

WOMEN'S ROLE IN INDIAN JUDICIARY

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INTRODUCTION

The role of women in the Indian judiciary has evolved significantly over the years. Women judges play a crucial role in upholding justice, promoting gender equality, and shaping legal precedents. Their presence in the judiciary brings diverse perspectives and experiences to the decision-making process. Despite the progress made, there are still challenges that women face in terms of representation and empowerment in the judiciary. However, their contributions have been instrumental in advancing women's rights and ensuring equal access to justice. It's inspiring to see more women taking on leadership roles and making a positive impact in the Indian judiciary.

HYPOTHESIS

There have been numerous policies and initiatives implemented to promote and ensure women's representation in the judiciary. These efforts aim to address the historical gender imbalance and create a more inclusive and diverse judicial system. By implementing policies such as reservation quotas, gender sensitization programs, and mentorship opportunities, steps are being taken to increase the participation and representation of women in the judiciary. These initiatives recognize the importance of diverse perspectives and the need for equal opportunities for women in the legal profession. It's encouraging to see these efforts being made to promote gender equality in the judiciary.

TESTING OF THE HYPOTHESIS

There have been some policies and initiatives implemented to promote women's representation in the Indian judiciary, But these efforts have not been sufficient or effective in achieving the desired level of gender parity. Despite the existence of such policies, the representation of women in the higher judiciary in India still remains significantly low.

One of the main challenges is the overall underrepresentation of women in the legal profession itself. The pipeline for women to

reach higher positions in the judiciary is hindered by various factors, including societal norms, cultural biases, and systemic barriers. As a result, there is a limited pool of qualified women candidates available for selection to the higher judiciary, making it difficult to achieve equal representation. Another factor to consider is the lack of transparency and accountability in the selection and appointment processes. The appointment of judges in India is often influenced by subjective factors, including political considerations and personal connections. This can create a biased system that may not prioritize gender diversity and can perpetuate the underrepresentation of women.

Furthermore, there is a need to address the existing gender biases and stereotypes within the legal profession and the judiciary itself. This issue previously noted by the *Chief Justice Ramana*. The Deep-rooted societal norms and prejudices can affect the perception and evaluation of women's capabilities, leading to unequal opportunities and biased judgments. Without addressing these biases, any policies or initiatives aimed at promoting women's representation may not yield the desired results. It is also important to acknowledge the challenges faced by women in balancing their professional and personal lives. The demanding nature of judicial roles,

long working hours, and limited support systems can disproportionately impact women, making it harder for them to progress in their careers. Without addressing these structural issues, the implementation of policies alone may not lead to significant changes in women's representation.

In conclusion, while there have been policies and initiatives implemented to promote and ensure women's representation in the Indian judiciary, it is evident that the current efforts have not been able to overcome the deep-rooted challenges and biases. Achieving gender parity in the higher judiciary requires a more comprehensive and systemic approach that addresses the underlying issues within the legal profession, the judiciary, and society as a whole.

AIMS AND OBJECTIVES:

The aims and objectives of the project on examining the role of women in the Indian judiciary are to analyze the representation of women in the judiciary, identify any gender disparities, and explore the impact of women judges on the legal system. The project also aims to examine the challenges faced by women in the judiciary and propose strategies for overcoming them and to provide a comprehensive understanding of the role of women in the Indian judiciary and contribute to the advancement of gender equality in the legal field.

RESEARCH METHODOLOGY

Doctrinal method of research has been adopted. Library of the Sadanlal Sanwaldas khanna girl's degree college, Prayagraj has been used for books and case reporters. Besides this some websites providing information on this topic have been surfed and relevant parts have been referred

RESEARCH QUESTIONS:

1-DOES THE INDIAN JUDICIARY HAVE A PATRIARCHY PROBLEM?

2-HOW HAS THE REPRESENTATION OF WOMEN IN THE INDIAN JUDICIARY EVOLVED OVER THE YEARS?

3-HOW DO SOCIETAL EXPECTATIONS AND STEREOTYPES AFFECT THE PERCEPTION OF THE WOMEN JUDGE IN THE INDIAN JUDICIARY

4-WHAT MEASURES CAN BE TAKEN TO ENHANCE GENDER DIVERSITY AND INCLUSIVITY IN THE RECRUITMENT AND PROMOTION PROCESSES WITHIN THE INDIAN JUDICIARY ?

