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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE UNBALANCED BENCH: GENDER INEQUALITY IN INDIAN HIGHER JUDICIARY

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ABSTRACT:

Due to the advancement of women in society, the Indian Constitution and other laws grant a number of benefits. The fundamental question, however, is whether gender neutrality is truly occurring in society. When it comes to gender neutrality, the judiciary, which is supposed to be the guardian of the people, is falling behind. A clear indication of the Indian judiciary's gender neutrality is the fact that there are currently no female Chief Justices in the country. Despite having its first female judge in 1989, the top court has only had five female judges (3.07%) out of 163 past judges. Regarding the current judges, only three of the thirty-one judges are female. In reality, this means that only once in 10 years women are represented in the Supreme Court of India. The first two female judges to be appointed in the same year were Justices Indu Malhotra and Indira Banerjee. This research article seeks to highlight the position of women in India's higher judiciary, as well as the associated disadvantages and recommendations. This research paper focuses on the appointment of Supreme Court Judges and comparison between the representation of women judges in India and USA women judges in higher Judiciary and the drawbacks of not providing equal opportunities to women Judges in the Judiciary.

KEY WORDS: Women Judges, Higher-Judiciary, Chief Justice, Appointment, Gender-Neutrality, Drawbacks.

INTRODUCTION:

India is a land of vast history. It was ruled by several people during the ages. The Status of women in every era was different. During the early Vedic period women were given equal importance in par with men. This gradually changed during the later Vedic period. After a very long time the British rule brought changes by providing education to women and making them to evolve. The women community has faced struggles to reach to this position in which they are today. India has struggled with gender biases and prejudices since its independence. The Indian judiciary does not offer a particularly different picture. India's judiciary has been striving for a more introspective approach, but progress has been slow. Recent reports highlight a significant gender imbalance in the higher courts, with women making up only 12% of the entire strength. In India, there is a focus on case backlogs, insufficient judges, and caste-based appointments, rather than promoting an inclusive judiciary with equitable representation. The higher judiciary not only resolves disputes, but also establishes policies and governing systems. In general, it should reflect the country's geographical and demographic variety. A diverse judiciary demonstrates equal representation and can generate innovative solutions by leveraging varied human resources.

THE HISTORY OF APPOINTMENT IN THE INDIAN HIGHER JUDICIARY:

The Indian Constitution establishes a unified judicial system, with the Supreme Court at the top and the High Courts below. District Courts are subordinate courts that operate under each High Court. In India, a single court system was introduced from The Government of India Act¹ implements both central and state laws. In the USA, federal laws are enforced by both the federal judiciary and the states. The state judiciary enforces the laws. In the USA, there are two separate judicial systems: one for the centre and one for the states. To summarize, India, like the US, is a federal country which has a unified judiciary and one system of fundamental law and justice. The unitary character of the judiciary is not an accident but rather a conscious and deliberate act of the Constitution makers for whom a single integrated judiciary and uniformity of law were essential for the maintenance of the unity of the country and of uniform standards of judicial behavior and independence.

The Supreme Court of India was inaugurated on January 28, 1950. It replaced the Federal Court

¹ The Government of India Act, 1935.

of India, established by the Government of India Act². Articles 124 to 147 in Chapter IV of Part V of the Constitution³, titled “The Union Judiciary,” address the establishment and constitution of Supreme Courts, as well as the appointment of judges and their powers, rights, jurisdiction, and service conditions. Articles 214 to 231 in Chapter V of Part VI⁴, titled “The High Courts in the State,” address the constitution, appointment, and conditions of the office. In India, the President appoints Supreme Court Judges “after consultation with such Judges of the Supreme Court and High Courts in the States as the President may deem necessary.”⁵. Consult the Chief Justice of India before appointing a judge other than the Chief Justice. The President appoints High Court judges in collaboration with the Chief Justice of India, the Governor of the State, and the Chief Justice of the High Court⁶.

