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Ramifications of the Dearth of Female Representation in Indian Judiciary: An Appraisal

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Abstract

For a democracy as large as India, representation acts as a cornerstone for upholding its principles and maxims. This representation becomes a way of channelising the vox populi, which is then reflected in the socio-political and economic institutions. However, a paucity in the representation of 48% of the population in these institutions points towards a dismal condition of India's democratic systems. The paper studies the factors leading to an inadequate representation of women in the Indian judiciary and the judicial and societal impacts. Possible reasons for such low numbers are discussed, with an emphasis on the extremely stringent recruitment process and the sexist atmosphere prevalent in the courtroom. Through historical cases, judgements are compared and analysed where all men-benches are found to advocate patriarchal and misogynistic ideals prevailing in the society. An attempt to maintain the status quo can be observed which highlights the immediate need for a more gender-diverse bench that can accommodate different ideas and experiences.

Keywords *Patriarchy, collegium, judiciary, reservations, constitution, gender equality*

1.0 Introduction

“I was a deserving candidate, not because I'm a woman”, said Justice Indu Malhotra who became the first woman to be directly appointed to the Supreme Court from the Bar in April 2018 (IIC lectures, 2020). Justice Indu Malhotra was only the seventh female judge to serve in the nation's apex court since the institution's establishment in 1950, i.e, it took 68 years for the Supreme Court to have its first directly appointed woman judge. With a dismal number of 82 women judges out of a total 1,079 judges (GANESAN, 2020) appointed to High Courts, the desolate situation of female representation in all tiers of the judiciary is alarming.

Bearing the responsibilities of enforcing fundamental rights, upholding the morality of society, and overall, ensuring a quality of life for every person, the Indian judicial system is considered to be the custodian of individual liberty. It represents the interest of society and acts as a powerful and stabilizing influence. Yet, not unlike how a system of anarchy prevails when the government advances the interest of the majority at the expense of the minority, a patriarchal mindset is promoted in judicial judgements and precedents due to the lack of gender diversity in the courts.

While the judiciary serves as the *bonafide* benefactor and the saviour of ‘justice’, it becomes crucial to view this nature of the judiciary through the lens of critique. The chronicles of constitutionally safeguarding the rights of the people, the Indian judiciary has *de facto* and *de jure* acted as the protector of the interests of the people. However, when it comes to the systemic and institutionalized Brahmanical patriarchy in India, the judiciary is not immaculate. When the male chauvinist outlook of Indian society is reflected in the institutions of democracy, it becomes a matter of concern. The judiciary is not questioned only because of its verdicts and the viewpoints of various benches but also because of its very composition.

There have been many debates around ‘gender diverse benches’ and their impact on verdicts. This raises the question of how much does ‘identity’ influence one’s opinions. While jurisdiction is not merely about opinions but objective analysis, the deterministic biases can still be counted as instinctive. In any case, the objective morality of a verdict is consequentially dependent upon the justice delivered.

With matters concerning women, a subjective, traditional and generally oppressive lens is used to adjudicate cases instead of an objective, unbiased mind. The right of a woman as an individual is lost in the attempt to maintain the ‘patriarchal order’ of society. Exploring through historical landmark cases, this paper aims to analyze the dire effects of having little to no female representation in the Indian Judiciary and understand how its discriminatory manner leads to the detriment of society. Based on qualitative and quantitative secondary research methodologies, the objective of this paper is to provide an insight into the gender composition of the Indian Judiciary and possible reasons for underrepresentation including a critique of the collegium system and the pre-existing sexist atmosphere. The detrimental effect of advocating oppressive, male-dominated ideals, their deep impact on society and the dire need for women judges is elaborated upon. The paper concludes with a review of prevalent redressal measures and future policy recommendations.

2.0 Insight on the gender composition of the Indian judiciary

The present consensus around the globe suggests that gender diversity is extremely important for increasing public confidence in the courtroom, giving decision-making powers and ensuring justice to the most vulnerable section of society (Reddick et al., 2009, p. 1).