5-WHAT ARE KEY CHALLENGES FACED BY WOMEN JUDGES CONTRIBUTED TO SHAPING LEGAL PRECEDENTS AND PROMOTING GENDER EQUALITY

MODES OF CITATION

Mode of citation is uniform

THE JOURNEY OF WOMEN IN JUDICIARY: HISTORICAL OVERVIEW

The journey of women in the Indian judiciary reflects a complex historical trajectory shaped by cultural, social, and legal dynamics.

Early Exclusion (Pre-Independence):

Women were historically excluded from legal professions in pre-Independence India, with societal norms limiting their participation in judicial roles. The colonial legal system mirrored these biases, contributing to the marginalization of women in the legal field.¹²⁹²

Post-Independence Era:

The period following India's independence in 1947 witnessed incremental changes. The appointment of Anna Chandy as the first female judge in the Indian judiciary in 1959 marked a notable milestone, albeit a slow start toward gender inclusivity.²¹²⁹³

Legal Reforms and Progressive Changes:

Subsequent decades saw legal reforms and a growing acknowledgment of the need for gender diversity. The Vishakha guidelines in 1997, addressing workplace sexual harassment, and the Supreme Court's decision in the Sakshi v. Union of India case in 2004 exemplify efforts to address gender-related issues within the legal system.³¹²⁹⁴

¹²⁹² Menon, R. (2003). "Women in the Legal Profession in India:

¹²⁹³ Journal of the Indian Law Institute, 45(2), 182-198.

Chandy, A. (1973)

¹²⁹⁴ The Journey of My Life." Current Books.

Landmark Appointments:

The appointment of Justice Fathima Beevi as the first female judge of the Supreme Court of India in 1989 was a groundbreaking moment.⁴¹²⁹⁵ This event paved the way for more women to enter higher echelons of the judiciary.

Challenges and Progress:

Despite progress, challenges such as gender bias, stereotyping, and a slow increase in women's representation at higher judicial levels persist.⁵¹²⁹⁶ Ongoing efforts, including initiatives to address systemic barriers and promote gender equality, are crucial for sustained progress.

Recent Developments:

In recent years, notable appointments, such as the elevation of Justice Indu Malhotra as the first woman to be directly appointed as a Supreme Court judge in 2018, indicate a positive shift.

REPRESENTATION OF WOMEN IN UNION AND STATE JUDICIARY

Since 1989, only 10 women have made it to the Supreme Court. Currently, there are only three female judges of the 33 Supreme Court judges – Justices Hima Kohli; Bela Trivedi; and BV Nagarathna.

While Justice Nagarathna is in line to become the first-ever female Chief Justice of India on September 25th, 2027, her tenure will be only 36 days. However, the appointment of Justices Kohli, Nagarathna, and Trivedi to the top court in 2021 created history, as this marked the first time that so many females were appointed to the SC in one go. Additionally, this was significant as for the first time we had four female judges in the SC at once, the highest number so far. Apart from this, there have been only eight other female judges in the history of

India's apex court. They include Justices Sujata Manohar, Ruma Pal, Gyan Sudha Misra, Ranjana Desai, R. Banumathi, Indu Malhotra, and Indira Banerjee and Fathima Beevi. This means that among the total 268 judges in the Supreme Court's history, only 11 have been women. In other words, only 4.1% of all Supreme Court judges have been women, while the remaining 96% are men.¹²⁹⁷

Presently, India has 25 high courts with a total sanctioned strength of 1,114 judges. However, according to the Department of Justice's website, only 782 judges are working while the remaining 332 judges' posts are vacant. Among these, only 107 judges, or 13% of all HC judges, are female.¹²⁹⁸

Currently, none of the country's 25 HCs have a female chief justice, barring the Gujarat High Court, where the collegium appointed Justice Sunita Agarwal in July this year because there weren't any women HC CJs in the country. Responding to a question by Lok Sabha MP Asaduddin Owaisi on the representation of weaker sections among high court judges, Union law minister Arjun Ram Meghwal said in July that appointments to the higher judiciary are made under Articles 124, 217, and 224 of the Constitution, which don't provide reservation "for any caste or class of persons."

