

THE RARE BIRDS: DEARTH OF FEMALE REPRESENTATION IN INDIAN JUDICIARY

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ABSTRACT

The complex gender gap in judiciary impacts legal discourse and calls for rearrangement of hierarchy in judicial institutions to ensure mobility and representation of female judges as deciding authorities. The denial of representative opportunities to women has limited the inclusive dimensions in decision making process. The research probes the historical legacy of gender discrimination and inadequate representation followed by the instances of structural biases in transfers and appointments of judges in various HCs. Further, the research envisages to highlight existing and potential reforms in order to break the glass ceiling resulting in construction of gender-neutral institutional spaces.

After providing holistic overview of the issue, the research discusses historical account of structural and procedural impediments in judicial appointments barring women from Indian judiciary. Thereafter, the research explores systemic biases in appointments and transfers based on seniority norm which dissuade women from judicial career owing to their socially imposed gendered responsibilities. Furthermore, the research highlights enormous societal costs due to consequential outcome of gender biased judicial rulings and concludes by accentuating the need for potential reformatory actions in practice and gender sensitisation of various stakeholders for moulding gender perspectives and reinventing procedures for judicial appointments and transfers catering to social realities of women.

Keywords: Gender discrimination, Gender-neutral institutional spaces, Judicial appointments Inadequate representation, Structural biases.

LIST OF ABBREVIATIONS

AIBE	All India Bar Examination
AISHE	All India Survey of Higher Education
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women, 1981
CJHC	Chief Justice of High Court
CJI	Chief Justice of India
FJPI	Feminist Judgements Project, India
HC	High Court
IAWJ	International Association of Women Judges
ILO	International Labour Organisation
SCI	Supreme Court of India

I. INTRODUCTION

Diversity is regarded as the innate element in all democracies. It is appalling to witness that in India, being one of the largest democracies in the world, the judiciary is not reflective of diversity. The homogenic perspective of decision-making bodies, particularly justice delivering institutions has created multiple barriers with regard to caste, class, religion, sexuality and, most prominently, gender identity. Looking through the feminist lens, certain structural and implicit biases such as inadequate institutional support, gender stereotypes, harassment, strict observance to socially assigned gender roles, decades of oppression and discrimination are evident in the path of women judges while creating inclusive and representative judiciary in India.

The most notable ramification of unequal gender ratio in higher judiciary is that it significantly impacts judicial outcome of the case. The elements of gender bias are manifestly both explicit and implicit in appointment procedures and transfer policies at various judicial levels. “*Explicit or Overt Bias*” is where discrimination is *prima facie* identifiable through conduct and actions, whereas, “*Implicit or Covert bias*” is discernible beneath effects of actions done or decisions taken.¹ The latter is so latent and deep

¹ Jerry Kang, 'Implicit Bias: A Primer for Courts' (2009) 7 National Centre for State Courts <<https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/248/>> accessed 13 March 2023.

seated under societal norms and gender stereotypes that individuals are often unmindful of its existence or outcome. However, with constant evaluation of social realities, gender bias is effective in 2 categories, i.e., Structural and Discretionary bias.

Structural biases are inclusive of systemic biases inherent in the appointment and selection of candidates, thereby, providing undue advantage to some over others. These biases are not only reflective of social stereotypes regarding age, caste, race, gender, class and ethnicity but are also embedded in practices such as 'seniority norm' and 'senior-most HC judge to be elevated to the apex court', which further limits the chances of women judges to reach higher judiciary.¹ Moreover, in lower judiciary, judicial appointment and transfer policy targets gender as hindrance to career growth of women judges, i.e., prohibition from being appointed at place of their residence or matrimonial home bind them to reconsider gendered responsibilities socially imposed on them in private sphere.² *Discretionary bias*, on the other hand, exists in exercise of discretionary powers by authorities during judicial appointments and transfers. Devoid of any structural obstacles, these biases are the product of conscious or subconscious preferences and mindsets of decision-making authorities.

These structural and discretionary biases are supplemented by problem of intersectionality, i.e., differed experiences of discrimination from multiple sources of oppression and bias. For instance, varied socio-cultural, economic, sexual or religious identities will unequally place women in terms of treatment and opportunities. Likewise, an upper caste, fair and educated urban woman having legal background is less susceptible to bias and has greater access to justice and decision-making roles than low caste, poor and uneducated rural woman from non-legal background. Thus, it is quintessential to break stereotypical assumptions revolving around supposedly gender-neutral appointment and transfer policies in Indian judiciary by curing social blindness towards deeply ingrained gender bias in judicial mechanisms, thereby, reassuring trust of masses in Indian justice delivering institutions.³

The disparity among gentrified spaces has been constructed on a baseless platform of socio-cultural and historical factors. The globe has seen top hierarchical positions of legal institutions and international organisations predominantly as private space of one set of people. Such insufficient representation, non-acceptance in sphere of conservative social perception and idea of non-intrusion in the law-making and adjudication frame has resulted in institutional decisions tilted towards singular perspective of issues. This element of biased structures and glaring gender discrimination has subtly crept in Indian judicial forums. It is evident from statistics that majority HC across India are presided by men and out of 1079 sitting judges of HC, merely 82 are women.⁴

Even though existing appointment mechanism of judges through merit-based entrance examination ensures greater female representation in lower judiciary but their chances of promotion are bleak owing to structural and implicit gender bias and gender stereotypes prevalent in opaque collegium system. Several researches have recommended appointment of women judges to HCs in order to expand their candidature in the apex court for improving gender diversity in judicial courts.⁵ Gender inequality in courtrooms and political spaces has resulted in veto power to male elites while delivering justice. Moreover, non-inclusive structures and procedural deficiencies in appointments and transfers has made misogynist statutory interpretations common in judicial courts.

Furthermore, India being signatory to CEDAW is obligated to eliminate obstacles from women's lives and encourage equal participation and representation in both public and private spheres. However, in practice, blatant imbalance is evident in Indian judiciary. In response, parliamentary panel recommended advancing the quantum of women judges by 50% in the apex court.⁶ Moreover, in "96th report on demand for grants (2018-19)", the "Standing committee on Personnel Public Grievances and Law and Justice" recommended strength of women judges in India to be increased by 50% of its total strength.⁷ The report accordingly highlighted the higher judicial benches to be proportionate to diverse composition of society by enacting adequate corrective measures to include additional women judges.⁸

Even so, there exists lack of empathy with regard to differential societal burden on women owing to conventional understanding of their roles in marriage and motherhood, which in turn, primarily contributes to their insufficient representation in the Indian judiciary. It is yet a long road to appointment and elevation of women judges in Indian courts, especially higher judiciary, where the quantum of gender ratio is horrendously low. Many states in India have 30% horizontal reservation for women in lower judiciary,⁹ even then, their numbers have surpassed the reserved candidature, which refutes the

¹ Abhinav Chandrachud, 'Age, Seniority, Diversity' *Frontline* (16 April 2013) <<https://frontline.thehindu.com/cover-story/age-seniority-diversity/article4613881.ece>> accessed 13 March 2023

² Majda Halilovic and Heather Huhtanen, 'Gender and the Judiciary: The Implications of Gender within the Judiciary of Bosnia and Herzegovina' (2014) | DCAF – Geneva Centre for Security Sector Governance 32 <<https://www.dcaf.ch/gender-and-judiciary-implications-gender-within-judiciary-bosnia-and-herzegovina>> accessed 13 March 2023

³ Tannvi Tannvi and Sharmila Narayana, 'The challenge of gender stereotyping in Indian courts' (2022) 8:1 Cogent Social Sciences DOI: 10.1080/23311886.2022.2116815

⁴ Department of Justice, '15th Report of Standing Committee on Personnel, Public Grievances, Law and Justice' (2006) <<http://164.100.47.5/rs/book2/reports/personnel/15threport.htm>> accessed 13 March 2023

⁵ Chandra A, Hubbard W and Kalantry S, 'From Executive Appointment to the Collegium System: The Impact on Diversity in the Indian Supreme Court' (2019) Cornell Legal Studies Research Paper, University of Baltimore School of Law Legal Studies Research Paper 19

⁶ "In the Higher Judiciary only 6 women Judges till now have made it to the SCL."

