

## **Third Pillar of Democracy-Inclusivity of Indian Judiciary**

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### **Abstract:**

The judiciary is an organ of government that interprets the laws which are made by the legislature and enforced by the executive. It is the third organ of the government. For democratic countries, the judiciary is very important because the judiciary is known as the Guardian of Fundamental Rights of the people of the country. It upholds the rights of various individuals in the country and protects the constitution. The main function of the judiciary is to render justice to the people and thereby protect the rights of the people. India has a single integrated judicial system. The structure of the judiciary in India is pyramidal with the Supreme Court at the top, High Courts below them, and district and subordinate courts at the lowest level. The lower courts function under the direct superintendence of the higher courts. The one big issue that arises when we talk about judiciary is how inclusive and diverse is Indian judiciary. Recently, the Supreme Court Collegium itself has been talking about enhancing the diversity profile of judges in higher judiciary so the Supreme Court Collegium the judges who select judges themselves are talking about improving upon the diversity profile and fact that they are talking about this important issue is in itself a welcome development that is a step in the right direction. As of now in India we have quotas to enhance representation from diverse communities only at the subordinate court level and only in very few states do we have these kinds of quotas. So only from a very few states representatives from disadvantaged castes and tribes can surely enter the judiciary. A few, like Andhra Pradesh and Bihar, have reservations about women entering the judiciary, and that too only at subordinate court levels. In totality, we have been using quotas or reservations to enhance the representation whether it is in Panchayat elections or urban local bodies or more. But we have failed to adapt such at the level of the Indian Judiciary.

## **Status of Representation in Indian Judiciary**

Lack of equal Representation is the biggest issue India is facing today and it is seen almost in all aspects of society. Nothing changes when it comes to the Judiciary as well. Lack of representation can also be seen in our Indian Judicial System. Although it has improved there is larger room for improvement. The status of diversity in the Indian Judiciary presents a mixed picture with significant disparities across different levels and states:

### **1. GENDER-BASED REPRESENTATION**

#### **a) Subordinate Court Judges**

-According to the India Justice Report 2019 released by Tata Trusts women accounted for about only 30% of subordinate court judges. The states of Andhra Pradesh, Bihar, Chhattisgarh, Karnataka, Jharkhand, Tamil Nadu, Odisha, Rajasthan, Uttarakhand, and Telangana Provide for reservations in the subordinate judiciary to women as per the report. Meghalaya with 74% and Goa with 66% were the only states to achieve gender parity. Both had the largest share of women judges at a subordinate level.

- The 2020 India Justice Report released by Tata Trusts highlighted that among the large and mid-sized states Andhra Pradesh had the maximum number of women judges at the subordinate level with 43.6%. Other states with good numbers included Chhattisgarh, Haryana, Kerala, Odisha, Rajasthan, Punjab, Tamil Nadu, Uttarakhand, and West Bengal. As of small states, Goa still has the highest percentage of women in subordinate courts all over with 72% and Meghalaya also has 50% of women judges at a subordinate level.

- The share of women judges at the subordinate level remains uneven as depicted in the India Justice Report 2022 released by Tata Trusts. Nationally, subordinate courts constitute only an average of 35% of women judges. Among the states, Goa topped the chart with 70% of women judges at the subordinate level followed by Telangana with 52.8%.

#### **b) High Court Judges**

- The percentage of women judges at the high court level is low as compared to the percentage of women at the district level. As per the India Justice Report 2022 only 13.1% of judges in high court across the country comprise women. Among the states, Sikkim has the highest national average at 33.3% of women judges followed by Telangana with 27.3% of its judges comprising women. On the other hand, the share of women in high courts has dropped in some states. Andhra Pradesh went from 19 to 6.7% followed by Chhattisgarh which dropped from 14.3 to 7.1%.

#### c) States with No Women Judges

- Bihar, Tripura, Uttarakhand, Meghalaya, and Manipur high courts continue to have no women judges, highlighting a concerning lack of gender gap in these regions.

