

Assessing the Experiences of South African and Indian Legal Profession from the Perspective of Women Representation in Higher Judiciary: The Square Peg in a Round Hole Story

Authors : Sricheta Chowdhury

Abstract : To require a woman to choose between her work and her personal life is the most acute form of discrimination that can be meted out against her. No woman should be given a choice to choose between her motherhood and her career at Bar, yet that is the most detrimental discrimination that has been happening in Indian Bar, which no one has questioned so far. The falling number of women in practice is a reality that isn't garnering much attention given the sharp rise in women studying law but is not being able to continue in the profession. Moving from a colonial misogynist whim to a post-colonial "new-age construct of Indian woman" façade, the policymakers of the Indian Judiciary have done nothing so far to decolonize itself from its rudimentary understanding of 'equality of gender' when it comes to the legal profession. Therefore, when Indian jurisprudence was (and is) swooning to the sweeping effect of transformative constitutionalism in the understanding of equality as enshrined under the Indian Constitution, one cannot help but question why the legal profession remained out of brushing effect of achieving substantive equality. The Airline industry's discriminatory policies were not spared from criticism, nor were the policies where women's involvement in any establishment serving liquor (Anuj Garg case), but the judicial practice did not question the stereotypical bias of gender and unequal structural practices until recently. That necessitates the need to examine the existing Bar policies and the steps taken by the regulatory bodies in assessing the situations that are in favor or against the purpose of furthering women's issues in present-day India. From a comparative feminist point of concern, South Africa's pro-women Bar policies are attractive to assess their applicability and extent in terms of promoting inclusivity at the Bar. This article intends to tap on these two countries' potential in carving a niche in giving women an equal platform to play a substantive role in designing governance policies through the Judiciary. The article analyses the current gender composition of the legal profession while endorsing the concept of substantive equality as a requisite in designing an appropriate appointment process of the judges. It studies the theoretical framework on gender equality, examines the international and regional instruments and analyses the scope of welfare policies that Indian legal and regulatory bodies can undertake towards a transformative initiative in re-modeling the Judiciary to a more diverse and inclusive institution. The methodology employs a comparative and analytical understanding of doctrinal resources. It makes quantitative use of secondary data and qualitative use of primary data collected for determining the present status of Indian women legal practitioners and judges. With respect to quantitative data, statistics on the representation of women as judges and chief justices and senior advocates from their official websites from 2018 till present have been utilized. In respect of qualitative data, results of the structured interviews conducted through open and close-ended questions with retired lady judges of the higher judiciary and senior advocates of the Supreme Court of India, contacted through snowball sampling, are utilized.

Keywords : gender, higher judiciary, legal profession, representation, substantive equality

Conference Title : ICPP 2022 : International Conference on Public Policy

Conference Location : Amsterdam, Netherlands

Conference Dates : August 08-09, 2022