



Role Of Indian Judiciary In Empowerment Of Women: An Analysis Through Case Laws

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ABSTRACT

This research paper deals in the role of the Indian Judiciary in the empowerment of women and in what ways the judicial structure has helped in establishing equality in status, opportunity, culture and various other realms in the society. The paper has thrown light on the different landmark judgements so far, that have shaped the position of where women stand today in the Indian society. How judiciary has defined their rights, has gone beyond laid parameters and exercised Judicial Activism, so that no women in the state can be denied of their fundamental as well as human rights. The paper defines the numerous rights that not only women, but every citizen of the state has. It emphasises on the importance of uplifting women and alter the traditional ideologies that society has chained them down with. The content shows how evident gender disparity and gender discrimination is rooted in the Indian society and various initiatives, the Judiciary has taken through case laws, to attack and uproot that. Whether its equal pay for equal work, equality in opportunity, being against gender bias or harassment at work place, Judicial orders and judgements have turned the scenarios in favour of women, from time to time. Towards the end, the paper provides with conclusion and suggestions based on a small survey, including about 108 responses, given by people who belonged to different age groups and educational backgrounds. It was done by making use of the Google Forms and by providing the opinions of the people who participated. The survey represents what people generally perceive of the Indian Judiciary and what other effective measures and steps can be taken to ensure that the lacking that is witnessed even today, can be curbed and cured. The papers lays importance on why women needs to be empowered, not just morally, socially, culturally but financially. How the Judicial system has and can prove out even further, to be the most important back support of empowering women, is what this research paper has tried to explain.

Keywords: Judiciary, Indian Constitution, Women Empowerment, Judicial Activism, Gender-Justice, Gender-Neutrality, Legal Empowerment, Financial Independence

Introduction

The social system is very well based on the support of two pillars: a man and a woman. The tasks, responsibilities, and rights that they perform are mutual, shared and only beneficial when done in a way that balances and compliments each other. Even if one of the foundations becomes weak and broken, the other is unable to support the weight of the society and it is so much possible that the entire structure would collapse. Not just this, gender equality is extremely essential to empower women and girls so that a sustained, inclusive and equitable growth of the society can be achieved, along with sustainable development.¹

Furthermore, the safety of women in India, especially in the past few years, has gone terribly down, because of some continuous and increasing crimes against women. There has been a rapid decline in the status of women,

¹ Sustainable Development Knowledge Platform. Available at:

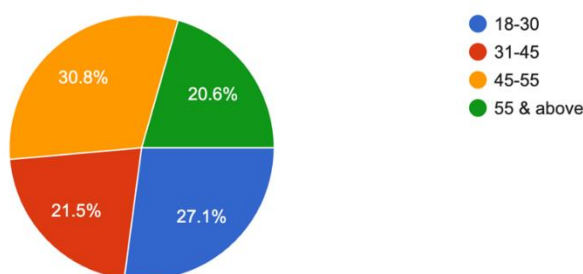
<https://sustainabledevelopment.un.org/topics/women/decisions>.

considering the ancient era to the medieval age and that is still continuing be witness deprecation. Although, Indian women do have equal rights just as the men do. Since, almost half the country is occupied by women, it is obvious that by promoting and providing for women, a scenario of a perfect balance can be achieved and created, in order to have the best of development. Factually, representation of women in modern India can be seen in higher ranks and offices (President, Speaker of Lok Sabha, Union Ministers, Leader of Opposition, Chief Minister, Governor, etc.), but there is no doubt that women are yet being exploited. The Constitution of India guarantees equal rights of dignity, equality, and freedom from gender discrimination. But all of these rights have still not been successful in completely eradicating continuous and numerous problems such as sexual harassment, violent victimization through rape, acid attack, dowry deaths, forced prostitution, and many more, similar to these.

This research paper presents and includes a survey, that was done through a google form, with a collection of responses from 108 people, of different age groups and professional backgrounds.

It showcases a pilot study on how people view judiciary as a contributor in women empowerment and safeguarding women's rights. On the collection of a 108 responses, the survey was closed and the following key points have been observed

Age Group
107 responses



As shown above, all age groups, have almost participated in a roughly equal or equivalent proportion. Where the maximum number who answered the questions belong to the age group of 45-55 years of age.

What is women empowerment?

Empowerment of women, means emancipation of women from the vicious grips of various kinds of discriminations, including social, economic, political, caste and gender based. The ones that keep them held back and so it means ensuring women the freedom to choices for their lives on their own. It is not that women are being 'deified', instead it means to replace patriarchy with parity.

There are multiple facets when women empowered is being talked about, such as:

— Human Rights or Individual Rights:

Never should the fact be forgotten that a woman is a being with awakened senses, imagination, and thoughts, that she should be able to express with absolute freedom. Having self-confidence, in order to assert and articulate individualism, is what is mean by Individual empowerment. this gives the power to negotiate and decide, what one feels to pursue in life, and this is something that women are in general deprived of, at a very large scale, across globe.

— Social Women Empowerment

Another critical aspect of social empowerment of women and precisely, the most vital one, over which all other forms of rights rely, is the gender equality. The promotion and practice of gender equality is extremely important to ensure change in the lives of women in any society, especially in a multi-cultural country like India. Enjoying the same opportunities, outcomes, rights, and obligations in all spheres of life, just as the men do, in the society is what gender equality truly is.