Poorvi Gupta, 'Parliamentary Panel Seeks 50% Quota For Women Judges - SheThePeople TV' (17 March 2018) <<https://www.shepeople.tv/news/parliamentary-panel-seeks-50-quota-women-judges/>> accessed 13 March 2023

⁷ "Out of the 15959 Judges across India, 11390 are male and only 4409 are female."

Department of Justice, '96th Report of Standing Committee on Personnel, Public Grievances, Law and Justice' (2019) <https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/18/104/96_2018_6_17.pdf> accessed 13 March 2023

⁸ Apoorva Mandhani, 'Increase Strength of Women Judges To 50%, Suggests Parliamentary Panel' (*Live Law*, 14 March 2018) <<https://www.livelaw.in/breakingincrease-strength-women-judges-50-suggests-parliamentary-panel/>> accessed 13 March 2023

⁹ Senu Nizar and Mayank Pandey, 'Application of horizontal reservation for women in India: The conundrum resolved by the Supreme Court' (2023) Indian Law Review DOI: 10.1080/24730580.2022.2161241

irrational notion of barring women judges in judicial courts owing to lack of requisite talent and skills. Moreover, gender disparity can be ascribed to dearth of female voices in forums of authoritative character such as collegium, both in apex court and HCs.

Replacing collegium structures would not be the deeply effective or everlasting cure to the widening trench of gender gap owing to same perspectives and value systems. In higher judiciary, where judges are directly elevated from bar to bench, the appointment of women judges is abysmally low due to limited pool of women advocates in bar. Additionally, the conventional and gender biased standards of judicial appointments further complicates the inclusive and diversified character of the judicial bench. For instance, the perception of women lawyers and judges to be docile, graceful, non-aggressive and having compromising attitudes is epitome of high-level gender prejudices and double standards of legal professionals.

A. Need of women judges in Indian Judiciary

The numeral strength of male dominated judicial discourse is a significantly resulting in greater erosion of women judges and practitioners. This erosion catalogues the treatment of women within judicial profession. A 2017 survey by Pew Research centre highlighted that women working in male dominated workplaces have experienced higher levels of gender discrimination and unfair treatment in personnel matters along with reporting gender as a significant barrier in their employment growth.¹ Consecutively, counting in gender diversity would reduce implicit gender bias and stereotypes prevalent at professional arenas, thereby, drastically changing the culture and value system of judicial organisations.

Moreover, altered judicial culture will have ripple effect on litigants seeking justice. Higher visibility of women judges on the bench will provoke willingness and trust of female litigants in rights' enforcement mechanism through courts.² In maximum cases, decision making authority having same gender as litigant not only relaxes the mind of the latter but also stimulates confidence. Therefore, it is quintessential to have diversified and intersectional representation of various marginalised sections of society on the bench for benefitting from their varied lived experiences. Furthermore, diversified judicial forums would result in inclusive and alternate perspectives to judicial interpretations.

Concurrently, enriched judicial reasoning would encompass different social contexts through distinct experiences, thereby, strengthening justice responses to needs of marginalised women. For instance, upholding dignity of rape victim in 2018 case of *State v. Pankaj Chaudhary*³ where all women division bench comprising of Justice Indira Banerjee and Justice R. Banumathi held that woman of easy virtue has right to refuse sexual intercourse and being habituated to sexual intercourse cannot infer victim as of loose moral character. On a divergent note, all male bench in 2016 case of *Raja v. State of Karnataka*⁴ having similar factual scenario impliedly attributed victim being accustomed to sexual intercourse.

Moreover, a division bench judgement⁵ in 2015 by the HC of Calcutta is a prominent instance where Justice Indrajit Chatterjee acquitted rape accused based on absence of exterior wounds on victim's body. On this point, Justice Indira Banerjee remarked that act of silent negation in the event of compulsion would not establish consent. Apart from judicial forums, adequate representation of marginalised gender in legislative committees have also done wonders. For instance, Justice Gita Mittal as chairperson of *Vulnerable Witness Project* has ensured witness could testify in confidential and comfortable spaces without facing the accused.⁶ Also, Justice Leila Seth as member of 15th Law Commission Report and Justice Verma Committee has recognised daughter's rights in inheriting ancestral property and recommended expedite trials and stern punishments for sexual offences respectively.⁷

II. THE HISTORY: LEGACY OF DISPROPORTIONATE REPRESENTATION

The patriarchal and conservative attitudes continue to exist in structure and functioning of legal profession till date. The chapter highlights legacy of tilted representation where women judges tend to take career breaks and find it difficult to enter and sustain in the profession owing to gendered responsibilities relating to family, marriage and childcare imposed additionally by society. The chapter strikes at flawed notions of gender roles and socially accepted behaviour ubiquitous in legal profession. Conventional thinking of women judges being polite and non-aggressive and barring confident, unequivocal and coherent ones, acts as operational filter during process of appointment, transfer, promotion and elevation of judges since decades.

It is evident from history that denial of justice and fair procedures at times can be attributed to design or structure more than inefficiency. The scope of discussion of making an inclusive and representative feminist conscious judicial institution encompasses broader considerations which defy ignorant and inadequate judicial policies. Concurrently, judges must strive to inculcate gender perspective while adjudicating disputes and interpreting laws. Hitherto, constrained patriarchal mindsets and male dominance boom in professional spaces. At the dawn of feminist perspective in legal profession, women judges are faced with professional hazards with respect to recognition of their identity and status.

¹ Kim Parker, 'Women in Majority-Male Workplaces Report Higher Rates of Gender Discrimination' (*Pew Research Center*) <<https://www.pewresearch.org/fact-tank/2018/03/07/women-in-majority-male-workplaces-report-higher-rates-of-gender-discrimination/>> accessed 4 March 2023

² International Commission of Jurists, 'Universal Women and Judiciary-Gva-For-1-Publications-Conference-Report-2014-ENG.PdF' <<https://www.icj.org/wp-content/uploads/2014/10/Universal-Women-and-Judiciary-Gva-For-1-Publications-Conference-Report-2014-ENG.pdf>> accessed 4 March 2023

³ *State (NCT of Delhi) v Pankaj Choudhary* (2019) 11 SCC 570

⁴ *Raja v State of Karnataka* Criminal Appeal No 1767 of 2011 (SC, 4 October 2016)

⁵ *Lachmi @ Lakshmi Kanta Kamath v State of West Bengal* CRA No 115 of 2009 (Cal HC, 16 September 2015)

⁶ Apoorva Mandhani, 'Witness Protection to Table Tennis Reform: Gita Mittal Is the Retired Judge for All Reasons' (*The Print*, 02 May 2022) <<https://theprint.in/judiciary/witness-protection-to-table-tennis-reform-gita-mittal-is-the-retired-judge-for-all-reasons/938815/>> accessed 13 March 2023

⁷ 'Justice Leila Seth: A Woman Who Broke Many a Glass Ceiling in the Legal Practice' (*Hindustan Times*, 6 May 2017) <<https://www.hindustantimes.com/india-news/justice-leila-seth-a-woman-who-broke-many-a-glass-ceiling-in-the-legal-practice/story-YWZRNU200yj9v4hKx2WL6N.html>> accessed 13 March 2023

Maintaining equality in representation of women at all levels of judiciary is paramount for establishing rule of law, justice and fairness in judicial decision-making arenas.¹ The increased quantum of women judges has always restrengthened the judicial discourse and encouraged trust of litigants. Moreover, presence of women judges not only builds trust in the institution but also improves its legitimacy by relying the note of being equally accessible and open for everyone who seek justice.² Such amplified number of women judges in judicial institutions, which have historically been dominated by male counterparts, is perceived as a path breaking achievement resulting in more inclusive, sufficiently representative, transparent and just policy making judicial forums.

