



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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E.MBA, LL.M, Ph.D, PGDSAPM

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More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

FROM GAVEL TO GOWN: THE STATE DETERMINANTS OF FEMALE REPRESENTATION IN INDIA'S JUDICIARY

AUTHORED BY - LIPI RASTOGI,

2nd year LLB Student at O.P. Jindal Global University

India's judiciary is firmly rooted in the British colonial legacy of common law, reflecting a journey marked by tentative strides towards achieving gender inclusivity. Historically, the male-dominated judiciary was a manifestation of the societal gender imbalance, a bias deeply embedded due to the traditional tenets of common law¹.

The predominantly homogenous viewpoint of decision-making bodies, especially those in judicial capacities, has constructed barriers spanning caste, class, religion, sexuality, and most notably, gender. A feminist examination reveals multiple inherent biases, from lack of institutional support and prevailing gender stereotypes to more dire challenges like harassment². These long-standing oppressive structures and discriminations severely obstruct women judges from fostering a truly inclusive and representative judiciary in India.

Remarkably, it took nearly 66 years post the enactment of the Legal Practitioners Act, 1923, for the first woman judge to grace the benches of the apex court³.

1 Harsh Bangia 'Access to Justice for Women in India' (Manupatra) < <https://articles.manupatra.com/article-details/Access-to-Justice-for-Women-in-India>> Last accessed 2 October 2023.

2 Ritika Kunwar 'THE RARE BIRDS: DEARTH OF FEMALE REPRESENTATION IN INDIAN JUDICIARY' (Institute of legal education) <https://book.iledu.in/wp-content/uploads/2023/09/04.pdf> Last accessed 2 October 2023.

3 Legal Practitioners Act 1923, No 23 of 1923 'The Indian Women Who Fought Their Way into the Legal Profession' (The Wire) <https://thewire.in/law/women-lawyers-history-india> Last accessed 2 October 2023.

YEAR	JUDGE'S NAME	DESCRIPTION
1989	Justice Fateema Beevi	1 st Woman Judge appointed in SCI
1977	Justice Leila Seth	1 st Woman CJHC; 1 st Woman to be designated as Senior Advocate by SCI
2000	Justice Ruma Pal	Longest Serving Female Judge of SCI
-	Omana Kunjamma	1 st Female Magistrate of India
2009	Justice Indu Malhotra	1 st Woman Additional-Solicitor General of India; 1 st woman advocate directly elevated from the Bar to SCI as Judge
2017	Justice Neeru Chadha	1 st Indian-Woman Judge at ITLOS
2021	Justice Gita Mittal	1 st Indian Judge to receive Arline Pacht Global Vision Award by International Association of Women Judges
2022	-	1 st International Day for Women Judges was celebrated on 10 th March by SCI

Table-1:-Women Judges who created history in Indian Judiciary⁴

A small ripple of change was seen with the appointment of Justice Anna Chandy in 1937, who later made her way to the High Court bench in 1959⁵. The narrative took a bold turn with Justice Fathima Beevi becoming the first female judge in the Supreme Court in 1989⁶. These trailblazers marked the beginning of a slow but discernible evolution, encouraging more women to step into the legal realm.

However, the journey to a more balanced judiciary remains fraught with challenges. The current scenario, where only 107 out of 788 sitting High Court judges are women, underscores the deeply entrenched gender disparities⁷. The murky waters of the appointment processes, mixed with entrenched patriarchal attitudes, continue to pose tough challenges for women eyeing a legal career. The continuous gender disparity, right from the judiciary's inception, points to a systemic issue needing deep examination and rectification.

The persistent unfair practices in appointments and a hostile environment hindering the professional

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Ritika

Kunwar

'THE RARE BIRDS: DEARTH OF FEMALE REPRESENTATION IN INDIAN JUDICIARY' (Institute of legal education) <https://book.iledu.in/wp-content/uploads/2023/09/04.pdf> Last accessed 2 October 2023.

5 HD Thanvi 'First Woman Judge of India- Anna Chandy'(The law advice)< <https://www.thelawadvice.com/articles/first-woman-judge-of-india-anna-chandy> >Last accessed 2 October 2023.

