



PROCESS AND PROSPECT ON INDIAN JUDICIAL SYSTEM : A FEMINIST PERSPECTIVE.

Zuberiya Nauman

Student

M.A. Gender Studies

Jamia Millia Islamia, New Delhi.

INTRODUCTION

Depending on the situation and the discipline, the term "state" might be interpreted in a variety of ways. However, one typical approach to comprehending the state is to list its four fundamental components: territory, population, government, and sovereignty. Consequently, the government consists of the Judiciary, Executive, and Legislature. The components have traditionally been dominated by men but over the last few decades, women have made substantial progress in removing barriers and increasing their entry into it. Similarly, the judiciary has also been dominated by men.

The legal profession is quite challenging for women as Indian women were not allowed to join the Bar until the High Court of Allahabad allowed Miss Cornelia Sorabji to practise law in 1921, making her the country's first woman to be admitted as an advocate. It resulted in the passage of the Legal Practitioners (Women) Act, 1923, making it a legal requirement for women to practise law and firmly enshrining the equality principle in the Indian Constitution.

Recently in the monsoon session of Lok sabha 2022, MP Jayadeva Galla raised the question of the number of women in the legal profession and the reason for their attrition from the profession which has ignited the debate on women in the legal profession once again. Although in response, the Government called for data from all 24 State Bar Councils. According to the 2011 census, there are over 1.3 million lawyers registered with the Bar Councils across the country, of which approximately 11.6% are women but as of March 2023, approximately 15.3% of lawyers in India are women and 85 women judges serve in the 25 high courts in India. The Delhi High Court has the highest number of women judges, with 10 out of 45 sitting judges being women.

Meghalaya has a promising percentage of women attorneys in the nation at 59.3% out of the 821 lawyers who are members of the Bar Council. Only 8.7% of the state's 4 lakh lawyers were women, placing Uttar Pradesh last overall. The remaining states without data are Delhi, Assam, Bihar, Chattisgarh, Himachal Pradesh, Jharkhand, Uttarakhand, Jammu & Kashmir, and Tripura. The data, according to Union Law Minister Kiren Rijiju, is based on details provided by the Bar Council of India. The Ministry has stated that no study is being conducted addressing the high attrition rate of women lawyers. Hence The question of "attrition" remains unanswered.

The inequality experienced by women in the legal system extends beyond the victim. The patriarchy within the system stimulates certain behaviours, which can be one of the major reasons for inequality.

'GENDERING' JUDICIARY

The gendered judiciary refers to the gender bias or discrimination that exists within the judiciary system. Female judges, lawyers, and litigants face discrimination in various forms, including subtle biases that are reflected in judgments and court procedures. Women are still underrepresented in the judiciary, with many law firms struggling to promote gender equality. The lack of diversity in the judiciary means that women's perspectives are often overlooked, which creates a system that is not truly representative of society's needs. Women in the legal field have encountered several obstacles, such as prejudice, stereotyping, and a lack of mentorship possibilities.

One theoretical perspective that can help us understand the gendered nature of judiciary is feminist legal theory. This theoretical framework emphasises the ways in which law and legal systems can perpetuate and reinforce gender inequality. Feminist legal theorists argue that legal systems are not neutral or objective, but are shaped by social and cultural factors, including gender. Another perspective that can help us understand is intersectionality, biases in the judiciary based on other criteria, such as race, class and caste may exacerbate gender biases.

The unequal gender dynamics in society, where women experience bias and discrimination in the workplace, are reflected in the gendered nature of the court. For the court to effectively serve society's demands, the underrepresentation of female judges and solicitors must be addressed. To create a court system that appropriately meets their requirements, the way that women's cases are treated as being less serious must be addressed. If we don't, a system that is based on injustice and encourages the oppression of women will continue to exist.

FEMINIST JURISPRUDENCE

The foundation of feminist legal theory, commonly referred to as feminist jurisprudence, is the idea that the legal system has played a significant role in the historical subordination of women. It analyses how gender impacts the law and how the law is used to reinforce gendered power dynamics. Feminist legal theory has two goals in mind. First, feminist jurisprudence aims to illuminate how the legal system contributed to women's historical subordination. Second, feminist legal theory is devoted to reworking the law and its treatment of gender in order to improve the situation of women.

The understanding that legislation is not fundamentally neutral but rather reflects the preconceptions and biases of society is at the centre of feminist jurisprudence. In the legal system, women have historically been marginalised and their subordination has frequently been maintained through the practise of the law. By analysing the ways in which the law upholds patriarchal norms and striving for a legal system that is more inclusive and equitable, feminist legal scholars have attempted to counter this. A variety of legal discussions, such as those involving sexual harassment, domestic violence, and reproductive rights, have benefited from the contributions of feminist legal experts. Additionally, they have played a significant role in promoting the adoption of anti-discrimination laws and the implementation of workplace rules that promote gender equity.

LITERATURE REVIEW.

The acute paucity of literature on the subject continues to severely limit the study of women in the legal profession. Despite the abundance of studies on gender-specific topics, such as women in different professions, the literature on women in the legal profession is largely notable by its lack. As a result, the article primarily refers to publications on related subjects that provide helpful context for the topic

The evidence of gender prejudice in the legal system and how it affects women demonstrates the comparison to men, women are more likely to be given harsher punishments and to be disbelieved in court. Apart from emotional, there are psychological effects of gender bias on women in the legal system (Mary, 2002) She argues that to combat gender bias, judges and solicitors should receive education and training on the negative impacts of gender bias and how to avoid it.

Similarly, Kenney and Susan Haire argued that the relationship between gender and the judicial process has historically excluded women from the legal profession and how this has affected the gender makeup of the judiciary (Kenny, 2019). The

paper defines the ways in which diversity on the bench, including gender diversity, can impact the judicial process, leading to better decision-making.

