

REVEALING WOMEN'S MARGINALISATION IN THE INDIAN JUDICIARY: OBSTACLES AND POSSIBILITIES FOR PARITY

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Abstract

The judiciary is one of the four pillars that make India one of the world's largest democracies. However, gender discrimination is deeply rooted in the Indian judicial system. The research, with the help of doctrinal methodology, delves into the current representation of women in the Indian judiciary and the obstacles faced by females in getting equal representation in judicial roles. The research analyses the development of the Indian judiciary over time and delves into societal barriers of caste, class and religion, which impede the judicial prospects of women in India. Case studies of gender stereotyping in Indian courts are also highlighted in the research. The research emphasises the integration of different approaches at the institutional, societal, and political levels for the inclusivity and diversity of women in the Indian judicial system. The research aims to discuss government policies, gender awareness training initiatives, and guided mentorship, which can help overcome gender-based bias in India's judicial system. Lastly, the research contributes towards the ongoing debate on gender disparity and aims to provide suggestive measures for gender equality through coordination and the establishment of an equitable legal framework for all within the Indian judiciary.

Keywords: Gender Disparity, Indian Judiciary, Women Marginalisation, Inequality.

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INTRODUCTION

“A woman cannot be herself in the society of the present day, which is an exclusively masculine society, with laws framed by men and with a judicial system that judges feminine conduct from a masculine point of view.”

- Henrik Ibsen¹

Democracy is inherently characterised by diversity. But in many democracies, including India, the court is not a true reflection of the nation's vast diversity. Most judges in India's High Courts and Supreme Court are upper-caste men. This unifies the viewpoint on justice and the law. Structural obstacles that affect female judges and solicitors include discrimination, harassment, gender stereotypes, and a lack of institutional and infrastructural assistance.² There are various axes of oppression to struggle with, including caste, class, sexual orientation, and religious identity.³ The Indian judiciary has a long and rich history, but the inclusion of women in judicial roles has been limited.⁴ The Indian judicial system is predominantly male-dominated. When Cornelia Sorabji became the first woman to be registered in the Indian legal profession, she was restricted from practising in the Indian courts of British India, marginalising her achievements. The Legal Practitioners Women Act in 1923 gave women the opportunity to pursue legal careers. However, to date, women face many challenges while pursuing a career in the legal field.⁵ The women need not be only symbolised in judicial roles. Their inclusion shall provide gender perspectives in the courts, which is essential for holistic justice. In 1989, Justice Fatheema Beevi made history as the first woman judge to be appointed to the Supreme Court. This significant milestone occurred nearly four decades after the establishment of the Apex Court.⁶ Female advocates have been ostracised from important cases and law firms over a long period of time. Given that women make up about half of the population in the nation, the chief justice of India recently raised concerns regarding the marginal representation of women as High Court judges on the event

¹ Henrik Ibsen, Quotable Quote, available at: <https://www.goodreads.com/quotes/1006590-a-woman-cannot-be-herself-in-the-society-of-the> (last visited on: 23.03.2025)

² Nancy Shonak, “State of Women in Judiciary” 1 (3) Nyaayshastra L. Rev. (2020).

³ Gita Mittal and Dipika Jain, “Women's Equal Representation in the Higher Judiciary: A Case for Judicial Diversity in India” 47 (2) *International Journal of Comparative and Applied Criminal Justice* 185-199 (2023)

⁴ Vartika Vaishnavi, “Gender Disparity in the Indian Judicial System” 2 *Jus Corpus Law Journal* (2021).

⁵ Geetali Tilak, “Women Empowerment Issues, Challenges and Activism of Indian Judiciary” 11 (1) *International Journal of Disaster Recovery and Business Continuity* 475-484 (2020).

⁶ Animesh Kumar, “Women in Contemporary Indian Society: An Overview”, 10 (1) *Chhattisgarh Law Journal* 90-93 (2024); available at: <https://ssrn.com/abstract=5022915> (last visited on: 23.03.2025)

of International Day of Women Judges celebrated on 10th March. The unequal representation affects the judicial outcome in Indian courts.

The proposed article seeks to gain insight into the chief exponents;

1. To analyse women's representation in the Supreme Court, high courts and subordinate courts in India.
2. To examine how gender biases and stereotypes influence judgements, particularly cases related to sexual harassment and gender-based violence.
3. To explore the socioeconomic challenges and discriminations faced by women in the Indian judiciary.
4. To propose policy reforms and legislative amendments for equal inclusion of women in judicial roles.

The research methodology includes a qualitative approach to examine gender discrepancy in the Indian judiciary. The research methodology incorporates doctrinal research and uses secondary sources with an extensive review of the literature related to gender inequality in the Indian judicial system. It includes reports from legal bodies, journal articles, previous case studies, and comparisons with other nations regarding the status of women's representation in judicial roles. A detailed study of the judicial decisions reflecting gender disparity and stereotypes in the judgments.

