

Topic:- “Embracing Equity in Justice Delivery System – Way Ahead”

Good evening and Namaskar,

I am delighted to be addressing this august audience at the International Women’s Day Celebrations organised by the Supreme Court Unit of the Adhivakta Parishad. I am happy to note and acknowledge that the Parishad has taken up programmes to enhance skills and ethics of the younger generation of advocates.

The Constitution of India is focussed on creating a responsive State that is geared towards enhancing public welfare and constructing a just society. The guiding light that drives the Constitution’s quest towards the said objectives is the value and principle of justice, more particularly, social justice. The guiding principles for this lofty vision of securing justice may be found in the diverse facets of ‘equity.’ Equity represents higher legal standards and greater individualisation in the application of law or the principles of equity, in rendering justice. The fusion of common law and equity in the common law world has, in my view, softened the former and rendered it more accommodative and inclusive of the needs of justice.

The cherished image of the Lady being a symbol of Justice, donning a sword (representing power); scales (representing a balance),

and a blindfold (generally accepted as representing impartiality), stands in our mind alongside the aspirational promise of a fair justice delivery system. Our justice system was formed in the backdrop of deeply pervasive hierarchies which were maintained by structures that took various forms- class, caste, gender, etc.

It is important to understand that structural inequity manifests in concrete ways; inequity is not an abstraction. Embracing equity in this context would mean re-examining prevailing assumptions around legal service and justice delivery. The pandemic has challenged the traditional model whereby clients and litigants are required to come to providers. Virtual proceedings now allow lawyers and courts to connect with people where they are. Increasingly, legal and justice service providers (including judges and courts) need to look to communities where they can help, which often means bringing services directly into those areas. If a justice system is rigid and follows a siloed approach to problem solving, there exists the possibility that broader social and life contexts are ignored and this results in inequity.

Diversification of the legal profession is critical to dismantling barriers to equity. Homogeneity in the profiles of lawyers and judges would create a negative loop wherein new generations do not see themselves as having a place in the system- and in turn do not pursue the profession, pinching the pipeline at the earliest stages. The lack of

diversity on the bench and in the Bar also perpetuates the systemic lack of empathy for the circumstances and issues, particularly those affecting historically marginalized groups.

The Judiciary, at every level is required to be sensitive, independent and free from biases. While I am conscious of the fact that there is no single-point antidote that may be applied to ensure the same, I am sure, that by promoting gender diversity in the Judiciary and thereby diversifying the life experiences of those who adjudicate cases, we will be moving several steps closer towards ensuring that a multitude of perspectives have been considered, weighed and balanced in arriving at decisions. Inclusion of women in the Judiciary would also ensure that the decision-making process more responsive, inclusive and participatory at all levels.

It may be apposite at this juncture to attempt to capture the sentiments of Judge Vanessa Ruiz, the senior most Judge of the Court of Appeal for the District of Columbia, United States of America and the President of the International Association of Women Judges, when she said and I quote *“By their mere presence, women judges enhance the legitimacy of the Courts, sending a powerful signal that they are open and accessible to those who seek recourse to justice.”* It is in that context that I stress on the importance of altering the demographics of the Judiciary, whether the District or the Higher Judiciary, to include

more women Judges. Legitimacy is a significant requirement of any decision-making body and a diverse judiciary, which gives not merely symbolic, but substantive representation to women is indeed a necessity.

It is my view, that greater presence of women in the Bar and on the Bench, would also enhance the willingness and confidence of other women, to seek justice. It may also be apt to recollect, at this juncture, important systemic changes introduced to secure justice, specially having regard to the needs and challenges of women litigants, victims and witnesses. One such example is the Vulnerable Witness Project, which was spearheaded by Justice Gita Mittal, which ensured that witnesses would not have to face the accused and could share their testimony in a comfortable and confidential space.

Out of 735 Judges, which is the total strength of the Supreme Court and all the High Courts, only 87 are women. The problem of underrepresentation of women in the Judiciary is not limited to India; the representation of women, even in the International Court of Justice constitutes a mere 20% of the total strength of the World Court. What I find to be a refreshing gender balance and a nearly appropriate gender-ratio, has been demonstrated in the International Criminal Court which has 9 women Judges out of the total strength of 18 Judges.