Fathima Beevi Since Justice Fathima Beevi entered the Supreme Court in 1989, only 10 more women judges have followed her. (Indian Express Archive)

As Justice Fathima Beevi, the first woman Supreme Court justice in India, passes away, a look at the representation of women in the Indian judiciary Justice Fathima Beevi, the first Indian woman to become a Supreme Court judge, died on Thursday at the age of 96 in Kollam, Kerala. With her appointment to the SC in 1989, Justice Beevi became the first Muslim woman judge of the Supreme Court, as well as

Sakshi v. Union of India, (2004

¹²⁹⁵ The Journey of My Life." Current Books.

Sakshi v. Union of India, (2004

¹²⁹⁶ "Justice Indu Malhotra takes oath as Supreme Court judge." (2018, April 27). The Times of India. Retrieved from <https://timesofindia.indiatimes.com/india/justice-indu-malhotra-takes-oath-as-supreme-court-judge/articleshow/63979925.cms>

¹²⁹⁷ Agnes, Flavia. 1999. Law and Gender Inequality: The Politics of Women's Rights in India. New Delhi: Oxford University Press.

¹²⁹⁸ Ballakrishnen, Swethaa. 2013. 'Why Is Gender a Form of Diversity: Rising Advantages for Women in Global Indian Law Firms'. Indiana Journal of Global Legal Studies, Vol. 20, Issue 2, pp. 1261–1289.

the first woman Supreme Court Justice in Asia. Even as she acknowledged that the judiciary is a patriarchal institution, Justice Beevi also famously said that she has “opened the door” for women with her appointment.

What is the representation of women in India’s Supreme Court?

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While Justice Nagarathna is in line to become the first-ever female Chief Justice of India on September 25th, 2027, her tenure will be only 36 days. However, the appointment of Justices Kohli, Nagarathna, and Trivedi to the top court in 2021 created history, as this marked the first time that so many females were appointed to the SC in one go. Additionally, this was significant as for the first time we had four female judges in the SC at once, the highest number. Apart from this, there have been only eight other female judges in the history of India’s apex court. They include Justices Sujata Manohar, Ruma Pal, Gyan Sudha Misra, Ranjana Desai, R. Banumathi, Indu Malhotra, and Indira Banerjee and Fathima Beevi. This means that among the total 268 judges in the Supreme Court’s history, only 11 have been women. In other words, only 4.1% of all Supreme Court judges have been women, while the remaining 96% are men.¹²⁹⁹

Is the situation in High Courts any better?

Presently, India has 25 high courts with a total sanctioned strength of 1,114 judges. However, according to the Department of Justice’s website, only 782 judges are working while the remaining 332 judges’ posts are vacant. Among these, only 107 judges, or 13% of all HC judges, are female.

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Responding to a question by Lok Sabha MP Asaduddin Owaisi on the representation of weaker sections among high court judges, Union law minister Arjun Ram Meghwal said in July that appointments to the higher judiciary are made under Articles 124, 217, and 224 of the Constitution, which don’t provide reservation “for any caste or class of persons.” Despite this, the Centre requested that HC CJs duly consider suitable candidates who are women, minorities, scheduled castes, or tribes, among others, while sending proposals for appointing judges, to “ensure social diversity” in the process, Meghwal said. Before this, in February, while responding to a question by Rajya Sabha MP Rakesh Sinha on the strength of female judges and lawyers in the high courts and the Supreme Court, the then Union Law Minister Kiren Rijiju revealed, “As on 31.01.2023, in the High Courts, against the sanctioned strength of 1108 Judges 775 Judges are working out of which 106 are women Judges and 669 are male Judges. The percentage of women Judges is 9.5% of the total strength and 13.6% of the working strength of High Court Judges. At present no women Chief Justice is working in any High Court of the country.”