— Educational Women Empowerment

Education empowers and gives any person the supreme power to bring in the change. It becomes important to educate and hence empower women, with knowledge, skills, and self-confidence necessary for the process of development and social participation. It means encouraging women to become more aware of their rights and inculcating confidence in them so that they can claim these rights.

— Economic and occupational empowerment

The most concrete and practical way to make women lead and raise in their power, it is making them economically and occupationally empowered. It implies that a better quality of material life that is achieved

through the livelihoods that are sustainable. Precisely, it means that women have a significantly reduced financial dependence on their male counterparts. This eventually leads to a lot more confidence, socially, personally, and emotionally as well. Women becoming a significant part of the human resource, can bring a much-needed balance, regardless of which community one belongs to.

— Legal Women Empowerment

Anything without a legal structure is always at a risk to exist and flourish. An effective legal structure, the one which is supportive of women empowerment, is hence vital. India does have some of the finest laws that secure and aim towards protection, equality, and upliftment of women, regardless of any indifferences, whatsoever. Addressing the gaps between what the law prescribes and what actually occurs, is also that can be bridged lawfully and through the laws itself.

— Political Women Empowerment

Another important and change inducing way to empower women, is to ensure their political participation. To have a political system that favors the participation into political affairs and a control by the women, in the political decision-making process as well as in governance, is termed as political empowerment of women.² Knowing these multiple factors of empowerment, the leaders of the Indian judiciary and those who feel there is certainly a lack in women representation and that their voices need to be heard, by law and surely by legal means - have tried and contributed in accessing and materializing this. Through various moves, welcoming ones, the Indian Judiciary has been sensitive to the needs of justice for women, their position and value in the Indian society. It is hence one of the judiciaries on the globe, which enjoys a high reputation of being highly sensitive to justice.³

Historically

The Constitution of India has focused on delivering gender equality and gender justice, through various measures. For instance, the Preamble, the Directive Principles of state Policies, Fundamental Rights, and many other rights, are incorporated and implemented via different schemes and policies by the legislature of the nation.

The issues of gender discrimination and gender parity have been tried to be dealt through the remarkable and impactful Acts, few of which are as follows:

- Right from the Abolition of Sati act (1829)
- Widow Remarriage Act (1856)
- British period to Dowry Prohibition Act (1961)
- The Domestic violence (Prohibition) Act along with measures like Gender Budgeting
- 33% reservation of seats for women in Panchayat bodies
- Schemes like: Sukanya Samriddhi Abhiyan, Ujjwala Yojana, Surrogacy Act and many similar others, have a similar aim of making the position of women better along with time.

Along with these, the Indian Judiciary has most definitely played a pivotal and crucial role in materializing and practically ensuring Gender-Justice. Not to forget cases like that of Gita Hariharan vs. Reserve Bank of India, Vishakha & others vs. State of Rajasthan, and some recent ones namely – Sabarimala issue, Equal Role for Women in the Army⁴, where the Indian Armed Forces are committed to gender equality and to provide women, with equal opportunities, so that it becomes easier for them to serve and advance in their careers. Adding to this, in the year 2022, The Supreme Court of India made a landmark decision, to enforce terms and conditions that are gender-neutral for a woman serving in the armed forces.⁵

² R. Gattaiah, *Women Empowerment in India and Judicial Activism*, *International Journal of Creative Research Thoughts*, Volume 5, Issue 4 December 2017, Available at:

<https://www.ijert.org/papers/IJCRT1704303.pdf>

³ A Raja, *Women Empowerment – Role of Judiciary*, *Indian Journal of Applied Research*, Volume: 5, Issue: 12, Special Issue Dec 2015, Available at: <https://www.worldwidejournals.com/indian-journal-of-applied-research.pdf>

⁴ PRITAM JYOTI PEGU, ARKIDA YASMIN, “Role of the Indian State and Judiciary in ensuring Gender Justice: A Paradigm shift in the nature of Policy Making and Pro- active role of the Judiciary”, *J Arch.Egyptol*, vol. 18, no. 1, pp. 3675-3687, Jan. 2021, Available at:

<https://archives.palarch.nl/index.php/jae/article/view/5631>

⁵ SRUTHAKEERTHY SRIRAM, *The Battle for Gender Equality in the Indian Armed Forces*, *The Nyaaya Guest Blog*, Feb 14, 2022, Available at: <https://nyaaya.org/guest-blog/the-battle-for-gender-equality-in-the-indian-armed-forces>

Post-Independence Position of women in India, at different times:

The government of India introduced a few general yet unique laws. These have particularly been some constitutional arrangements, so that the ladies can defend their voices and be rest assured that they're heard. Also, it means to engage more women in all realms in the nation. Definitely an improvement in the position of women was seen, post-independence when women represented positions as Governors, Cabinet clergymen, Judges, President, Ministers etc. Many measures were taken, by the government, to promote an equivalent status to women in political, financial, and social fields. There are specifically constitutional rights and legitimate rights, according to the classification or the categorization.

Constitutional Rights and Legitimate Rights:

Rights which are granted when there's different arrangement of the constitution. This means that these are majorly fundamental and comes under traditional rights that must surely be adhered to. Ones that are provided and guaranteed under various different laws. The constitution being the caretaker, the soul and guarantor of vows of fairness of status, equality and opportunity, the Indian Judiciary has always kept high spirits of the constitution and has attempted to satisfy the constitutional destinations through different proclamations while deciding cases.⁶

Earlier, during the period of Rig Veda, the position enjoyed by women faced deprecation, in the later Vedic period.

