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WOMEN'S REPRESENTATION IN INDIAN JUDICIARY SINCE INDEPENDENCE

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INTRODUCTION

*"Even after 'I have made it,' my word is often treated as less valuable than the word of a male lawyer"*¹

*"I was a deserving candidate, not because I'm a woman."*²

*"I was one of two or three women in a court where hundreds of lawyers practiced. I was an oddity being stared, humiliated, who was either an irritant for the male lawyers or a source of amusement. The lawyers were hostile, and the judges never reprimanded them."*³

Indian Judiciary impacts thousands of lives every day. People have this belief that the court is their "last straw" of providing justice. It no doubt is; however it is arduous to ignore the gender disparity. Our court, even after independence, has not seen a woman serving as Chief Justice of India.

Of the total population, about 48% are women in our country, and at most 3.3%, have made it to the higher courts. Independence was expected to open doors for a lot of ongoing issues. It is 2021, and the statistics of women in the Judiciary are disheartening. To put it into numbers⁴,

Women served as Chief Justice of India	0
Women served as Judge in Supreme Court	8 (< 1%)
Women in High Courts	82 out of 1079 (10%)
Women in Lower Courts	27%
Women as office bearers of the Bar Council of India	0

¹WEEK T, *Indira Jaising : I Was Sexually Harassed In The Corridors Of The Supreme Court* (theweek.in, 2018) <[²Sood Y, *Ramifications Of The Dearth Of Female Representation In Indian Judiciary: An Appraisal* \(2020\) 1 International Journal of Policy Sciences and Law <\[http://ijpsl.in/wp-content/uploads/2021/03/Ramifications-of-the-Dearth-of-Female-Representation-in-Indian-Judiciary-An-Appraisal_Yoshita-Sood-Seerat-Showkat.pdf\]\(http://ijpsl.in/wp-content/uploads/2021/03/Ramifications-of-the-Dearth-of-Female-Representation-in-Indian-Judiciary-An-Appraisal_Yoshita-Sood-Seerat-Showkat.pdf\)> accessed 14 June 2021](https://www.theweek.in/theweek/cover/interview-indira-jaising-senior-lawyer.html?fb_comment_id=1645647085530100_1969199899841482#:~:text=But%2C%20even%20after%20I%20have,minutes%20to%20make%20my%20point.> accessed 14 June 2021</p>
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³Adv. Avani Bansal ; Ibid.

⁴ Data derived from official numbers at "The Print"



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India has a diverse culture, where women are worshipped as goddesses, but as it is evident in the past that women and girls have faced many atrocities due to the conservative mindset as customs prevalent from time to time.

Judiciary cannot be trusted if it is viewed as a bastion of entrenched elitism, exclusivity, and privilege, oblivious to society's changes and the needs of the most vulnerable⁵. It will be hard for the litigants to have faith in the court for ensuring their rights if the judges act arbitrarily and discriminatory. This makes it essential for more women in the judiciary for more diverse and progressive views.

THE BATTLE

Women have faced patriarchy throughout. They had to battle through prejudices, biases on gender, norms, and the list does not seem to end.

This has to be with the expectations, the expectation of being "soft" and "ideal," and when there are contradictions in these expectations, the war begins. But, on the other

hand, the law is neutral, that is what it is interpreted as. It provides justice to the needy and breaks various traditional or ongoing misogyny.

Despite that, the Indian Judiciary is no different. Advocacy requires having strong language and being able to convey it. But things go wrong when women are looked beyond their skills in the courtrooms. There are times when women have been questioned as to what they were doing in court. This particular incident happened to *Adv. Rucha Anant Pandey*. She was seen as a misfit in the world of criminal law by the court clerks and even the male lawyers. *Kiruba Munusamy, an advocate in the Supreme Court of India*, was grilled about her short hair. She pointed out that there was no such code instructing the women's hairstyle. The judge said it was his opinion.