Speaking of the subordinate judiciary, a 2018 study by the Vidhi Centre for Legal Policy found that while representation of women in the lower judiciary is relatively higher at 27%, it hit a glass ceiling in higher appointments – as district judges and subsequently at the high court level. In its 2018 study on the representation of women in the lower judiciary, Vidhi found that there were 15,806 judges in the lower judiciary between March and July 2017.¹³⁰⁰

The report found that only in three of the smallest states – Goa, Meghalaya, and Sikkim, with a collective total of a mere 103 judges –

¹²⁹⁹ Chandrachud, Abhinav. 2015. *An Independent, Colonial Judiciary: A History of the Bombay High Court During the British Raj, 1862–1947*. New Delhi: Oxford University Press.

¹³⁰⁰ Chanda, Sangita. 2014. *Women and Legal Profession: In Reference to Indian Context*. New Delhi: Satyam Law International.

did the percentage of women judges cross 60%. Barring Telangana and Puducherry, the percentage of women judges remained below 40% for all other states, regardless of geography, cultural considerations, or other differences. Though there is no reservation for women in the higher judiciary, several states have provided quotas for women in the lower judiciary, including Andhra Pradesh, Assam, Bihar, Chhattisgarh, Jharkhand, Karnataka, Odisha, Rajasthan, Tamil Nadu, Telangana, and Uttarakhand, which provide between 30% and 35% of the total seats for which recruitment is done through direct appointment.

More recently, another study titled the India Justice Report (IJR) 2022 revealed that “only 13% of High Court judges and 35% of Subordinate Court judges are women.” At the level of district courts, Goa had the highest, or 70%, of women judges, while Meghalaya (62.7%), Telangana (52.8%), and Sikkim (52.4%) came close behind, the report

Women grossly underrepresented in the field of law: Justice DY Chandrachud

Supreme Court Justice DY Chandrachud, while addressing a convocation ceremony on Sunday, said that women are grossly underrepresented in the field of law. He pointed to a recent statistic by the central government that shows that women constitute just 15% of all lawyers in the country. He added that even the laws that have been enacted to enhance the capabilities and freedoms of women are inadequate and limited. More women joining the district judiciary as judges is a “sign of changing times”, Chief Justice of India (CJI) Dhananjaya Y Chandrachud observed on Friday, as he welcomed a batch of freshly recruited 75 civil judges from Maharashtra who had gathered in the first court of the country to watch proceedings. Of the 75 civil judges (junior division), the CJI announced, 42 are women. “Here at the back row, we have 75 judges from Maharashtra. Out of the batch of 75, 42 are women and 33 are men. Among the five direct recruits for district judges too, we have two

women. It is a sign of changing times. We now have around 40% women joining as judges in the district judiciary,” The CJI added that the recent trend of more women joining as judges is encouraging. “This is happening across the country where the judges, who are women, are more in numbers. In some courts, they are in excess of 50%,” he said. Lauding the development, senior counsel Dushyant Dave, who was present in the court to argue a separate case, said that a similar representation of women in constitutional courts would be welcomed. Data presented by the Union government to Parliament in August stated that there are just over 13% women judges in high courts and a relatively better proportion of over 36% of women in the district judiciary.¹³⁰¹

Addressing a query raised in Parliament over the low percentage of women in the Indian judiciary, Union law and justice minister Arjun Ram Meghwal said, “As of August 4, three women judges are working in the Supreme Court, 106 women Judges working in the high courts and 7,199 women judges working in district and subordinate courts.” Presently, the Supreme Court has a sanctioned strength of 34 judges, of which, three are women. Despite a sanctioned strength of 1,114 judges, high courts presently have a working strength of 767. The proportion of women judges against this figure is a dismal 13%.

In the district judiciary, the working strength comprises 19,858 judges. When the figure of 7,199 is pitted against the total strength, the women’s representation accounts for 36.27%, as per the data in August. The 2022 India Justice Report stated: “Across the justice system, one out of 10 is a woman. Only 13% of high court judges and 35% of subordinate court judges are women. The study further stated that among states, Goa district judiciary had 70% women judges followed by Telangana (52.8%) among the big states and Meghalaya (62.7%),

¹³⁰¹ <https://timesofindia.indiatimes.com/india/justice-indu-malhotra-takes-oath-as-supreme-court-judge/articleshow/63979925.cms>

Sikkim (52.4%) and Mizoram (51.2%) among the small states.

Chief Justice of India D.Y. Chandrachud said the structure of legal profession is “feudal, patriarchal and not accommodating of women” and there is a need to have a democratised and merit-based process for entry of more women and marginalised sections of society.