The appointment of Supreme Court and High Court judges has been a direct challenge to the Indian judiciary, while a number of other significant issues have been posing an indirect threat to its independence. The senior most Supreme Court judge was typically appointed as India’s Chief Justice, according to a brief overview of the country’s judicial appointment history from 1950 to 1973. When Justice A N Ray replaced Justice J M Shelat, K S Hegde, and A N Grover as the Chief Justice of India in 1973, this long-standing norm was broken. The most senior judge, Justice H R Khanna, was replaced by Justice M H Beg as Chief Justice of India once more in 1977⁷. The concept of a “committed judiciary” served as the impetus for this departure from the accepted constitutional convention. These nominations brought up certain constitutional issues with potentially harmful ramifications. The concept of a dedicated judiciary had unfavorable effects and called into question the fundamental basis of India’s judiciary’s independence. According to Nani Palkhivala, “the idea of a committed judiciary was like boiling ice cream, and that the concept of a committed judiciary was an anathema.”⁸. A number of alternative models were proposed to address these issues, including the appointment of judges by an independent commission and, second, by a collegium made up entirely of judges. According to the constitutional framework, any modification to the legislation pertaining to the appointment of judges requires a constitutional amendment, which

² Ibid.

³ The Constitution of India, 1950.

⁴ Ibid.

⁵ Article 124(2) of the Indian Constitution, 1950.

⁶ Article 217(1) of the Indian Constitution, 1950.

⁷ M.P. Jain, INDIAN CONSTITUTIONAL LAW, Lexis Nexis, New Delhi, 7th edition, 2014 (Reprint), pp. 193.

⁸ Amit A. Pai, “Committing to an Independent Judiciary”, available at <http://www.livelaw.in/committingindependent-judiciary>

is a prerogative granted solely to the Indian Parliament. Because successive governments have not demonstrated a willingness to change the Constitution, they have instead been more interested in advancing the views of a dedicated court.

The progressive evolution of constitutional legislation pertaining to judge appointments in other progressive constitutional systems of several nations likewise caught the attention of the Indian Parliament. The Supreme Court of India took the initiative to amend the constitutional law on the appointment of judges through judicial legislation in the 1980s in response to these legislative and executive failures. Although the term judicial activism was adopted gradually, the Supreme Court of India did accept it in order to amend the constitutional requirement pertaining to the selection of judges. This judicial activism journey can be roughly categorised into three phases, which correspond to three significant Supreme Court of India rulings. The first stage relates to **S.P. Gupta v Union of India**⁹, the second stage relates to **Supreme Court Advocates on Record Association v Union of India**¹⁰ and finally the third stage deal with **In Re Presidential Reference case**¹¹. The Supreme Court has given different interpretation of the word 'consultation' in the above provision and devised the collegium system of appointment of Judges in India.

The collegium system has been criticised for its opaque appointment and transfer of judges, as well as corruption and nepotism within the judiciary. The recent revelation by Former Justice Markandey Katju and Justice P.D. Dinakaran is a step towards reforming the judiciary. However, the consultation process is secretive and unknown to the public. On February 22, 2000, the NDA Government of India, led by Atal Bihari Vajpayee, passed a resolution creating the National Commission to Review the Working of the Constitution (NCRWC), also known as the Justice Manepalli Narayana Rao Venkatachaliah Commission, to recommend potential changes to the Indian Constitution. In 2002, it turned in its report. The commission had suggested that a National Judicial Commission be established under the Constitution to handle the appointment of Supreme Court judges.

This is the second time an NDA administration has tried to alter the appointment process for judges with the NJAC. NJAC was one of the NDA's top priorities when it came to power with

⁹ S.P. Gupta v Union of India AIR 1982 SC 149

¹⁰ Supreme Court Advocates-on-Record Association v Union of India AIR 1994 SC 268: 1993 (4) SCC 441