Apart from building credible appearance, proportionate levels of women judges result in quality decision-making in judicial forums. They reflect the elements of justice, empathy and fairness in judicial actions through their lived experiences which have comprehensive impact on foundation of legal action and awareness about its consequences.³ Women judicial officers have earned equivalence competence and achievements which are required to meet the benchmark of judicial selection. Even after accomplishing certain laurates and credentials, women are burdened with genders notion of complex family obligations along with socio-cultural impact prevalence in society.⁴

However, women entering into legal profession, especially judicial benches, are offered unequal opportunities which are presumably low status gendered arenas such as family law, probate law etc. Denial of partnerships and lower remuneration are other by-products of gender discrimination and exclusion persisted for women judges in twenty-first century judicial forums. Legal fraternity and courts have been lamenting over gross underrepresentation of women, especially in higher judiciary since decades. Women judges who bang the opportunities in lower judiciary through merit-based appointments find it difficult to progress up on the ladder when it comes to senior ranks. Progression of women judges to higher judicial office and their adequate involvement in justice administration is debatable even after thirty years of feminism and histrionic changes regarding entry of women in the legal profession.

The primary requirement of formal legal education is inextricably linked with gender exclusion and segregation practiced by upper castes in the name of tradition. While realtering public-private gender roles, female legal professionals are grappled with subjects relating to room for women in leadership and decision-making roles along with societal participation. It took almost 66 years for first woman judge to climb the stairs of the apex court as judge since enactment of the *Legal Practitioners Act, 1923*⁵ (See Table 1). Yet till date only two women judges, i.e., Justice Banumathi and Justice Ruma Pal, have been part of collegium.⁶ The projections of women achieving decent positions as judges in the legal profession, which is predominantly competitive and acquired by men, appears to be shady.

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 Judiciary*

Even though SCI collegium has the ultimate authority over appointments of judges in higher judiciary, the obligation to initiate process of appointment of HC judges rest with HC collegium. The latter recognises and recommends eligible candidates to the former for taking the final call, while the former is empowered to accept, reject or return the suggestions but cannot make additions to the list on its own.⁷ Therefore, it is evident that historically HCs have been vested with implied authority of

¹ Epstein L and Knight J, 'How Social Identity and Social Diversity Affect Judging' (2022) 35 *Leiden Journal of International Law* 897

² Vakil, 'Representation and Legitimacy in the Supreme Court: Adjudicating Law and Religion in India' (2022) 10:1 *Studies in Indian Politics* 48

³ Judge Vanessa Ruiz, 'The Role of Women Judges and a Gender Perspective in Ensuring Judicial Independence and Integrity' <www.unodc.org> accessed 13 March 2023

⁴ Yoshita Sood and Seerat Showkat, 'Ramifications of The Dearth of Female Representation in Indian Judiciary: An Appraisal' (2018) 1:3 *International Journal of Policy Sciences and Law* 1227

⁵ Legal Practitioners Act 1923, No 23 of 1923

⁶ 'The Indian Women Who Fought Their Way into the Legal Profession' (*The Wire*) <<https://thewire.in/law/women-lawyers-history-india>> accessed 13 March 2023

⁷ Poojari Ganeshan, 'Only 2 Woman Judges in SC and 82 of 1,079 Judges in HCs — Judiciary Has a Gender Problem' (*The Print* 6 December 2020) <<https://theprint.in/judiciary/only-2-woman-judges-in-sc-and-82-of-1079-judges-in-hcs-judiciary-has-a-gender-problem/557564/>> accessed 13 March 2023

⁸ Rangin Pallav Tripathy, 'Fewer Indian Women in Higher Judiciary? Blame High Court Collegium, Suggests Data' (*The Print*, 22 July 2019) <<https://theprint.in/opinion/fewer-indian-women-in-higher-judiciary-blame-high-court-collegiums-suggests-data/265747/>> accessed 13 March 2023

barring individuals to enter into higher judiciary as judges, which further due to gender bias, affects chances of women judges to observe judgeships in higher judiciary. The debate on enabling reservation of women judges in judiciary must be directed towards their empowerment and upliftment such as by enabling adequate representation of women in collegium at SCI and HCs.

Moreover, it has been recommended by “*Parliamentary Standing Committee on Law and Justice*” in its 2015 report to have unbiased and equivalent representation in higher judiciary along with confirming consideration of reservation to women in the same. Furthermore, the effect of feminization of judicial institutions, i.e., appointment of more women judges in justice delivery forums would eradicate ‘insensitive approach’ of judicial courts patently manifested in cases of sexual violence and others concerning rights and dignity of women.¹ In the light of imbibing gender sensitive and feminist way of thinking among judges, the SCI was concerned with its necessity in *Aparna Bhatt v. State of MP*.² Even then the prolonged issue of minuscule of women fulfilling the criteria of 10 years seniority for judgeships at higher judicial courts along with impediment characterised by collegium.

III. GENDER GAP: INSTANCES OF SYSTEMIC BIAS FROM HIGH COURTS

There continues to exist barricades in the path of women striving to enter and excel in legal profession, especially as judges. The top hierarchies at judicial institutions, being devoid of gender diversity, are disproportionately represented by singular set of perspectives. The chapter reflects instances of systematic operation of structural bias at judicial benches through overwhelming figures from Indian HCs. Such prejudicial standards of appointments and promotion elevates to apex courts, thereby resulting in gender imbalance in higher judiciary. Moreover, the chapter delves into reasons of undue representation of women in Indian judiciary and strikes out significant difficulties in balancing personal and professional lives of women judges along with inadequate familial and structural support overshadowing gender diversity in decision making roles.

Legal profession is often characterised as out-dated and conventional arena equipped with discrimination and social exclusion, thereby, being unwelcoming of minorities and women since decades. This marginalisation is evident by law ministry data in 2021 which elaborates insufficient representation of women judges as merely 12% and 18% in higher and lower judiciary respectively.³ Moreover, as of June 2021, merely 11.7% (quantum wise, 76 out of 650 judges) of existing occupied judges in all the Indian HCs are women (See Figure 1).⁴ Where overall approved strength of judges in Indian HCs is 1080, 76 women judges amount to mere 7% of the same.⁵

The leading strength of women judges among all the HCs is in HC of Madras with 13 as the quantum of women judges, which has been followed by HC of Bombay with 8 women judges (See Figure 2).⁶ On an appalling note, HCs of Patna, Uttarakhand, Meghalaya, Tripura and Manipur do not have even a single women judge. Moreover, HCs of Jammu and Kashmir, Orissa, Himachal Pradesh, Ladakh, Rajasthan, Jharkhand, Sikkim and Guwahati are armed with only single women judge. 3.04 is the average number of women judges across all the Indian HCs.⁷ Some of the HCs having average and above average strength are HCs of Bombay, Punjab and Haryana, Kerala, Delhi, Calcutta, Gujarat, Allahabad, Andhra Pradesh, Madras and Karnataka.

