



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Gender disparities in Indian Judiciary: A Study

Aadrika Goel^a

^aNational Law University, Odisha, India

Received 19 November 2022; *Accepted* 01 December 2022; *Published* 12 December 2022

The dearth of women on both the top court and the collegium of High Courts, as well as their insufficient representation in such a platform, can indeed be attributed to gender discrepancies in the judiciary. It's indeed crucial to remember that incorporating women within the judiciary entails more than just ensuring that their perspectives are relevant to situations involving women. Given that we will continue to consist of the same representatives or value systems, asserted, changing the collegium structure would not solve the issue. Indian judiciary requires more diversity because it fosters beneficial institutional reforms. This demands that more women be admitted to the judiciary. Through this article, I have enforced the need for women in Judiciary in India.

Keywords: *justice, gender, women, inclusive, advocates, discriminatory.*

INTRODUCTION

Judges have quite a significant function in the administration of justice and the creation of verdicts because verdicts have a broad and profound impact on social structures, social order, and persistent systemic inequities. The judgements of Honourable justices are a representation of their thought processes as well as an insight into the thoughts as they interpret and apply the law. To ensure a fair and appropriate reaction through judicial decisions, such judgments should at the very least be inclusive of both men and women on that bench. Providing women with

equal representation and implementing the gender perspective is the objective. "Throughout India, there has been noted that there are just 11.5% of female judges in high courts, whereas there are only four female judges now serving on the Supreme Court out of the 33 total judges."¹The position for female attorneys in the nation is not much better.

"Approximately 15% of the 1.7 million registered advocates are women."²Women are crucial for resolving some situations that could have extremely broad social and political repercussions at all levels of the judiciary. Initially, an absence of representation may exacerbate existing biases in the court system; second, the credibility of the courts as delegates of the societies they serve may be called into question; and third, the appointment of women judges pings equality of opportunity for women in the bar and a fair and non-discriminatory selection process that creates a level playing field. For the majority of the time, tacit or unconscious gender bias is concealed in language and may unknowingly become embedded in the system by resting on similar assertions and assumptions, especially those about women. Although language can reinforce these preconceptions, it can also have powerful, timely, and decisions taken on ushering constructive, much-needed transformation.

This seems to be because the language has an impact on how people think and can spur change. Due to it being more representative of the composition of society, presenting multiple points of view and arguments to the court fosters better public trust and confidence. This incorporates a variety of social settings and emotions that must be taken into account, acknowledged, and perhaps most significantly, appreciated. The adoption of gender-neutral language, which is a language that is especially aware of gendered words and roles and the depiction of women, is yet another facet of expanding on the gender viewpoint for inclusiveness and visibility. For instance, the consistent usage of the pronoun "he" can support the notion that men should hold the dominating position. "Ex-Chief Justice of India, Hon'ble Mr. Justice N.V Ramana also voiced

¹ Bhadra Sinha & Tushar Kohli, '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 15 November 2022

² 'Representation of Women in Judiciary' (*Drishti*, 11 March 2022) <<https://www.drishtias.com/daily-updates/daily-news-analysis/representation-of-women-in-judiciary>> accessed 15 November 2022

out his opinion regarding the representation of women in the judiciary. He supported having 50% female representation in the judiciary.”³

"You have the right. It's not a charitable issue... Enough with this centuries-long repression, added Justice Ramana. At an event ceremony held to congratulate him and the nine new justices of the Supreme Court last year I, the former Chief Justice of India said that women make up only approximately 30% of the subordinate judiciary. Additionally, he emphasised the need for greater gender diversity in the legal profession. "As a first step, I vehemently support allocating a sizeable portion of seats in law schools and universities exclusively to women. In the end, the addition of female judges and attorneys will significantly raise the standard of justice distribution, according to Ramana. The number of female judges currently sitting on the Supreme Court is at an all-time high. By successfully launching the simultaneous nomination of three women judges to the Supreme Court, the Ramana Collegium wrote history. Justice B.V. Nagarathna, one of them, would likely hold the position of Chief Justice of India in 2027.