The presence of women in the Judiciary serves as a catalyst for the development of a strong, independent, accessible and gender-sensitive judicial institutions; more broadly, the achievement of gender justice within society. I would also like to state that representation for women in the Judiciary is not the only need of the hour. We need to create and foster environments, within Courts and among the members of the legal fraternity which would enable women to grow intellectually and demonstrate the merit they possess. In such an atmosphere where women are accorded fair opportunity, it would naturally follow that the number of women in the Judiciary would only enhance.

The legal profession should be reflective of all the communities that justice seeks to serve. Discourse on judicial reforms in India has increasingly focussed on the need for diversity in the legal profession. One parameter of diversity is gender. While the number of women graduating from the leading law schools and working at junior levels in the legal profession is nearly equal to their male counterparts, this does not translate to equal representation at workplace or later at higher positions. Their upward mobility is hampered by systemic discrimination. Gender diversity is particularly significant in the legal profession where the presence of women plays a critical role in upholding the ideal of equality, fairness and impartiality of the justice system especially amongst disadvantaged groups.

We often find that women enter or *get into* the legal profession, but not many *get up*. The 'glass ceiling' implies the existence of an impermeable barrier that blocks the vertical mobility of women. It is important to look at three main phenomena: (I) the entry of women into the legal profession; (II) the retention of women and growth of their numbers in the profession; and (III) the advancement of women, in numbers, to senior echelons of the profession.

To this end, the requirements of women lawyers need to be recognized and provided for. These requirements may be as basic as provision of adequate sanitation and hygiene facilities in the Court premises, permission to appear in legal proceedings through video conferencing or sometimes even general acts of courtesy towards women, such as offering a chair in a crowded court room, making way for women to easily enter or exit a Court Hall, etc.

How should female lawyers confront the reality of the glass ceiling and chisel away at it until they can break through to the other side? How do women confront the motherhood dilemma? These are questions that we as a legal fraternity need to deliberate and concertedly act upon.

A longstanding obstacle to equal opportunity involves the mismatch between characteristics associated with women and those associated with professional success, such as assertiveness and competitiveness. Women still face a long-standing double standard

and a double bind. They risk criticism for being too “soft” or too “strident,” too “aggressive” or “not aggressive enough.” Further, what appears ‘assertive’ in a man often appears ‘abrasive’ in a woman. A related obstacle is that most often, women lawyers do not receive the same presumption of competence or commitment as their male colleagues. In large national surveys, between half and three quarters of women believe that they are held to higher standards than men. The problem is understandably compounded for women belonging to some other identifiable minority such as disabled women, women belonging to the LGBTQIA+ community. The performance of these groups is subject to special scrutiny, and their achievements are often attributed to ‘special treatment’ rather than professional qualifications. The force of traditional stereotypes is reinforced by other biases in decision making. People are more likely to notice and remember information that confirms prior assumptions than information that contradicts them. For example, seniors who assume that working mothers are less committed tend to remember the times they left early, not the nights that they stayed late in office. People also want to believe that their own evaluations and workplaces are meritocratic. If women are underrepresented, the most psychologically convenient explanation is that they lack the necessary qualifications and commitment.

An equally persistent problem is inadequate access to informal networks of mentoring and client development. Despite recent progress, many seniors in the profession are most comfortable supporting others who seem similar in backgrounds, experiences, and values. These barriers can become self-perpetuating. Overburdened seniors at the Bar are reluctant to spend scarce time mentoring women who they believe are “*likely to leave soon anyway*”. Women who are not supported are in fact more likely to leave. Their inability to reach senior positions then reduces the pool of women mentors and perpetuates the assumptions that perpetuate the problem.

Moving on, ensuring that the work-space is free from discrimination and violence is critical to the empowerment of women. Sexual harassment, particularly at the workplace is a gendered expression of power. Sexual harassment is a form of discriminatory conduct which hampers women’s Constitutional right to equality under Article 14 and dignity under Article 21 of the Constitution of India.

Until the late 1900s, Constitutional equality and dignity was not the lens through which a woman’s experience of sexual harassment was viewed. ***Vishakha vs. State of Rajasthan, A.I.R. 1997 SC 3011*** was therefore a visionary decision in many ways.