- Women were not allowed to seek education.
- Widows were not allowed to remarry.
- There were no right of inheritance and ownership of property.
- Existence of Dowry system, child marriage, these social traps kept women engulfed.

During the Gupta Period: The status of women deteriorated even more immensely. Dowry giving became the main concept under marriage institution and Sati-Pratha was highly prominent as well.

During the Rule of the British: a significant change was seen because the social revolutionaries like, Raja Rammohun Roy, Jyotirao Phule, Ishwar Chand Vidyasagar, started to agitate, for empowering women and to stop the discriminating and inhuman torture over them, in the name of societal culture.

A massively significant step was taken, and their efforts lead to the formulation of the Widow Remarriage Act, thereby abolishing Sati-Pratha. Women's rights were later advocated by the great men including the Father of the Nation, Mahatma Gandhi, Pt. Jawahar Lal Nehru etc.

A significant elevation was witnessed in how the women were considered and treated in the society as their social, economic, political appearance began.

The Current Situation and Scenario on Women Empowerment:

The Indian Constitution definitely has provisions to empower women, based on the ones that were championed by the founding fathers including provisions that focus on many social, political, and economic empowerment. Women in India, presently, participate in every field, whether it's education, sports, politics, culture, media, art, social-media, different service sectors, science, technology and even business. However, the patriarchal mentality hasn't completely let the position of women alter and the women in the Indian society face physical and mental torture, exploitation, victimization, humiliation, and indifferences based on gender.

After the passing of seven long decades of Independence, women have been made subject to social, educational, domestic, cultural hurdles that do not let them blossom to their fullest and with full freedom, at least freedom as equal as the men of the society enjoy.⁷

Legal empowerment:

A powerful tool and certainly a very vital one, to ensure all kinds of rights, not just for women, but every person in the society. It provides people with the knowledge, wisdom, skill set and the confidence to participate in the development projects. It is only through legal empowerment that inclusive growth is possible. Inclusiveness is a way to reduce poverty, inequality and this is made to be possible only because through inclusiveness, the capacity of people to improve their lives can be achieved. This also means that women should be and definitely can be guided, helped, and motivated to have a stand of their own in the society.⁸

⁶ Dr. Mohammad Khaja Moinoddin., *Role of Judiciary in Empowering Women in India*, IJEMR, January 2020, Vol 10 Issue 1, Online- ISSN 2249-2585, Available at: <https://ijemr.in/wp-content/uploads/2020/07/Role-Of-Judiciary-In-Empowering-Women-In-India.pdf>

⁷ Ibid, page 1

⁸ Asian Development Bank Final report. *The Asia Foundation*. (2009.) *Legal Empowerment of Women and Disadvantaged groups*. ISBN 978-971-561-759-8. P.17-22.

The Reproductive Rights and Exclusionary Wrongs: Including the Maternity Benefits

The women of the society have irreplaceable role to play as they contribute to the economy with the unpaid labour that they do. Not only the unpaid labour but women contribute by producing and bearing children and generations, that is no less than a social work for the progress of the human race. However, to this when something concrete is to be looked up, there are hardly any protections available. The reason behind this is that maternity protection in India, revolves around being sector-specific than more centric towards the employer-employee zones.

The result of this is that majority of the women are left in an unorganized sector. But not to forget that the government and other agencies of the state stay well aware and concerned, the example of which can be seen under the new scheme like the Indira Gandhi Matritva Sahyog Yojana, piloted in 52 districts. It implicitly gives focus on and recognises the strong need to compensate for the loss of wages that women face due to the maternity leaves taken by them. This scheme also provides for the nutritional support to both the mother and the child.⁹ In addition to this, the Planning Commission back in early 2000s, prepared to scale up the scheme and exclusion under it as the exclusions in remain as same, shall even further “victimise the victim”.¹⁰

Judicial Activism and Women Empowerment In India

The world clearly shares one major and common issue, which is the issue of Gender injustice. It is certainly a problem that is faced, witnessed and concerns almost the entire globe. The roots and the causes and the gravity maybe different, but as humans, it is the duty to ensure that the dignity and respect can be ensured for every person, regardless of what gender they belong to. Protection of human rights is hence extremely necessary and pivotal, so that humans in general and especially the victims, can be well protected.

No exception to the fact that women have been ill-treated, discriminated and deprived of even their basic human rights since ages, in every society, including the Indian society. Indian Judiciary not only felt convinced of the humungous need of empowering women, but it is certainly what a judicial system is expected to contribute, being so. It is only through the laws and through the legal system, that empowerment of nay form can be achieved, in a valuable manner, especially when the matters are about uplifting the women as a community. The Constitution of India has brought up and provided with long leaps in the direction of eradicating different adversities and lingering effects, that cause women to stay in deprecation of equality, success and opportunity. There are express provisions, for affirming actions towards women, that aim to prohibit discrimination of all forms, specially gender biases and a strong carpet securing equal opportunity is laid, regardless of the variety of walks of life.

No women should be left uneducated, unemployed, and there shouldn't be any lack of participation for women, whatsoever. The analytical jurisprudence says that a court of law only finds the laws and interprets them. Whereas, the Judges, apply the discretionary power to serve and provide fairness and justice to women in the context of Socio-Economic circumstances.

Undoubtedly, the legislature and Judiciary, together, played significant roles, from time to time, in securing a higher position of women, from where they have previously stood and have aimed to ensure an equal footing just as the men do. Moreso, the Judiciary has an even special and an enhanced role in the issue of women empowerment. Judiciary has actively enforced and strengthened the goals of the constitution so that women's rights can be protected. The wide interpretation of the laws of the land and those passed by the legislature, makes it possible for women to enroot their trust in Judiciary.