6 Kiran Manral "I opened a closed door" — Fathima Beevi, India's 1st woman judge in SC who remains an enigma'(The Print) < <https://theprint.in/pageturner/excerpt/i-opened-a-closed-door-fathima-beevi-indias-1st-woman-judge-in-sc-who-remains-an-enigma/862301/>> Last accessed 2 October 2023.

7 R. Sai Spandana 'Only 107 of 788 Sitting High Court Judges are Women'(Supreme Court Observer) < <https://www.scobserver.in/journal/only-107-of-788-sitting-high-court-judges-are-women/>> Last accessed 2 October 2023.

advancement of female judges emphasize the lasting gender gap. Social stereotypes and professional biases further widen this divide, suggesting a crucial need for a structural and ideological overhaul.

This research aims to unravel the factors influencing the narrative of female representation in India's judiciary over the years. By dissecting the historical evolution, analysing the current scenario, and probing the biases within appointment processes, it seeks to build a comprehensive understanding of the gender dynamics at play within the Indian judicial system. Through an equity lens, this investigation also hopes to spark a dialogue on the necessary corrective measures to bridge the existing gender gap, pushing the judiciary towards a more impartial future

Objective

This research endeavours to delve into the state determinants that have shaped the narrative of female representation in India's judiciary over the years. By analysing the historical evolution, the current scenario, and the underlying biases within appointment processes, this paper aims to foster a comprehensive understanding of the gender dynamics within the Indian judicial system⁸. Through a lens of equity, the paper also seeks to provide a discourse on remedial measures necessary to bridge the existing gender gap, suggesting moving the judiciary towards a more impartial future.

The selected metrics for this study will facilitate a multifaceted analysis. Population size and sex ratio will provide a demographic insight; brain drain, discrimination, and asymmetric federalism will shed light on the political-economic scenario; education and literacy rates will help gauge the social fabric influencing the gender representation in the judiciary across these regions.

The research acknowledges the limitations pertaining to data availability, regional diversity, and the dynamic nature of the factors which might affect the accuracy and comprehensiveness of the analysis. Also, we will strictly be focussing on a few High Courts for analyzing the gender discrimination existing in the Indian Judiciary.

Each of these metrics will be analysed with respect to their influence on the proportion of female

⁸ Mr. Justice S. S. Dhavan High Court, Allahabad 'The Indian Judicial System'(Allahabad High Court) < https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.pdf> Last accessed 2 October 2023.

judges in the selected cities and regions. We will be using the data pertaining to the High Courts as examples to show the disparity. Through this methodology, the research aims to provide a comprehensive understanding of the gender disparities in the higher judiciary.

