

Gender discrimination in Indian Judicial System: Causes and Implications

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Abstract- In all over the world about a half of women population of working age is in the labour force comparing to nearly 80 per cent of men. As per report of World Bank data in 2014, female (above 15 years of age) work participation rate in India is only 27 per cent. Women participation in Government services is meager due to gender discrimination, violence against women, other forms of women suppression and the patriarchal social structure. Gender discrimination in Government institutions for a long time not only restrains women to enter into these services but also leads to denial of justice, when women are aggrieved of their legal rights and approached Governmental institutions. Presence of males in government institutions discourages women to claim their legal rights by suggesting loss of chastity, reputation, prestige and other attributes depending on women's status. Masculinity tries to save male perpetrators for bribe or material benefits and suppresses feminine gender in all possible ways and thereby sets bad precedents, which lead to failure of implementation of all kind of women welfare laws. Political arena is completely inaccessible for women. It is persisting by male dominated attitude and practice for a long time. Legislature has meager representation of women, which denies chances for women to participate in the process of framing laws. Judiciary has very meager women representation, which is main cause for gender bias in all Governmental institutions.

Introduction:

Women status is an indicator of development. Women participation in work force is necessary for economic development. But, they cannot effectively participate in development process due to gender discrimination and violence against them. The ideologies, institutional practices and the existing norms of society have contributed much to women inequality. In spite of legislative measures adopted in favour of women in our society, after independence the spread of education and women's gradual economic independence, countless women still continue to be the victims of violence. (Ram Ahuja, 1999. P243.). There is a gap between legal protection on paper and practical implementation, which is responsible for women not daring to report, when they are troubled by males. They knock the doors of the government mechanism when they are seriously wounded or threat to life or unable to bear the troubles from the offenders. They deserve to tolerate their problems as they are dependent on the wrong doers in the family, relatives, friends, neighborhood, at work place etc., According to The Hindu news daily, there is a lack of trust between police and public, which results in several violence against women going unreported. (Rukmani, The Hindu, p10). Democratic institutions are not successful in creating confidence among the women folk that their problems would be solved without any physical, mental strain, monetary loss, loss of dignity or loss of reputation by the legal mechanism. At this juncture this paper analyses gender disparity in judicial system of our country, causes for this kind of discrimination, its influence on contemporary

society and the possible solutions with the help of secondary sources of data.

Patriarchal Bureaucracy

Almost all the institutions of government are patriarchal, which is the fundamental cause for all sorts of gender discrimination and sustaining it. In India women job in Government Offices in 2013-2014, is 5 per cent only. (Rukmani, The Hindu, 2015, p10) Bureaucratic institutions have been occupied mostly by men, who in turn favour men folk and neglect women folk willfully. Exclusion of women leads to lacking or slow development, which unconsciously leads poor implementation and management of developmental policies.

Male Domination in Legislature

Law enacting institutions like parliament and state legislature also restricted women's entry, which leads to male domination in legislature. Women political participation State level is 8.71 per cent (359 /4120 MLAs), central level is 11.42 per cent (62/543 MPs) and Ministers in Central Government is 8/66, State is 41/ 593 (Rukmani, The Hindu, 20015, p10). Socio- cultural, economic and political environment are not feasible for women to participate in politics. Domestic responsibility and restricted familial roles of women for a long period, do not give adequate liberty and empowerment for participating in politics. Legislature has meager representation of women, which denies chances for women to participate in the process of framing laws. Women have to debate, discuss and give their consensus for the legislations to

be implemented and obeyed by them, who nearly consist a half of the population of our country.

Gender prejudice in Judiciary

Women Judges

Women judges are also at the receiving end of sexism. There have been instances of losing male lawyers foul-mouthing them. A woman judge in Karkardooma courts in Delhi filed an FIR when she was subjected to sexist abuses by a lawyer. But her own chief judicial magistrate reportedly asked her to withdraw the complaint. In judiciary women appointments is meager. Since independence only six women judges are appointed for Supreme Court out of the total 229 judges appointed from 1950. Among 611 high court judges at national level only 62 are women. The first female judge appointed to Supreme Court, was Fathima Beevi from Kerala in 1987. It took more than four decades after independence for a woman to be appointed as a Supreme Court judge. (Dhananjay Mahapatra, times of india.com) In India out of 955013 advocates registered in Bar Councils only 98556 are females. It is around 10 per cent of women law graduates are working as advocates at National level. (Shiva Thokas, www.socialwatchindia.net)

Statistics prove it is a man's world. There is only one woman judge—Justice R. Banumathi—in the Supreme Court as against 25 male judges. Only six women have been appointed as judges of the apex court till now. The 24 High Courts in the country have only 64 women judges compared to 557 male judges, and there is not a single woman judge in eight High Courts. While at least 44 names were recommended by the Allahabad High Court collegiums to the government recently for appointment as judges, only two of them are women. A woman was appointed to the High Court only in 1959. At no point have there been more than two women judges in the Supreme Court.

