
GENDER DISPARITY IN HIGHER JUDICIARY: A BLOW TO GENDER EQUALITY

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ABSTRACT

Even after gaining independence 75 years ago, gender prejudice and preconceived beliefs persist in India. Nonetheless, the Indian judiciary has effectively demonstrated via its seminal rulings that discrimination against women would not be accepted under any circumstances. Even more startling is the fact that the organization that defends women's freedoms and rights was unable to achieve systemic gender parity. As a developing nation, we have made many note-worthy developments of which women are equal contributors. The Constitution of India promotes equality and freedom and while having equal access to education and entering the legal field, fewer women as compared to men are really able to advance to the higher courts—that is, the Supreme Court and the High Courts. The author has referred to the data available on the official website of Department of Justice to provide with the latest numbers. The article focusses on the factors leading to such gender disparity and attempts to find the reasons that have led to the underrepresentation of women in the higher courts.

Keywords: Gender disparity, gender equality, higher judiciary, Supreme Court, women judges

“In a healthy democracy, the judiciary must be a mirror of the whole society.”

-Justice Prabha Sridevan¹

INTRODUCTION

As one of the world's biggest democracies, India is characterised by diversity, with women's inclusion being one of its most important components. We have entered times where men and women have become equal contributors in the society.

India's legal system is divided into three tiers: the district and taluka courts in each state are referred to as the "subordinate" or "lower" judiciary, while the Supreme Court and high courts make up the "higher judiciary." The under-representation of women in the legal profession has been addressed recently, and statistics indicates that female solicitors have performed on par with, if not better than, their male counterparts. In fact, several have fared better on judicial services exams than their male counterparts. Furthermore, as it encourages social and legal/constitutional multiplicity as well as new forms of creativity, it is clear that having female justices on courts is a constitutional benefit.²

The 10th of March was designated as the International Day of Women Judges by the UN General Assembly on April 26, 2021. It was requested of the member nations to encourage women's equal involvement in the judiciary at all levels. The purpose of commemorating this day was to advance women's empowerment and gender equality.³ The goal was to make the judiciary more accessible and equitable by offering a variety of gender perspectives and being more inclusive and varied.

Giving women equal visibility and integrating the gender perspective are key components of engaging women in the judiciary. As women judges are better representative of society as a whole, the public is more likely to trust and confidence them because they offer a diversity of opinions and reasons to the court. It incorporates a range of social circumstances and

¹ Justice Prabha Sridevan is a retired judge, Madras High Court from 2000 to 2010.

² Upendra Baxi, “Women in Judiciary: From Raw Deal to New Deal?” *India Legal Live*, November 17, 2018, available at: <https://indialegalive.com/viewpoint/women-in-judiciary-from-raw-deal-to-new-deal/> (last visited Sept. 18, 2024)

³ UNODC, “International Day of Women Judges” available at: <https://www.unodc.org/ji/en/events/international-day-of-women-judges.html> (last visited on Sept. 18, 2024)

experiences that must be acknowledged and valued.⁴ The presence of more women in the judiciary can guarantee that judges handle situations with greater empathy and balance. For young girls who aspire to work in this sector, witnessing women participate in significant decision-making can be a great source of encouragement. For the purpose of research and the data mentioned in the article, the author has referred to latest facts and statistics as given on the official website of Department of Justice.⁵

PRESENT SCENARIO

The 2030 Agenda for Sustainable Development, which was adopted by the UN in 2015, established 17 Sustainable Development Goals. Goals 5 and 16 in particular address the worldwide duty of having gender equality and women's representation in public institutions, such as the judiciary.⁶ Achieving equality for women and judges in terms of representation should be the ultimate goal.

South Asian countries still show underrepresentation of women. Across the area, women account for fewer than 10% of judges. Women make up fewer than 2% of Pakistan's superior judiciary and less than 15% of its subordinate judiciary. Similarly, less than a tenth of Nepal's attorneys and judges are women. Only 14% of India's high court judges are women.⁷ Latin America is home to a sizable number of female lawmakers with 36.8%, which is higher than the world average of 26.7 percent. While in the Middle-East, women hold just 18.1 percent. In European Parliament, women hold 31.4 percent of seats. Interestingly, there are disparities even within the same continent: women hold 27.2 percent of seats in Sub-Saharan Africa whereas only 17.1 percent do so in North Africa.⁸