Yet, with an abysmal percentage of barely 7% of female judges across the total sanctioned strength of judges in all the 25 high courts of the country, it becomes difficult to ascertain an impartial and just judiciary (Sharma, 2019). In a written reply to a question raised in the Lok Sabha, Ravi Shankar Prasad, the Law Minister of India said that while Madras High Court has the highest number of women judges in the country with 13 judges, followed by the Punjab and Haryana High Court, which has 11 woman judges, High Courts of Patna, Manipur, Meghalaya, Telangana, Tripura and Uttarakhand have no women judges at all. The numbers in the Supreme Court are even more dismal. There are only 2 woman judges in the apex court as opposed to the sanctioned strength of 34 judges (Gupta, 2020). Since its inception, there have only been 8 female judges appointed to the Supreme Court. Recently, the Attorney-General of India batted for more women in the judiciary, stating the minuscule number of 17 women senior advocates present in the top court, as compared to 403 men (Sarda, 2020).

It is also imperative to note here that this dearth of female judges in India exists simultaneously with the vacancies in these positions. According to the data released by the Department of Justice in January 2021, there are 4 vacancies out of the sanctioned 34 positions in the SC and 411 vacancies out of the sanctioned 815 judges of HCs.

Surprisingly, factual information about the composition in lower courts and tribunals is not easily available since the Center does not maintain data about female judges in these courts. A report by Vidhi Centre for Legal Policy states that in 17 states, between 2007 and 2017, 36.45% of judges and magistrates were women. As of 2018, out of the total 15,806 lower court judges, 4049 were women (Kohli, 2018). While these facts give some hope about the dwindling situation, yet it has been observed to be near impossible to replicate these numbers in the higher courts.

2.1 Reservations in Lower and Higher levels of Judiciary

This significant difference in the composition of higher and lower courts is attributed to the different recruitment processes and the existing reservation system in subordinate courts. In 2016, Bihar approved 50 per cent reservation in the state's judicial services, for positions of judicial magistrates, munsif magistrates, additional and district judges (Singh, 2016).

States are given flexibility regarding quotas for the lower judiciary. States like Andhra Pradesh, Assam, Bihar, Chhattisgarh, Jharkhand, Karnataka, Odisha, Rajasthan, Tamil Nadu, Telangana and Uttarakhand provide for reservation which ranges between 30%-35% of the total seats, for which recruitment is done through the direct appointment (Kohli, 2018).

The importance of gender diversity is augmented by the role of the judiciary as people's representative in society and ensuring equality of opportunity for girls within the bar. This opinion is affirmed by the prevalence of reservations in the lower courts, but the absence of such a system in the higher courts contradicts the idea.

Responding to a question in Rajya Sabha (Judiciary Open to Have More Women Judges, but Reservation Not Envisaged, Says Centre, 2017), the government reiterated on the collegium system being the sole criterion of appointment in the higher courts and reservation not being envisioned for this purpose. Arguments against the idea of reservation emphasize merit being the norm for appointment to higher judiciary along with the 14th (Law Commission of India, 1958), 79th (Delay and Arrears in High Courts, 1979) and 80th (The Method of Appointment of Judges, 1979) report of the Law Commission of India maintaining this opinion. In fact, the 14th report heavily suggested decreasing confidence in the higher judiciary due to appointments made on communal, political, and regional considerations. However, waiting for marginalized members of the society to naturally assume such high positions of responsibilities is an opinion deeply entrenched in privilege and classism. The exclusion of adequate representation of women, Dalits, Adivasis among other minorities of society lessens the chances of their prospects.

2.2 The Collegium System and its trials

In order to maintain a fair balance between the executive and the judiciary, the Constituent Assembly deemed it necessary that the judges of the Supreme Court are appointed by the President of India, after 'consultation' with the Chief Justice of India and other Supreme Court and High Court judges. The ambiguity of the word 'consultation' has raised a number of questions in the Three Judges case (1982,1993,1998). The Third Judges case led to the verdict that the Chief Justice of India should consult a 'collegium' of 4-5 senior-most judges of the Supreme Court.