Justice Shoba Eapen was elevated to the Kerala High Court as a judge. Considering seven female judges out of a total of 38, the High Court of Kerala has recorded history throughout this matter. Even if these developments give us a glimmer of optimism, India still has a long way to go before it can nominate more female judges to the nation's courts, particularly the high courts and the Supreme Court, where female representation is pitifully low. "There has been a 30% horizontal reservation for women in the appointment of judges in various Indian states such as Uttarakhand.”⁴ It is indeed worth noting that more than 30% of women are recruited to the lower courts within those states, indicating that they are being admitted based on merit. Such data disproves the claim made by some that there aren't enough female judges because they're not talented or skilled enough. Paternalistic beliefs and gender norms must be abandoned for change to happen. In a contrast, it is widely believed that women judges will be more

³ Sanjay Sharma & Aneesha Mathur, 'Women of the world unite': CJI Ramana backs demand for 50% reservation for women in judiciary' (*India Today*, 26 September 2021) <<https://www.indiatoday.in/law/story/cji-nv-ramana-calls-for-50-per-cent-reservation-for-women-in-judiciary-1857433-2021-09-26>> accessed 14 December 2022

⁴ Ashish Tripathi, 'SC lifts stay on HC order for 30% quota to women having domicile of Uttarakhand' (*Deccan Herald*, 4 November 2022) <<https://www.deccanherald.com/national/north-and-central/sc-lifts-stay-on-hc-order-for-30-quota-to-women-having-domicile-of-uttarakhand-1159352.html>> accessed 14 December 2022

sympathetic to the feminine side of the case while men are impartial. However, this is false, as Justice Indu Malhotra, a female judge who presided over the Sabarimala Judgment⁵, abstained from the decision to permit women of all ages to visit Sabarimala. Although there are more women than men in law school classes and more women are entering the workforce, it is unfortunate that they are underrepresented in institutions that make major decisions.

PRIMARY REASONS FOR THE UNDER-REPRESENTATION OF WOMEN IN THE LEGAL PROFESSION

One primary reason for women's underrepresentation in the judiciary is society's engrained patriarchy. Courts frequently have unfriendly environments for women. Other traumatic experiences that are frequently related by many women lawyers include harassment, a lack of regard from either the Bar councils or the judiciary, and being told what to say and what not to say. Due to the approach of hiring through an entrance exam, more women tend to enter the lower courts at the entry level. The collegium structure used by the upper judiciary, meanwhile, has a history of being more opaque and consequently more prone to reveal prejudice. A recent recommendation by the Supreme Court Collegium for 192 candidates for the High Courts included 37 women or 19% of the total. Unfortunately, out of the 37 women who were recommended, only 17 have been appointed thus far. It ought to be mentioned that there aren't restrictions on women serving in the judiciary. The lower judiciary in several states has a reservation policy for women, while the High Courts and Supreme Court do not.⁶ As a result of this quota, states like Assam, Andhra Pradesh, Telangana, Odisha, and Rajasthan currently have 40-50% female judges. Despite the overwhelming support from the opposition, legislation to grant women 33% reservation within state and federal governments has not yet been passed.⁷

Age and familial responsibilities are one of the many other aspects that contribute to the promotion of women judges from lower to higher judiciary. According to Madhya Pradesh civil

⁵ *Indian Young Lawyer Association & Ors v State of Kerala & Ors* (2018) SCC Online SC 169

⁶ Shrutu Sundar Ray, 'The Higher Judiciary's Gender Representation Problem' (*Article 14*, 31 August 2020) <<https://article-14.com/post/the-higher-judiciary-s-gender-representation-problem>> accessed 15 November 2022

⁷ *Ibid*

judge Soumya Sahu, "a lot of female judges join the service very late, making their chance of making it to the high courts or Supreme Court poor." Women judges are not exempt from the "leaking pipeline," which refers to the phenomenon in which many working women leave their jobs in the middle of their careers when their children have board examinations and their parents require more childcare for women. A former judge from the Madras High Court, Justice Prabha Sridevan, stated that "the entire attitude toward women who work outside of the home must alter." As an illustration, she cited the three-year transfer schedule for female magistrates. This lessens the ability of women to remain in any job.