Concurrently, blatant instances of gender inequality are evident in the apex court with merely 8 women judges since its inception. India, being a country having 48% of its population comprised of women, has legacy of gender gap reflective in strength of women judges in the apex court over last seven decades. Out of 245 judges being elevated to the apex court since its establishment, merely 3.3% women overall have made it to SCI and none has served the office of CJI.⁸ In accordance with data published by the Department of Justice, only 4 out of 33 in SCI and only 66 out of 627 judges in all the Indian HCs were women as of August 2021.⁹ However, lower judiciary has reflected much higher representation of women judges as compared to higher judiciary.

Through Judicial Reforms Initiative in January 2020 by “*Vidhi Centre of Legal Policy*,” a study of 17 states had been conducted for a period of 2007-17 assessing strength of women judges across HCs and districts courts, including civil judges, in India.¹⁰ The statistics mirrored 36.45% of judges and magistrates as women over the said period. In lower judiciary, 11.75% of women were directly recruited and appointed as district judges through merit-based selection test over the said time period.¹¹ In accordance with 2018 report by Vidhi Centre, the statistics were indicative of regressive trend of women judges as one progresses through

¹ Buckee Gillian FM, ‘An Examination of the Development and Structure of the Legal Profession at Allahabad 1866-1935’ (1972) Unpublished PhD Thesis presented to the University of London, United Kingdom

² *Aparna Bhatt v State of MP* [2021] SCC OnLine SC 230

³ Debayan Roy, ‘Legal Profession Has Been Feudalistic and Unwelcoming of Women: CJI DY Chandrachud’ (*Bar and Bench - Indian Legal news*, 11 January 2023) <<https://www.barandbench.com/news/legal-profession-feudalistic-unwelcoming-women-cji-dy-chandrachud>> accessed 13 March 2023

⁴ ‘11.7% of High Court Judges Are Women’ (*Supreme Court Observer*) <<https://www.scobserver.in/journal/11-7-of-high-court-judges-are-women/>> accessed 13 March 2023

⁵ Ashutosh Sharma, ‘Women Account for 7 Percent of Judges in 25 High Courts: Government Tells Lok Sabha’ (07 February 2019) <<https://www.nationalheraldindia.com/india/women-account-for-7-percent-of-judges-in-25-high-courts-government-tells-lok-sabha>> accessed 13 March 2023

⁶ ‘11.7% of High Court Judges Are Women’ (n 23)

⁷ Shreya Sharma, ‘India Needs More Women Judges, but Judiciary Has a Long Way to Go’ (*The Print*, 1 June 2022) <<https://theprint.in/campus-voice/india-needs-more-women-judges-but-judiciary-has-a-long-way-to-go/976666/>> accessed 13 March 2023

⁸ Krishnadas Rajagopal, ‘Women Judges in Supreme Court Have Short Tenures’ *The Hindu* (26 March 2022) <<https://www.thehindu.com/news/national/women-judges-in-supreme-court-have-short-tenures/article65262749.ece>> accessed 13 March 2023

⁹ Bhadra Sinha, ‘Alarming Gender Disparity in Judiciary: 4 Women Judges out of 33 in SC, 66 out of 627 in HCs’ (*The Print*, 13 October 2021) <<https://theprint.in/judiciary/alarming-gender-disparity-in-judiciary-4-women-judges-out-of-33-in-sc-66-out-of-627-in-hcs/749684/>> accessed 13 March 2023

¹⁰ Agarwal Savitri, ‘Women’s Representation in Judiciary: Empty Noise Again?’ - *Academike* (3 May 2021) <<https://www.lawctopus.com/academike/women-in-judiciary/>> accessed 13 March 2023

¹¹ ‘The Higher Judiciary’s Gender Representation Problem — Article 14’ <<https://article-14.com/post/the-higher-judiciary-s-gender-representation-problem>> accessed 13 March 2023

higher tiers of lower judiciary.¹ One could base such disproportionate figures as a consequence of seniority norm and structural bias prevalent in higher judiciary. A general presumption in absence of gender discrimination is that proportion of equally competent and meritorious male and female judicial officers would relatively be equivalent as one moves from lower to higher tiers of judiciary.

However, the existence of glaring gender gap can also be attributed to masking figures revealing systemic discrimination and gender bias in the profession. The professional culture is much accustomed towards men's way of living in society which makes it difficult to accommodate women professionals in the field.² The exclusivity of women judges in the field is often backed by dual work-life obligations and stereotypical notions of womanhood and gender roles prevalent in legal profession.³ There are, generally, three main constituents of structural discrimination are (i) identifying marginalised sections (ii) suffering from prolonged discrimination since ages (iii) and having a past and present situation of disadvantage.⁴ For instance, in legacy of gender discrimination, women have been systematically underrepresented in top hierarchies and professional decision-making positions and suffers from similar kinds of characteristic biases and discrimination since ages.

Structural or indirect discrimination emerges from standards or practices based on omission of certain acts or applying neutral criteria of differentiation resulting in socio-political, cultural and economic exclusion of certain community collectively. Likewise, such discrimination is so deeply ingrained in society that it affects a particular group systemically, for instance, gender-based discrimination may prima facie appear neutral in professional culture but adversely impacts a specific cluster of population in practice. Moreover, the concept of systemic discrimination is antithesis to substantive equality owing to notion of intergroup subjugation and recognition of discriminating and oppressing actions within the system. This demands creation of positive climate which systematically challenges and dissuades inherent discrimination.

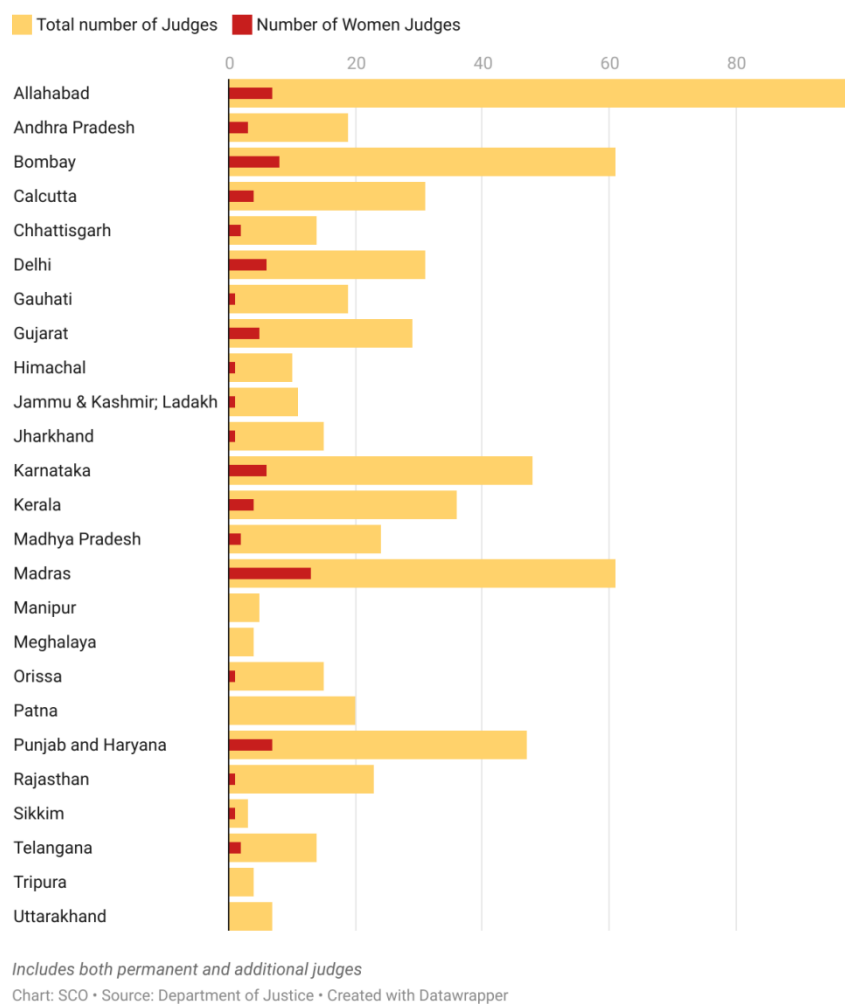


FIGURE 1: *Quantum of women judges in each HC out of overall occupied strength of judges (as of June 2021)*