Institutional Prejudice in High Court –

Figure 1: Sitting Women Judges in High Courts

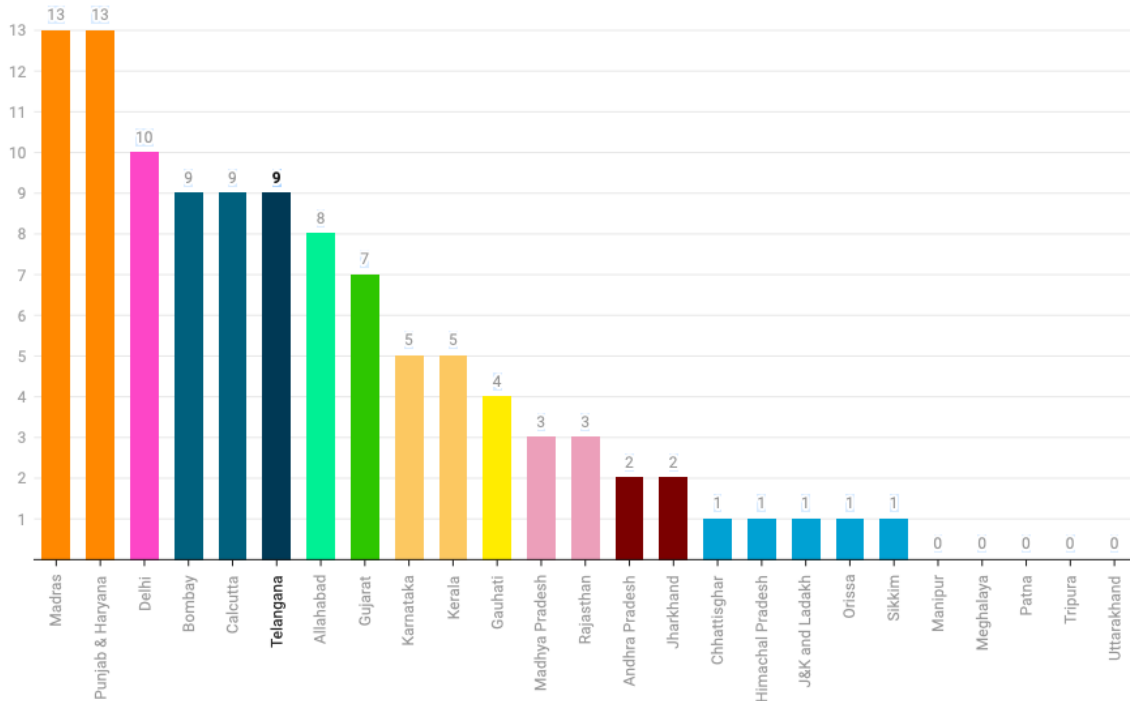


Chart: Supreme Court Observer • Source: Department of Justice, GOI • Created with Datawrapper

Figure-1⁹

The distribution of female judges across the High Courts (HCs) in India showcases a marked gender disparity¹⁰. Among all the HCs, Madras High Court leads with 13 female judges, followed by Bombay High Court with 9 Judges (See Figure- 1)¹¹. Unfortunately, the HCs of Patna, Uttarakhand, Meghalaya, Tripura, and Manipur do not have a single female judge. Additionally, the HCs of Jammu and Kashmir, Orissa, Himachal Pradesh, Ladakh, Rajasthan, Jharkhand, Sikkim, and Guwahati each have only one female judge¹². The HCs of Bombay, Punjab and Haryana, Kerala, Delhi, Calcutta,

9 R. Sai Spandana ‘Only 107 of 788 Sitting High Court Judges are Women’(Supreme Court Observer) < <https://www.scobserver.in/journal/only-107-of-788-sitting-high-court-judges-are-women/>> Last accessed 2 October 2023.

10 Ibid.

11 Ibid.

12 Ibid.

Gujarat, Allahabad, Andhra Pradesh, Madras, and Karnataka fare slightly better with average or above-average representation of female judges¹³.

The situation is even more concerning in the Supreme Court, where only 8 female judges have been appointed since its inception¹⁴. Despite women constituting 48.4% of the country's population, the legacy of gender inequality is apparent in the judicial system over the past seven decades¹⁵. Out of 245 judges elevated to the Supreme Court since its establishment, a mere 4% are women¹⁶. This glaring gender gap highlights a critical area of concern for achieving gender equality within the judiciary in India.

My Lady's Labyrinth: Overcoming obstacles in Jurisprudence

The Indian judiciary grapples with entrenched gender bias, affecting its functionality and public perception of justice. The appointment of Justice Indira Banerjee to the Supreme Court in 2018¹⁷, only the third woman judge in the apex court, highlighted a significant gender gap. Female judges often face differential treatment, including rigorous questioning and condescension from colleagues and advocates, reflecting a patriarchal mindset. They are frequently assigned cases deemed "suitable" for women, perpetuating societal stereotypes¹⁸. Gender bias extends to judgments by female judges, with their decisions sometimes attributed to their gender rather than legal expertise. Informal accounts and interviews reveal instances of harassment and discrimination, hindering their impartiality¹⁹.

Inadequate maternity leave and childcare facilities, along with insensitivity to family responsibilities, compound gender disparity in the judiciary²⁰. The lack of women in key legal forums and committees

13 'Representation of Female Judges in the Indian Judiciary' (Law Wire) < <https://lawwire.in/representation-of-female-judges-in-the-indian-judiciary/>> Last accessed 2 October 2023.

14 Gauri Kashyap '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/>> Last accessed 2 October 2023.

15 'India - Population, Female (% Of Total)' (Trading Economics) < <https://tradingeconomics.com/india/population-female-percent-of-total-wb-data.html>> Last accessed 2 October 2023.