A lot of people have a lot of opinions about women, and it is not surprising that the same has been occurring in the Judiciary. There are exceptional judgments delivered on adultery, sexual orientation, sexual harassment, etc. This shows the progressiveness yet, the adjudication on the sexual harassment allegations against former Chief Justice of India where he was the

⁵Ruiz J, *The Role Of Women Judges And A Gender Perspective In Ensuring Judicial Independence And Integrity* (Unodc.org, 2017)
<<https://www.unodc.org/dohadecclaration/en/news/2019/01/the-role-of-women-judges-and-a-gender-perspective-in-ensuring-judicial-independence-and-integrity.html>>
accessed 13 June 2021

judge in his own case and there was no release of the RTI application even after the report filed by in house committee , and the remark made by Attorney General K.K. Venugopal on Indira Jaising where he referred to her as someone's wife in the courtroom, brings us back to square one.⁶

Despite hard work, competence and struggle, women lawyers lag behind the wall of male-dominated society and are left far behind from the recognition. Few second-generation lawyers make it till the acknowledgment, which is not the same for the first generations.

Courtrooms are the most welcoming and comfortable for the male lawyers making them feel they belong there, but they are not even close to making women feel welcomed.⁷

The conflict does not end here. Many litigants have faith in women advocates to file their cases but not argue in the court correctly.

⁶Munusamy K, *Sexism In Indian Judiciary Runs So Deep It'S Unlikely We Will Get Our First Woman CJI*, (ThePrint, 2019) <<https://theprint.in/opinion/sexism-in-indian-judiciary-runs-so-deep-its-unlikely-we-will-get-our-first-woman-cji/251727/>> accessed 11 June 2021
⁷*Ibid*.

THE NEED FOR CHANGE

There are more women in the lower judiciary than higher because of the process of recruitment. The system of the collegium in High courts and Supreme courts deprives women of serving as judges.

The gender biases have not stopped our women judges to mark their territory.

Justice Sujata Manohar delivered the *Vishaka* case⁸ where the sexual harassment in workplaces was addressed, and legal action was commenced. In the case, *Jayachandra v Aneel Kaur*⁹, *Justice Ruma Pal* explained the concept of mental cruelty in marriage in a very detailed manner. Mental health is one of those things which are often talked about, and it could be said that Justice Pal began the talk. Mental cruelty has been spoken in many cases since.

There are many points which are noted down as to why there are an under-representation of women.

⁸ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁹ *Jayachandra v Aneel Kaur*, (2015) 2 SCC 22.



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- Domestic responsibilities
- They have not been able to be part of certain circles.
- The Collegium system
- Categorization of laws (*i.e., tax law is a job of a male lawyer*)

After all these hurdles and more, even if a woman decides to be a judge, the eligibility for being a district judge becomes the major barrier. It states that a lawyer has to be in continuous practice for seven years between the age of 35-45. What is essential to consider is that some women are married by this age. Further, the long work hours with responsibilities make a woman say goodbye to the legal profession.¹⁰

In a case of sexual harassment, the High Court of Madhya Pradesh ordered bail to an accused stating that he has to be tied rakhi by the victim. The High Court of Karnataka granted bail to the offender because it is “*unbecoming of an Indian*

woman to sleep after rape” further, dictating that is not how our women react.¹¹

Throughout history, women have been domineered on what to wear, how to react, and most importantly, how to be. The above case of Karnataka is not less than a command of how a woman is supposed to respond to rape.

Orders like these prove the lack of diversity that subject to more trauma and put the victim's dignity on the pedestal.

The courts have witnessed sexism and stereotypical views about women in large numbers, and it has been found that the presence of female judges leads to a sharp decline in these perceptions.