Women's experiences in the court process differ significantly from men's, with discrimination and bias impacting outcomes negatively. The bias is because the legal system is fundamentally masculine, women could feel apprehensive or out of place (Holly,2016).

Despite examining prejudice, the relationship between gender and the judiciary, and experience, the literature has not addressed the question of "attrition" within the profession.

GENDERED JUDICIARY

According to a study institutionalised bias against women in the courtroom has made the judiciary gendered. The gendered nature of the judiciary has been a topic of discussion as the number of women in the judiciary remains appallingly low.

According to a 2020 report by Vidhi Centre for Legal Policy, only 11.4% of judges across all courts are women. This underrepresentation is often attributed to socio-cultural norms that discourage women from pursuing legal careers, as well as systemic sexism within the profession.

Furthermore, women lawyers and judges frequently face gender bias and harassment on account of their gender. For instance, in December 2020, three senior female judges resigned from their posts after being subjected to sexual harassment and discriminatory treatment by male colleagues. Addressing these issues requires recognizing gendered power dynamics that shape judicial settings and making significant structural changes towards achieving genuine equality rather than tokenism.

NON-SERIOUSNESS TO WOMEN'S QUESTION

The issue of non seriousness towards women in the judiciary system is a grave concern that demands immediate attention and action. The examples of this deplorable behaviour are numerous, ranging from frequent mansplaining to female judges and belittling their opinions, to dismissing or undermining cases of gender-based violence against women.

A complaint of sexual harassment against the sitting Chief Justice of India was sent (along with an affidavit and other supporting evidence) to the other sitting judges of the Supreme Court of India asking for the constitution of an inquiry committee of senior retired judges to investigate and adjudicate this serious allegation. The composition of the committee includes the CJI itself, which violated the principle of natural justice. Moreover, Justice Indu Malhotra is the chairperson of the Internal Complaints Committee of the Supreme Court and was not included in this special bench.

Such instances not only perpetuate systemic sexism and misogyny but also undermine the very foundations of justice and equality. It is imperative for the judicial authorities to actively work towards creating an inclusive and respectful environment that values women's perspectives, experiences, and contributions. This can be achieved by implementing stricter codes of conduct, holding offenders accountable for their actions, and promoting diversity in the legal profession to foster a more equitable representation of the community as a whole.

SOCIO-CULTURAL ENVIRONMENT

The socio-cultural environment continues to present challenges for women in the legal system, particularly within courts. Deeply ingrained patriarchal values continue to influence the attitudes of judges, lawyers, and court personnel. Women seeking justice in cases of sexual assault, domestic violence, and discrimination often face gender bias and victim blaming.

In 2016 Supreme Court acquitted the convicts and disbelieved the woman in a gang rape case largely because "her conduct during the alleged ordeal is also unlike a victim of forcible rape and betrays [a] somewhat submissive and consensual disposition. From the nature of the exchanges between her and the accused persons as narrated by her, the same are not at all consistent with those of an unwilling, terrified and anguished victim of forcible intercourse, if judged by the normal human conduct" (The Wire).

The above argument demonstrates a lack of sensitivity towards gender-based violence, rape, and harassment cases further adds to the problem. Not only are women subjected to harsh treatment by judges but they also face scrutiny about their character and clothing choices in courtrooms.

GLASS CEILING

The glass ceiling in Indian courts refers to the invisible barriers that prevent women from achieving the same level of success as their male counterparts within the legal profession. Despite several progressive initiatives to increase gender diversity in the judiciary, female representation remains strikingly low, with women constituting only 11% of all in India. According to India Justice Report (IJR) 2022 there are more women judges at the district court level than at the High Court level, with 35% of the total number of judges at the district court level and only 13% of judges in the High Courts.

This disparity is a result of systemic discrimination and gender bias prevalent in recruitment processes, promotions, and work culture. Women also face multiple challenges such as sexual harassment, lack of access to support networks, and inadequate maternity leave policies. The consequence of this is not just limited to gender inequality but also leads to a lack of perspectives from different backgrounds, which reduces diversity within a courtroom which can lead to half understanding of criminal cases.

CONCLUSION

The women's question in the judicial system remains and will remain an ignorant issue, although the underrepresentation of women in the judiciary and its causes has been discussed in the development of feminist legal discourse, an adequate solution for women's inclusion has not yet been put forward. Additionally, the discourse also examines women using an intersectional approach, focusing primarily on the dynamics of caste, ethnicity, and race with gender, which overshadowed the central argument of women in the legal profession. On the other hand, the state must take action to promote the inclusion of women in the institution by providing the necessary infrastructure, looking into the attrition of women from the legal profession, and assuring safety and security in the case of public prosecution and providing reservation in the higher to lower judiciary. This interference of the state will give an edge to the women opting for the legal profession.

The unequal gender dynamics in society, where women experience bias and discrimination in the workplace, are reflected in the gendered nature of the court. If we do not, a system that is based on injustice and encourages the marginalisation of women will continue to exist. The issue of non-seriousness towards women in the judiciary system is a grave concern that demands immediate attention and action. The examples of this deplorable behaviour are numerous, ranging from frequent mansplaining to female judges and belittling their opinions, to dismissing or undermining cases of gender-based violence against women. The behaviour ingrained in patriarchal values continues to influence the attitudes of judges, lawyers, and court personnel which demonstrates a lack of sensitivity. However, the inclusion of women and bringing about a qualitative improvement in the practice will strengthen the institution.

The intersection approach can be utilised in future research for a better understanding of gender dynamics and its interaction with caste, class and race etc. within the Institution.

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