

## **“Underrepresentation of Women Judges in Supreme Court”**

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### **ABSTRACT**

This paper brings forth the absence and gross underrepresentation of women in higher judiciary in India and globally. How even though women are faring well in all fields there have only been eight women judges in the Indian Supreme Court since its inception.

It brings to light how even in cases which would have a great impact on the lives of women; the voices of women were either completely absent or highly skewed against the fairer sex like the Triple Talaq Judgment – where no female judge was present in the bench.

In this paper, we try to emphasize the lack of women judges in the higher judiciary – the reasons behind it and some possible solutions.

### **INTRODUCTION**

Supreme Court of India came into existence in the year 1950, even after 70 years of its formation still higher Judiciary has only seen eight female judges so far. When most of the people talk about women empowerment and there is a significant increase in the number of women in almost every field but when will this happen in higher judiciary and when the issue of gender inequality in the appointment of women judges in Apex body of the country will resolve?

Women are getting positions in spheres of public as well as private sector why is our judiciary lacking behind? Even the recent judgments given by Justice Deepak Mishra and other Supreme Court Judge’s panel comprised of a single woman judge Justice Indu Malhotra, this was only done to avoid the question of gender imbalance. So one could say this was a formality to show that women judges are part of constitutional judgments. This question of imbalance in the judiciary is not only nationally recognized but it is gaining importance internationally, even justice Baroness Hale in 2015 UK's only female Supreme Court judge criticized all-male judges' appointment.

### **POSITION IN INDIAN JUDICIARY**

In India, the recent judgments whether it be of Triple Talaq or Right to privacy, not a single woman judge was a part of Constitutional Bench, the judgments were given by Supreme court on important issues like - should women worshippers be barred from the Sabrimala temple because they are considered “impure” due to menstruation, Section 377 of IPC, Section 497, etc. all these judgments comprised of a single women judge Justice Indu Malhotra.

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When the judgment of Triple Talaq was decided by a five-judge constitutional bench<sup>1</sup>, in a judgment where judges discussed the rights of Muslim women - was it not essential for a constitutional bench to have a woman judge? India is a country with a diversity of faith, the judiciary even keeps this in mind while deciding any matter that comes before it but when judiciary will start considering diversity in gender?

Justice Prabha Sridevan Former Judge of Madras HC, she said: “that problem is why not Justice Bhanumathi was part of a panel which gave judgments of constitutional importance but the problem is far more deeply ingrained that why women are not appointed as judges and that this does not seem to matter to anyone.”<sup>2</sup>

First woman judge of Supreme Court Justice Fathima Beevi was appointed in 1989; it almost took 39 years our Supreme Court to get its first woman judge.<sup>3</sup> In present, there are 34 judges in Supreme Court out of which only 3 are women judges; this is the first time in Indian history when the Supreme Court is having three sitting women judges.<sup>4</sup>

India is a signatory to the Convention on the elimination of all forms of discrimination against women which is aimed at removing obstacles for women and to remove obstacles from women’s lives so that they can participate in public as well as private spheres, but this doesn’t seem to be the reality because the greatest imbalances are seen in the apex system of the judiciary only. To solve this problem a parliamentary panel in its report suggested increasing the number of women judges by 50%.<sup>5</sup>

In 96th report on demands for grants (2018-2019), the Standing Committee on Personnel Public Grievances and Law and Justice headed by Mr. Bhupender Yadav has further recommended that the strength of women judges in the country should be increased to 50% of its total strength. The report pointed that out of the 15959 Judges across India 11390 are male and only 4409 are female and the parliamentary panel report pointed out that the situation is even worse in the Higher Judiciary where only 6 women Judges till now have made it to the Supreme Court. The report pointed out that states like Bihar, Andhra Pradesh, Odisha, Telangana, Assam, Rajasthan, and Tamil Nadu have introduced reservations for women in the subordinate judiciary and the panel recommended extending it to other states too.

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<sup>1</sup> A Vaidyanathan, *Triple Talaq: 5 Judges, 5 Faiths, What They Said*, NDTV (Aug 22, 2017, 03:59 PM), <https://www.ndtv.com/india-news/5-supreme-court-judges-of-5-faiths-to-give-verdict-on-triple-talaq-1740329>.

<sup>2</sup> Namita Bhandare, *67 years of Supreme Court, 6 women judges*, LIVE MINT (02 Sep, 2017, 12:10 AM), <https://www.livemint.com/Leisure/Ak3TNcLWpQuoFaD3gJUnmM/67-years-of-Supreme-Court-6-women-judges.html>.

