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## Gender Disparity in the Indian Judicial System

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*The judiciary is expected to be impartial when it comes to interpreting legislation issued by legislative bodies. The judiciary is a result of patriarchal societal processes; thus, this is the most serious issue. Unbiased judicial interpretation of laws established by the legislature is essential for a healthy democracy and a diverse society. However, the Indian judicial system is afflicted by a patriarchal worldview with archaic and insensitive views against women. In light of this, measures should be done to promote gender awareness in the Indian courts so that everyone is treated equally regardless of their differences. Gender sensitization and the fair role of women in Indian courts could go a long way toward establishing an accessible judiciary that is concerned with the wellbeing of the society and operates in a just manner. The judiciary must first take a hard stance against unjust and prejudiced conclusions and guarantee that the judges implicated are held accountable. The male-dominated Indian Judicial System is a disgrace to justice. It is up to the institution not women to address the gender gap.*

**Keywords:** *gender sensitization, indian judicial system, patriarchy, gender disparity, gender gap.*

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## INTRODUCTION

“A woman cannot be herself in the society of the present day, which is an exclusively masculine society, with laws framed by men and with a judicial system that judges feminine conduct from a masculine point of view.”<sup>1</sup>

- Henrik Ibsen

The judiciary, as altars of justice, determines and is made of societal perception. The judiciary's perspective on societal concerns like patriarchy is essential in the administration of justice.<sup>2</sup> In understanding and enforcing the law, the Indian court plays a crucial role. In a country where gender imbalance exists in nearly every area of society, the Indian judiciary has a critical role to play in empowering women and creating gender equality. Through its legal rulings, the Indian judiciary has aided women in obtaining what is due to them as a matter of right and has demonstrated that discrimination against women in Indian society would not be allowed.

A courtroom is a place where tyranny and dominance are challenged and social, economic, and political justice is promoted. As a result, the court's primary responsibility is to preserve the spirit of the constitution as well as citizens' liberties and the rule of law. In reality, the integrity of the court is highly valued in a democratic country. Courts that are firmly rooted in a layered, hierarchical, patriarchal society frequently reaffirm and promote male ideals and androcentric morality while neglecting the fact that their primary objective is to administer justice by the Constitution and legal rules. Patriarchy manifests itself in many forms in courtrooms daily. Discrimination occurs not just in terms of the number of men and women who reach the highest levels of the judiciary, but prejudices also persist in many forms in everyday courtroom practice. Women's concerns are frequently dismissed by patriarchal male-dominated tribunals. The evaluation of daily proceedings in misogynist courtrooms discloses how sexism functions and is reinforced, and repeated in daily decisions, orders, conversations, and presumptions based on an ideology that oppresses women even though the Indian

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<sup>1</sup> Amrita Nair, 'Unmasking the misogyny of Indian Courts' (*The Leaflet*, 2020)

<<https://www.theleaflet.in/unmasking-the-misogyny-of-indian-courts/>> accessed 12 October 2021

<sup>2</sup> *Ibid*

Constitution assures encouraging provisions in their favour. Nonetheless, the women who find the bravery to fight for justice in these patriarchal courtrooms may achieve a tiny victory in some form or another, thanks to the support they may obtain from many places and above all due to their perseverance and sheer tenacity. It is not because the courts have suddenly become receptive or sensitive to women's problems or issues rather it is because these women have persevered in their battle and as a result, they may be able to overthrow patriarchy in the courts and community.