Judicial Activism:

Judicial activism can be defined as an expanded and even broadened role of the judiciary, as it fills in and encompasses an area that is left as void or in vacuum by the legislature.¹¹

The role of the judiciary is certainly not limited to interpreting the laws laid by the constitution and make them flow in perusal of the people of the society for justice, peace and harmony.

In *Sheela Barse vs. State of Maharashtra*, 1983, the issues raised were:

- Whether or not the adverse and ill-treatment that women experienced by female prisoners can be justified?
- Whether or not the mistreatment of female prisoners can be considered as a violation of the rights protected under Article 21 of the Constitution of India?
- Whether or not it is the responsibility of the State Authorities to ensure legal counselling to prisoners?

⁹ Priyanka Dutta and Dr. Shweta Thakur, *The Empowerment Dimensions of Women in Northeast India: A Socio-Legal Review*, *International Journal of Management (IJM)* Volume 11, Issue 9, September 2020, pp.1864-1873, Available at: <https://iaeme.com/Home/issue/IJM?Volume=11&Issue=9>

¹⁰ Lingam Lakshmi, Yelamanchili Vaidehi, (2011) *Reproductive Rights and Exclusionary Wrongs: Maternity Benefits*. *Economic and Political Weekly* Vol XLVII no. 43 pp - 94- 103

¹¹ Semwal, M. M., & Khosla, S. (2008). *JUDICIAL ACTIVISM*. *The Indian Journal of Political Science*, 69(1), 113–126. <http://www.jstor.org/stable/41856396>

On the final disposition of the petition, the court in the case issues the following directives:

- A financially disadvantaged or an indigent accused has to have a legal assistance. Not only does article 39A of the constitution, requires this, for the accused persons facing life threats and threats to their personal liberty. Article 14 and 21, throw light on the same.
- A prisoner, whether under trial or convicted, must be given availability of the legal assistance, to ensure that they do not go through torture, oppression or harassment etc., merely because of lack of legal awareness.

The Court issued some additional directives:

- **Female Suspects should be kept in Segregation:** The female suspects must be put in selected for to five lock-ups, in decent localities and to be guarded by females constables, specifically.
- **The Procedures of Female Interrogation:** there should be the presence of female police officers or constables, during the interrogation of female suspects.
- **Providing Information to the Arrested Persons:** Persons arrested must be immediately informed of the reason or the grounds of such arrest. It should be quickly informed to the arrested person that they are entitled to apply for their bail.
- **Surprise Visits to Police Lock-Ups to check:** The magistrate or police officers of higher ranks can anytime make surprise visits to lock-ups to check up on the true conditions.
- **Arrest should be informed and notified to Relatives/Friends:** it is necessary for the police to promptly contact the specified relative or friend and provide them with the information of arrest.
- **Magisterial Inquiry into Torture or Maltreatment:** The magistrate has the power to make an inquiry about the arrested person, produced before him/her and if the so arrested person had complained of any ill-treatment, torture or unfair behaviour.

Hussainara Kahtoon v. State of Bihar:

In this landmark case, the court had ordered and directed the release of a very big number of men and women in custody, those who were awaiting trials. The delay of justice was so much that it was ultimately causing a denial of justice. The court further directing that it is State's duty to ensure that there is speedy justice and legal aid is provided to all the prisoners.

Role of Judicial Commission in Nirbhaya case:

The committee formulated in response to the nation-wide agitation, anger, disappointed and mourning cry of civil society, majorly led by the youth against the failure of governance and security that is to be guaranteed and ensured by the authorities to safeguard and maintain a dignified environment for women of the nation. Women being constantly a prey to sexual violence and exploitation, need a stronger umbrella of laws and culture to save them. In the present Nirbhaya case, where a young woman was brutally gang raped, left a big hole in the hearts of the entire nation and each individual was left terrified and shook. In response to this barbaric act, the committee that was formed, recommended amendments to the criminal laws and it was proposed that a speedy, quicker and very enhanced trial must be conducted in such sensitive and rarest of the rare cases.

Justice J.S. Verma headed the committee and more rigorous and higher degree punishments were then later added to the existing criminal laws and punishments. The amendments included alterations and additions in laws relating to rape, child sexual abuse, sexual harassment, trafficking, medical examination of the victims and also some educational reforms. Definitely, it isn't the case that the Judiciary is transgressing upon or is usurping the powers of the other two organs of the government, i.e. the executive and the legislature, but it is also true that without Judiciary, it would be impossible to execute the justice that the legislature ideals and theoretically prepares about. It is undoubtedly the very need and demand of the time. The role of Judiciary has come up because of the depraved system that has been witnessed in the democracy. The situations in which the other two organs of the government ended up in a fiasco, it was the Judiciary, that stood as the last hope of the people of the society and of course the State.

Judiciary has the power of discretion that this organ uses to provide fairness and justice in Socio-Economic context.

The role of Indian Judiciary in ensuring Gender Justice:

"The judge infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society." Said by Justice – P.N. Bhagwati

It is truly crucial to build public awareness and support for the Judicial Activism to be successful.

Few of the allies, of organisations that work along with the judiciary and in accordance with the laws laid down by the legislature to safeguard and guarantee women empowerment, safety and security in all forms, are listed below:

The National Commission for Women and the National Human Rights Commission, along with the judiciary, address violations of rights of women, just like the Judiciary does. Seeking their collaboration shall only be benefitting and strengthening judiciary to work even more firmly.