<sup>3</sup> PTI, *In a first, three women judges in Supreme Court*, THE ECONOMIC TIMES (Aug 07, 2018, 02.06 PM), [https://economictimes.indiatimes.com/news/politics-and-nation/in-a-first-three-women-judges-in-supreme-court/articleshow/65305504.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/in-a-first-three-women-judges-in-supreme-court/articleshow/65305504.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>4</sup> Legal correspondent, *SC now has 3 women judges*, THE HINDU, August 8, 2018, at 10.

<sup>5</sup> Poovi Gupta, *Parliamentary Panel Seeks 50% Quota For Women Judges*, SHETHEPEOPLE (Mar 17, 2018), <https://www.shethepeople.tv/news/parliamentary-panel-seeks-50-quota-women-judges>.

The committee accordingly deserves that bench of Higher Judiciary be reflective of the composition of the society and its diversity recommends that suitable measures need to be taken to include more women judges.<sup>6</sup>

### **INTERNATIONAL POSITION OF JUDICIARY**

The number of women judges has significantly increased all over the world in recent times. In many countries around half of the law students are women, and 2014 data shows that women in OECD countries make up more than 54% of professional judges. But women are still vastly underrepresented in top-ranking judicial positions including on High Court benches and other senior roles in the legal profession.

Women only hold 33.6% of judgeships in Supreme Courts. Since women are often successful at gaining entry into the legal profession but progress slowly into senior posts, re-visiting the corporate culture and working conditions, and introducing mentorship schemes are necessary considerations. Regardless of government policies, leadership and independent monitoring of outcomes are essential components to ensure a more diverse judiciary.<sup>7</sup>

In UK top courts, Supreme Court, only 3 out of 12 justices are female.<sup>8</sup> The United States is not far behind in gender inequality since currently it only has 3 women judges out of 9 and till now has had only 4 women judges, out of 114. There are only a few countries like Canada which have gender equality in the higher judiciary.

### **APPROACH FOR A GENDER NEUTRAL JUDICIARY**

It can be traced back in history, that women were always deprived of their rights, till 19th-century women did not have the right to vote in many countries around the world, during the time of French revolution women suffrage movement took place to provide equal voting rights to women. Later, the United Nation Human Rights Commission introduced voting rights for women in international law and its charter in Article 21 talks about equal voting rights.

In the year 1960 women liberation movement took place, which demanded equal wages for equal work. Later, Article 23 in the Charter of United Nation Human Rights Commission introduced. Article 21 of the Indian Constitution provides equal pay for equal work.

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<sup>6</sup> Apoorva Mandhani, *Increase Strength Of Women Judges To 50%, Suggests Parliamentary Panel*, LIVE LAW (Mar 14, 2018, 9:13 PM), <https://www.livelaw.in/breakingincrease-strength-women-judges-50-suggests-parliamentary-panel/>.

<sup>7</sup> *Women in the Judiciary: working towards a legal system reflective of society*, OECD (Mar, 2017), <https://www.oecd.org/gender/data/women-in-the-judiciary-working-towards-a-legal-system-reflective-of-society.htm>.

<sup>8</sup> Diana Taylor, *Lady Hale: at least half of UK judiciary should be female*, THE GUARDIAN (Mar 24, 2019, 01:55 PM), <https://www.theguardian.com/law/2019/mar/24/lady-hale-at-least-half-of-uk-judiciary-should-be-female>.

The Law reforms directed towards bringing women at par with men have not yielded much success. Raising the number of women members in parliament will help in reducing paternalistic laws and ensure autonomy to women in deciding for themselves. This will ensure women-friendly laws. Having gender-neutral laws, promoting gender-neutral values and gender-neutral institutions will go a long way in getting rid of gendered roles for men and women alike.

The laws are enacted to empower the women by granting them political powers and by helping the women achieve economic control and authority through education and social upliftment. Women empowerment is essential for creating a stronger economy and achieving internationally agreed goals for sustainable development.<sup>9</sup>

## CONCLUSION

No society can call itself modern and civilized and reach the ideals of liberty, fraternity and equality without ensuring equal rights and opportunities for women. The underrepresentation of women in higher judicial services shows that there are still multiple forces at work like lack of opportunities, biased selections, lack of interest of women for judicial services, etc. Since women's lives everywhere are impacted by the laws of their country and their proper implementation, the society would be benefited if the voices of women become more prominent in the benches of the apex courts – it would lead to greater sensitization towards women's issues and the upliftment of women at the grassroots level. The Parliament has provided 30% reservations for women; it is high time for the judiciary to implement similar corrective measures.

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<sup>9</sup> Shampa Dev, *Gender Justice in India: A Feminist Jurisprudential Perspective*, 10 TATTVA-JOURNAL OF PHILOSOPHY. 69, 84 (2018).