The courtrooms should in theory function impartially and without prejudices but this is not the case. In terms of the number of men and women in the courtrooms, the disparity is obvious. Men dominate both inside and outside the courtrooms, as seen by a peek inside one. As a result, courtrooms are not neutral or equal environments but rather institutions that revere and promote masculine ideas. Males dominate the courtroom in terms of numbers from the judge to the clerical staff and from the advocates to the litigants. A limited number of female judges may be seen in courtrooms and their number decreases as one progresses from lower to higher courts.<sup>3</sup>

## SYNOPSIS

Mahatma Gandhi once quoted that:

*There is no occasion for women to consider themselves subordinate or inferior to men*<sup>4</sup>

The Indian judiciary was proactive in encouraging women to pursue careers in law. On August 31, 2021, three of the nine new judges sworn into India's Supreme Court are women. The appointment is being considered important because women's representation in the judiciary has traditionally been low.<sup>5</sup> The Supreme Court's first female judge was appointed in 1989 after 39 years of its foundation. Only eleven women have been sworn in as judges in the

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<sup>3</sup> *Ibid*

<sup>4</sup> Sinha, 'Role of judiciary in maintaining a gender-just world' (*Legalserviceindia.com*) <<https://www.legalserviceindia.com/legal/article-3337-role-of-judiciary-in-maintaining-a-gender-just-world.html>> accessed 17 October 2021

<sup>5</sup> *Ibid*

Supreme Court since then including those sworn in on August 13, 2021. The Supreme court has a total of four women judges now, the highest ever. The female representation in the High Courts is a little better with only 11% of judges being female. The lower judiciary has a somewhat better track record. Surprisingly, women's representation in the judiciary has not risen in proportion to the original number of female judges. The situation has deteriorated to the point that a proposal for a 33 percent reservation for women in the judiciary has been made to achieve parity in the number of male and female judges.

“After 75 years of Independence, one would expect at least 50% representation for women at all levels, but I must admit, with great difficulty, we have now achieved a mere 11% representation of women on the Bench of the Supreme Court,” “This was said by the current CJI, N.V. Ramana.

People perceive females to be less capable than men and lack leadership capabilities and as a result of these perceptions, women encounter greater barriers and doubts at work. These views also have an impact on women's career progression graphs with the sluggish development discouraging women from pursuing law as a career. Harassment and bullying in the workplace also play a significant role in women quitting the legal profession. In the arena of law women, attorneys are usually seen as anomalies and there have been numerous incidents of women being verbally assaulted not just by opposing counsel but also by the court's "honourable" judge. As a result, when a learned judge becomes the individual who creates gender distinctions the legal profession retains a strong sense of gender disparity. Women who wish to work in the legal profession are in good shape.<sup>7</sup> Women made up over half of those who applied to law school whether through the Common Law Admission Test for National Law Universities or through State/Central Universities.<sup>8</sup> Even though women and men join law school at about the same rate, not all law graduates choose a career in

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<sup>6</sup> Rajagopal, 'Chief Justice of India is unhappy with less representation of women at the top' (*The Hindu*, 2021) <<https://www.thehindu.com/news/national/chief-justice-of-india-unhappy-with-less-representation-of-women-at-the-top/>> accessed 14 October 2021

<sup>7</sup> *Ibid*

<sup>8</sup> Siddiqui and George, 'Indian Judiciary: How Have Women and Gender Minorities Lawyers Fared So Far?' (*Feminism in India*, 2021) <<https://feminisminindia.com/2021/02/17/judiciary-indian-womxn-lawyers/>> accessed 14 October 2021

litigation. Incorporating legal firms and in-house counsel roles transactional work is also a possibility. The issue of inclusion doesn't end with the appointment of women judges rather the entire picture must be considered. The problem of prejudice extends beyond the courts' gender-insensitive design to all aspects of the judicial system including daily expressions of gender bias like sexual harassment at work for female attorneys and judges. It is necessary to ensure diversity in respect of caste, gender, and sexual orientation. The necessity of the hour is to enforce what has already been established in our Constitution. The justice scales on the other hand are never going to be perfect. It should be appropriately and effectively handled so that excluded and marginalized social groups are accommodated. Women's rights organizations and advocates for inclusion must seize this chance to guarantee balance on the benches. The judicial process of Indian democracy has shamefully failed to assure the existence of diversity and as a result, it must work tirelessly to assist those who have been deprived of justice from the dawn of time.<sup>9</sup>