⁴ Ayesha Malik, "The Importance of Women in the Judiciary to Integrate the Gender Perspective and Bring Equal Visibility" *available at*: <https://www.unodc.org/dohadecaration/en/news/2021/152/the-importance-of-women-in-the-judiciary-to-integrate-the-gender-perspective-and-bring-equal-visibility-.html#:~:text=The%20choice%20of%20words%2C%20or,well%20represented%20on%20the%20bench.> (last visited Sept. 16, 2024)

⁵ Department of Justice, *available at*: <https://doj.gov.in/>

⁶ United Nations Sustainable Development Goals, *available at*: <https://www.un.org/sustainabledevelopment/development-agenda/>

⁷ Rida Tahir, "The gender gap in South Asia's judiciary is growing - here's why we need to close it," 10th January, 2024, *available at*: <https://www.weforum.org/agenda/2024/01/gender-gap-south-asia-judiciary-justice/> (last visited on Sept. 22, 2024)

⁸ Vanilda Souza Chaves, Luisa Fernanda Cervantes Macias, Fernanda Ribas, Joni Lovenduski, Minna Cowper-Coles, "Representing Women in Latin America" April, 2024, *available at*: <https://www.kcl.ac.uk/giwl/assets/representing-women-in-latin-america.pdf> (last visited on Sept. 20, 2024)

The World Economic Forum defines male leadership as a collection of masculine characteristics linked with effective leadership positions and related to masculinity.⁹

This concept is described as “Male Default”.¹⁰ This refers to a worldview that views the experiences of men as the standard by nature. It denigrates women's experiences and contributions and considers the public sphere as a man's realm. This leads to male-centric solutions that ignore women's concerns and present legislation as token acknowledgements of their achievements.

REPRESENTATION OF WOMEN IN HIGHER JUDICIARY

A diverse bench promotes fairness, equality, and impartiality, leading to increased public trust in the court. The representation of women on the Supreme Court has likewise been quite unsatisfactory. Justice Fathima Beevi became the first woman judge in 1989, over four decades after the Supreme Court was established. She was also the first Muslim judge and the first woman to serve as a Supreme Court justice in Asia. Since then, just ten women have made it to the Supreme Court.¹¹

This calls into question if the superior judiciary is still a man's world. The dissatisfaction stems from the fact that it took over 75 years for female representation in the Supreme Court to reach 4%. The appointment of Justice Hima Kohli, Justice Bela Trivedi and Justice B.V. Nagarathna to Supreme Court in 2021 became a historic moment as along with Justice Indira Banerjee, it was for the first time the Supreme Court had 4 women Justices at once.¹²

The Supreme Court's sanctioned strength is 34, which includes the Chief Justice of India. The Supreme Court currently has 33 judges, with just two women. The number was decreased from three to two with the retirement of Justice Hima Kohli on August 30, 2024, after three years in

⁹ Silvia Wiesner, “The male blueprint: What it is — and how it stops women from reaching the C-suite” available at: <https://www.weforum.org/agenda/2024/03/the-male-blueprint-what-is-it-and-how-does-it-stop-women-from-reaching-the-c-suite/> (last visited on Sept. 18, 2024)

¹⁰ Caroline Criado Perez, *Invisible Women: Data Bias in a World Designed for Men* (Chatto & Windus, Great Britain, 2019)

¹¹ Gauri Kashyap, “Gender Diversity at the Supreme Court of India” *Supreme Court Observer*, 13th September 2024 available at: <https://www.scobserver.in/75-years-of-sc/gender-diversity-at-the-supreme-court-of-india/#:~:text=In%20the%20last%2075%20years,woman%20judge%20at%20the%20court.> (Last Visited on Sept. 20, 2024)

¹² Mihir R, “Woman SC Judges Have Shorter Tenures than Male Judges” *Supreme Court Observer*, 30th September, 2021 available at: <https://www.scobserver.in/journal/woman-judges-at-the-supreme-court-have-below-average-tenures/> (last visited on Sept. 20, 2024)

the Supreme Court.¹³ Whereas, the position of Chief Justice of India is still devoid of a female. This is set to change with Justice B.V. Nagarathna who is going to be the first woman Chief Justice of India in 2027, but her tenure as CJI shall be only 36 days.¹⁴

In High Courts

The sanctioned strength in High Courts is 1,114 whereas the current operating strength is 749. Currently, 107 women are working as High Court Judges and only 2 states, that is Gujarat and Uttarakhand, have women as High Court Chief Justices. States of Meghalaya and Tripura still do not have any women judges in their High Courts.¹⁵ Justice Anna Chandy became the first female judge in history in 1937. 40 years later, Justice Leila Seth entered the High Court. Each appointment of a woman judge at that time was historic as it was an uncommon sight. Justice Seth also became the first female Chief Justice of a High Court in 1991, thirteen years after she was appointed as a judge on the High Court.¹⁶