Just like the Indian State the Indian Judiciary has essentially played a vital and extremely crucial role in delivering justice that is based on gender and aims at removal of insensitivities related to the difference of gender, specially that the women in the society go through. Judiciary protects the constitutional rights of the people and make sure that the justice is served to all those that have gone through downtrodden experiences and ensures that some indispensable judgements continue to be delivered.

The Indian Judiciary has power to make judicial reviews and review the constitutionality of the acts passed by the parliament and that the government passes. It is the protector of the basic guidelines and provisions as are mentioned in the soul document i.e. the Constitution of India, in order to keep them safe from getting violated. Few Important Instances where the Decisions that the judiciary took to ensure gender justice are analysed as follows:

1. C. B. Muthamma v. Union of India:

The Indian Foreign Service (Conduct and discipline) Rules of 1961, provided that a female employee should obtain a permission in writing, of the Government, before getting married. It further provided that after the marriage, a woman member of the service may require to take resignation from the job/position/service. This was challenged in the above mentioned case and the Supreme Court held such a rule and position as entirely discriminatory against women and it was held unconstitutional.

2. Pratibha Ranu v. Suraj Kumar:

In the above mentioned case, it was held by the Supreme Court that the Stirdhan property of a woman who is married, should be essentially placed in her custody only. The woman shall have complete right and control over it. The simple and only fact that she is living with her husband and the dowry items are been used jointly and commonly by both or other members of the house, does not make any difference and does not affect her right of absolute ownership that she has over all the items.

3. Gita Hariharan v. Reserve Bank of India:

The section 6 of the Hindu Minority and Guardianship Act 1956, was challenged and under the mentioned case, the Supreme Court held that the mother could act as the natural guardian of the minor, even during the lifetime of the father of the child, in cases where the father was not in charge of the care and affairs of the minor child.

4. Vishaka and Others v. State of Rajasthan:

In this case the Supreme Court held that sexual harassment of a women at her workplace is violation of rights of gender equality and right to life and as laid under the constitution of India, in Articles 14, 19 and 21. This particular judgement has been crucial and truly a landmark one, that has also been applied in other similar cases like the Apparel Export Promotion Council v. Chopra. In which, emphasis was on the fact that sexual harassment, is gender based discrimination and a mention of the International Labour Organisation (ILO) was given too in the same.

5. Suchita Srivastava & Anr. v. Chandigarh Administration(2009):

Here the Supreme Court gave its judgment against the decision of the high Court of Punjab and Haryana. SC held that the Pregnancy cannot be terminated without the consent of the victim. The reproductive choice of the victim should be respected.

6. Danamma Alias Suman Surpur And Another V/S Amar And Another (2018) 3 Scc 343

The above case of Danamma v. Amar deals with a highly debated question of law i.e. what category of the daughters shall be given and be entitled to the right to become a coparcenary, as according to the amendment done in the year 2005. The highlight and the intent behind the amendment was that the legislature wanted to end the discrepancy between the genders. But, the courts in this case maintain ambiguity as the position of law, also because it does not overturn the precedent that is present in the previous judgement.

This case furthers the legislative intent behind the provision, which is to eliminate the discrepancy between the genders. However, the court in this case does not present a clear position of law as it do not overturn the precedent set by the prior judgement. Hence, putting the lower courts under the dilemma as to which one is the good law and which precedent is to be applied in which case.

Supreme Court pronounced that any amendment to the substantive provision is in itself prospective unless it has been stated clearly, otherwise. This was laid by the Supreme court while interpreting section 6(1)(4) of the Hindu succession Act, that clearly says that daughters will have coparcenary rights in the joint family property *on and from the commencement of this act*.

7. Joseph Shine v. Union of India(2018)

Considering the five-judge bench unanimously struck down Section 497 of Indian Penal Code(IPC) that deals was struck down, unanimously. This section dealt with Adultery sayiit was criminalization of the adultery done by men and it gave the assumption that a woman is considered as the property of the husband. The right to privacy, liberty and dignity of women were being attacked as the section caused discrimination against married women and it perpetuated gender based stereotypes.

8. The Secretary, Ministry of Defence v. Babita Puniya & Ors (2020)

In this case, a Supreme Court bench upheld the order by the Delhi high Court on permanently commissioning women in the Army. SC held that it is entirely irrational to put an absolute bar on granting command post to women just on the basis of their physiological features and domestic obligations they have. The Court also said that absolute exclusion of women violated their right under Article 14 of the constitution, which is therefore unjustified. Including this, the recent judgement of the Supreme Court to allow women of a particular age group to step into the Sabarimala Temple in Kerala showed how the judiciary has yet again stepped forward in breaking the gender based stereotypes and saving the right of women to worship, that is fundamental.