Consecutively, this 'dribble-up' approach theoretically accounts for swift transformation in composition of judicial benches in legal profession resulting in automatic balance of proportionate representation therein. The most prevalent roadblock in the path of cultural and attitudinal transformation in legal profession is hegemonic masculinity which confirms and encourage

¹ Diksha Sanyal, Shreya Tripathi and Tarika Jain, 'Breaking through the Old Boys' Club' (*Vidhi Centre for Legal Policy*, 25 January 2020) <<https://vidhilegalpolicy.in/research/breaking-through-the-old-boys-club/>> accessed 13 March 2023

² Donald Nicholson, 'Debating Affirmative Action: Conceptual, Contextual, and Comparative Perspectives' (2006) 33:1 *Journal of Law and Society* 109-125

³ Rosemary T, *Feminist Thought: A Comprehensive Introduction* (5th edn, Routledge 2018) 24

⁴ Maria Jose Anon, 'The Antidiscrimination Principle and the determination of Disadvantage' (2014) 2 *The Age of Human Rights Journal* 109

stereotypical presumptions about gender roles, differential abilities and pigeon-holed interests.¹ Moreover, sexual harassment and dignity attacks on women quadruple the chances of gender inequality at the bench. Such instances of professional difficulties are often overlooked during social conversations among professionals at higher levels of judiciary primarily identified by masculine dominance.

Additionally, the notions of gendered responsibilities in private spheres and notions of inability of women judges in handling professional workload negatively affects their chances of attaining decision making positions in higher judiciary.² In order to combat systemic discrimination, it is quintessential to conceptualise workplace discrimination and dynamic disadvantage perpetuated through continuum of structural practices within judicial system.³ Furthermore, the structural discrimination targeting vulnerable gender in legal profession through pre-established operational procedures and practices of recruitment, appointment, promotion, transfer and elevation of women judges, which are alternatively reinforced through deemed natural forces, must be exposed.⁴

IV. STRUCTURAL BIAS IN APPOINTMENT AND PROMOTION OF WOMEN JUDGES

Even though there is considerable quantum of female entrants in lower judiciary due to merit-based evaluation, yet their acceleration up to higher judiciary is extremely rare. The chapter discusses colossal patterns of gender bias systematically percolating in judicial structures, which is often triggered by collegium system as concierges of higher judiciary. In order to enable gender diversification at judicial benches, the chapter reveals the need for transparency in selection and elevation of candidates in Indian judiciary. The resolutions, context of appointment, pool of eligible candidates and results must be published with cogent reasons of selection. The chapter also points out impacts of reservation policies for women in order to achieve gender-neutral decision-making institutions.

Owing to merit-based recruitment through common entrance examination, quantum of women judges in lower judiciary is relatively high. However, progression of women judges to greater levels of judicial hierarchy is very unlikely due to presence of opaque and operatively biased collegium system at higher judiciary. Such disproportionate representation can be attributed to reservations and recruitment standards. However, progressive societal changes acknowledging women's rights has increased the strength of women in bar and, consecutively, it is expected from collegium system to elevate considerable number of women judges to the bench. On the drastic note, the reality of meagre likelihood of presence of women judges in higher judiciary remains the same.

Even though geographical and religious identity has been taken into account both in pre and post collegium era, but aspect of gender diversity has never seen light of the day.⁵ Considerations of age and familial obligations additionally affect possibilities of elevation of women judges from subordinate to higher judicial courts.⁶ Moreover, many women judges join judicial service in later ages, thereby, making opportunities to reach higher judiciary even more bleak. Owing to shifting focus of women towards their families, women candidates find it difficult to focus on their career growth as judicial officer and quit mid-career, thereby, getting prone to repercussion of ailment of 'leaking pipeline'.⁷

Following an advanced approach, various states have introduced reservation of women judges in lower judiciary which is absent in higher judiciary. It not only acts as a sufficient measure bridging the gender gap but also proves to be support system which facilitates more women to enter the judicial system. According to 2018 Report by ILO, India is alarming gender gap in unpaid care work which has led to mere 24% of female participation in labour workforce.⁸ This demands positive modification in perspectives towards women working outside homes, for instance, the practice of transferring women judicial officers appointed as magistrates in every 3 years reduces zeal of women workforce to continue in judicial profession.⁹

Concurrently, the conventional notion of women as sole care giver in marriage and nurturer in the family needs reorientation. Such differential societal expectations and professional constraints are further impeded by eligibility criteria of direct elevation from bar, thereby, limiting potential of recruitment of district judges in higher judiciary. Moreover, the strict benchmark of seven years of continuous practice as advocates is essential to be appointed as district judges, thereby, disqualifying women advocates who are already overburdened from gendered obligations of motherhood and marriage. The constitutional mandate of seven years under *Article 233* has been consistently interpreted as continuous practice by the apex court in various cases.¹⁰

Furthermore, discouraging participation rates of women as district judges can also be attributed to practical working of eligibility criteria conditioned in corresponding rules under state judicial services.¹¹ Concurrently, judicial service rules in various states have minimal age criteria of 35 years for entering into office of district judge. Such provision is inherently biased and indirectly discriminatory towards women as possibilities of Indian women to be shadowed with significant marital, household and familial obligations are more likely at this age. A 2015 research study at HC of Allahabad indicates that overwhelming

¹ Rosemary H, *Women Barristers and Gender Difference* (Hart Publishing 2003) 103

² Ryan Chan, 'Sexism at the Bar and the Equitable Briefing Policy: A Well-Meaning but misguided response to gendered briefing practices' (2017) 29:2 BLR159

³ Marie Mercat-Bruns, 'Systemic discrimination: Rethinking the Tools of Gender Equality' (2018) 2 EU ELR 5

⁴ *Canadian National Railway Company v CN* [1987] 1 SCR 1114

⁵ Uday Shankar and Srichetha Chowdhury, 'Representative Judiciary in India: An Argument for Gender Diversity in the Supreme Court' (2019) 2 ILI Law Review 12

⁶ Gita Mittal and Dipika Jain, 'Women's equal representation in the higher judiciary: A case for judicial diversity in India' (2023) 49 IJCAJ 1

⁷ Ulrike Schultz and Tabeth Masengu, 'Women and judicial appointments' (2020) 27:2 International Journal of the Legal Profession 113

⁸ 'India: Why Is Women's Labour Force Participation Dropping?' (13 February 2013) <http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_204762/lang-en/index.htm> accessed 13 March 2023

⁹ SR Ramya, 'Women's Participation in the Legal Profession- Issues and Challenges in India' (2022) 5 Int'l J. Mgmt and Human 1680

¹⁰ *Sushma Suri v Government of National Capital Territory of Delhi* (1999) 1 SCC 330; *Deepak Aggarwal v Keshav Kaushik* (2013) 5 SCC 277

¹¹ Arjjeet Ghosh, Diksha Sanyal and Nikita Khaitan, 'Tilting the Scale: Gender Imbalance in the Lower Judiciary' (*Vidhi Centre for Legal Policy*, 12 February 2018) <<https://vidhilegalpolicy.in/research/report-on-gender-imbalance-in-the-lower-judiciary/>> accessed 13 March 2023

quantum of women practicing at bar are unmarried, thereby, attributing mid-career dropout rates of women in legal profession to inadequate family and structural backing along with long and inflexible working hours.¹

Therefore, it is challenging for women legal professional to achieve yardstick of seven years of continued legal practice. Such disappointing scenario justifies the recruitment figures of 63 women against 473 men (11.75% of the total) across 13 states in the period of 2007-17.² Only in comparatively well performing states such as Meghalaya and Delhi, selection of women candidates reaches celebrating figures of approximately 40%.³ Concomitantly, delayed recruitment cycles and long-term unfilled vacancies also impedes entry of women as judges in the legal profession, thereby, resulting in appalling gender discrimination and skewed representation of women at higher levels of judiciary.