CONSTITUTION OF INDIA AND GENDER JUSTICE

The Indian Constitution focuses on achieving gender justice and equality. For example, the nation's legislature incorporates and implements the Preamble, the Directive Principles of state policies, Fundamental Rights, and many other rights through various schemes and policies.⁷

Gender equality and discrimination have been attempted to be addressed through notable and influential Acts, a few of them are as follows:

- Sati Abolition Act, 1829

⁷ Narender Nagarwal, "Gender Justice Ideology and the Indian Constitution: Analysing Equality Rights" 4 *Indian Journal of Law & Justice* 111-123 (2013)

- Widow Remarriage Act, 1856
- The Dowry Prohibition Act, 1961
- The Protection of Women from Domestic Violence Act, 2005
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013
- The Maternity Benefit (Amendment) Act, 2017
- The Surrogacy (Regulation) Act, 2021
- The Constitutional (Seventy-Third Amendment) Act, 1992
- The Constitutional (Seventy-Fourth Amendment) Act, 1992
- Nari Sakti Vandan Adhiniyam, 2023

The provisions of the constitution of India also discuss about gender justice and equality⁸:

- Article 14: The Indian Constitution assures equal protection under the law and equality before the law. In order to put all citizens on an equal footing, the State is permitted to practise positive discrimination thanks to the idea of equal protection under the law.
- Article 15 (1): The Constitution expressly forbids discrimination on the grounds of sex, among other things, under Article
- Article 15 (3): Nonetheless, the State is authorised to create particular provisions for women and children under Article 15(3)
- Article 16: Equality of opportunity is guaranteed to all parties with regard to public employment and appointment to all offices. It specifically outlaws discrimination based on a person's gender.
- Article 39: Ensuring that men and women have an equal means of subsistence and that they receive equal compensation for equal work is covered under Article 39 of

⁸ D. K. Malik, "Women Empowerment and Gender Equality: A Study of Indian Constitution" 9 (4) *Quest Journals Journal of Research in Humanities and Social Science* 27-33 (2021).

the DPSP.

- Article 42: In addition, Article 42 covers maternity leave and fair and humane working conditions.
- Article 15(A) (e): It is the responsibility of every citizen to abstain from actions that diminish the dignity of women.

Despite the existence of constitutional safeguards, legislative rules, and a plethora of proclamations in support of gender equality, cultural views and institutional structures have not appreciably changed.⁹ Constitutional mobilisation is heavily influenced by the wisdom of the people involved.¹⁰

CURRENT STATUS OF WOMEN IN INDIAN JUDICIARY

The two pillars of a man and a woman provide strong support for the social structure. Their duties, obligations, and rights are reciprocal, shared, and only advantageous when carried out in a way that enhances and balances one another. The weight of society cannot be supported by one of the foundations alone, and it is very likely that the entire building will collapse if it grows weak or breaks. Not only that, but gender equality is crucial for empowering women in order to ensure sustainable development and the steady, inclusive, and equitable progress of society. Despite the constitution of India strongly supporting women's equality, the Indian judiciary lacks equal representation of women in various roles. There has been some improvement over the years, but women are underrepresented in the Supreme Court and high courts and require a thorough reform for gender parity in the judiciary.

Women Judges in the Supreme Court

In 1989, Justice M. Fatima Beevi became the first female judge of the Supreme Court, and following her retirement as a Kerala High Court judge, only 11 women have served as Supreme Court judges in India since the court's foundation, and there hasn't even been a female Chief Justice. There were no women judges in the Supreme Court of India from the

⁹ Animesh Kumar and Pradeep Kumar Kulshrestha, "Examining the Contribution of the Judiciary in Promoting Gender Equality in India", 11 *Journal of the Campus Law Centre* 45-58 (2024); available at: <http://dx.doi.org/10.2139/ssrn.5070118> (last visited on: 18.03.2025)

¹⁰ *Ibid* at 57.

1950s to most of the 1980s.¹¹ There are just three female judges on the Supreme Court at the moment: Justices Kohli, B V Nagarathna, and Trivedi. In 2027, Justice Nagarathna is expected to become the first female Chief Justice of the nation.

Women Judges in High Courts

Women make up about 13% of the judges in High Courts. Only 17 of the 37 female candidates for high court judges who were suggested by the Supreme Court Collegium have been appointed so far. Only 107 out of 788 high court judges are women. Till June 2023, there was no women chief justice out of the twenty-five High Courts in India.¹²

Subordinate Courts

The situation in lower courts is much better, where women make up approximately 28% of judges at the district level.