16 Gauri Kashyap '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/>> Last accessed 2 October 2023.

17 Supreme Imbalance : Gender Disparity In Apex Court Of India LiveLaw, <https://www.livelaw.in/supreme-imbalance-gender-disparity-in-apex-court/>.

18 Gita Mittal & Dipika Jain, Women's equal representation in the higher judiciary: a case for judicial diversity in India, 47 International Journal of Comparative and Applied Criminal Justice , 185–199 (2023).

19 *Id.*

20 Aishwarya Chouhan, STRUCTURAL AND DISCRETIONARY BIAS: APPOINTMENT OF FEMALE JUDGES IN INDIA, <https://www.law.georgetown.edu/gender-journal/in-print/volume-xxi-issue-3-spring-2020/structural-and-discretionary-bias-appointment-of-female-judges-in-india/>.

diminishes their visibility and career progression. Urbanized regions, like Bombay and Delhi, attribute the rise in female lawyers and their socio-economic liberation to urbanization, enriching the pool of female lawyers available for advancement²¹. Surprisingly, the establishment year of a court doesn't align with the appointment of its first female judge, highlighting inconsistencies across states²².

Article 233 of the Indian Constitution outlines qualifications for District Judges, including a seven-year uninterrupted experience as advocates²³. This requirement disproportionately affects women who may experience career interruptions due to marriage and motherhood. The absence of provisions recognizing "sex reassignment surgery" (SRS) and hormone therapy as valid grounds for medical leave can create challenges for transgender individuals²⁴. There is also a need to consider the impact on individuals requiring mental health or post-treatment breaks, especially within disabled communities²⁵.

The early appointment of a female judge in a court doesn't guarantee a growing trend of appointing female judges²⁶. For instance, despite pioneering the appointment of a female judge, the Kerala High Court has seen only 5 female judges out of 164 since then²⁷. Transferable judicial positions pose gender-specific challenges as judges may not work in their or their spouse's place of residence, stemming from societal norms around marriage and motherhood²⁸.

In some states, the percentage of women joining the lower judiciary surpasses the stipulated 30%, debunking arguments of a lack of aptitude or skills among women²⁹. Justice Pratibha M Singh of the Delhi High Court pointed out that although women make up over half of the law school population,

²¹ *Id.*

²² *Id.*

²³ Inclusive Judiciary: A Manifestation or Reality SSC Online Blog, <https://www.sconline.com/blog/post/2023/05/13/inclusive-judiciary-a-manifestation-or-reality/>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Supra* note 20.

²⁷ A Chouhan, APPOINTMENT OF FEMALE JUDGES IN INDIA, <https://go.gale.com/ps/i.do?id=GALE%7CA634872165&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=15256146&p=AONE&sw=w>.

²⁸ *Supra* note 20.

²⁹ HC judge laments "huge disparity" in legal profession, says only 15 % of practising lawyers are women The Economic Times, <https://economictimes.indiatimes.com/news/india/hc-judge-laments-huge-disparity-in-legal-profession-says-only-15-of-practising-lawyers-are-women/articleshow/102447993.cms?from=mdr>.

only 15% of active lawyers are women³⁰. Domestic hurdles, including the difficulty of balancing marriage with a legal career, or transitioning to corporate law after marriage, contribute to this gender imbalance³¹. Instances of sexual harassment also significantly amplify gender disparity within the judiciary, often downplayed or unnoticed in male-dominated circles. One recent example involved an Additional District and Sessions Judge in Madhya Pradesh who resigned due to sexual harassment allegations against a former Portfolio/Administrative Judge of the Madhya Pradesh High Court³². A bench consisting of L Nageswara Rao and BR Gavai determined that her resignation could not be considered voluntary and ordered her reinstatement as an Additional District & Sessions Judge³³.

Feminist Perspectives on Judicial Diversity: An Exploration through Difference and Equality Theories

The legal realm often presents daunting challenges for women, especially those from marginalized communities. Amidst discourse on judicial diversity, feminist theories like "Difference" and "Equality" theories have emerged as significant frameworks to examine the potential impact of women's increased representation in judiciary.