Alongside, recruitment mechanism of civil judges (junior division) through competitive merit-based exam from pool of law graduates also proves to be an accelerating factor that influences women's entry in lower judiciary. However, before 2022, yardstick of three years' experience as practicing advocate was quintessential to fulfil for being eligible to enter the judicial system. Interestingly, this system of open examination is identical to practices of judicial careers followed by Portugal and France where young law graduates with little experience are mostly qualified as judicial candidates. Both the civil law countries share common route of 'feminisation of judiciary' with considerable women candidates entering into judicial services.⁴

Accordingly, owing to low performance of men in judicial entrance exams than women, very less quantum of male candidates apply for judicial training and most of them indulge into lucrative field of practicing law. It is often argued by the socio-legal researchers that path of entering into judicial services for women judges is relatively easier in civil law countries having fairly transparent and rational practices, as compared to common law countries having subjective factors of recruitment, transfer and elevation of judges such as professional networking, favourable achievements and viable evaluations.⁵ Even though India is a common law country, its recruitment and selection methods in lower judiciary are similar to civil law jurisdictions, thereby, enabling more women candidates to enter into subordinate judicial services than higher judiciary.

In higher judiciary, the debates of opacity and exclusiveness has been revolving around appointment of judges through collegium structure where seniormost judges select judges from lower judiciary or bar and forward the selections to President.⁶ The said system has failed to adequately include candidates with diverse backgrounds, particularly, while addressing gender diversity.⁷ Women judicial officers have often been avoided in significant discretionary and decision-making roles. Despite feminization of judiciary, such trends pertaining to dearth of women judges at top hierarchies are also reflected in civil law jurisdictions like France and Portugal.⁸ This concludes that better gender representation at entry levels of lower judiciary does not, per se, ensure proportionate gender diversity at higher levels of judiciary.

Nevertheless, ostensible notion of feminising Indian judiciary and its subsequent effects on women judges are yet to be studied. Owing to early stages of building feminist conscious judicial institutions in India, the research involved in introducing gender diverse, flexible and accommodative spaces in relation to requirements of women judges are still at nascent stage. At international ambience, such impacts of gender diversity on delivery of judgements have been analysed extensively.⁹ For instance, German women judges have improvised emotional communication through their working style and strengthen trust and cooperation.¹⁰

However, significant increase in female participation as judiciary officers at subordinate levels notwithstanding restrictive participation in professional academics and legal practice has augmented the move towards feminisation of Indian Judiciary.¹¹ Simultaneously, considerable research in this arena has indicated professional stability and financial viability along with flexible working hours in judicial careers as crucial explanations of aforesaid increase in spite of hefty workloads in judicial profession.¹² Judicial services over independent legal practice has often been preferred by the female legal professions owing to two-fold

¹ Saurabh Kumar Mishra, 'Women in Indian Courts of Law: A Study of Women Legal Professionals in the District Court of Lucknow, Uttar Pradesh, India' (2015) e-cadernos CES [Online] 24 <<https://journals.openedition.org/eces/pdf/1976>> accessed 13 March 2023

² 'Breaking through the Old Boys' Club' (n 36)

³ 'Women's Share in Judiciary Abysmal, SC Saw Only 11 Judges since 1950: Justice Indira Banerjee' (*ThePrint*, 10 March 2022) <<https://theprint.in/india/womens-share-in-judiciary-abysmal-sc-saw-only-11-judges-since-1950-justice-indira-banerjee/867991/>> accessed 13 March 2023

⁴ Gibson-Morgan, 'Gender Equality in the Judiciary in England and France: Making It a Living Reality' (2015) 2:4 *Revue Miroirs* 114

⁵ Schultz, Ulrike and Gisela Shaw, Introduction: Gender and Judging: Overview and Synthesis' in Ulrike Schultz and Gisela Shaw (eds), *Gender and Judging* (Oxford: Hart Publishing 2013)

⁶ *Supreme Court Advocate on Record Association v Union of India* AIR 1994 SC 268

⁷ Atul Dev, "'Barter System of Appointments': The Debate Over the Collegium System And The NJAC' (*The Caravan*) <<https://caravanmagazine.in/vantage/jayant-patel-collegium-system-njac>> accessed 13 March 2023

Gyanant Kumar Singh, 'The Greatest Enemy of India's Judiciary Isn't the Government but Its Own Secretive System' (*Scroll.in*, 18 September 2016) <<http://scroll.in/article/816765/the-greatest-enemy-of-indias-judiciary-isnt-the-government-but-its-own-secretive-system>> accessed 13 March 2023

⁸ 'All 5 SC Judges Acknowledge Criticism against Collegium' (*Tribuneindia News Service*) <<https://www.tribuneindia.com/news/archive/nation/all-5-sc-judges-acknowledge-criticism-against-collegium-147398>> accessed 13 March 2023

⁹ Duarte et al, 'Feminization of the Judiciary in Portugal: Dilemmas and Paradoxes' (2014) 10:1 *Utrecht Law Review* 34

¹⁰ Anleu, Sharyn Roach and Kathy Mack 'Skills for Judicial Work: Comparing Women Judges and Women Magistrates' in Ulrike Schultz and Gisela Shaw (eds), *Gender and Judging* Onati International Series in Law and Society (Oxford: Hart Publishing 2013)

¹¹ Schultz U, 'Women Lawyers in Germany: Perception and Construction of Femininity' in Ulrike Schultz and Gisela Shaw (eds), *Women in the World's Legal Professions* (Oxford: Hart Publishing 2003)

¹² Bora S, 'Feminising the Indian Judiciary: The Gender Gap and the Possibilities of Objectivity' in Melissa Crouch (ed), *Women and the Judiciary in the Asia-Pacific* (Cambridge University Press 2021)

¹³ Junqueira, 'Women in the Judiciary: A Perspective from Brazil' in Ulrike Schultz and Gisela Shaw (eds), *Women in the World's Legal Professions* (Oxford: Hart Publishing 2003)

burden of managing professional and familial expectations in the latter along with influential socio-professional legal networks primarily dominated by male counterparts.¹

Besides, the enhanced tendencies of women judges being appointed in lower judiciary can also be attributed to significant socio-economic renovations in the ambit of education and employment market. The substantial jump in gender parity index for higher education from 0.86 in 2010-11 to 0.97 in 2016-17 as recoded through 2016-17 AISHE is indicative of fair figures of women candidates enrolling and graduating in higher education across different streams as compared to male entrants.² Contrastingly, female participation in workforce, especially public sector, is minimal and often stagnant as compared to other developing economies.³ The reasons for the same can be ascribed to marital, household and societal expectations relating to family and childcare which tends to adversely impact their chances of getting employment in service sector.