- a) *Advocates*: only 15% of women represent out of 1.7 million advocates.
- b) *Bar Council*: Women make up just 2% of the State Bar Council's elected representatives. There is no female member of the Indian Bar Council.

OBSTACLES REGARDING LIMITED WOMEN REPRESENTATIVES IN INDIAN JUDICIARY

Patriarchal Society: Deeply rooted patriarchy in society is the main cause of women's underrepresentation in the judiciary. Courtroom environments are frequently unfavourable to women. Many women lawyers frequently talk about other painful situations, such as being harassed, having their ideas silenced, and receiving disrespect from the bar and bench.¹³

Opaque Collegium System: Because of the recruitment process that is based on entrance exams, more women are frequently admitted to the lower judiciary. The upper judiciary employs the collegium system, which tends to be more opaque and so more likely to reflect

¹¹ Gauri Kashyap, "4% of Supreme Court Judges of all time are Women" Supreme Court Observer, June 30, 2023; available at: <https://www.scobserver.in/journal/4-of-supreme-court-judges-of-all-time-are-women/> (last visited on: 22.03.2025).

¹² R. Sai Spandana, "Only 107 of 788 Sitting High Court Judges are Women" Supreme Court Observer, June 30, 2023, available at: <https://www.scobserver.in/journal/only-107-of-788-sitting-high-court-judges-are-women/> (last visited on: 16.03.2025).

¹³ P. Ganesan Palsamy and Dinesh Kumar, "Gender Discrimination in Indian Judicial System: Causes and Implications" April *International Journal of Recent Research Aspects* 698-702 (2018).

prejudice.¹⁴ A new system of appointment can change the gender gap between male and female judges.¹⁵

No Reservation for Women: Although numerous states have a reservation policy for women, neither the Supreme Court nor the High Courts do. Assam, Andhra Pradesh, Telangana, Odisha, and Rajasthan are among the states that have profited from this reservation; in these states, women currently make up 40–50% of judicial officials.¹⁶

Lack of Judicial Infrastructure: A further barrier keeping women out of the sector is a lack of judicial infrastructure. Little, cramped courtrooms, a dearth of restrooms, and a lack of childcare facilities enhance the challenges faced by women.

Fewer Women in Litigation: there are still not enough women serving as advocates, which reduces the pool from which female judges can be selected. A significant portion of judges on the high courts and Supreme were elevated from the bar to the bench.

INDIA AND OTHER NATIONS: A COMPARISON OF WOMEN IN JUDICIARY

The majority of women serving as chief justices and leading constitutional courts worldwide are found in Africa. Africa has four out of ten female judges on average, with representation varying from fifty percent in Kenya, Lesotho, and Zimbabwe to 18% in Burkina Faso and 22% in Sierra Leone.¹⁷ Currently, women make up more than 1/3rd of all active judges in the United States. These women preside over US District Courts, US Bankruptcy Courts, US Magistrate Courts, and US Court of Appeals. Of the 17,778 State Court Judges in the United States, 6,056 (34%) are women.¹⁸

The need to maintain gender parity in judicial leadership has also been emphasised by OECD nations as a crucial governance concern linked to justice, openness, and the efficacy of the rule of law. In the OECD-EU countries as of 2018, the proportion of women judges ranged from 81% in Latvia to 33% in the United Kingdom, with 61% of judges being women. The

¹⁴ M. Bhattacharjee, “The Leaking Judicial Pipeline” 4 (5) *Indian Journal of Law & Legal Research* (2022).

¹⁵ Shefali Soni, “Pre and Post Implications of Collegium System in India - A Need of Policy Reforms” 6 (3) *International Journal of Law Management and Humanities* 3749-3759 (2023).

¹⁶ Alok Prasanna Kumar, “Absence of Diversity in the Higher Judiciary” 51 (8) *Economic and Political Weekly* 10-11 (2016)

¹⁷ Gretchen Bauer and Josephine Dawuni (eds.), *Gender and the Judiciary in Africa: From Obscurity to Parity?* (Routledge, 2015)

¹⁸ Gbemende Johnson, “Gender, Diversity, and the United States Judiciary” 61 (41) *SAIS Review of International Affairs* (2021)

number of women judges in supreme courts of OECD-EU countries was 36% as of 2018.