Difference Theory, spearheaded by Carol Gilligan³⁴ through her "Different Voices Theory" (1992), posits a distinct moral reasoning pattern between genders. While men incline towards an "ethic of justice," women often embrace an "ethic of care," prioritizing relational responsibilities over autonomous rights. Shuai Wei³⁵ resonates with this theory, emphasizing how female judges in Asia frequently employ mediation in criminal law contexts, traditionally seen as masculine domains. This mediation-centric approach, valuing reconciliation and victim compensation, particularly manifests in sensitive cases like rape, demonstrating a gendered empathetic stance towards resolution over retribution

³⁰ *Id.*

³¹ *Id.*

³² Harassed, transferred, left with no choice but to resign: Read how this MP District Judge won half the battle in alleged sexual harassment case as SC orders her reinstatement SSC Blog, <https://www.sconline.com/blog/post/2022/02/11/harassed-transferred-left-with-no-choice-but-to-remain-read-how-this-mp-district-judge-won-half-the-battle-in-alleged-sexual-harassment-case-as-sc-orders-her-reinstatement/amp/>.

³³ *Id.*

³⁴ Gilligan, C. (1993). *In a Different Voice: Psychological Theory and Women's Development*. Harvard University Press, <https://doi.org/10.2307/j.ctvjk2wr9>.

³⁵ Wei, S. (2021). "Gendered Justice in China: Victim–Offender Mediation as the 'Different Voice' of Female Judges." *International Journal of Offender Therapy and Comparative Criminology*, 65(4), 346–372, <https://doi.org/10.1177/0306624X20936202>.

A concrete manifestation of substantive representation is witnessed through Justice Leila Seth's endeavor in the 15th Law Commission of India (1997-2000). Her recommendations led to the amendment of the Hindu Succession Act (1956) in 2005, enabling daughters to inherit ancestral property equally, marking a substantial stride towards gender parity in property rights.³⁶

Conversely, Equality Theory propounds that a judiciary mirroring societal gender composition enhances objectivity, leading to gender-sensitive judgments and processes.³⁷ This theory suggests that recognizing and addressing structural biases can dismantle pervasive discrimination. For instance, in the U.S., female judges show a higher propensity to challenge laws affecting gay rights, indicating a nuanced comprehension of gender roles and sexual orientation.³⁸

The 2014 report by the International Commission of Jurists³⁹ underscores the importance of marginalized identities, especially women, being represented in the judiciary. It emphasizes that a higher number of women judges not only encourages women to seek justice and assert their rights but also enriches judicial reasoning by bringing diverse perspectives to the table. A notable example of the impact of diverse representation is the 2018 case of *State (Government of NCT of Delhi) v. Pankaj Chaudhary*,⁴⁰ where an all-woman Supreme Court bench, Justices R. Banumathi and Indira Banerjee, highlighted a woman's right to refuse sexual intercourse despite certain arguments against her.

The presence of women judges also plays a crucial role in cases of gender violence, as demonstrated in *Virender v. State of NCT of Delhi*⁴¹ in 2009. Justice Gita Mittal's involvement in this case was instrumental in addressing procedural barriers faced by victims, especially minors, seeking justice. She introduced guidelines for reporting sexual assault and initiated the Vulnerable Witness Court

³⁶ The Wire Staff. "Leila Seth-Mother in Law, Breaker of Glass Ceiling, Deliverer of Justice." *The Wire* (May 6, 2017), <https://m.thewire.in/article/law/leila-seth-several-judicial-firsts-credit-passes-away/amp>.

³⁷ Aura-Odhiambo, R. (2018). "Gender Equality: Integration of Women in the Judiciary in Kenya." In W. M. Kabira, P. K. Mbote, M. Kavina, & A. Meroka (Eds.), *Changing the Mainstream: Celebrating Women's Resilience*, 93–122. African Women's Studies Centre, <https://www.ielrc.org/content/w1801.pdf>.

³⁸ Smith, F. O. (2005). "Gendered Justice: Do Male and Female Judges Rule Differently on Questions of Gay Rights?" *Stanford Law Review*, 57(6), 2087–2134, <https://www.jstor.org/stable/40040241>.