The additional factor of negative impression of working women prevalent in socio-cultural contexts, especially with households having substantial income from male working members, has exaggeratedly driven females out of professional employment. The similar kind of discrepancies are visible in judicial profession where fresh and unmarried women entrants tend to fill up significant quantum of posts of civil judges. However, progressing at higher levels with age criteria of 35 years for district judge appointment, lesser female judges are seen on the bench due to considerable burden of marital, domestic and child-rearing obligations. This structural bias limiting gender representation elevates even more significantly in higher judiciary.⁴

Concomitantly, various state judicial service rules and government notifications, in line with public sector employment such as paramilitary forces, state police and other government jobs, have introduced reservations for women in civil judge and district judge cadre. States like Karnataka, Chhattisgarh, Uttar Pradesh, Jharkhand and Rajasthan provide for horizontal reservation of women judges domiciled in respective home states.⁵ Additionally, policies of reservation in Rajasthan and Odisha are accompanied by provision for age relaxation for female candidates. However, HCs act as ultimate authority in deciding categories and percentage of reservation granted in lower judiciary in respective states.

Even though state legislature is authorised to formulate recruitment conditions under public services under Article 309 yet HCs are specifically vested with the authority to appoint judicial officers in lower judiciary under Article 233 and 234. The apex court has interpreted the provision to mandate consultation with HCs while altering appointment conditions or introducing reservation policies by states in the realm of lower judiciary.⁶ Certain queries have been raised in the past with respect to separate reservation provisions applicable to judicial courts as opposed to state public services.⁷ Consecutively, non-transparency on the said issue has discouraged incentives of higher judiciary to introduce reservation policies for women judges in appointment and elevation on the judicial bench. Recently, a 2019 Standing Committee Report⁸ has recommended state governments to announce reservation quota for women in legal educational institution and subordinate judiciary to balance gender representation and bridging gender gap at judicial benches.

Arguably, reservation is just one of the tools to facilitate gender diversity in judicial system. The said measure must be accompanied by ancillary factors such as workforce participation, tertiary level of education and other socio-economic development indicators in order to achieve higher average rate of women representing at judicial benches. Moreover, recruitment, appointment and transfer of women judges are also dependent on language, thereby, restricting the larger pool of female entrants as judicial officers in Hindi speaking states. Further, mandatory language and translation tests during judicial entrance examinations mechanically limit pool of eligible female candidates. This stimulating situation of structural bias in the process of appointment, transfer, promotion and elevation of judicial officers elaborates to alter demographics of female representation at HCs and apex court.

V. BREAKING THE SHACKLES: REFORMS AND INITIATIVES

With feminist reforms and initiatives by legal professionals, the judicial structures have forwarded towards more gender diverse benches. The chapter delves into recognition of competent and deserving women candidates in order to overcome systemic gender discrimination and break the glass ceiling. The promotion, elevation and careers of judges are under arbitrary and direct control of HC collegiums which must formally progress in the direction of founding gender neutral methods to enable sufficient female representation as judicial officers. The chapter repeatedly emphasises gender inclusiveness and representative diversification as methodological tools resulting in substantial alternation in judicial institution and, subsequently, judicial reasoning.

Since inception of SCI, merely 11 judges, none of them being CJI, have represented women at judicial benches of the apex courts. The figures of under representation in HCs and subordinate courts are equally alarming, i.e., 83 women out of 680 judges and 30% respectively.⁹ However, with collegium's move to elevating three women judges to the apex court, Justice

¹ Schultz U, "Introduction: Women in the World's Legal Professions: Overview and Synthesis" in Ulrike Schultz and Gisela Shaw (eds), *Women in the World's Legal Professions* (Oxford: Hart Publishing 2003)

² Department of Higher Education, 'All India Survey on Higher Education (2016-17)' (2017) MHRD

³ Centre for Sustainable Employment, 'State of Working India Report, 2018' (2018) Azim Premji University

⁴ Aishwarya Chouhan, 'Structural and Discretionary Bias: Appointment of Female Judges in India' (2020) 21 Geo J Gender and L 725

⁵ 'Representation of Women in Judiciary' (*Drishti LAS*) <<https://www.drishtias.com/daily-updates/daily-news-analysis/representation-of-women-in-judiciary>> accessed 13 March 2023

⁶ *State of Bihar v Bal Mukund Sab* (2000) 4 SCC 640; *Government of Bihar and Others v Dayanand Singh* Civil Appeal No 9921- 9923 of 2016 (SC, 29 September 2016)

⁷ Dhananjay Mahapatra, 'Quota Applies to Entry Level Recruitment of Judges: SC' *The Times of India* (14 January 2009) <<https://timesofindia.indiatimes.com/india/Quota-applies-to-entry-level-recruitment-of-judges-SC/articleshow/3974103.cms>> accessed 13 March 2023.

⁸ Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, 'Ninety Ninth Report on Action Taken on Ninety Sixth Report of the Committee on Demands for Grants (2018-19)' (2019)

⁹ Sharma (n 31)

Nagarathna is expected to break the glass ceiling as first woman CJI in 2027.¹ Such a move demonstrates considerable victory in inaugurating gender diversity apart from seniority norm as the selection criteria. However, it is quintessential to disregard patriarchal misconceptions and gender stereotypes in order to bring about a positive change. For instance, the conventional perception of female judges being women-centric and male judges having neutral approach, which was prevalent in Sabrimala judgement having sole female judge having dissenting opinion on the issue of gender discrimination.²

Looking at deplorable state of female underrepresentation in decision making roles of judicial system, former CJI NV Ramana stressed on practical introduction of 50% reservation for women as judicial officers at all levels of judiciary beyond declaration of affirmative action in this regard.³ Even though there is not much gender trench visible in lower judiciary owing to competitive evaluation, yet female judges consistently struggle to climb up the ladder of higher judiciary in the realm of patriarchal outlook and staunch gender bias in top hierarchies. In order to achieve participatory, procedurally inclusive, structurally accommodative and sufficiently representative judicial benches, it is necessary to strike neutral balance in attitudes of authorities at all levels of judiciary.

Beyond formal equality, it is high time for judicial institutions to enable substantive equality to women through affirmative action in practice.⁴ Moreover, gender neutral representation in decision making roles will encourage intergenerational justice and influence upcoming generations to achieve women empowerment as an essential sustainable development goal.⁵ Concurrently, diversification of judicial benches with greater quantum of female visibility will back dispute resolution process with democratic legitimacy and enhance willingness of female justice seekers to enforce their legal rights through court of law. Thus, paradigm shift in arrangement of gender ratio in adjudicatory positions will introduce novel trends in conventional judicial procedures.

The jurisprudential aspect of gender diversity not only entails increased quantum of women judges in courts but also ideal amplification in women seeking justice and courts delivering gender sensitive judgements with diversified female experiences. However, isolated measure of necessary representation of women judges would not sufficiently mean advocating for gender justice or feminist conscious judicial structures.⁶ Some feminist male judges may also contribute in social transformation by delivering more empathetic judgements towards gender sensitive issues. The essential aspect is to garner actual breathed experiences of marginalisation and gender discrimination to radically induct attitudinal transition in behaviours of judges and judicial reasoning.

The natural imputation on women being flagbearers of feminist thinking often relieves men from mandate of being sensitive towards needs of marginalised women. The equation between enhance women in Indian judiciary and consistent gender sensitive judgements involving female victims does not necessarily be directly proportional. Therefore, bargained legal application and gender sensitive interpretations may not be the result of increased women, but increased feminism in judicial benches.⁷ Nevertheless, women judges, being victims of traditional practices of reticent sectionalisation and gender bias, have been more vocal and open towards feminist rulings. Moreover, feminist judges in predominant male judicial structures have often been remarked having pro-woman bias, thereby, suffering with high burdens of diluting politics disguised as neutrality in the system.