#### d) Sikkim's Exceptional Case

- Sikkim stood out with 33.3% of women judges in the high court and 52.4% in subordinate courts, making it a positive example of gender inclusivity.

#### e) Supreme Court

- Justice Fathima Beevi was the first woman to be appointed as a judge at the Supreme Court in 1989 after a long gap of 39 years from the date of establishment of the Supreme Court. Despite India's 75 years of independence, there have been only 11 women judges in the Supreme Court representing only 4% of women judges, emphasizing the need for increased gender representation at the highest judicial level.

Overall, while there have been some improvements in the representation of women in the Indian Judiciary at the subordinate court level in certain states, the High Courts and the Supreme Court still lag in achieving gender diversity. The disparities among states also highlight the need for concerted efforts to promote gender inclusivity and address the gender gap in the Indian judicial system.

### 2. RELIGIOUS DIVERSITY

- The three most religious minority communities namely Muslim, Christian, and Sikh have considerably less representation in the Indian Judicial system. At least 79% of executive-appointed judges were Hindu and 84% of Collegium-appointed judges were Hindu. Although Muslims represent 15% of India's population, their representation in the judiciary is alarmingly low. This is true for other religious minorities too.

### 3. CASTE DIVERSITY

- It has been seen that 79% of all the High Court judges appointed from 2018 to 2022 come from the upper castes while the proportion of SCs, STs, and other backward classes has not exceeded 10%. In fact, no Judge from a Scheduled Tribe (ST) has been appointed to the Supreme Court since its establishment. Also, other backward classes (OBBCs) continue to find no seats on the benches of constitutional courts.

### 4. DIVERSITY ABOUT LGBTQ+ COMMUNITY

- Even after scrapping section 377 from the constitution, there still exists homophobia among people. This fear is also reflected in India's judicial system through the underrepresentation

of LGBTQ+ in the judiciary. Till now, Joyita Mandal has been the only first openly transgender person to be appointed as a judge of a Lok Adalat in 2017.

Despite the abovementioned categories, many others in the community face such stereotypical discrimination and are not given equal opportunities and representation.

### **Reasons for lack of inclusivity or diversity in Indian Judiciary**

The lack of inclusivity or diversity in the Indian Judiciary can be attributed to several factors:

#### **1. Opaque Selection and Appointment Process**

- The system of selecting and appointing judges through the collegium system has often been criticized for its lack of transparency. This opacity can result in decisions that may not adequately consider diversity and inclusivity.

#### **2. Lack of Data and Analysis**

- There has been a historical lack of comprehensive data and analysis on the gender and diversity aspects of judicial appointments. Without this information, it becomes challenging to identify and address such disparities in regard to this.

#### **3. Limited Debate and Spotlight**

- The issue of diversity and inclusivity in the judiciary has not received sufficient attention and debate in the public sphere. There has been a lack of public awareness as well as discussion about the problem in question that can therefore lead to inertia in addressing the problem.

#### **4. Institutional Preferences and Marginalization**

- The continued underrepresentation of certain sections of the population, such as women and marginalized communities, in the judiciary can reflect institutional preferences that may perpetuate historical biases and inequities in the existing judiciary system of India.

#### **5. Absence of Women Representation**

- While some states have implemented reservation policies to encourage women's representation in the lower judiciary, this approach is often missing in the High courts and the Supreme Court. The absence of women representation at higher levels of the judiciary can contribute to the overall lack of gender diversity and gap in the judicial system.

Overall, addressing the lack of inclusivity and diversity in the Indian Judiciary requires a concerted effort from various stakeholders, including the judiciary itself, legal institutions,

policymakers, and civil society, to promote a more representative and inclusive judicial system.

### **Need for Inclusivity**

#### 1. Enhancing Justice Delivery

- Inclusivity in the judiciary is essential because it brings together judges from various income, social, and gender backgrounds. These diverse life experiences can help mitigate unconscious biases that may exist within the judicial system.