Not just female judges, the court also need judges with proper training to place themselves in the victims' shoes while passing orders. There is also a need for compulsory courses in gender sensitization¹² and the study of law in a feminist

¹⁰Alexander S, *What Stops Women Rising In The Judiciary?* (MINT, 2020)
<<https://www.livemint.com/news/india/what-stops-women-rising-in-the-judiciary-11580285992379.html>> accessed 15 June 2021

¹¹Verma S, *Only 78 Of 1079 Judges Are Women In India's High Courts And It Has Its Consequences* (Ungender | Empanelled by GoI, 2021)

<<https://www.ungender.in/women-and-the-indian-judiciary-in-2020/>> accessed 16 June 2021

¹² *Provide Gender Sensitisation Training To Judges, To Avoid Stereotyping Women, Says Attorney General KK Venugopal* (BW Businessworld, 2019)

<<http://www.businessworld.in/article/Provide-gender-sensitisation-training-to-judges-to-avoid-stereotyping->



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way because feminism is all about equality and not just women.

WOMEN ARE NOT ENOUGH IN DISPUTE

Since attorneys have been raised from lawyers to ¹³judges in the high courts and the Supreme Court, it is important to note that women lawyers are still low and that a small pool of women judges may be picked from is reduced.

While there is no statistics about the number of females in the law industry in its whole, a news article by 2020 indicates that women account for just 15% of the country's registered defenders.

Women have entered the legal profession are not limited. Women made about 44 percent of those who qualified for the National Law University Common Law Admission Test 2019.

Notwithstanding the fact that women and men join law school, all law graduates do not direct their attention to litigation – transactional practise is also an option in corporate and in-house legal firms.

"The litigation workspace is quite different from that of law firms and corporations," said by a recent survey- a company that assists businesses to comply with legal standards, carried out in 2012 on working moms in the legal profession from Delhi, Mumbai and Bengaluru. This problem is not confined to the sex-insensitive architecture of courts, but extends to all elements of the justice system—from everyday incidents of sexual interference encountered by female attorneys and judges to sexual harassment in the workplace.

WHY JUDGES PREFER WOMEN?

"It cannot be denied that numerical strength has a signification, as the macho nature of the profession makes an important component leading to a larger degree of attraction for both female judges and practitioners," stated Rachna Chaudhary.

"It is absolutely essential to have representation of diverse marginalities in the judiciary because of their distinct lived experiences" said Sonavane.

"Diversity on the bench would surely bring in alternate and inclusive views to legislative interpretations" added Chaudhary.

women-says-Attorney-General-KK-Venugopal/03-12-2020-349294/> Last accessed on 16 June 2021

¹³ Shruti Sundar Ray, *The Higher Judiciary's Gender Representation Problem*, <https://www.article-14.com/post/the-higher-judiciary-s-gender-representation-problem>.

Gender differences are just one part of variety.

WOMEN AND THE INDIAN JUDICIARY

With the changing times, there have been many enactments made to safeguard rights of women and girl child. In Present times women are employed in every field. Today women hold equal status to men. They have equal opportunity to work. Women are present in every domain such as- doctors, politicians, entrepreneurs, worker, armed forces, paralegals, legal practitioners or civil servants.

Many great women have paved their path in judiciary, many female lawyers have resulted as superheroes in delivering justice. This article would highlight few of the prominent female lawyers of India, that have made a remarkable contribution in Indian Judicial system.

1.1. Menaka Guruswamy

Menaka Guruswamy is a Supreme Court of India attorney. She focuses her practice on constitutional and criminal law. She has been a vocal advocate for a provision in the Right to Education Act that requires all non-minority-run private schools to accept disadvantaged pupils. She has worked for the rights of victims of extrajudicial killings in Manipur.

Her most significant contribution has been in the fight against Section 377 of the Civil Rights Act of 1964. She was one of the attorneys for the Naz Foundation in the case against Section 377 of the Indian Penal Code.

She has devoted her entire life to supporting the rule of law. In this quote, she summarizes: *“to advocate, for those who cannot tell their own stories, to defend those whose freedom is in peril, to prod a nation to ask of itself: for who am I, and for what was I created?”*¹⁴

1.2. Arundhati Katju

Arundhati Katju is a well-known Supreme Court lawyer. She has taken on a number of notable cases, including campaigning for transgender rights and investigating the death of Jessica Lal; she was also involved in the 2G spectrum corruption investigation. Fighting Section 377 has been her most remarkable effort.