Women lawyers

No woman is appointed as office bearer and no woman became chairperson or vice-person of bar council of India. But women are not expected to be aggressive, and if they are, they are branded as cantankerous or rude. Former Delhi High Court Chief Justice A.P. Shah recalls having once recommended a woman lawyer as a judge, but she was rejected apparently because she was 'rude'. "If a male lawyer replies in a certain manner to a judge, it is usually taken in the stride. But if the same things were to be said by a woman, it becomes a topic of discussion for the bar or bench, and not in a pleasant way," he says. Shah is known as one of the few High Court chief justices to recommend a good number of women for judgeship; many of the names, however, got rejected. Women also have to deal with men who are either condescending or patronizing. "Either they are nasty to you or would want to take you in their protective umbrella, which is the old boys club. They do not like women who stand on their own dint and are strong individuals," says Supreme Court lawyer Shilpi Jain. If you are aligned to a chamber or are related to a judge or a senior lawyer, you are a part of this club. It helps to have a godfather, says a lady judge in a district court in Delhi. She says there are many examples of women

who have made it because they were either related to a judge or a senior lawyer or were affiliated to a certain chamber.

The attitude of clients is also not very encouraging. Trivedi talks about clients getting the case file prepared by a woman lawyer, but wanting their case to be argued by a male lawyer. Also, women lawyers are seen as suited to handle family law cases and social issues, and not trusted with high stake cases. Former Supreme Court judge Sujata Manohar said the inability to get cases is a main reason why women are losing out on judgeship. "Women still find it difficult to get litigation work. As a result, there are very few successful women lawyers practicing at the bar. So women lawyers rarely figure among lawyers from the bar being considered for appointment as judges of the High Courts." Women lawyers have to be extra careful about how they dress up, too. A retired judge of the Delhi High Court is still remembered for his nasty comments on the attire of women lawyers. It is said that women were scared to appear before him because of his comments, which ranged from "Are you dressed up for a party?" to "You are so focused on your appearance that you cannot even remember to take the next date from me."

While women got the right to practice in 1922, Jaising became the first woman additional solicitor general in 2009. The country has not had a woman solicitor general or attorney general. From 1992 to 2005, at the top three courts of the country—Supreme Court, Delhi High Court and Bombay High Court, only one woman had been designated senior advocate. The designations are on hold in the Supreme Court till it decides on a petition filed by Jaising, urging for greater transparency in the nomination of senior counsels. Women lawyers face problems right from when they enter the field. Rucha Anant Pandey, 24, who started practicing at the Nagpur bench of the Bombay High Court a few months ago, says her initiation into the field was in a trial court in Pune, where she handled criminal cases along with a senior. Everyone in the court, from the bailiff to the court clerk to male lawyers asked her, "Madam, kya kar rahe ho [What are you doing here]?", referring to her as a misfit in the world of criminal law. A judge once asked her to call her senior, and advised him to give her only certain kind of cases.

Causes for gender discrimination

Economic: (i) Division of labour: women are entrusted with light and household works and earning responsibility vested with male members of the family. Light work and domestic responsibility is not valued in money due to patriarchal perception. **(ii)** Problems in work place: women face sexual harassment at work place, especially in unorganized sectors. They do not want to participate in economic activity unless family warrants supplement of income. When a girl is in a position to earn money for subsistence, she has to tolerate sexual harassment and it leads to non-readiness to report sexual harassment.

Social: (i) Patriarchal dominance: role and status of women have been developed and maintained by patriarchal social structure for a long period led to women's marginalization and abandonment in decision making and intellectual works.

Women's submissiveness, dependence, soft nature and politeness of women indirectly empower males to take upper hand and dominate women, (ii) Cultural Barriers: cultural hurdles restrain women to use opportunities, and their talents. They are not only unable to avail chances by tackling the barriers and restricted themselves for domestic responsibility but also they transform the same cultural traditions to the subsequent women generations, (iii) Social stigma and inferiority: nature of roles given to women and life styles and behavior prescribed for women lead to develop inferiority and social stigma that they are inferior to men and they should not deviate the norms of patriarchal system and (iv) Male preference: mostly in all matters male members are given preferences in nutritional food, education, recreation because they are the identity of family or community. Males are preferred to send to school mostly girls are not allowed to pursue higher education.