³⁹ International Commission for Jurists. (2013). *Women and the Judiciary*. Geneva Forum Series, <https://www.icj.org/wp-content/uploads/2014/10/Universal-Women-and-Judiciary-Gva-For-1-Publications-Conference-Report-2014-ENG.pdf>.

⁴⁰ *State (Govt. of NCT of Delhi) v. Pankaj Chaudhary*, (2018) 6 SCC.

⁴¹ *State (Govt. of NCT of Delhi) v. Pankaj Chaudhary*, (2018) 6 SCC.

Project in Delhi's trial courts, creating a more supportive environment for vulnerable witnesses. Justice Mittal later expanded these efforts through nationwide training and sensitization programs for judicial officers, legal professionals, and court staff in Vulnerable Witness Deposition Centers. Overall, the inclusion of women judges promotes fairness and empathy in the judicial system, particularly in cases involving gender violence.

In India, Justice R. Banumathi's verdict in *Mukesh v. State for NCT*⁴² of Delhi underlined gender sensitization's paramountcy in combating gender-based crimes, emphasizing a proactive, societal attitudinal shift over merely punitive measures.

The United Nations Development Programme echoes similar sentiments, endorsing gender-balanced representation in judicial roles aligning with Sustainable Development Goals⁴³. A diverse bench can foster a broader policy perspective, challenging conventional patriarchal norms within judicial domains.

However, the assumption of women judges necessarily exhibiting differential judicial behaviour is debunked in cases like *Indian Young Lawyers' Association v. The State of Kerala (2018)*.⁴⁴ Justice Indu Malhotra's dissent showcased a nuanced religious rights interpretation over gender equality, thereby challenging simplistic gender-based assumptions on judicial attitudes.

Moreover, caste dynamics further complicate women's judicial representation, with implicit biases favouring certain castes in judicial appointments. The paltry representation of Dalit women among appointed judges starkly portrays the gender-caste intersectionality in judicial diversity.⁴⁵

The discourse on judicial diversity transcends a mere numbers game. It interlinks with broader societal structures and biases, necessitating a multifaceted approach towards fostering an inclusive

⁴² *Mukesh v. State of NCT of Delhi*, (2017) 6 SCC 1.

⁴³ UN Stats. SDG Indicator Metadata. (2022). UN Stats. 16.7.1(c), <https://unstats.un.org/sdgs/metadata/files/Metadata-16-07-01c.pdf>.

⁴⁴ *Indian Young Lawyers' Association v. The State of Kerala*, 2018 (8) SCJ 609.

⁴⁵ Saxena, N. (2021). "Disproportionate Representation at the Supreme Court: A Perspective Based on Caste and Religion of Judges." *Bar and Bench*, <https://www.barandbench.com/columns/disproportionate-representation-supreme-court-caste-and-religion-of-judges>. / Shah, R. (2021). "Top Upper Caste Judges in India 'Biased' Against Dalit Colleagues: US Bar Association Report." *The Leaflet*, <https://theleaflet.in/top-upper-caste-judges-in-india-biased-towards-dalit-colleagues-us-bar-association-report>.

legal ecosystem. Both Difference and Equality Theories offer valuable insights into realizing a judiciary that reflects the gendered and marginalized experiences, hence promoting a more equitable justice system.

Behind the Bench: Unpacking Judicial Appointments

In 2021, the sitting CJI, NV Ramana addressed these pressing concerns and strongly advocated for reservation as a measure to ensure that 50% of the judiciary consists of women.⁴⁶ However, it is important to note that policy and legislative measures can only go so far. The appointment of judges in India has been a matter of heated debate for decades. In the early days of the Indian Supreme Court, the executive branch held primary authority over these appointments. However, in 1993, a new system, known as the collegium system, was introduced by the SC. Under this system, the CJI and senior SC judges took charge of appointing judges to both the Supreme Court and the High Courts.⁴⁷

In 2014, significant changes were made when Parliament amended the Constitution and enacted a law to revamp the appointment process. This involved the creation of the National Judicial Appointments Commission, comprising the CJI, the two most senior judges of the Supreme Court after the Chief Justice, the Union Law Minister, and two eminent individuals chosen by a committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha, and the Chief Justice. Most significantly, at least one of the eminent persons was required to be from marginalized communities or a woman. However, this legislative amendment and law were challenged before the Supreme Court in the case of *Supreme Court Advocates on Record Association v. Union of India (Judges IV)*.⁴⁸ The Supreme Court, by majority opinion, struck down the amendment, citing the potential compromise of judicial independence due to executive interference.

