the existing gender disparities. In my opinion, associations led by competent leaders could be established, where women in the legal profession can jointly put forth issues of gender disparity, and strive for their eradication through collaborative efforts. These associations have the potential to serve as important platforms to ensure that no woman is left behind in their struggle against various injustices rooted in our societal and legal structure. It is also essential that these associations keep a strong watch against any indicators of religious, caste and or class discrimination while coping with the gender inequalities faced by women in the legal profession.

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