9. Gender and the economic aspect:

With growing time now the government has an increased amount of attention to concepts like the equal pay for equal work, compensation at the time of divorce, the property rights of women, solutions to unaddressed issues like that of granting maternity leave and many more that are wholesome and basic needed for women to have an equal footing and status in the society like the men do. Besides these, the Gender Budgeting in India that was introduced in 2006 and other schemes like the Sukanya Samridhi Abhiyan, STEP which skills women and helps them grow as an entrepreneur, creation of the Mahila E-haats and most importantly Mahila Kosh for providing extension towards micro-credit services to women etc. have all proved out to be the key initiatives to ensure economic justice to each woman.¹² The Indian Judiciary feels totally convinced, of the high need of empowerment that women need and that they need to be backed up by law and the legal means. The soul document of the nation i.e. the constitution, certainly prohibits all kinds and means of discrimination against the female communities and the ones in minority. It secures equal opportunity and lays a carpet of naturally just and fair treatment with women and children and other communities that are generally overlooked. Whether its education, employment or support to grow in various realms of life, women are certainly have the power of laws already established exclusively for them. In connection to this, the courts in the nation have interpreted laws in consonance even with the cross border treaties and the conventions.¹³

10. Air India Vs Nargesh Meerza, [(1981) 4 SCC 335]

In this particular case law, the women's right to equality was dealt. The supreme court had struck down the retirement clause of the air hostesses, when they attain the age of 35 years or if they get married within the initial 4 years of the service or if they conceive a child, whichever happens earlier. These conditions were understood as arbitrary and entirely unreasonable and violative of article 14 as under the constitution of the state.

11. Vishaka Sawhney Vs State of Rajasthan, AIR 1997 SC 3011, (1998)

A very famous and revolutionary case law, this was the case where an alarm was raised for preventing women from being sexually harassed at their places of work. It turned out to be a landmark judgement, as the supreme court held that women undergoing or those who've suffered sexual harassment at workplace, is a violation of their fundamental rights under article 15 and 21 of the constitution. The apex court laid down exhaustive guidelines so that working women can be prevented from such injustice until a law is passed for the same. Later, however, in 2013, The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013 was passed by the parliament of India.

12. Sarla Mudgal Vs Union of India 1995, AIR 1531, 1995 SCC (3) 635

In this case, the gross exploitation of the personal laws of women was brought to limelight. According to the facts of the case, a hindu male, married under the Hindu law, desired to have a second wife, who was a Muslim and hence turned himself into a Muslim by adopting Islam religion. After getting married, he again converted himself back to Hinduism, to which the courts intervened. The second wife pleaded that she had no protection under any of the personal laws, neither the Hindu personal law nor the Islamic law. This is when getting into marriage this way was prohibited and the supreme court along with this directed the Union government to implement uniform civil code in the state.

13. Mohammad Ahmed Khan Vs Shah Bano Begum, 1985 AIR 945, 1985 SCR (3) 844

This is well known as the Shah Bano case, a penurious Muslim woman made a claim for maintenance from her husband under section 125 of the code of criminal procedure. She did so when she was given triple talaq by her husband. The apex court in this case decided that women do have a right of maintenance, as per section 125 of Code of criminal procedure. This decision brought nationwide discussions, conversations, meetings, agitations etc.

¹² Ibid, page 2

¹³ Mohanraj TP, *Judicial Activism and Women Empowerment In India*, Legal Services India, Available at: <https://www.legalservicesindia.com/article/1862/Judicial-Activism-and-Women-Empowerment-In-India>

14. Tuka Ram and Anr vs State of Maharashtra, 1979 AIR 185, 1979 SCR (1) 810

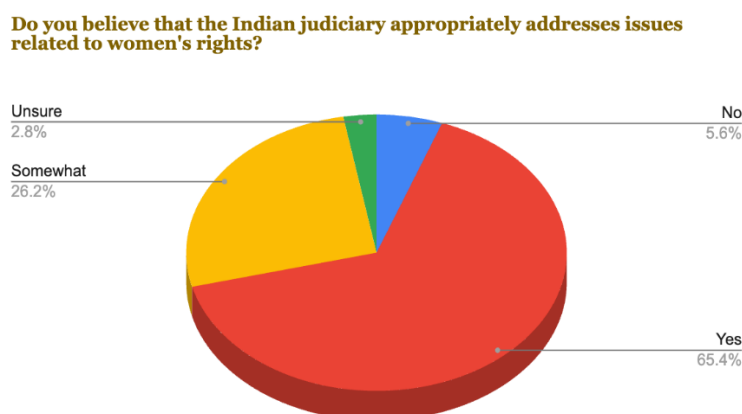
This is a well-known case, also called as the Mathura rape case. It was an incident of custodial rape. A young girl, in Mathura, was allegedly raped by two policemen, and it was alleged to be done on the compound of Police Station. In this case, the accused was acquitted by Supreme Court, which eventually resulted in a big public outcry and men and women came on streets for protests. This led to amendments in the laws for rape and the Indian Criminal Law underwent a second amendment, called as The Criminal Law (Second Amendment) Act 1983 (No. 46).

15. Mackinnon Mackenzie Vs Audrey D'costa, 1987 AIR 1281

The case brought with itself the very first major judgment on the *Equal Remuneration* and an act was delivered too, by the Supreme Court in this case. This case is about Audrey, a lady stenographer, who sued her company under the equal remuneration act because she was being paid less than the male stenographer, for doing the same amount and same kind of work.¹⁴