Educational: (i) Illiteracy and ignorance: parents especially women are illiterates and ignorant about educational empowerment. BIMARU states which are contributing all kind of problems are mostly responsible for these causes. (ii) Denial of higher education: However, women basic education is encouraged, legal education is almost denied for them because of the socio, cultural, economic and political atmosphere of our country. Our social system does not encourage women to pursue their higher education due to the stigma of good groom for marriage, dowry and restricted them to domestic roles traditionally prescribed by the patriarchal social system. (iii) Non-readiness of women to pursue legal education: Women themselves are not ready to pursue legal studies, or they are not allowed to select legal education by their family members or friends due to various problems like safety, risk of dealing with criminals, unsecure income, presence of more number of males etc., there is no good precedents and women are not ready to take risks to pursue legal studies and practice as lawyers. Women legal education is the foremost need for removing this kind of inequality.

Political :(i) Democratic ideals are not guaranteed: due to social, economic and cultural political institutions do not ensure justice, equity and liberty for women. Political institutions even after 68 years of independence do not create an atmosphere to empower women in various aspects of social life, (ii) Lack of reservation policy: women officials in government offices, legislature and courts are not proportionate to men. Women appointments are very meager in all government offices from peon to high officials. However, 33 per cent reservation given in Local body elections, they are not implemented meat and bounds and elected women are not permitted to function properly, (iii) Violence against women: violence against women increases and conviction rate of offenders decreases year by year. Technological development, increase of numbers of police stations, courts, jails and financial commitment of Government are fast growing but sufferings of women is still not contained.

Implications

Economic: (i) Waste the talents of women: highly educated women became house wives. Educational, technological and

administrative skills are kept in abeyance. Human resources are not utilized properly to achieve economic development. (ii) Minimum women work force: work force is 27 per cent. It is also mostly in unorganized sector. Work force in social, economic and political arena should be increased to achieve development and equalitarian justice, (iii) slow economic development: exclusion of women in governmental institutions, involvement in agricultural and unorganized sector leads to lowering women status and slow economic development.

Social: (i) Transformation of male chauvinism to next generation, male chauvinist attitudes, beliefs, ideas, norms and values are transformed to the upcoming generation. Even the wrong doers against women are claiming women violate societal norms, legal values which empower women are not recognized but social norms which underestimate women are much respected by the men who are in high offices of Government, (ii) Continuance of social stigma, Women have stigmatized behavior in the family and community. They do not bother about any law enacted in their favour. They are under the control of patriarchy. Civil society directions do not reach them beyond the barrier of patriarchy. Those women, who break or claim to break legal values, face a lot of issues in their social life, which becomes bad precedents. (iii) Low enrolment in higher education: women are forced to take up their social roles through early marriage hence they are restrained from higher studies.

Political: (i) Criminalization of Bureaucracy and Politics: Criminalization of politics and bureaucracy. Women are afraid of the presence of rowdism in politics and administration. Women in Government posts are assaulted casually by contractors or political volunteers. While males in bureaucratic set up is not facing such kind of issues. Criminals, muscle power or mighty persons are males, which pushes outside the institutions or which do not attract women towards inside, (ii) Corruption & Scandals: When there is a nexus between bureaucrats and politicians and criminals, organized corruption and scandals are carried out mostly by males. Even women are involving in such kind of activities they are guided or motivated by men. Government can reduce corruption and contain scandals if more number of women present in Government institutions, (iii) increase of violence against women, violence against women, insecurity, low age at marriage, restriction on higher education are all the reason for low enrolment of women in higher education. They should come forward breaking the social barriers to pursue higher education by availing the scholarship and free education facilities.

Solutions

Socio-cultural and economical: Education and economic empowerment are generally essential conditions for women's development. Transformation of socio-cultural behavior can be achieved through literacy level and economic independence, which will be a solution for most of the problems of women. There are some slanginess in implementing welfare legislations and schemes due to presence of males in government institutions, this position can be changed. Women participation should increase in

economic development automatically lessen patriarchal suppression. The present school level education trends are good competitiveness of girls and achievement of girls more than boys.

Psychological: Recreation, meditation, counseling, physical exercises, learning self defense methods and sex education can relieve women from their psychological problems. Self Help Group involvement and organized activities of women function well and women especially home makers have benefitted through Self Help Group. Men folk in family, educational institutions and at work place should accept freedom, equality and empowerment of women.