The collegium system has been heavily criticised for lack of transparency and possible disregard for merit and seniority.⁴⁹ Especially in a system and country plagued by a patriarchal mindset, it gives rise to concerns of gatekeeping positions of power from women. It is worth noting that both the pre-collegium and collegium systems have fallen short in promoting gender diversity. Given the changing

⁴⁶ Scroll Staff, Chief Justice NV Ramana raises concerns about lack of women among High Court judges, SCROLL, (Mar 11, 2022), <http://surl.li/lrzse>.

⁴⁷ Aparna Chandra et al, From Executive Appointment to the Collegium System, 51 JSTOR 273, 273-289 (2018).

⁴⁸ The Fourth Judges Appointments Case, (2016) 5 SCC 1.

⁴⁹ Legal Correspondent, More deserving and suitable: Collegium, THE HINDU, Apr 27, 2018, at 3.

social landscape and the increasing presence of women in the legal profession, the absence of equal representation of women in the judiciary following the introduction of the collegium system is now more difficult to justify compared to the period before its inception. Furthermore, the path to the Supreme Court seems to have become more challenging during the collegium era, with judges typically spending more time in private practice and on the bench compared to judges appointed before the collegium system was established.

Recently, acknowledging the concerns of opacity surrounding the collegium system, the Court conducted a subsequent hearing and invited input from the general public regarding necessary reforms for the collegium system. While the Court ultimately left the decision on finalizing the workings of the collegium to the Government in consultation with the collegium (a matter still pending resolution), it expressed the view that reforms to the collegium should prioritize defining eligibility criteria for appointments, establishing a transparent decision-making process, creating a permanent secretariat to assist the collegium in improving the management of the appointments system, and instituting a mechanism to address complaints against individuals under consideration for appointment, among other issues.⁵⁰ These reforms essentially echo the principles that were agreed upon as a result of the *Three Judges' Cases*.⁵¹ While these cases do not directly address the appointment of female judges, they attain relevance in this context because they collectively emphasize judicial independence, the importance of appointing judges based on merit, integrity, and competence rather than political considerations, a transparent and accountable process for judicial appointments; and non-discrimination.

Starting from October 2017, the Supreme Court has adopted a new practice of publishing the decisions made by the collegium on its official website. These documents typically offer a broad explanation of the reasons behind recommending an individual for a Supreme Court appointment. However, they do not delve into the precise details or supporting evidence that underpins these recommendations.⁵²

⁵⁰ Aparna Chandra, *supra* note 47.

⁵¹ The First Judges Appointments Case, (1981) Supp. SCC 87; The Second Judges Appointments Case, (1993) 4 SCC 441; The Third Judges Appointments Case, (1998) 7 SCC 739.

⁵² Aparna Chandra, *supra* note 47.

In contrast to the higher judiciary's obscure appointment process, the lower judiciary has a clear merit-based approach to the intake of judges. Some states have implemented state-specific reservation policies in the entrance examination-based recruitment process. This is probably why the lower judiciary tends to attract more women at the initial level; and explains how several states, such as Assam, Andhra Pradesh, Telangana, Odisha, and Rajasthan have seen a substantial increase in female judicial officers, reaching up to 40-50%. However, implementation of reservation policies is notably absent in the High Courts and the Supreme Court. The stark discrepancy in the consequent representation of female judges in the lower and higher judiciary is evident through a recent issue that arose wherein the Supreme Court Collegium recommended 192 candidates for High Court positions, with only 19% of them being women. Out of the 37 women recommended, unfortunately only 17 have been appointed to date.⁵³