- When judges have different perspectives and experiences, they are more likely to make well-rounded and fair decisions. This diversity helps ensure that justice is administered impartially and equitably.

#### 2. Effectiveness of Institutions

- Inclusivity is not just a moral imperative but also a hallmark of effective institutions. When public institutions, including the judiciary, are inclusive, they are better equipped to represent the diverse interests and needs of the population they serve.

- An institution that reflects the diversity of society is more likely to gain public trust and credibility. People from all walks of life should feel that they are heard and represented in these institutions.

#### 3. Constitutional Commitment

- In India, the Constitution commits public institutions to provide equal opportunity to all citizens, irrespective of their background. Inclusivity in the judiciary is a tangible way to operationalize this constitutional value.

- Having judges from different religions, castes, classes, language groups, and genders demonstrate a commitment to inclusivity and equal representation, aligning with the constitutional principles of justice and equality.

#### 4. Empowering Women

- Inclusivity, especially in terms of gender representation, can motivate more women to seek justice. When women see a significant number of female judges, it can instill confidence and trust in the judicial system.

- The presence of women judges not only encourages more women to pursue legal careers but also sends a powerful message about gender equality and empowerment.

Therefore, inclusivity in the judiciary and public institutions is essential for upholding the principles of justice, equality, and effectiveness. It helps mitigate bias, gain public trust, and ensures that diverse voices are heard and represented in decision-making processes. This inclusivity is not only a constitutional mandate but also a practical necessity for a just and equitable society.

### **Collegium system in India**

The Supreme Court of India consists of a collegium system that emerged long back. Collegium is a group of five judges which includes the Chief Justice of India and the four senior judges of the Supreme Court who decide the appointments to the apex court. The High courts too have collegiums however, the high court collegiums only make recommendations for appointments to the high court.

According to Article 124(2) and Article 217(1), it is nowhere mentioned that the advice of the collegium is binding or mandatory for the president for the appointment of the judges. This was highlighted for the first time in the case of *S.P. Gupta v. Union of India* aka First Judges Case (1981). This case empowered the executive in the judge's appointment process. The key observation made in the case was that "consultation" by the President from CJI should not be constructed as "concurrence", which meant that a President is not bound to follow the opinion or advice of CJI in a judge's appointment. However in 1993 with the case of *Supreme Court Advocates-on-record Association v. Union of India* (Second Judges Case) the decision of the 'First Judges Case' was reversed. The Supreme Court held that "consultation" really means "concurrence" and that the CJI should be given the primary role in the appointment of judges. This led to the introduction of a collegium system for the appointment of judges. The collegium system was introduced in a structured way in 1998 also known as Special Reference 1 of 1998 aka Third Judges Case. On the President's reference, the body of the collegium system was expanded to a five-member body (for the Supreme Court judges' appointment), which would consist of the Chief Justice of India and four senior-most judges. In the appointment of the High Court judges, the body of the collegium system would consist of the Chief Justice of India and two senior-most judges.

The central government is not a supporter of the collegiums system. According to the government, the current system is not transparent and can be blamed for the high number of vacancies in the judiciary. It also lacks enough representativeness. Women, Dalits, and Schedule castes and tribes are underrepresented in the higher judiciary in India.

In 2014, the government brought the National Judicial Appointments Commission (NJAC) Act to replace the Collegium system. It was established by the 99th Constitutional Amendment Act, 2014 and the main purpose of NJAC was to make appointments of judges more transparently as compared to the existing collegiums system. The NJAC is composed of the CJI who would be chairman of NJAC; two senior-most judges of SC; the law and justice minister and two eminent persons. However, NJAC was struck down in the Fourth Judges Case, 2015. It was held that the Judiciary should be kept independent of the legislature and executive and that they should not indulge in the process of appointing judges. It was also held that the future judges appointed under NJAC cannot be expected to be independent-minded if the Union law minister is the member of the commission responsible for their appointment.