¹¹ In Re Presidential Reference case AIR 1999 SC 1

a landslide majority. It was given constitutional status by quickly amending the Indian Constitution through the Constitution (Ninety-Ninth Amendment) Act 2014, which was approved by the Rajya Sabha on August 14 and the Lok Sabha on August 13. The 99th Constitutional Amendment aims to add Articles 124A¹², 124B¹³, and 124C¹⁴, which specify the makeup and duties of the National Judicial Appointments Commission, to Article 124(2) of the Constitution, which deals with the appointment of judges of the higher judiciary. The NJAC was a planned body that would have taken the role of the collegium system for appointing judges and would have been in charge of proposing to the President the appointment and transfer of judges to India's higher courts. Together with the Constitution Amendment Act, the Indian Parliament also passed the National Judicial Appointments Commission Act 2014, which established the process for the proposed six-member body to follow when appointing and transferring judges to the higher judiciary and regulating the commission's operations. Additionally, it gives Parliament the authority to pass legislation governing the makeup, duties, and protocols of the NJAC (The National Judicial Appointments Commission)¹⁵. On April 13, 2015, the NJAC Act and the Constitutional Amendment Act became operative. The legal community contends that NJAC is a ruse to subjugate the judiciary to the executive branch under the guise of a reformed collegium system. NJAC will therefore restrict the judiciary's ability to examine the executive's overreach and malicious actions. It will jeopardise the judiciary's independence, which has been essential to maintaining the public's trust in democracy. Furthermore, it is maintained that the NJAC has not established an impartial appointment process. These consist of guidelines to guarantee openness in nominations, standards for determining the appropriateness of the candidates and objective guidelines for determining meritorious candidates. Judges must also be ensured security of tenure as well as an adequate tenure period through the new mechanism.

The **Supreme Court Advocates on Record Association**¹⁶ was the initial and principal petitioner in a series of petitions that were later submitted to the SC by various individuals and organisations, claiming that the law compromised the judiciary's independence and the fundamental framework of the Constitution. By a vote of 4:1 on October 16, 2015, the SC's Constitution Bench declared the National Judicial Appointments Commission (NJAC)

¹² Article 124A - National Judicial Appointments Commission.

¹³ Article 124B- Functions of Commission.

¹⁴ Article 124C - Power of Parliament to make law.

¹⁵ Article 124C of the Indian Constitution, 1950.

¹⁶ Supreme Court Advocates on record Association & Anr V. Union of India (2016)5 SCC 1.

unconstitutional and affirmed the collegium system. As a result, the work will provide insight into India's judicial appointment process and the significant changes that have occurred since independence. It will also address the ramifications of the National Judicial Appointments Commission Act of 2014 and the 99th Constitutional Amendment Act of 2014, as well as an analysis of the National Judicial Appointments Commission's ruling. Additionally, it will offer a conceptual grasp of judicial independence and compare and contrast the judicial appointment systems of different nations. The paper also concentrates on the reforms that are needed in the present system of judge appointments in the higher judiciary in India.

REPRESENTATION OF WOMEN IN INDIAN HIGHER JUDICIARY:

As of 1 August 2024, 14 percent of sitting judges across High Courts in India are women. Just two High Courts have women Chief Justices. Currently, based on the acquired data out of 754 judges only 107 Judges are women in High Courts¹⁷.

HIGH COURT	NUMBER OF WOMEN JUDGES
Allahabad	3
Andhra Pradesh	5
Bombay	10
Calcutta	6
Chhattisgarh	1
Delhi	9
Gauhati	4
Gujarat	8
Himachal Pradesh	1
Jammu, Kashmir, Ladakh	2
Jharkhand	1
Karnataka	8
Kerala	4
Madhya Pradesh	2
Madras	14

¹⁷[Representation of women judges in High Courts has improved only by 3 percent in three years | August 2024 - Supreme Court Observer](https://www.scobserver.in/journal/representation-of-women-judges-in-high-courts-has-improved-only-by-3-percent-in-three-years-august2024/#:~:text=As%20of%201%20August%202024%2C%2014%20percent%20of,11%20percent%20in%20March%202022%20and%20June%202021.), available at <https://www.scobserver.in/journal/representation-of-women-judges-in-high-courts-has-improved-only-by-3-percent-in-three-years-august2024/#:~:text=As%20of%201%20August%202024%2C%2014%20percent%20of,11%20percent%20in%20March%202022%20and%20June%202021.>

Manipur	1
Meghalaya	0
Orissa	1
Patna	1
Punjab & Haryana	13
Rajasthan	3
Sikkim	1
Telangana	8
Tripura	0
Uttarakhand	1

TABLE.1 NUMBER OF WOMEN JUDGES IN EACH HIGH COURT

The number of female judges in each Indian High Court is plotted in Table 1. With 14 female judges out of 66, the Madras High Court (HC) has the highest percentage of female judges, followed by the Punjab & Haryana High Court with 13 out of 54, the High Court of Bombay with 10 out of 64, the Delhi High Court with 9 out of 37 judges, the Telangana High Court with 8 out of 27, the Gujarat High Court with 8 out of 29, and Kolkata with only 6 out of 45. There are just one female judge on the bench in up to eight High Courts. The Meghalayan and Tripura High Courts do not have any female judges.¹⁸