The ambiguity and confusion still persisted. In 2014, the National Judicial Appointments Commission (NJAC) was established. This commission aimed to replace the collegium system and it comprised the Chief Justice of India, two senior-most judges of the Supreme Court, the Union Law Minister, two eminent persons to be elected by a committee including the Prime Minister and the Leader of Opposition. However, the power of constitutional interpretation that is vested in the Supreme Court, led to NJAC being declared unconstitutional on the grounds of judicial independence. Therefore, the collegium system is still followed for the appointment of the Supreme Court judges today.

For ensuring the transparency of the collegium system, which is otherwise criticized on a number of grounds, the Supreme Court started uploading the reasons why a judge is being recommended for appointment on its official website from 2017. In 2019, however, it stopped uploading these resolutions as an abrupt move, without giving any prior notice (Kumar, 2019). The ambiguity gives a clean chit to the collegium when questions of gender diversity are raised. The comparison between the capability of male and female judges cannot be empirical in this regard because the collegium does not hold substantial grounds for this ‘capability’.

The composition of this collegium is also a matter of concern. Justice Ruma Pal and Justice R. Banumathi are the only two female judges who were a part of the collegium since its inception. The NJAC laid down that at least one of the eminent persons of the commission should belong to SC/ST/OBC/Religious Minority or should be of the female gender (“From Executive Appointment to the Collegium System: The Impact on Diversity in the Indian Supreme Court,” 2019, p. 2). However, the present system of collegium has no such obligation.

Therefore, while NJAC was criticized on grounds of judicial independence, some parts of the commission could have been adopted by the collegium in order to ensure the moral and ethical validity of the system. Former judge of the Supreme Court Justice Kurian Joseph, who was a member of the bench that struck down the NJAC in 2015, also criticized the collegium system. By contrast, four years later Justice Kurian was quoted saying he regrets his decision of quashing the NJAC (“Former Supreme Court Judge Kurian Joseph Regrets His Decision Quashing National Judicial Appointments Commission,” 2019). He questioned the ‘absolute independence’ of the judiciary in matters of appointing the judges. It is this absolutism that legitimizes the underrepresentation of female judges in the Supreme Court today.

2.3 Appointments in Lower Courts

On the same grounds of subjectivity, the appointment of judges in subordinate courts is also criticized. It varies across the different State Public Service Commissions across India. The lack of uniform guidelines for their appointment provides a gateway for discrimination and resistance towards change. A 2018 research paper by Vidhi Centre of Legal Policy states that given that men and women are equally meritorious, in the absence of discrimination, one would assume that the proportion of women judges will remain the same from the lowest to the higher tiers, for any given batch of judicial officers.

While admission to the higher judiciary consists of a collegium system, each state has flexibility regarding the recruitment in the lower judiciary. The subordinate judiciary consists of three tiers of judges; (i) district/sessions judges, (ii) civil judges (senior division), including the chief and additional metropolitan and judicial magistrates, and (iii) civil judges (junior division), including judicial magistrates of the first class and metropolitan magistrates. There is an entry-level examination for the position of junior civil judge whereas there is a direct promotion for senior civil judges. Fresh law graduates can also sit for the entry-level examination (Chandrashekar et al., 2020).

3.0 Possible causes for inadequate female representation

A significant factor for the low-rates of women as district judges is the condition of a minimum practice experience of 7 years as an advocate or a pleader. Whereas Article 233 of the Constitution demands no less than 7 years of practice, the Supreme Court has interpreted this as 7 years of continuous practice, as seen in cases like *Sushma Suri v Government of National Capital Territory of Delhi* 1999 and *Deepak Aggarwal v Keshav Kaushik* 2013. Inherent prejudice is evident as women face many societal and familial pressures because of the intervening social responsibilities of marriage and motherhood which doesn't allow them to have 7 years of continuous practice (Ray, 2020).

“Leaking Pipeline”- a term attributed to employed women who ‘voluntarily’ terminate their profession due to various reasons, can be applied to the judiciary too. This voluntary decision masks the tacit consent given to patriarchally prescribed gender roles.