The qualifications for appointing judges are determined by official constitutional regulations as well as unofficial conventions. The Supreme Court and High Court use the Collegium system for the appointment and removal of justices. The Constitution is not its foundation. Rather, it has changed as a result of Supreme Court rulings. The appointment and transfer of judges is recommended by the Chief Justice of India (CJI) and the four seniormost Supreme Court justices. The Constitution states that the following people may be nominated to the Supreme Court as judges: either a) five-year-serving high court judges, b) ten-year-serving high court solicitors, or c) distinguished jurists in the President's estimation.¹⁷

In case of High Court, the Chief Justice of the court and the two most senior justices serve as the leaders of the Collegium. High court judges are nominated either via the bar or through judicial service. That is to say, two categories of people can be appointed to the position of

¹³Department of Justice, List of Supreme Court Judges, *available at*: <https://cdnbbsr.s3waas.gov.in/s35d6646aad9bcc0be55b2c82f69750387/uploads/2024/09/20240902119201310.pdf>

¹⁴ *Supra* note 13

¹⁵ Department of Justice, List of High Court Judges, *available at*: <https://doj.gov.in/list-of-high-court-judges/>

¹⁶ Gauri Kashyap, "Women in the Judiciary- Have we Come Far from the 30s?" *Supreme Court Observer* 23rd July, 2021 *available at*: <https://www.scobserver.in/journal/women-in-the-judiciary-have-we-come-far-from-the-30s/> (last visited on Sept. 19, 2024)

¹⁷ The Constitution of India, art. 124(3)

judge of high court: judicial officers with ten years of experience, or high court attorneys with ten years of experience.¹⁸

Higher judiciaries are more likely to choose practicing attorneys. Although it might be claimed that women can also participate in the bar selection process, spending a lot of time in courts makes it clear that gender prejudices exist in legal practice there as well. The first female judge to be directly elevated from the bar to the bench was Indu Malhotra J. Many in the legal community saw this action as shattering a significant glass ceiling.¹⁹ The government may also protest to the Collegium's decisions and request further information, but if the Collegium selects the same candidates again, the government will be forced to appoint them. Several questions have been raised regarding the working and opacity of the collegium. To address these issues, The National Judicial Appointments Commission (NJAC) was created in 2014. But the same was declared unconstitutional and nullified by five-judge Bench.²⁰

REPRESENTATION OF WOMEN IN LOWER JUDICIARY

The sanctioned strength for subordinate judiciary is 25,511, however the operating strength is 19,761. Out of this, 6696 are women judges, accounting for 33% of lower judiciary, a number much higher than the superior courts.²¹ One of the main reasons of the increased proportion of women in lower courts is that recruitment is through competitive entrance examinations. For women serving in the lower courts, some states offer quota. In addition to reservations, several states offer age relaxation for women; however, they are horizontal in nature and only apply to women who are residents of their home state. Each state has its own judicial service rules for recruitment process framed by the governor²². The entrance examination generally allows fresh graduates to apply for the post of Civil Judge (Junior Division) and, by promotion can be appointed as Civil Judge (Senior Division). About 75% of district judges are either promoted internally through a limited competitive examination or merit-cum-seniority, and 25% are chosen directly from among advocates or pleaders who have practiced continuously for at least

¹⁸ The Constitution of India, art. 217(2)

¹⁹ Uday Shankar, Srichetha Chowdhury, "Representative Judiciary in India: An Argument for Gender Diversity In the Appointment of Judges in The Supreme Court" *Indian Law Institute Law Review* (2019)

²⁰ *Supreme Court Advocates-on-Record Association v. Union of India* (2016) 5 SCC 1

²¹ Department of Justice, Dashboard, *available at*: https://dashboard.doj.gov.in/sanctiondata/working_strength (last visited on Sept. 22, 2024)

²² The Constitution of India, art. 309

seven years through a high court examination.²³

REASONS FOR LOWER REPRESENTATION

India has struggled with gender biases and prejudice since its independence. The Indian judiciary does not offer a particularly different picture. The concept of creating an all-reflective judiciary has recently emerged on India's judicial horizon, but sculpting a new India has been 'an uphill endeavour operating at a slow and meandering pace'.²⁴

Women have made significant contributions in all fields, but are still struggling to establish a permanent foothold in the legal profession persists.²⁵ Several factors have combined to bring about this gender parity in the judiciary.