S. No	Name of Judge	Date of appointment	Date of retirement
1	Fathima Beevi	06-Oct-89	29-Apr-92
2	Sujata Manohar	08-Nov-94	27-Aug-99
3	Ruma Pal	28-Jan-00	02-Jun-06
4	Gyan Sudha Misra	30-Apr-10	27-Apr-14
5	Ranjana Desai	13-Sep-11	29-Oct-14
6	R. Banumathi	13-Aug-14	19-Jul-20
7	Indu Malhotra	27-Apr-18	13-Mar-21

¹⁸[High Court Judges: Only 99 out of 719 judges in High Courts are women, according to ETLIG findings, ET LegalWorld](https://legal.economictimes.indiatimes.com/news/litigation/justice-hima-kohli-flags-gender-bias-in-judiciary-women-judges-making-up-13-76-of-high-court-judges/114661314#:~:text=In%20an%20exclusive%20report%20by%20ET%20Legal%20Intelligence,i.e%20out%20of%20719%20judges%2C%2099%20are%20women.), available at <https://legal.economictimes.indiatimes.com/news/litigation/justice-hima-kohli-flags-gender-bias-in-judiciary-women-judges-making-up-13-76-of-high-court-judges/114661314#:~:text=In%20an%20exclusive%20report%20by%20ET%20Legal%20Intelligence,i.e%20out%20of%20719%20judges%2C%2099%20are%20women.>

8	Indira Banerjee	07-Aug-18	23-Sep-22
9	Hima Kohli	31-Aug-21	01-Sep-24
10	Bela Trivedi	31-Aug-21	09-Jun-25
11	B.V. Nagarathana	31-Aug-21	29-Oct-27

TABLE.2 LIST OF WOMEN JUDGES OF SUPRME COURT

In 73 Years of the Indian Supreme Court, there have been 268 Judges. Of these, only 11 Judges have been women. So far, the SC has not had a woman Chief Justice. The first woman at the SC was Justice Fathima Beevi, who was appointed in October 1989 she served the shortest tenure of 2.5 year. For the first 39 years of the SC, there were no women on the Bench. Between 1990 to 2000, the SC had one woman judge Justice Sujata V. Manohar. After she retired in August 1999, Justice Ruma Pal was appointed in January 2000. No other women were appointed to the Supreme Court in the 2000s.

The 2010s were relatively better for gender diversity at the Supreme Court with 5 woman Judges appointed over the decade. This includes Justices Gyan Sudha Misra, Ranjana Prakash Desai, R. Banumathi, Indu Malhotra and Indira Banerjee. In 2021 the appointment of Justices Hima Kohli, B.V. Nagarathna and B.M. Trivedi made history as the most number of women appointed in one go. When the appointment was made, the Court also made history for having 4 women Judges in the Court at once. This is the highest so far. Justice Ruma Pal served the longest tenure of 6.3 years. Justice B.V. Nagarathna will be the only other woman Judge to cross the 6 years mark. If the principle of appointing the senior most judge as the CJI is followed, Justice B.V. Nagarathna will be India's first woman Chief Justice. However, her tenure as CJI will be 36 days. The average tenure served by women judges is 4.3 years. This is 1 year less than the average tenure of all the judges at the supreme court since 1950¹⁹.

COMPARISON OF REPRESENTATION OF WOMEN JUDGES IN

¹⁹[4% of Supreme Court Judges of All Time are Women - Supreme Court Observer](https://www.scobserver.in/journal/4-of-supreme-court-judges-of-all-time-are-women/) available at <https://www.scobserver.in/journal/4-of-supreme-court-judges-of-all-time-are-women/>.

INDIA AND USA:

S.NO	COURT	INDIA	USA
1	Supreme Court	Only 2% are women Judges	44% are women judges
2	High Courts	14.21% are women	33% are women.