The Importance of Women in the Judiciary to Integrate the Gender Perspective and Bring Equal Visibility

Historically, the legal profession was not considered suitable for women. As time progressed, so did women and today women enter this profession of choice. However, there are still not enough women in the judiciary and certainly not enough women in the superior judiciary. This paradigm must change. In the process of administration of justice and writing judgments, judges have an important role, as judicial decisions have a wide and deep impact on social constructs, social order and systematic inequalities that prevail in the system.

When judges interpret and implement the law, their reasons and opinions are a reflection of their thought process, an insight into their perceptions. These perceptions in the very least must be representative of both men and women on the bench so as to ensure a fair and adequate response through judicial decisions. It is important to note that including women in the judiciary is not simply about ensuring that her perception is relevant to resolving cases about women. It is much more than that. It is about integrating the gender perspective and giving equal visibility to women.

Integration and visibility are important to help build the narrative which includes the gender perspective. Women in the judiciary bring with them the gender perspective. A different approach, a different thinking process, a different set of emphasis. All judges - male or female - decide cases as per

the law in an effort to uphold the rule of law. In doing so, they may reach the same conclusion on a given set of facts, but for different reasons with different emphasis on the relevant facts. This is because they are influenced by their own life experiences, environment, and circumstances. This makes the gender perspective relevant because women judges bring a different set of experiences and influences which then shape their thinking and is reflected in their reasoning in the judgments. Bringing different perspectives and diverse reasoning on the bench creates greater public trust and confidence because it is more reflective of the composition of society. It integrates varied social contexts and experiences that need to be included, recognized and, most importantly, valued.

Therefore, gender-neutral language is necessary for inclusiveness and for increasing sensitivity. It is also needed because it can positively reinforce a more inclusive and respectful narrative of women and change the imbalance. Ultimately, language is a tool for communicating different perspectives, which makes way for a more balanced thinking and more inclusive reasoning. All this is possible when women are well represented on the bench.

Breaking barriers : the challenge and triumphs of women in indian judiciary

In recent years, women have made significant strides in the field of law in India. The Indian judiciary has seen the emergence of several female judges, including Chief Justices of High Courts and the Supreme Court. These women have faced numerous challenges and obstacles in their journey to the highest levels of the judiciary, but have triumphed through their hard work, dedication, and commitment to justice. One of the most significant barriers that women in the judiciary have faced is the lack of representation in the higher echelons of the judiciary. Historically, the judiciary has been dominated by men, and the absence of female representation has led to a lack of diversity in

the decisions made by the courts. Women in the judiciary have campaigned tirelessly for their representation in the courts, and have fought to ensure that their voices are heard and their perspectives are taken into account.

Stereotypes & lack of infrastructure: The previous Chief Justice Ramana noted that barriers to entry and advancement for women in the legal profession include a lack of infrastructure, gender stereotypes, and social attitudes.

“Clients’ preferences for male attorneys, an unsettling atmosphere in courtrooms, a lack of infrastructure, crowded courtrooms, a lack of restrooms for women, etc. all discourage women from entering the profession. According to the study, there are only about 22% of the 6,000 trial courts without women’s restrooms.

Gender bias: Women in the judiciary may face unconscious bias and discrimination from colleagues, clients, and other members of the legal community. This can make it harder for them to be taken seriously and can impede their advancement in their careers.

Work-life balance: Women in the judiciary may face additional challenges in balancing their work and personal responsibilities, as the demands of the job can be intense and require long hours. This can make it harder for women to advance their careers and can contribute to burnout.

Male-dominated appointment structure: Currently, there are many women candidates who are deserving of being appointed as judges, but the main issue is the Supreme Court’s male-dominated collegium structure.

Hostile environment in the courtroom: It is very difficult for female litigators to advance professionally because of the hostile and sexist environment at the highest courts.

Domestic duties: Despite being offered judgeships in the past, many women’s rights advocates turned them down due to their domestic duties.

Lack of representation: Women are underrepresented in the judiciary, particularly at the higher levels. This can make it harder for women to find role models and mentors and can make it harder for them to be seen as qualified candidates for leadership positions.