It is pertinent to note that existing dichotomy of fearful feminist judges over apprehension of being unfair and biased make them even more vulnerable as judges.⁸ However, collaborative efforts of amplifying feminist jurisprudence through FJPI have significantly empowered potential feminist judges to write alternate judgements substantially concerning issues related to women.⁹ For instance, while rewriting *Uday v. State of Karnataka*¹⁰ under FJPI, one of the feminist experienced possibilities of toning down the dissenting opinion as a judge. Convicting the accused, the dissent encounters the presumption of consent in 'promise to marry' scenarios as dynamically challenging attribute in inter caste context between prosecutrix and the accused.

While dealing with issues of gender diversity in judicial structures, legal fraternity has called for gender sensitization of judicial officers along with personalisation of judgements, particularly those dealing with issues of sexual harassment and gender-based violence.¹¹ Moreover, comprehensive data must be maintained on female distribution in all levels of judiciary and tribunals along with female senior advocates¹² in the legal profession. In line with IAWJ, the legal curriculum in professional educational

¹ Sucheta, 'The Exemplary Eleven: Stories of the Remarkable Women Judges of the Supreme Court' (*SCC Blog*, 8 March 2023) <<https://www.sconline.com/blog/post/2023/03/08/supreme-court-exemplary-eleven-women-judges-stories-international-womens-day-celebrations-legal-news-updates/>> accessed 13 March 2023

² *Indian Young Lawyers Association v. State of Kerala* WP (C) No 373 of 2006 (SC, 18 August 2018)

³ Krishnadas Rajagopal, 'CJI Voices Support for 50% Representation for Women in Judiciary' *The Hindu* (26 September 2021) <<https://www.thehindu.com/news/national/cji-voices-support-for-50-representation-for-women-in-judiciary/article36681345.ece>> accessed 13 March 2023

⁴ Melissa Crouch and Natasha Naidu, 'The Feminisation of the Judiciary in Asia-Pacific: The Challenges for Formal and Substantive Equality' in Melissa Crouch (eds), *Women and the Judiciary in the Asia-Pacific* (Cambridge University Press 2022)

⁵ Shampa Dev, 'Gender Justice in India: A Feminist Jurisprudential Perspective' (2018) 10:1 *Tattva Journal of Philosophy* 69

⁶ Patricia Yancey Martin, John Reynolds and Shelley Keith, 'Gender Bias and Feminist Consciousness among Judges and Attorneys: A Stand Point Theory Analysis' (2002) 27:3 *Journal of Women in Culture and Society* 665

⁷ "Feminist Consciousness refers to a commitment to a gender politics which is aimed at identifying and eliminating inequality and societal disadvantages faced by women. Feminist consciousness prescribes to a belief that (a) there exists systemic discrimination against women and girls (b) this dynamic is wrong, and (c) collective action is necessary to correct this wrong."

⁸ Swetha S. Ballakrishnen, *Accidental Feminism: Gender Parity and Selective Mobility among India's Professional Elite* (Princeton University Press 2021)

⁹ Rosemary (n 36)

¹⁰ 'Indian Feminist Judgments Project' (*Feminist Judgments*) <<https://fjpiindia.wixsite.com/fjpi>> accessed 13 March 2023

¹¹ *Uday v State of Karnataka* (2003) 4 SCC 46

¹² *Rajagopal v State Crl A (MD)* No 188 of 2015 (Mad HC, 13 March 2020)

¹³ 'Women's Day 2023: Only 3 per Cent of Senior Advocates in the Supreme Court and High Courts Are Women' (*Bar and Bench - Indian Legal news*, 8 March 2023) <<https://www.barandbench.com/columns/womens-day-2023-only-101-of-2982-senior-advocates-high-courts-supreme-court-women>> accessed 13 March 2023

institutions along with AIBE must mandatorily introduce course on gender sensitisation.¹ Additionally, with the object of inducting gender perspective in courtroom procedures and eliminate gender bias in the working of adjudicatory authorities, IAWJ provides for judicial training for ensuring principle of equality and non-discrimination in legal interpretations along with guaranteeing amiable and swift access to justice through establishment of gender judicial offices.²

VI. CONCLUSION AND PATH AHEAD

It can be concluded that in order to broaden inclusiveness, gender diversity and adequate representation on judicial benches, it is quintessential to reconsider working of adjudicatory structures through feminist perspective. Weighing all probabilities, the need of the hour is to systemically transform dispute resolution process in order to enhance transparency, public confidence and female visibility in procedures concerning appointment, transfer, promotion and elevation of judges in Indian judiciary. The legal fraternity must sensitise existing and prospective judicial officers through professional networking and weekly group discussions regarding empathetic roles in dealing with gender issues. In order to eliminate unconscious structural gender bias inherent in judicial procedures, women judges require representative assistance and recognition as marginalised populace in lower and higher judiciary.

Moreover, the professional issue of work-life balance must be sorted by breaking the maternal wall, i.e., deconstructing the subtle stereotypes revolving around institutional elucidations that women lack commitment to realise their life choices and workplaces are often designed for men and by men. Arguably, feminist activism demands for restructuring institutions to rectify the practice of guiding women into public domains without calling men into private spheres. The requirement is to enlarge the scope of interpreting work-life balance to include marital and childcare obligations, family expectation to cater to needs of elderly members, pursuing hobby, easy availment of sabbatical leave and preserving psychological and emotional health.

Effectively, sustenance of women judges in legal profession depends on incentives relating to appointment, promotion and elevation policies. Concurrently, adequate regard to gender diversification and mandatory representation of women among eligible candidates would defy procedural opaqueness and structural obstructions in selection of judges in lower and higher judicial institutions. The merit-based evaluation scheme has acted as equalizer in maintaining gender ratio in subordinate judiciary and, interestingly, HC recommendations carry the onus to bring gender diversity by nominating more women in higher judiciary. Cultivation of feminist values requires a judicial system where judges are proficient in skills of reflexively check explicit and implicit biases in adjudicating procedures and inculcate sensitive approach towards gender discrimination.

The legal fraternity must advocate for consistent training of judges on gender issues at professional levels along with being a subset of course curriculum in various educational institutions. In addition to improvised judicial behaviour, sexist annotations in judgements and other legal documents must be barred from judicial vocabulary as language plays vital role in feminisation of social structures. Moreover, for effectual feminisation of judicial structures, enhanced accountability and affirmative actions must enabled women to embrace decision making roles and power positions at all tiers of judiciary. Such versatility in judicial structures and jurisprudence will revolutionise the future of pillars of justice and democracy. The positive approach towards gender parity in judicial courts must be accelerated through establishment of feminist conscious institution.

Even though the utopian idea of inclusive and egalitarian judicial benches is often camouflaged by intensely ingrained social marginalisation in judiciary, yet gradual reforms and gender recognition have percolated down radical optimism to the grass root levels. There is a need to revisit absolute implementation of judicial independence in composition of judicial benches at all levels along with acknowledging presence of women in power positions beyond symbolic tokenism of women empowerment. A laudable step of appointing women CJI would not absolve legal fraternity from accountability towards gender representation at all judicial levels. Moreover, the prerequisite of female representation in judicial courts is to transform socially conditioned patriarchal mindsets and narrowing ambit of individual subjectivity along with addressing conscious and subconscious gender biases leading to grave discrimination.

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¹ Samanwaya Rautray, 'Devise Gender Sensitisation Courses for Lawyers, Judges: Supreme Court' *The Economic Times* (18 March 2021) <<https://economictimes.indiatimes.com/news/politics-and-nation/devise-gender-sensitisation-courses-for-lawyers-judges-supreme-court/articleshow/81574759.cms?from=mdr>> accessed 13 March 2023

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