According to Nikita Sonavane, a lawyer, *courts were not created to cater to anyone other than upper caste males on a technical, even structural basis.*" Sonavane cited the Madhya Pradesh high court as one place where there aren't many restrooms for women. "Throughout courts in India, there aren't even the most basic, clean restrooms available, let alone other amenities like sanitary napkin vending machines, nursing rooms, and crèches for nursing moms. The issue of discrimination affects all facets of the legal system, from the everyday instances of institutional sexism that female lawyers and judges experience to workplace sexual harassment. It is not just the gender-insensitive layout of courts that exacerbates the issue. Lack of established support systems, such as paid maternity leave and childcare, gender bias, discrimination, and sexual harassment are some things that discourage women lawyers from practising law." A shift in judicial mentality is expected to affect litigants as well. In a report titled, the International Commission of Jurists stated that "more women judges, and their visibility, can boost the desire of women to seek justice and enforce their rights through the courts."

WAY FORWARD

Consider a transgender woman as a judge hearing the cases of other trans women, This would also give the plaintiff comfort. Due to different circumstances, Sonavane asserted, it is unquestionably beneficial to have representation for distinct marginalizations in the judiciary. In *State (Govt. of NCT of Delhi) v Pankaj Chaudhary*⁸, an all-female Supreme Court panel led by Justice R. Banumathi and Justice Indira Banerjee ruled in 2018 that even if "the victim was habituated to sexual intercourse," it could not be assumed that she was a "woman of loose moral

⁸ *State (NCT of Delhi) v Pankaj Choudhary* (2019) 11 SCC 570

character," and that even if the prosecutrix was of "easy virtue, she has the right to deny to submit herself. Up a different level, a noteworthy example is of Justice Leila Seth, a representative of India's 15th Law Commission who played a key role in amending the Hindu Succession Act of 1956 to ensure daughters' inheritance rights to family property."⁹ She also served as a member of the three-person Justice Verma committee, which has been established in the wake of the horrifying 2012 Delhi gang rape case and urged swifter trials and harsher penalties for sex assaults. There is no doubt that modern male judges are capable of rendering pro-women rulings as well. Similar to the previous point, the rare examples of certain women judges promoting gender equity do not imply that all women judges are progressive or feminist.

This also goes against what the judges have experienced to assume that female judges are more understanding of female victims and litigants. Not only must judges and counsels receive gender-sensitization training, but it should be incorporated into the legal curriculum. Additionally, sexist language in verdicts should be recorded and banned, and judges and attorneys who support sexist behaviour should not be given top positions. Accountability is necessary, but it cannot take the place of women holding positions of power themselves. "The growing importance of the judiciary in governance and policymaking makes it imperative that we advocate for a diverse judiciary. The parliament, which is the primary legislative body, has come under fire for failing to carry out the Constitution's greater purpose of a controlled revolution, which has prompted the judiciary to broaden the scope of its authority beyond adjudication." With the greater number of women in leadership positions, gender has not yet been a commonly used model for appointment in the judiciary. Additionally, it is important to examine how gender diverse the Indian judiciary is.

CONCLUSION

For a society to uphold the concepts of liberty, fraternity, and equality and claim to be contemporary and civilised, equal rights and prospects for women must be provided. Consequently, I'll end with a "comment made by the late Justice Krishna Iyer in the case of

⁹ Shruti Sundar Ray (n 6)

*Krishan Lal v the State of Haryana*¹⁰ (1980) which neatly sums up issues with substantive justice for women. His statement that "a socially sensitive judge is a better legislative defence against gender uproar than long phrases of intricate sections with the all the safeguards wrought into it." The underrepresentation of women in higher judicial positions demonstrates that a variety of factors, such as a lack of opportunity, biased employment practices, a lack of desire on the part of women in the judiciary, etc., are at play. Because the regulations of their country and how they are applied have an impact on the lives of women worldwide, it would be advantageous for society if women's voices were heard more often in the apex courts. This would increase awareness of women's issues and help women at the grassroots level.

¹⁰ *Krishan Lal v The State of Haryana* (1980(SCR (3) 305