The struck down of NJAC was based on the 4:1 ratio where J. S. Khehar, Madan Lokur, Kurian Joseph, and Adarsh Kumar Goel had declared the 99th Amendment and NJAC Act unconstitutional while Justice Jasti Chelameswar upheld it. Justice Jasti Chelameswar supported the act and found the NJAC Act constitutional and meritorious. He pointed out that transparency is an extremely important factor in constitutional governance. He held that proceedings of the collegium are inaccessible to the public and, therefore, it lacks transparency. He also pointed out that it is important to maintain the doctrine of checks and balances and the exclusion of this principle leads to the destruction of the basic structure of the Constitution. However, as he was in the minority his opinion was not considered and NJAC Act was declared unconstitutional as per the 4:1 ratio.

As we all are familiar with the saying “Justice Delayed is Justice Denied” it can be seen that over 69766 cases are still pending before the Supreme Court and over 5987477 in High Court as of July 2023 data. The reason for such a big number is the unfilled seats and vacancies in Supreme courts and High courts. The current collegiums system can be blamed for this and some experts believe that this kind of issue arises because of lack of pressure from outside. This failure of the collegium system has again renewed the debate over the appointment of judges in which SC and Centre are in disagreement. The collegium system is considered opaque and everyone is kept dark about the collegium meetings and decision-making process.

## **How can the inclusivity in the Indian Judiciary be increased?**

### 1. Transparency in Appointments

- Making the process of judicial appointments more transparent and accountable can help ensure that considerations of diversity and inclusivity are taken into account. The Supreme Court can institutionalize appointment criteria itself along the lines of religion, caste, regionalism, and gender in a manner that ensures non-arbitrariness.

### 2. Data Collection and Analysis:

- Regularly collecting and analysing data on the demographic composition of the judiciary can provide insights into disparities and inform targeted interventions.

### 3. Public Awareness and Advocacy

-Raising public awareness about the importance of diversity in the judiciary and advocating for inclusivity can help bring this issue into the spotlight.

### 4. Reform and Policy Changes

- Implementing reservation policies or other measures to encourage diversity, especially at higher judicial levels, can be considered to rectify historical imbalances. The goal is to enunciate policies and create processes that ensure a welcome for people from outside dominant caste groups, include more religious minorities, and add more women, disabled, transgender, and varied sexual orientations to the mix.

## **Conclusion**

In the words of former CJI Ramana “Although presently the Supreme Court was functioning with four women judges- the highest number so far- he “expects more” and “inclusivity does not stop with having more women judges.” India has a population of nearly 140 crores, with around 120 languages, thousands of dialects, more than 4000 communities, and more than 700 tribes. This social and geographical diversity must find its reflection at all levels of the judiciary as diversity on the bench promotes diversity of opinions and efficiency. *‘The seeds of our institutions today in terms of inclusion, and diversity reflect the state of the profession, say two decades ago.’* Chief Justice [D.Y. Chandrachud](#) [lamented](#) when asked about the gender diversity in Indian Courts.

Although in recent times steps have been taken by the Government to increase inclusivity in the judicial system of India such as the introduction of the “Sensitisation Module for the Judiciary on the LGBTQ+ Community” to promote diversity in the judiciary by educating judicial personnel about the LGBTQ+ community. Also, there have been efforts to increase the representation of women judges in the higher judiciary- currently, there are 3 women judges holding positions at the Supreme Court. However, there still seems to be a lot of improvement. The judiciary will not be considered a trusted institution if it is viewed as a bastion of established elitism, exclusivity, and privileged and blind to the changes in society and to the needs of the most vulnerable. The judiciary needs to reflect diversity in society being the most significant and impactful institution in India. There is an increasing need to reflect on these observations to achieve the end goal of creating a diversified judicial system in India.