Women's legal critics have examined a variety of case laws to show how patriarchal prejudices have manifested themselves in judgements about women's problems from the colonial period to the present. Many studies and case law analyses have revealed that courts frequently operate as conservative traditional institutions viewing themselves as guardians of old conservative ideology instead of guards of constitutional principles. Personal evaluations of one's situations and perceived experiences affect individual choices. Personal "preferences,"<sup>10</sup> as well as possibilities and behaviors of women and men determine the socio-economic circumstances and restrictions placed on homes, communities, and countries. Furthermore, what is regarded as appropriate by the family, community, or society has an impact on social norms and gender roles. Women and men tend to comply with social standards to avoid the negative effects of social isolation, instability, or other social penalties such as prejudice and abuse.<sup>11</sup>

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<sup>9</sup> *Ibid*

<sup>10</sup> Nigam, 'Fighting for the Justice in the Patriarchal Courts' (*SSRN Electronic Journal*, 2017 )  
<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3028829](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3028829)> accessed 12 October 2021

<sup>11</sup> *Ibid*

The paradigm of "men as breadwinners"<sup>12</sup> was especially popular in Eastern European and Asian nations. Northern, Southern, and Western Europe as well as Northern America preferred it the least. Gender disparities at home and work are also a result of gender-based perceptions of men and women's productive and reproductive responsibilities which remain through cultures and economic situations. Because a substantial percentage of judges in the High Courts and Apex Court are attorneys who have advanced from the bar to the bench, it's important to note that the number of female lawyers is still limited restricting the field of women judges from whom to pick. Indeed, many international gender equality criteria particularly and clearly emphasize women's right to equal participation in society as well as fair opportunities to and involvement in the judiciary. A supporting legal framework for gender justice is created when a government approves and executes international human rights instruments treaties that contain the notion of gender equality and incorporates it into its domestic legislation.<sup>13</sup>

As the number of different judges grows so may people's desire and bravery to pursue justice and protect their rights through the courts. The existence of diversity is vital to the judiciary's legitimacy as it transforms the Constitution's high-speaking principles and the public's confidence into practice and judgement. Family-oriented policies that favour women attorneys in the country should be enacted immediately to solve the issue of gender imbalance in the legal profession. To end sex discrimination regulations that allow both men and women to better balance their professional and personal life must be implemented immediately. Paternity leaves, flexible work schedules, and child care should all be included in such rules which are especially important to women attorneys who have compromised their personal life to succeed in their careers. Some legal firms have proposed arranging and funding "diversity training" seminars to teach staff how to appreciate and comprehend the differences between men and women. In light of the culture, we live in a suitable complaint system that guarantees the secrecy of the complainant is required. To listen to the concerns of

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<sup>12</sup> Siddiqui and George (n 8)

<sup>13</sup> *Ibid*

women members of the system and to sensitize male members of the Judiciary and Bar, the Judiciary must collaborate with organizations and persons outside of their domains.

## CONCLUSION

The desire to become a judge continues to entice advocates but the number of female Justices has not risen in comparison to male Judges throughout the years.<sup>14</sup> But, slowly but steadily people's opinions of the profession are changing in favour of women resulting in equal status, pay parity, and a novel work culture that is reasonable to women increasing the number of women choosing to enter the profession in the coming years closing the gender gap in advocacy. Certain particular institutional adjustments need to be addressed in the Indian scenario at the Bar and in the Judiciary to solve the problem of gender inequality. Females in the legal fraternity must come together to create an organization that can investigate workplace gender disparities while also ensuring that no woman feels alone in her struggle against a structural and cultural evil. To avoid any sort of caste or class bias in circumstances of gender inequality in the legal profession, it is also important that such organisations and groups be led by qualified individuals.<sup>15</sup>

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<sup>14</sup> Ashwin Kunal Singh and others, 'A Socio-Legal Analysis of the Status of Indian Women in The Legal Profession' (2019) 9 *Pramana Research Journal*

<sup>15</sup> *Ibid*