Katju was a key figure in the struggle against this antiquated law, and she feels that,

“The law was an expression of the Victorian-era morality but it had come to be understood

¹⁴ 8 Female Advocates In India Who Are The Super Heroes Of Justice (Women's Web: For Women Who Do, 2021) <<https://www.womensweb.in/2019/05/8-female-advocates-in-india-who-are-the-super-heroes-of-justice/>> accessed 16 June 2021

as an expression of conservative Indian social values, it was Criminal law that shuts down your aspirations."¹⁵

1.3. **Karuna Nundy**

Karuna Nundy is a Supreme Court counsel who specializes in human rights, constitutional law, and media law. She has made a big contribution to India's gender equality movement.

Karuna Nundy worked for the victims of the 1984 Bhopal Gas Tragedy to receive justice. She has also battled tirelessly for online free expression.

Her most famous contributions include the Womani-festo and the anti-rape statute enacted in the aftermath of the Nirbhaya Delhi gang rape. She believes, *"Teach men how not to stalk, how to control anger, how to become more 'marriageable'. Why should the onus always be on the woman"*¹⁶.

¹⁵ Pandey A, *Top 10 Most Inspirational Female Lawyers In India*, Ipleaders (2020) <<https://blog.iplayers.in/famous-female-lawyers-in-india/>> accessed 16 June 2021.

¹⁶ *8 Female Advocates In India Who Are The Super Heroes Of Justice*. (Women's Web: For Women Who Do, 2021) <<https://www.womensweb.in/2019/05/8-female-advocates-in-india-who-are-the-super-heroes-of-justice/>> accessed 16 June 2021.

1.4. **Shreya Singhal**

Shreya Singhal is an Indian lawyer who was instrumental in the decision to strike down Section 66A of the Information Technology Act, which restricted freedom of speech.

Following the detention of two young ladies in Maharashtra for posting and like a comment on the Mumbai shutdown following Shiv Sena Leader Bal Thackeray's death, she filed a petition under section 66(A) in 2012.

1.5. **Sudha Bharadwaj**

Sudha Bharadwaj is a civil rights activist and a notable trade unionist. She was a member of the Chhattisgarh Mukti Morcha, which battled against corrupt bureaucrats who refused to pay adequate wages to miners and plant workers in Bhilai. She was actively involved in Dalit and tribal rights problems, defending the rights to land, education, health, and security from corrupt landlords of labour.

Bharadwaj has been campaigning for the inhabitants of Ghatbarra and surrounding villages in Chattisgarh since 2016. Sudha Bharadwaj and nine other notable human rights activists were detained on August 28 in Maharashtra's Bhima Koregaon hamlet in



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connection with caste violence. The government stated the activists were "*Urban Naxalites*" who wanted to create "*regular protests and disruption.*"

Sudha Bhardwaj remarked on her life journey and said:

"I haven't earned money but I have earned people".¹⁷

1.6. Vrinda Grover

TIME Magazine named Vrinda Grover one of the 100 most influential women in the world in 2013. She is a human rights activist and researcher. Grover has battled for justice in the rape-torture case of Soni Sori and the 1984 anti-Sikh riots.

Her most significant contribution was to the formulation of the 2013 Criminal Bill Amendment law against sexual assault, the Protection of Children from Sexual Offenses Act, 2012, and the Prevention of Torture Bill, 2010, which dealt with the protection from Communal and Targeted Violence.

¹⁷ 9 Women Who Have Become 'Super Advocates' In India (The Better India, 2019)
<<https://www.thebetterindia.com/133751/women-advocates-india-law-lawyers/>> accessed 15 June 2021.

1.7. Indira Jaising

Indira Jaising is one of the top Supreme Court of India lawyers. She is well-known for her legal activity on behalf of human rights. Fortune magazine placed Indira Jaising 20th among the 50 Greatest Leaders of the World.