Sexual harassment at the workplace is a problem for which women pay a substantial and disproportionate price. Many experience both economic and psychological injuries, such as loss of employment opportunities, unwanted transfers, anxiety, depression, and other stress-related conditions. Organizations pay another price in decreased productivity and risks of legal liability.

Legal employers and bar associations must be prepared to translate principles into practice, and to hold their leadership accountable for the results. Senior lawyers in positions of influence need to build a moral and a pragmatic case for diversity, and to incorporate diversity goals into the ethos of the legal profession.

The Governments across the country can provide impetus for inclusion of qualified women lawyers in their panels by at least 30%, ensuring that work is assigned to them from across the spectrum of laws. Further, Courts across the country can appoint more women as *amicus curiae* to assist on issues of their expertise, more compulsorily, on issues concerning rights of women.

On this occasion let us all jointly reaffirm our commitment towards creating inclusive and gender sensitive legal profession and judiciary.

Developing a more diverse and inclusive profession must start well before law school. Discrimination manifests at a very young age,

and without models that show children that career pathways are open to them, the law can quickly become out of reach. Children must know at a young age that there is a pathway to a legal career.

Another aspect that needs to be addressed while seeking to embrace equity in the justice delivery system is securing access to justice. Access to Courts is an essential component of access to justice. This includes enabling litigants to overcome barriers to getting *into* Court, ensuring that appropriate treatment is meted out *within* the court-system, which would in-turn ensure that litigants obtain just outcomes *from* the legal system. In order to understand the concept of access to justice from a system-wide perspective, it is imperative to focus not only on access to the Higher Judiciary such as the High Courts or the Supreme Court, but even the District Courts. The District Judiciary too plays a key role in enabling access to justice. More so because District Courts are embedded in the local circumstances and are likely to have a more nuanced understanding of the social dynamics at play in a given dispute. It is therefore, necessary to maintain high standards within the District Judiciary, which is, in most cases the first and immediate forum accessed by litigants.

Access to justice, as I stated earlier, does not mean simply overcoming barriers to getting *into* Court. It also requires that having knocked on the doors of a Court, a litigant will receive treatment

which is consistent with his/her rights. This requires that all attitudinal barriers which would cause decline in the voluntary usage of the system, should be eliminated. Such attitudinal barriers to access include incomprehensibility and intimidating nature of court processes, callousness of court staff including judges, re-victimisation and badgering by opposing counsel, lack of certainty in court processes.

Technology provides substantial opportunities to solve equity and access issues. The COVID-19 pandemic has had a major impact on the way the justice system functions and research is emerging on the efficacy of measures put into place during this time. People can participate in virtual hearings from their homes, offices, or public libraries, removing burdens of in-court participation relating to transportation, time off work, and childcare costs. At the same time, we are also coming to understand better the contours of the digital divide and how a purely virtual engagement disadvantages certain people and communities. As we internalize the lessons we have learned to date from the pandemic, we will be better equipped to design hybrid systems with multiple on- and off-ramps, allowing court users to select options that work best for their circumstances.

The legal system catches the failures of our social system and the inequities in our country. Discussions underway within the legal system have been instrumental in identifying how we might begin to

dismantle barriers to equity. However, additional work, including education and collaboration, is needed to act on solutions that will create a truly equitable system.

Justice does not live only in courthouses. Individuals and organizations in the community are valuable justice system partners in the quest towards more equitable justice delivery. Collaborations between justice system stakeholders and community organizations can help people through upstream interventions that get closer to addressing the roots of where inequities manifest. Partnerships with communities and early educators to increase the pipeline of new, diverse generations of lawyers and judges can make longer-term changes to the makeup of the judiciary, creating a system that is truly representative of the people it serves.

In conclusion, I must state that to realise the promise of equitable justice delivery, the judiciary is to be, in every sense, a strong institution that is accessible, efficient and committed to protecting the rights of all citizens, particularly, the vulnerable.

On that note, I thank the Supreme Court Unit of the Adhivakta Parishad for inviting me to address you all this evening.

I thank you all for your kind attention.

Namaskar.