Long and inflexible working hours, along with inadequate support from family results in women frequently dropping out from the workforce. To maintain neutrality in judicial judgements, there is a transfer policy that is constitutionally permitted under Article 222 of our Constitution for high courts. The subordinate judges are transferred every two or three years. Here the court fails to recognize the patriarchally assumed responsibilities of a woman which include rearing and bearing children. This not only instils a dilemma among the women who have chosen this profession but also creates an implicit bias in the appointment of female judges. Most States' Judicial rules dictate a minimum age of 35 years for entry as a district judge through direct recruitment. Further, no one below the age of 55 years can be appointed as a judge in the Supreme Court (Chandrachud, 2013). By this time, women have already been married and would have significant responsibilities.

It is believed that there are comparatively more women in the lower tiers of judiciary due to the presence of formal qualifications and examination results which are more rational and transparent than higher judicial appointments whose recruitment process is opaque and rely on subjective factors such as professional viability, favourable evaluations and professional achievement and networks (Schultz and Shaw, 2013). Women amounting to only 15% of practising advocates reduces the pool significantly for direct promotion at higher levels of the judiciary. Girls, in large numbers, go for law as a profession; In the Common Law Admission Test for National Law Universities 2019, women comprised 44% of the qualified candidates. Yet there is an apparent lack of women in litigation, which points to an amount of hesitation in pursuing this field of law.

The hostile and sexist environment at the apex courts makes it extremely difficult for female litigators to grow as professionals. As per interviews conducted by Aishwarya Chouhan in her paper titled 'Structural and Discretionary Bias: Appointment of Women Judges in India', 13 judges out of 19 acknowledged the gender bias that exists in the appointment procedure of judges to the Supreme Court and the High Courts. One female judge in the interviews indicated that when she was appointed as one of the first female judges of a lower court, people would consider her 'incapable' due to her gender and physique, which points to deeply entrenched prejudices against women.

India's first woman additional solicitor-general and the first-ever woman to become a senior advocate in the 154-year-old Bombay High Court, Indira Jaising said that sexual harassment is rampant in the Supreme Court. Despite her seniority and age in the profession, she was sexually harassed in the corridors of the Supreme Court by her male colleague (Mishra, 2016). The inherent misogyny in the old boys' club is evident when equal importance is not given to the arguments stated by their female counterparts. The floor is always given to the male lawyers to present their points first. Supreme Court lawyer Malvika Trivedi says that women drop out of litigation due to the absence of cases given to them (Mishra, 2016b). Even if case files are written by women lawyers, clients want male lawyers to advocate their case. Women without connections to a judge's chamber or a 'godfather' are not accepted.

Many cases of sexism faced by women judges don't see the light of the day because of the pedestal that the judiciary has been kept on. They are often asked to withdraw their complaints by their fellow magistrates (Dr P.Ganesan et al.). A retired judge of the Supreme Court indicates that her judgements were scrutinized more, and were accepted only if they were backed by a larger bench (Bipasha Bandopadhyay). Additionally, the dearth of services like lack of supportive infrastructure, from toilets to maternity leave, also contribute to a high attrition rate amongst women lawyers, with many preferring to join the corporate sector instead (Vidhi Centre for Legal Policy et al., 2018).

4.0 Comparative Analysis of Composition of Global Judiciaries

Indian judiciary is often compared to the federal court of the United States and the final court of appeal of the United Kingdom. In the American federal judiciary, women only comprise 27% of the judges (Root, 2019, p. 1). In response, there has been positive affirmation to counter the rampant problem of gender disparity as now the appointment of judges is done with preference given to race and gender rather than the prevailing criteria like religion. Countries like Iraq and Nepal have just 7.6 % and 3.8 % of women judges respectively whereas Kuwait has none. Impressively, women make up for almost 70.9% of judges in France (UNDP: Promoting Gender Equality in the Judiciary, 2019).

It has been observed that in countries like France and Portugal where civil law is followed, there is ‘feminization of judiciary’ due to multiple entrants into the judiciary being women. There is a career judiciary system, from which qualifying judges are mostly young graduates with little or no practice experience. (Gibson-Morgan 2015).