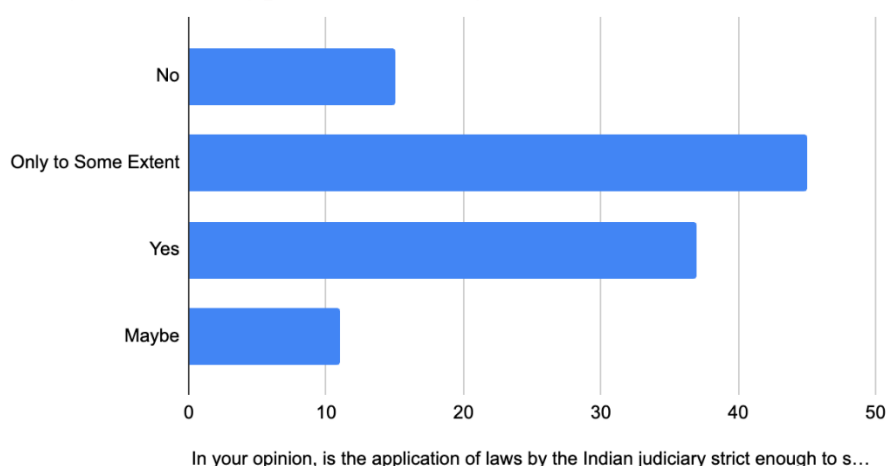
THE SURVEY RESULTS

A survey with a total number of 10 questions was done by making use of google form and was randomly shared amongst people belonging to the age ranging from 18-55 and above. This was done to collect the opinions and views that people have about the Indian Judiciary and how it functions and what better steps can be taken to bring an impactful change in the society, especially for women and their overall empowerment.



On being asked if they believed if judiciary appropriately addresses issues that are related to the rights of women, 65.4% of the people said yes in their answers, which shows that it is the judiciary of the nation that people in a good majority believe that saves the rights and ensures that they're not taken away based on discriminatory behaviours and exploitation from the dominating communities, especially in the case of women.

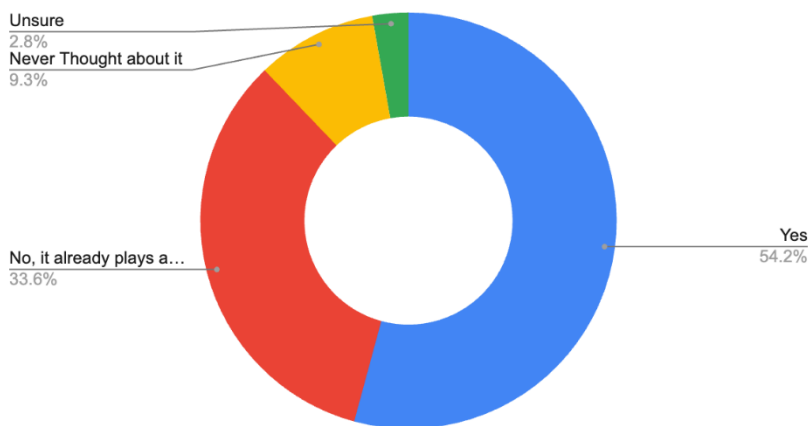
In your opinion, is the application of laws by the Indian judiciary strict enough to successfully protect women's rights?



¹⁴ *ibid* page 2

An idea of how strict the application of laws by the judiciary is, was taken by putting up a question based on this to the class of people to whom these set of questions was shared. In the opinion of people, based on the 108 responses, the graph drawn, as presented above, says that, only 34.3% of the people believe so, while 41.7% of the people believe that it is only to a certain extent that there is strictness in the application of laws by the judiciary. Application of laws does not mean that they should be interpreted strictly; in fact it solely means that once an issue falls under a particular law and is decided to be dealt under it, it should hence be taken to its completion and in a more disciplined manner.

Do you think a more Proactive Role of the Indian judiciary is required in addressing gender-based discrimination and violence against women?



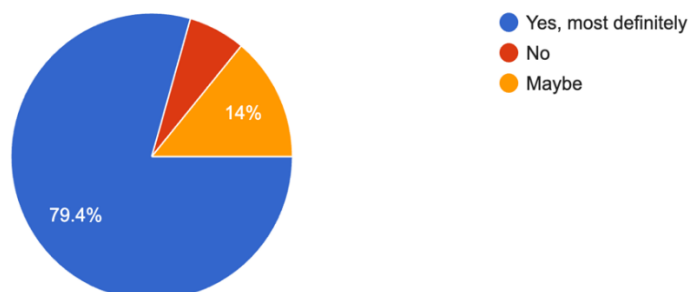
Moreover, a question based specifically on the gender-based discrimination and violence against women was put up, that, whether an even more proactive role of the judiciary is required to address such concerns, to which 54.2% percent of the total people who appeared in the survey answered in a yes. This shows that, undoubtedly the judiciary does play a vital role in addressing such major issues, but in the opinion of people it still needs to amplify the role and broaden its functioning so that the societal evils like gender based discrimination, violence and exploitation against women is well addressed.

IF THERE IS A NEED OF FAST TRACK TRIBUNALS

People who chose to answer this question, were of the opinion that there is a need of having specialised courts or tribunals to handle cases, to which about 79.4% of the people said yes, there is most definitely a need to have a fast track courts to speed up the trials and reduce the burden on the existing courts. The percentage of people who said yes, is certainly in majority and a good number to believe that speedy and special tribunals or branches of courts are needed, which works as a suggestion to the current law makers and institution establishers to focus on the needs of the society.

Do you think there is a need for specialised courts / tribunals to handle cases related to women's rights with more speed and effect?