Courting Equality: The Road Ahead for Female Judges

Achieving gender equality in the Indian judiciary necessitates a multifaceted approach that includes addressing institutional barriers, biases, and enforcing objective appointments. Some experts advocate for implementing horizontal reservation for women⁵⁴ in the superior judiciary while maintaining merit, which also aligns with SDG Goals 5 and 16 - advocating for gender equality and inclusive decision-making. India might also borrow inspiration from the South African model which follows a fully transparent appointment process.⁵⁵

Another concrete step that would aid in uniformity and cohesiveness is the establishment of All India Judicial Service (AIJS), which is supported by Article 312 of the Constitution. The constitutional provision enables creation of the AIJS at District Judge level. However, due to divergence of opinion among the State Governments and among the High Courts at present, no headway has been made on the constitution of such a Service.⁵⁶

Mending the system would also include overhauling the current infrastructure of the judiciary – fixing issues such as inaccessible courts; crowded and poorly ventilated courtrooms in dilapidated buildings;

⁵³ Sumathi Chandrashekar et al, Breaking through the Old Boys' Club, 55 ECO. & POL. WEEKLY 23, 23-28 (2020).

⁵⁴ Express News Service, CJI bats for 50% women's reservation in judiciary, INDIAN EXPRESS, Sep 26, 2021 at 2.

⁵⁵ Inclusive Judiciary: A Manifestation or Reality SSC Online Blog, <https://www.sconline.com/blog/post/2023/05/13/inclusive-judiciary-a-manifestation-or-reality/>.

⁵⁶ Ministry of Law and Justice, "All India Judicial Service", Posted On: 24 MAR 2023 6:20PM by PIB Delhi.

and inadequate washroom facilities among others. Of the 6000 trial courts, nearly 22% do not have ladies' washrooms. The current Court Complexes have been more inclusively reimagined by ex-CJI Ramana's proposed National Judicial Infrastructure Corporation.⁵⁷

The behavioral workings of courtrooms must also be transformed. From anecdotal experience, those familiar with the workings of the legal system are aware of clients' preference for male advocates and judges' biased opinions of female advocates. Both create hindrances in the professional trajectories of female advocates and reduce their chances of breaking into the judiciary.⁵⁸

Further, the elevation of women judges from subordinate judicial services to higher courts is also influenced by factors like age and family responsibilities. Article 233's stipulation of 7 years continuous practice must be modified to accommodate the requirements of so many female advocates who do not want to sacrifice their personal lives for their legal career. This would require gender mainstreaming in policy development, providing maternity leave, and promoting a work-life balance through a feminist lens.⁵⁹

Additionally, Justice Sridevan's application of CEDAW guidelines underscores the importance of gender sensitization training, suggested by Sanyal and Chaudhary for both judges and lawyers, which could be integrated into the legal education curriculum. Eminent lawyers Jaising and Sonavane have also emphasized eradicating sexist language and enhancing accountability while advocating for women's power positions to significantly bolster female representation.⁶⁰

In a nutshell, the push for change requires the willingness and coordination of all stakeholders in the legal fraternity. It is heartening to see positive steps in this regard; prominent among which is J. Ramana's ardent support for the cause. Drawing inspiration from Marx, he announced, "If giving women their due share is a revolution, I would be very happy to be branded as a revolutionary. I whole heartedly welcome such a revolution."⁶¹

⁵⁷ Scroll Staff, Chief Justice NV Ramana raises concerns about lack of women among High Court judges, SCROLL, (Mar 11, 2022, 09:27 am), <http://surl.li/lrzse>.

⁵⁸ Sumathi Chandrashekar et al, Breaking through the Old Boys' Club, 55 ECO. & POL. WEEKLY 23, 23-28 (2020).

⁵⁹ Shruti Sundar Ray, The Higher Judiciary's Gender Representation Problem, ARTICLE 14 (Aug 31, 2020, 9:00 AM), <https://www.article-14.com/post/the-higher-judiciary-s-gender-representation-problem>.

⁶⁰ Gita Mittal & Dipika Jain, *Women's equal representation in the higher judiciary: a case for judicial diversity in India*, 47 INTERNATIONAL JOURNAL OF COMPARATIVE AND APPLIED CRIMINAL JUSTICE, 185-199 (2023).

⁶¹ Express News Service, CJI bats for 50% women's reservation in judiciary, INDIAN EXPRESS, Sep 26, 2021 at 2.