1. The existing patriarchy in the judiciary poses a major threat to woman's participation. In her autobiography, "On Balance", Justice Hima Kohli stated that the Supreme Court functions similarly to the old boys' club. The first female chief judge of a high court, judge Leila Seth, wrote about the difficulties faced by women in a system dominated by males. She needed to maintain a balance between being stern and gentle, avoid making too many mistakes, and avoid making offensive or sexist remarks²⁶. This suggests that there may be some issues with the system that prevent women from succeeding. Senior advocates and judges share their experiences about working in a profession dominated by the males and patriarchy. While working they often came across colleagues who were either condescending or patronising. Women are judged differently for their mistakes and their confidence is viewed as arrogance and deemed to be rude.²⁷
2. Gender based discrimination continues despite the changing scenario. Women judges frequently encounter gender prejudice and workplace harassment, as well as sexist

²³ Sumathi Chandrashekar, Diksha Sanyal, Shreya Tripathy, Tarika Jain, "Breaking through the Old Boys' Club

The Rise of Women in the Lower Judiciary" 55 *Economic & Political Weekly* (2024)

²⁴ *Supra* note 2

²⁵ Upendra Baxi, "The Feminisation of the Bar" *India Legal Live*, September 19, 2020 available at: <https://indialegalive.com/top-story/the-feminisation-of-the-bar/> (Last visited on Sept. 15, 2024)

²⁶ Khadija Khan, "Does the Indian judiciary have a 'patriarchy problem'?" *The Indian Express* 26th November, 2023 available at: <https://indianexpress.com/article/explained/explained-law/indian-judiciary-fathima-beevi-women-justices-9041769/> (last visited on Sept. 16, 2024)

²⁷ Soni Mishra, "The Sexist Bar" *The Week* (2016), available at: <https://www.theweek.in/theweek/cover/gender-discrimination-in-judiciary.html> (Last Visited on Sept. 16, 2024)

language and the benches' implicit acceptance of it. Men's opinions are generally given more value and importance than the women, even if both have said the same thing. These factors create a hostile and unfavourable work environment for women, particularly if they come from underprivileged backgrounds. There is no level playing field for women to grow in higher judiciary.²⁸

3. In India, courts were only developed with the social and infrastructure needs of non-disabled upper caste males. With the number of women increasing in the courts, it has been observed that the courts lack adequate amenities and the infrastructure is not female friendly. There are no proper restrooms, nursing rooms, or sanitary product machines in the courts. Courts lack dignified working conditions for women, especially for young women.²⁹
4. Court routines are of demanding nature which require lengthy working hours, and women have to face difficulties in juggling their personal and professional obligations. As a result, women find it more difficult to develop and advance in their jobs. The ascent of women's achievement makes it more challenging for them to manage work and life. A Justice B.V. Nagarathna said in an interview that women frequently leave their positions during their prime phase to raise children and get married³⁰. This phenomenon is known as Leaking pipeline phenomenon which basically means many working women leave their jobs in the middle of their careers due to personal responsibilities. Conventional gender norms normalize women leaving their jobs. This trend can also be seen in education. Even with 33% of females entering the legal field,³¹ only a few make it to the top. The dropout rates increase as we go above the ladder and are reduced to minimal numbers on reaching the higher levels.
5. The recruitment criteria also create hindrance. Lawyers that fulfil the criteria of minimum time period become eligible for elevation to the bench. Because of the societal obligations of marriage and motherhood, women frequently fall short of the

²⁸ Kanu Sarada, "Chief Justice on gender imbalance in judiciary: No level playing field", *India Today* 31st August, 2024 available at: <https://www.indiatoday.in/law/story/chief-justice-of-india-dy-chandrachud-women-judges-lawyers-judiciary-justice-hima-kohli-2591369-2024-08-31> (last visited on Sept. 18, 2024)

²⁹ Srishti Ojha, "Our duty to create dignified conditions for women in judiciary: Chief Justice Chandrachud", 18th February, 2024 available at: <https://www.indiatoday.in/law/story/cji-dy-chandrachud-women-in-judiciary-dignified-working-conditions-supreme-court-2503823-2024-02-18> (last visited on Sept. 15, 2024)