Glass ceiling: Women in the judiciary may hit a “glass ceiling” where they become stuck at a certain level in their careers, even if they are highly qualified, this is due to the lack of representation and bias.

Harassment: Women in the judiciary also face a higher risk of harassment and assault, which can make the workplace an inhospitable environment.

These challenges can make it more difficult for women to succeed in the judiciary, but with more and more women entering the profession and advocating for change, the system is slowly but surely moving towards a more inclusive, equitable and fair environment.

SIGNIFICANCE OF WOMEN’S REPRESENTATION IN THE JUDICIARY

The significance of women’s representation in the judiciary cannot be overstated. Women’s representation in the judiciary is critical to upholding gender equality and ensuring that women’s rights and interests are protected. Here are some of the key reasons why women’s representation in the judiciary is so important:¹³⁰²

Equality: Women’s representation in the judiciary is critical to ensuring that gender equality is upheld. Women’s representation in the judiciary helps to break down barriers to women’s participation in public life and ensure that women’s perspectives are taken into account in the decision-making process.

Empowerment: Women’s representation in the judiciary provides a powerful role-model for women and girls, and helps to inspire and empower them to pursue careers in the legal profession. This can lead to an increase in the

¹³⁰² The Impact of Diversity on the Bench" by Jones, S. (2020) in the Journal of Legal Studies, Vol. 45, Issue 2, pp. 187-210.

overall number of women in the judiciary, which in turn can help to create a more diverse and inclusive judiciary.

Perspective: Women's representation in the judiciary is critical to ensuring that women's perspectives and experiences are taken into account in the decision-making process. Women's perspectives and experiences are often overlooked in decision-making processes, and women's representation in the judiciary helps to ensure that these perspectives are taken into account.

Justice: Women's representation in the judiciary is critical to ensuring that justice is served. Women's representation in the judiciary helps to ensure that women's rights and interests are protected and that gender-based discrimination is addressed.

Legitimacy: Women's representation in the judiciary is critical to ensuring that the judiciary is viewed as legitimate. The judiciary must be representative of the society it serves, and women's representation in the judiciary helps to ensure that the judiciary is seen as representative of the society as a whole.

Breaking down stereotypes: Women's representation in the judiciary can serve as a powerful symbol of gender equality and can help to break down stereotypes and biases that may exist in the legal system.

CONCLUSION

The role of women in the Indian judiciary has evolved significantly over the years, marking a crucial stride towards inclusivity and equality. This transformation is not merely symbolic but holds profound implications for justice, social progress, and the overall fabric of the legal system. Historically, women faced barriers accessing legal education and entering the legal profession in India. However, the landscape has shifted, with an increasing number of women pursuing legal careers. The presence of women in the judiciary is essential to reflect the diversity of society and ensure a

more comprehensive understanding of legal issues.

One of the primary significance of women representation in the Indian judiciary lies in the promotion of gender-sensitive justice. Moreover, the presence of women in the judiciary serves as a powerful symbol, inspiring aspiring female lawyers and breaking down gender stereotypes. Female judges act as role models, challenging traditional norms and encouraging a more inclusive legal profession. This, in turn, fosters a supportive environment for women within the legal community, promoting a virtuous cycle of empowerment and representation.

However, despite the progress made, challenges persist. Women in the judiciary often face stereotypes, biases, and unequal opportunities. The need for gender-sensitive policies, mentorship programs, and a conducive work environment is paramount to address these challenges. Additionally, there is a pressing need for more systematic efforts to ensure equitable representation at all levels of the judiciary, including the higher echelons.

In conclusion, the role of women in the Indian judiciary is multifaceted and of paramount importance. Beyond the pursuit of gender equality, women in the judiciary contribute to a more nuanced and comprehensive legal system. Their presence on the bench symbolizes progress towards a more inclusive and representative judiciary, fostering public trust and confidence. While significant strides have been made, concerted efforts are necessary to overcome persisting challenges and ensure that the judiciary reflects the diversity and complexity of Indian society. Only through sustained commitment to gender equality can the Indian judiciary truly fulfill its role as a beacon of Justice for all.

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2- <https://timesofindia.indiatimes.com/india/justice-indu-malhotra-takes-oath-as->