TABLE.3 COMPARISON TABLE OF WOMEN JUDGES IN INDIA & USA

The American court system has historically been dominated by men. Only in 1869, eight decades after the legal system was established, did Arabella Mansfield break down boundaries as the nation's first female lawyer. Women were frequently expressly prohibited from practicing law because of their gender prior to her accomplishment.²⁰ For the initial 80 years of its existence, the U.S. judicial system did not include any women, as they were not permitted or were legally barred from working within it.²¹ Nearly a century and a half after the nation's court system was established, and 59 years after Arabella Mansfield broke down boundaries as the first female lawyer in the United States, Genevieve Rose Cline became the first woman appointed to the federal bench in 1928.²² The next and highest tier of the federal judicial system is the Supreme judicial of the United States. The Supreme Court, which has the last word on the subject, may hear an appeal of a circuit court's decision. The Supreme Court has nine justices. At the moment, four of these justices are female. However, only six of the 116 Supreme Court justices in American history have been female, representing a record 5% representation. In 1981, Sandra Day O'Connor became the first female justice of the Supreme Court. She worked until 2006, when she retired. While India's Supreme Court now has just one woman on a 34-judge bench,²³ the U.S. Supreme Court is almost gender parity (4/9). About 14% of the judges in India's High Courts are women, with 109 of the 767 active judges as of March 28, 2025, being women. According to the ACS/FJC statistics, women comprise roughly four out of ten active judges in U.S. federal courts, and roughly one-third if senior judges are included.²⁴

²⁰ Iowa Department of Human Rights, Arabella Mansfield, Page 38.

²¹ U.S. Reports: Bradwell v. The State, 83 U.S. (16 Wall.) 130 (1873)

²² Women as 'Way Pavers' in the Federal Judiciary, available at <https://www.uscourts.gov/data-news/judiciary-news/2015/02/26/women-way-pavers-federal-judiciary>.

²³ Judges Roster | Supreme Court of India | India available at <https://www.sci.gov.in/judges-roster-2/>

²⁴ Justices - Supreme Court of the United States, available at https://www.supremecourt.gov/about/faq_justices.aspx

SUGGESTIONS:

The Suggestions for the improvement of representation of women Judges in the Indian Higher Judiciary are as follows:

- Improve women's representation at all levels of the judiciary, including the Supreme Court, to ensure a balanced and empathetic approach to cases concerning sexual violence.
- Judges who belong to the "old school" and may be with patriarchal outlook must be sensitised to prevent them from passing orders objectifying women in cases of sexual violence.
- Provide mandatory training to all lawyers on gender sensitisation.
- The Supreme Court must direct the collection of data to determine the number of women judges in the lower judiciary and tribunals and determine the year-wise number of senior designates by all High Courts.
- The SC Collegium must achieve at least 50% representation of women in all leadership positions.
- A strategic investment in a diverse judiciary will bring in exemplary changes in accessing justice as well.
- Family-friendly and flexible working hours and childcare support should be introduced to help women manage family responsibilities.
- To enable more women to enter legal profession the former CJI N.V. Ramana proposed reservation for girls in legal education. He said that states such as Assam, Andhra Pradesh, Telangana, Odisha and Rajasthan have benefited from such reservation as they now have 40-50% women judicial officers.

CONCLUSION:

We should ask ourselves the question that after almost 75 years there have been only nine woman judges. It tells us something about the male mindset and allows us to reflect how to carve the future of the legal profession. It is not easy to make it to Supreme Court as a women judge who has to face trials and tribulations. The phenomenal lady lawyers working in the Higher courts should be designated as High Court judges. It has happened with male lawyers then why not women lawyers. The ratio must change. It was stated by former Supreme Court Judge Indra Banerjee that when she was appointed as a Judge of the Supreme Court, she was

the 8th women Judge of the Supreme Court after 68 years of the Constitution coming into force. She also added that this was because 33 percent of the Judges are appointed from the Judiciary and 66 percent are appointed from the Bar²⁵. Even today High Courts in certain States do not have even a single women Judge. So, this is the time we step forward and make provisions to include women in the Indian higher Judiciary. This change would definitely bring modifications in the approach towards judiciary. The increase in women Judges in the Judiciary would pave way for inclined diversity and this diversity in turn would enhance the court's legitimacy and public trust.

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²⁵ Legal World.com, <https://legal.economicstimes.indiatimes.com/news/litigation/former-sc-judge-indra-banerjee-underlines-gender-imbalance-in-higher-judiciary/108625674> last visited on 26/12/2024.

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