5.0 Assessing the impacts of the dearth of female litigators and judges

Unlike in countries with civil law where judges “act as anonymous interpreters of the law and pass judgements in the name of the state or the people”, thereby leaving no room for personal biases to seep in, common law countries like India “have greater discretion in reaching their decision” by ‘distinguishing’ the case in hand from precedents. Hence, the judgements are greatly influenced by the judges’ personalities (Schultz and Shaw 2013).

With a long history of oppression of women, it does not come as a surprise when the misogynistic and prejudiced attitudes of Indian judges affect their judgements. In August 2020, the High Court of Madhya Pradesh granted bail to a molester on the condition that he will get a rakhi tied by the victim. The accused was asked to go with his wife to the complainant’s house with a box of sweets to get the rakhi tied. He was also directed by the court to promise to protect her to the best of his ability for all times to come (Sinha, 2020). A petition was filed by women advocates against this order as it brought into light the ‘non-empathetic approach of the judge.

The protector of the people, the judiciary in India is supposed to uphold the spirit of the Constitution and rule of law. In an ideal situation, a courtroom should be a place where the utmost importance is given to justice and oppression is battled. Yet enforcement of hierarchical, traditional, masculine values can be seen in daily decisions, orders, conversation, jest, reasoning and assumptions based on the ideology that subjugates women wholly. In a legion of rape cases, the Supreme Court and some High Courts have upheld the “behavioural ethics” of Indian women. The basis of these judgements is limited to the ideal dignity of a woman, and not on the criminal nature of the act itself. This selective nature of preserving the ideals when women are the primary stakeholders, suggests a hypocritical nature of some benches. One instance of this hypocrisy can be determined in the observations of the Karnataka High Court in June 2020 (DHONCHAK, 2020).

The rapist was granted bail on grounds that the after-rape behaviour of the victim is not how a rape victim 'ideally behaves', keeping in view the traditional principles of India. This was adjudged by a single bench of Justice Krishna S. Dixit. In *Raja & Ors vs State Of Karnataka (2016)*, the bench of Justice Pinaki Chandra Ghose and Justice Amitava Roy granted bail to the perpetrators by ascertaining that the victim's behaviour after the incident was suspicious as she did not hurriedly run away from the crime scene in a "distressed, humiliated and a devastated state" (Roy, 2016). In another nerve-wracking case of *Mohd. Habib Vs State*, the Delhi high court ruled that there were no indications of resistance on organs of the accused, ignoring the injuries of the 7-year-old victim which included ruptured hymen and bites on her body (Desai, 2003).

When a litigator approaches the court for justice, a superior outlook involving a 'giver' is taken up by the ruling judges. Advocate Dr Shalu Nigam writes; "The process of seeking and delivering justice, therefore, involves sorting out a complex emotional, psychological and social mesh consisting of human emotions, subjectivities, clashing egos, hopes, injury, hurt, fear, loss, scars and triumph, in an objective manner (Nigam, 2017). A litigant is therefore requesting a subjective court to examine his or her individual subjective matter with the objectivity and rationality of the law where a judge uses his or her own subjective prism to adjudicate." The intrinsic misogyny within the courtrooms is amplified when judgements are based on the previous sexual history of a woman, lack of physical evidence of resistance or injuries, different personal standards of consent and level of contact between the victim and perpetrator before the incident. Rather than focusing on providing socio-legal solutions or justice to the complainants, the courts act as custodians of the current patriarchal order. Often, the individual rights of a woman are ignored and her subjective social and economical position is taken into consideration before adjudication. In Bihar, 19 women were gang-raped by a large group of policemen in 1988 and the state government awarded the women Rs 1,000 as an ex-gratia payment. Due to poor investigation by the police, there was a lack of evidence to convict the accused. Keeping in mind the 'questionable character' of these women as they were engaged in menial work, the judge remarked, 'It cannot be ruled out that these ladies might speak falsehood to get a sum of Rs. 1000 which was a huge sum for them' (quoted in Baxi, 1995, p 128).