She has challenged prejudice against women in a number of situations. The most famous was the Mary Roy case, which resulted in Syrian Christian women in Kerala being granted equal inheritance rights. She has worked on matters involving discrimination against women, Muslim Personal Law, child labor, and domestic violence, among other things.

Her work was crucial in the development of the Domestic Violence Act (2005). Her most recent achievements include a significant victory in Priya Pillai's case, in which the High Court decided that the government cannot silence dissent. In 2009, Jaising became the first woman to be appointed as India's Additional Solicitor General.

1.8. Flavia Agnes

Flavia Agnes is a lawyer, legal researcher, and fighter for women's rights. She's also the Co-



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Founder of '*Majlis*,' a legal aid group for women.

Agnes has dedicated a great deal of her time to raising awareness regarding minority and women's rights. In 1979, she was also a driving force behind the founding of the Forum Against Women's Oppression, a campaign group that addressed issues such as domestic abuse, dowry, and sexual harassment. Her own experience with domestic violence has motivated her to advocate for women's rights.

These women have truly been justice fighters. They are the forces that empower, educate, and inspire a generation of women to stand up for what is right and wrong.

All these wonderful women have remarkably contributed to Indian Judiciary by advocating such important legal issues. It is because of these intelligent and determined female lawyer that Indian judiciary have given landmark judgments and legislature had been successful in making stringent laws for safeguarding the rights of an individual.

ENSURING WOMEN PARTICIPATION IN THE INDIAN JUDICIARY

It is extremely important to ensure women's representation in the Indian judiciary for gender parity. India has never had a woman Chief Justice and merely has 1 Judge in the Apex Court presently, which is merely 3% of the sanctioned strength of the Court. The United States has approximately 30% female judges. Numerous steps would be requisite to warrant the representation of women in the Indian judiciary is at par:-

1. There must be a mandatory training for all the lawyers and court staff, wherein gender sensitisation programs must be conducted to sensitize the legal world about women's representation. This becomes one of the reason why women stay away from judicial positions, since they believe that this may not be the right place for them due to prejudices.
2. The lower judiciary is witnessing a rise in the number of women lawyers and judges; however the dearth is still witnessed in the High Courts and the Apex Courts. This is because a long drawn practice is a requisite in the higher courts, to achieve big. This acts as a hindrance for women who may not be comfortable in working for 10-15 years,



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due to many constraints. Therefore, the courts can relax the working experience for women, owing to Article 15 of the Indian Constitution.

3. The Bar Council of India has a provision for paying Rs. 5000 as stipend to new and junior advocates. This may be raised in cases of women to attract more women lawyers in the mainstream, by taking care of their financial security as well.
4. Law must be taught as a subject in schools, starting from senior secondary education level. This will help women gauge interest in the subject and comprehend it. The more known it is made, the more chances of it being followed.
5. There is a need of strict implementation of the laws already in place, more specifically the sexual harassment of women at workplace, which is highly witnessed. Due to the scare of such acts, women are not seen as increasingly participative.
6. Provisions like maternity, protection and special consideration needs to be placed for women. Without such protective

measures, women do not enter the professional industry.

CONCLUSION

India boasts about being the Nation where “Devi” is worshipped. Ironically data suggests of the country bagging place among the last spots when it comes to the inclusion of women at workplace or women equality in general. Among diversified issues, the present context is widely seen in the participation of women into the Indian Judiciary as well. The Researcher has taken a pragmatic approach in studying the potential causes and solutions for the same. An interdisciplinary study analysing the idea of equality under the ambit of Constitution and other laws have been discussed in detail. The Research is aimed at providing the future implications of the present trend and the potential setbacks. The inclusion of women at all places of work including that of Indian Judiciary is the present subset of equality articulated under Article 14 to the Constitution and steps should be taken to achieve a higher standard of participation in the Legal Fraternity for the collective growth and development of the country.