Political: Reservation policy in Government institutions and politics - Education and political empowerment generally and particularly eradication of corruption and criminalization of politics, implementation and increase of reservation in elections, freedom for women leaders such as MLAs, Presidents, and empowering officers from top to bottom can transform women folk into availing opportunities and participate nation building and development. Poverty eradication, infrastructure development, measures for increasing agricultural production is needed for rural people including women folk. According to The Millennium Development Goal report significant inequalities especially of gender also class, caste and region are hampering India's road towards development, "Persistent inequalities, ineffective delivery of public services, weak accountability systems and gaps in the implementation of pro-poor policies are further hindrances to progress in regard. (Millennium Development Goal report, 2010).

CONCLUSION

Male domination in government institutions leads to denial of justice to women, who are affected by males. Presence of males in government institutions discourages women to approach government offices and claim their various legal rights. Especially, when women are affected by crimes like rape, sexual harassment, eve-teasing, and other related rights. Male officers are mostly occupying high posts in Government institutions and they cannot deal women issues without prejudice, which is emphasized by rule of law. They mostly discourage women to give up their rights or tolerate the acts of perpetrators by suggesting loss of chastity, reputation, prestige and other things depending on girls' status. Masculinity tries to save male offenders for want of material benefits and suppresses feminine gender in all possible ways and thereby set bad precedents, which leads to lack of implementation of all kind of women laws.

In India we have provided so many legal measures and welfare schemes for increasing women's status and transforming women into development activities but still we have not achieved the expected result due to traditional, cultural, social, economic, educational and political factors. Women should give importance for news and general awareness in mass media. Women are prey to similar problems and men folk adopt similar tactics to deceive girls like love through false promises, trafficking women by false employment chances and other ways of cheating modalities can be learnt through mass media. Sex education and self

defense training for women are important in the modern changing world. Organized functions like Women Self Help Groups, Women Clubs, Associations, branches of Women Commissions and other type of group activities can help women to avail and enforce their rights. Now-a-days not only women but also male organizations voice against atrocities leveled against women, who lead to major policy and legislative changes in our country.

Formal social control system should be increased and extended to make women have confident in the legal mechanism. Child Help Line and Help Line for Women in distress, Action of Employer against Sexual harassment at work place and reservation election for women are good measures functioning effectively. Modern mechanical life, food pattern, hormonal change in adolescent due to exposure to internet, increase of divorce cases and other needs of globalized technological era, need licensing commercial sex work. Informal social control system such as folkways, mores, norms, values, customs and other methods, which emphasize respect for equality, freedom and respect for women, will be given importance through joint family living arrangements. If the hurdles are removed and women participate in productive activities the pace of development will increase. It is the responsibility of men folk in family, community, work place and government to remove discrimination against women, ensure liberty towards building an equalitarian society.

REFERENCE

1. Soni Misra, The Sexist Bar, 13.11.2016, retrieved on 10.03.2019 at 9.19 p.m
2. Rukmani, S. (2015. March 3). The "Second" Sex. The Hindu news daily.
3. Shiva Tokas, Position of Women in Indian Judiciary an Analysis. Internship research paper, National Social Watch.
4. Dhananjay Mahapatra, (2015, November, 4) Why has collegiums chosen only a few women judges? Ask women lawyers. The times of India.
5. Female work force participation rate, Retrieved (2016.02.28) at 8.30 pm
6. Down to Earth. (2014, December, 15) 30 years of Bhopal Gas Tragedy: a Continuing Disaster.
7. Amtul waris ,B.C. vraktam, (2013). Gender gaps and women's Empowerment in India – issues and strategies. International Journal of Scientific and Research Publications, 3, (9), 2250-3153.
8. Press Trust of India (2015. 12. 02) Crime against women increases 9 per cent in 2014.
9. Ram Ahuja, Criminology, New Delhi, Rawat Publications, 2010.

10. Ram Ahuja, Indian Social System, Jaipur, Rawat Publications, 2010.
11. United Nations Development Programme (2010). Human Development Report.
12. Manikamma Nagindrappa , Radhika M.K, (2013). Women Exploitation in Indian modern soviet. International Journal of Scientific and Research Publications, 3 (2), 2250-3153.

WEBSITES

- <http://www.theweek.in/theweek/cover/gender-discrimination-in-judiciary.html>)
- <http://www.socialwatchindia.net/images/documents/285/women%20in%20judiciary%20an%20analysis.pdf>
- <http://timesofindia.indiatimes.com/india/Why-has-collegium-chosen-only-a-few-women-judges-ask-women-lawyers/articleshow/49651940.cms>
- <http://data.worldbank.org/indicator>
- <http://www.india.com/news/india/crime-against-women-increases-by9-per-cent-in-2014-752482>
- <http://www.un.org/millenniumgoals/pdf>