Within this context, it can be observed that a favourable outcome is guaranteed when the woman is a 'woman of honour', where honour is defined by the stereotypical norms of society. While gender stereotypes exist in the social institutions throughout the country, a major part of it is observed in the rural part. That is to say, that if some population of urban India has started to acknowledge the gender bias, if not resolve it, rural India still lags behind. The female population of rural India is oppressed to the extent that they choose to not take any legal action against crimes like domestic abuse, sexual assaults, etc. This may be due to reasons such as the lack of legal awareness, fear of repercussions from society, or lack of trust in the judiciary. This lack of trust stems from the assumed behaviour of some male judges especially in cases concerning women.

In the rape case of a teenage tribal agricultural labourer by a policeman in 1980, the lack of injuries in the medical report led to the dismissal of the victim's testimony by Justice Koshal of the Supreme Court. The judge concluded that since the victim was not a virgin prior to the rape and had a lover, 'stiff resistance having been put up by the girl is all false' (Westmarland & Gangoli, 2012, p. 110).

In sexual harassment cases, the unjustified rigorous proceedings instil feelings of doubt in appellate jurisdiction. While the benefit of the doubt should be given to the victim vis-a-vis *mens rea*, in many cases, it is the accused who enjoys this provision. Probing into this aspect through the perpetrator's point of view, exonerative verdicts on evasive grounds quashes the stringent role of the judiciary as peoples' protector. This lack of stringency of the judiciary in gender-based crimes reduces the feeling of legal fright among the criminals.

An interesting point to explore is the inter-dependence of societal norms and the functioning of the judiciary. Keeping in mind the prevailing mindset of the majority, herein men, laws are formed and yet these laws play a crucial part in moulding the public policy and therefore the accepted standards at which the society operates. Hence, for the welfare and growth of society, it becomes important to make sure laws are free of traditional and parental notions of women and their place in society which can only be achieved by ensuring adequate gender diversity in the judiciary.

6.0 Analysing the need for gender diversity in Judiciary

There are many scholarly arguments for female representation in the courts. Being a representative democracy, maintaining an equal share of women in the judiciary becomes significant as it enhances the representativeness of courts (Hunter, 2015, p. 1) and upholds the democratic integrity of courts. It also gives a voice to the most vulnerable sections of society and brings to the bench varied experiences and outlooks. ‘Diversity brings in alternative and inclusive perspectives to statutory interpretations’, says Rachna Chaudhary, an associate professor at Ambedkar University whose research focuses on the treatment of women within judicial discourse (RAY, 2020b). Confidence in the impartiality of the judiciary is increased with the inclusion of a diverse bench. Amendments to the Hindu Succession Act, 1956, were spearheaded by Justice Leila Seth who fought for daughters’ inheritance rights over the ancestral property (The Hindu Succession Act, 1956). She was also a part of the three-member Justice Verma committee, formed after the heinous 2012 Delhi gang-rape case which advocated for speedy trials and more stringent punishments for sexual offences.

Some schools of thought argue that a more balanced judiciary will reduce subconscious biases in judicial decision-making (Eyman 2015). Rosemary Hunter claims that women bring in an empathetic viewpoint in matters of gender and they provide better courtroom experiences for these victims. The Vulnerable Witness Project, designed by a committee headed by Justice Gita Mittal ensured that there was no face-to-face contact of the victim with the accused and a safe and protective environment was provided to share her testimony.

Justice Sujata V. Manohar’s judgement of *Vishaka vs. State of Rajasthan* was feted which considered sexual harassment of women at workplaces as a violation of the fundamental right to life. The Court also ruled that workplace sexual harassment of women violates the right to life and right to live with human dignity. A safe workspace was to be ensured by the employers as well as the employees, and the proper implementation of this judgement was to be ensured. This case indicates that gender-diverse benches tend to deliver justice that tries to establish an egalitarian society through legal measures.

‘Gender Sensitization’ of the judiciary happens when women bring in a myriad of life experiences in the process of adjudication which are pertinently different from men. In the State (Govt. of NCT of Delhi) vs Pankaj Chaudhary case, an all-women bench comprising Justice R. Banumathi and Justice Indira Banerjee ruled that everyone has the right to refuse to submit to sexual intercourse, even someone of ‘easy virtue’. The inference of ‘loose moral character’ cannot be done even if the victim was habituated to sexual intercourse (BANUMATHI, 2018).