³⁰ Utkarsh Anand, "Justice Nagarathna calls for diversity in legal profession", *Hindustan Times* Sept. 15, 2024

³¹ Government of India, All-India Survey of Higher Education (AISHE), 2021-22 (Ministry of Education, 2022)

qualifying requirements for direct promotion. The differing expectations that families have of women were not taken into account in the eligibility standards for direct recruitment from the bars. The elevation done through unwritten norms on the basis of seniority through the collegium system. The working of collegium is also questioned due to its non-transparency and lack of accountability.³²

6. Lack of mentorship and assistance causes women to frequently miss out on possibilities since there isn't a fair playing field for them. Senior advocates only hire lawyers based on their personal network of contacts and connections. Women entering this field for the first time frequently give in to pressure when they don't have the right guidance and assistance.³³

WAY FORWARD

In a field that is traditionally viewed as a male-oriented profession, it becomes difficult for women to establish control in a profession. By their sheer presence, women judges improve the credibility of courts, sending a significant signal that they are open and accessible to individuals who seek recourse to justice. "It's time to break the glass ceiling and time for women to strive ahead," Justice Nagarathna had declared. She said that more women are stepping forward to assume positions in the nation's court, which used to be predominately male. To ensure maximum participation of women in this field, there must be certain issues that need to be addressed.

- Addressing the work life balance concerns of women to avoid leaking pipe phenomenon. Steps must be taken so that women are able to return to the profession after child birth instead of quitting. One such initiative was the inauguration of creche facility in Supreme Court in 2024. Women-friendly infrastructural developments must be encouraged at all levels of judiciary.
- Gender sensitization trainings should be conducted frequently. Institutions must not be viewed as male domain and women's participation should be encouraged to bring about

³² Gyanant Kumar Singh, "The greatest enemy of India's judiciary isn't the government but its own secretive system" *Scroll* September 18, 2016 *available at*: <https://scroll.in/article/816765/the-greatest-enemy-of-indias-judiciary-isnt-the-government-but-its-own-secretive-system> (last visited on Sept. 22,2024)

³³ *Supra* note 28

gender diversity. Efforts should be made to establish a conducive and a dignified work environment to extract maximum benefit.

- Introduction of reservation for women in higher judiciary should be put forward so that a greater number of women can get a chance to reach the Apex Court, thus improving the numbers and the gender diversity of the courtrooms. It is evident from studies³⁴ that reservations in lower judiciary have improved the participation of women in the lower courts, the same be applied to higher courts as well.
- In accordance with the Vishaka Guidelines³⁵ that were laid down in 1997, it was finally in 2013 that Supreme Court established its Gender Sensitization and Internal Complaints Committee to address the issues of gender discrimination and sexual harassment.
- Mentorship and networking opportunities which are often inaccessible to women , owing to gender prejudice and societal barriers must be addressed to establish a diverse pipeline of leaders. Promotions and professional advancement need the creation of a clear, open, and fair structure. Instead of being presented as helpless beneficiaries of assistance, women need to be seen as active participants in the nation's rehabilitation. Senior advocates must ensure that qualified women are given equal opportunities.

CONCLUSION

Greater variety leads to greater empowerment. Gender inclusivity rather than alienation is the key to diversity. Although there has been significant progress, women's representation in the judiciary is still significantly behind that of males. It is odd that, despite our boasts of having advanced from ancient times into modern civilization, we still need to establish and commemorate days dedicated to gender equality as a reminder. There are substantial obstacles for women to enter and advance in this mostly male-dominated sector. Women's representation has increased recently, which has led to a rise in the number of women who are eligible to become attorneys and appointed to judicial posts. Women's involvement in the judiciary is critical for ensuring that courts represent their population, address their issues, and render

³⁴ *Supra* note 23

³⁵ *Vishaka v. State of Rajasthan* AIR 1997 SC 3011.

competent decisions.³⁶ The attainment of gender parity in the court is imperative; without this, the legal system would continue to be undermined, casting doubt on our fundamental tenets of equality before the law. Such presence is not merely symbolic but is a necessity. These issues require careful consideration. A varied judiciary may be necessary if one is aware of the function judges play and the idea that differences in values reflect differences in judging. But to answer the questions such as what kind of diversity are we aiming at and how it can be achieved creates an appropriate platform for carrying out additional investigation and provides a way for further research.

³⁶ Abhinav Chandrachud, *The Informal Constitution: Unwritten criteria in selecting judges for the Supreme Court of India* 274 (Oxford University Press, New Delhi, 2014).