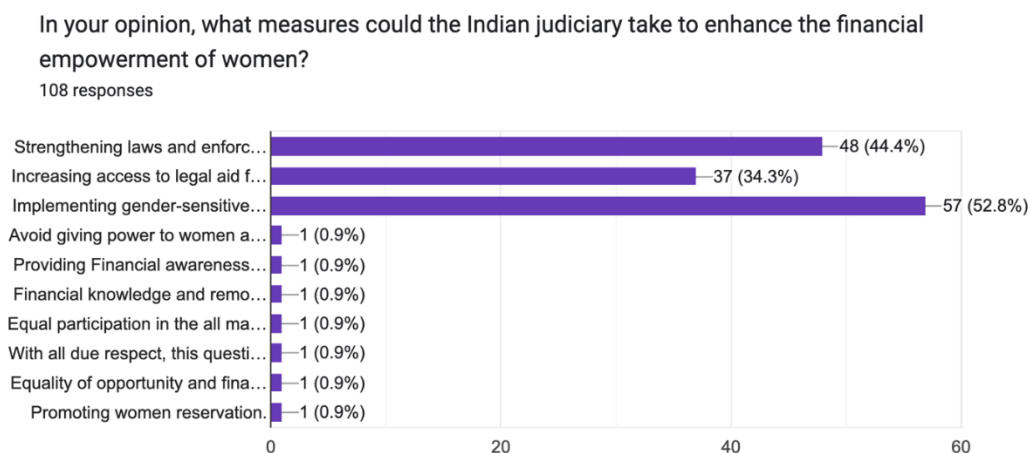
107 responses



FOR FINANCIAL INDEPENDENCE

It is noteworthy that judiciary does have a key function in boosting empowerment of women, in all realms and the most practical ways. Considering Financial independence, which is the true need and the most concrete method and in fact a big solution to various insensitivities and discrimination that women face, is something that the judiciary does and can further contribute into.

The law makers certainly create the laws, but their judicial-implementation is as important as it is to have the laws in power. *Implementing gender-sensitive policies in financial matters*, is something that most people, i.e. around, 52.8% of the total people who participated in the survey, said yes to. Rest of the options, included were – ‘strengthening of the laws and their enforcement’, which was selected by 44.4% of the people while 34.3% of the people said that ‘increasing access to legal aid for women’ can help women grow financially, as it would bring a lot of legal empowerment and hence the confidence to choose for themselves, whether socially or financially.



Not just this, additionally, as a matter of fact, women constitute $\frac{1}{2}$ of the world's population and $\frac{2}{3}$ of the entire globe's work force, is composed of women only. However, they get only $\frac{1}{10^{\text{th}}}$ of the world's income and only 1% of the entire world's wealth". – as per the United Nations.¹⁵

CONCLUSION & SUGGESTIONS

Towards the conclusion, it can be said that the Indian Judiciary functions in a very particular and highly disciplined manner in order to protect laws laid down for each citizen and person residing in the nation, with all its special care and attention been given to women, children and the minorities. The primary data collected through the survey and the secondary data collected through articles, blogs, journals and other documented manuscripts, show that Judiciary plays a vital, a key role and one that works like oxygen to the implementation and correct interpretation of the laws that the legislature lays down for organising the nation, its citizens and all the relationships between men and women.

At different times, the judiciary has shown how necessary it is to regulate the rights of women through the judgements, to protect them from various discriminations and to provide them the courage to raise their voices against and injustice, exploitation and gender based abuse.

However, it should yet take even more crucial steps to enhance the status, domination and equality of women just like the men of the nation enjoy.

The following can be some fruitful suggestions for achieving gender neutral society that the Judicial organ can help in:

- The strict application of laws to successfully protect women's rights
- Providing legal aid and awareness programs for women
- By setting up specialised courts / tribunals to handle cases related to women's rights with more speed and effect
- Implementing gender-sensitive policies in financial matters for financial independence of women
- Financial knowledge and removing the idea that women cannot earn more than a man should change.
- Equal participation in the all matters. Equal opportunities should be provided.
- Providing Financial awareness and ways to improve financial position.
- Equality of opportunity and financial education will help.
- Promoting women reservations.

¹⁵ Patron Prof Shalini Bharat, International Conference on Changing Contours of Women's Paid and Unpaid Work jointly organised by School of Management and Labour Studies & School of Development Studies, Tata Institute of Social Sciences, Deonar, Mumbai, A Deemed University, established under Section 3 of the UGC Act, 1956

Abstract available at:

file:///Users/kaushiki/Downloads/Book_of_Abstracts_Changing_Contours_of_W.pdf

Some other ways to empower women include:

Replacement of 'Patriarchy' with Parity: A quite strong patriarchal society that has deeply rooted socio-cultural values, has always affected empowerment of women and even today continues to do so. The society needs to turn into an egalitarian one, where there isn't any room for superiority. The forces that work to keep the patriarchal traditions alive, should be identified and eliminated by the authorities and organs of the government.

Education is one such way that can work as an indispensable tool for women and can ripple the barriers for the families and their future generations.

There should be efforts to restructure the legal processes so that fairness can be delivered and timely justice can be ensured to the victims of crimes such as rapes, sexual harassment, acid attacks, trafficking, domestic violence, exploitation etc. So that the heinous and barbaric acts can be controlled and eventually stopped from happening.

The idea of having *Fast-Track Courts*, is the another best way, to ensure speedy justice to the victims of crimes, specially the women. This idea has been actualised and implemented and is certainly the best the judiciary as well as the government has done.

It is also essential to build public awareness and a support system for the Judicial Activism to be successful. Both the National Commission for Women and the National Human Rights Commission can be considered as good allies and indeed the important ones, in addressing all kinds of violations against women, along with the Indian Judiciary. It should be even more vigilant, should make stringent decisions and must have a proactive role, when it comes to punishing the offenders.

Hence, it can be said that certainly the Judiciary does play a very important and impactful role in empowering women but with its horizons being broadened, a better society, culture and environment can be created for the women to flourish.

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