7.0 Redressal Measures and Recommendations

K.K. Venugopal, the Attorney General of India, in December 2020, suggested the Apex Court ways in which it can deal with the under-representation of female judges and thus, gender sensitization of the Court’s verdicts (Rajagopal, 2020). His statements remarked that certain issues need personalization by the judges. They must see themselves in the shoes of the victim while dealing with cases of sexual violence. He suggests that the courts maintain extensive data on the distribution of women in different tribunals, levels of courts and how many women are senior advocates. He also highlights there is not a single-gender course that is taught compulsorily at law schools and the All India Bar Examination does not contain even a single question or section relating to gender sensitisation (Sinha, 2020).

Organizations like the International Association of Women Judges are already working on this problem. With a goal of establishing ‘gender offices’ which will incorporate a gender perspective into the working of the courts, with the aim of guaranteeing non-discrimination and equal access to justice, IAWJ also organizes judicial training in interpretation of the law which is free of gender bias (International Association of Women Judges, 2019).

The first step involves compiling basic data on gender composition on all tiers of the judiciary. A report by the Policy Department for Citizens’ Rights and Constitutional Affairs for the European Union highlights the importance of initiating a framework for the systematic monitoring of gender and gathering all monitoring data into one place on a regular basis. There is a need for a systematic approach towards the collection of data which can result in a more comprehensive analysis (Galligan et al., 2017, pp. 89-90).

“More than gender, it is the lived experience of marginalization and discrimination and the commitment to social transformation that is likely to impact judicial behaviour in a radical way,” says Rachna Chaudhary (Ray, 2020). Not unlike the Gender Bias Task Forces in the USA which examine the relationship between gender and court systems, there is a need for a committee that focuses on making the Indian judiciary inclusive (International Association of Women Judges, 2019). A report on Women and Judiciary by Geneva Forum Series No. 1 proposes a mentorship system where senior women judges and lawyers can support and guide their younger peers. Regular, informal meetings of women judges and lawyers can provide valuable opportunities to discuss and reflect on challenges faced and the identification of key support needs (The International Commission of Jurists, 2014, p.39).

Nirmal Kumar Mohandoss, an advocate at the Madras High Court says that unless society gives up its strict ‘gender roles’ and stereotypical outlook, the gender disparity will grow (Mohandoss, 2020). The court has to be cognizant of the societal and familial pressures women face and have to mould their rules accordingly so that more women take up or to continue court practice even after marriage. A report published by the OECD Gender Initiative emphasizes leadership and independent monitoring of outcomes being essential components to ensure a more diverse judiciary.

Kiruba Mumuswamy, a practising lawyer in the Supreme Court of India and the founder-executive director of Legal Initiative for Equality believes that a special diversity program and an effective affirmative action work plan should be established which encourages and motivates women lawyers, especially those coming from marginalized groups (Munusamy, 2019). Lowering the minimum age requirement for the appointment of a district judge can stop female advocates from opting out of practice and working in the corporate field. Keeping in mind the updated gender ratio in the judiciary, conducive environments and adequate opportunities should be created for women to flourish as advocates and judges.

8.0 Conclusion

The dearth in the versatility of gender representation spans across various institutions of society. History has seen revolutions that transform these institutions in ways that otherwise seemed utopian. Whilst we are moving towards a more inclusive and egalitarian society through development, some polarisations and sectionalization seem to be vividly ingrained. This development, hence, acts only as camouflage. The importance of the judiciary is such that a general disposition of optimism is needed to create radical but gradual changes. Enough attention has been given to acknowledging the need for these changes, what is required is the grass-root reforms and their implementation. Judicial independence and its absolutist nature need some retrospection because the judiciary acts as the protector of the Constitution, and the Constitution derives its authority from the people. And the adequate representation of the people ensures that adequate justice is delivered. Reforms in the composition of the judiciary at all tiers will determine the direction of reforms in their judgements, as well. These reforms will also ascertain the gender sensitized scope of the judiciary, and thus, this institution will stand as an ideal for the people of India in encompassing egalitarianism.

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