Overall, gender representation in the judiciary has risen by two percentage points on average from 2016 to 2017 in the majority of OECD countries. Turkey witnessed the biggest increase of 5 percentage points in the proportion of female judges.¹⁹

ADDRESSING THE MISOGYNY IN INDIAN COURTROOMS²⁰

In *Sri Rakesh B v. State of Karnataka*²¹, The complainant accused the defendant of rape on false promise of marriage. The Karnataka High Court judge's remark "Unbecoming of Indian women" to fall asleep following a sexual assault, while granting the offender anticipatory bail, unavoidably caused a great deal of controversy and prompted debate on whether he was correct to make the comment and whether it was necessary. Such remarks are regrettably not unusual, even if the judge's remarks are an exception. In numerous instances, the judiciary has assisted in upholding patriarchal norms of behaviour and forcing them upon women.

In *M.I. Shahdad v. Mohd. Abdullah Mir*²², the Jammu & Kashmir High Court ruled that serving the summons exclusively to a male adult family member did not discriminate or disadvantage women. In fact, it relieves the defendant of all responsibilities while taking into account societal norms and conditions. The rationale offered was that women's roles in Indian society were primarily as housewives, and the majority of females were illiterate.

A division bench is made up of P. B. Majmudar and Anoop Mohta JJ. ruled in a divorce suit in 2012 that "women must be like Goddess Sita", meaning that a woman must follow her husband wherever he goes. This suggests, in the modern context, that the wife should resign from her work and blindly follow her spouse to a new place. The wife's income is usually seen as "lipstick money", something to be used sparingly and as a supplement. Appalling comments like "A wife should be minister in purpose, slave in duty, Lakshmi in appearance, Earth in patience, mother in love, and prostitute in bed" have been cited by the courts in

¹⁹ Organisation for Economic Co-operation and Development (OECD), "Government at a Glance 2017," available at: https://www.oecd.org/en/publications/government-at-a-glance-2017_gov_glance-2017-en.html (last visited on: 17.03.2025).

²⁰ Amrita Nair, "Unmasking the Misogyny of Indian Courts" *The Leaflet*, Aug. 6, 2020, available at: <https://theleaflet.in/unmasking-the-misogyny-of-indian-courts/#:~:text=In%202012%2C%20in%20a%20divorce,her%20husband%20wherever%20he%20goes> (last visited on: 23.03.2025).

²¹ Criminal Petition No. 2427/2020; available at: https://www.livelaw.in/pdf_upload/pdf_upload-376983.pdf (last visited on: 24.03.2025)

²² MANU/JK/0041/1966

numerous divorce cases.

In *Hadiya's case*²³, the Kerala High Court stated that a twenty-four-year-old girl is frail and fragile. She is vulnerable to manipulation in a variety of ways. Thus, the most significant life decision she will ever make in her marriage must be decided upon after careful consideration and input from her parents. Judges in sexual assault cases cast the victim's character in disarray and make declarations about what qualities an ideal Indian lady should possess. These limitations on agency and the dehumanisation of mature women are really troubling. However, the Hon'ble Supreme Court set aside the order of the Kerala High Court in the case of *Shafin Jahan v. Asokan K.M.*²⁴. The Court was of the view that assessed the allegation that Hadiya was deceived into marrying her husband, Mr Shafin Jahan and forcibly converted to Islam. The Court found that the allegation, which was made by her parents, was clearly false.

The trial court's sentencing for the rape of another student was suspended by the Punjab and Haryana High Court for three students. The court found that the victim's "misadventures and experiments", her "promiscuity", and the lack of severe violence that followed the sexual assault served as the foundation for suspension of sentence.

In a similar case, the Delhi High Court cleared director Mahmood Farooqui of rape on a visiting researcher during an appeal.²⁵ In doing so, the Delhi High Court interpreted the legal definition of consent, which appears to have been heavily impacted by the victim's prior relationship with Farooqui, her education (making her a "woman of letters"), the perceived weakness of her refusal to engage in sexual activity, and Farooqui's bipolar disorder. In appeal, the Supreme Court refused to interfere with the Delhi High Court verdict.²⁶

IMPACT OF WOMEN IN JUDICIAL ROLES IN INDIA

The importance of women in the Indian judiciary has been proven over time by several examples. The appointment of Justice Fatima Beevi in the Indian Judiciary created opportunities for other women to enter various judicial roles. The landmark judgements by Justice Ruma Pal during her tenure from 2000 to 2006, well known as the "Best Bakery case", Justice Gyan Sudha Sharma's decision which established sexual harassment at the

²³ *Asokan K.M. v. Superintendent of Police*, (2017) 2 KLJ 974

²⁴ (2018) 16 SCC 368

²⁵ *Mahmood Farooqui v. State (Govt. of NCT of Delhi)* 2018 Cri LJ 3457

²⁶ *State (Govt. of NCT of Delhi) v. Mahmood Farooqui* MANU/SCOR/59208/2018

workplace as a breach of fundamental rights and the judgement of Justice Indu Malhotra in “Sabrimala Case” which allowed women of all ages to visit the Sabrimala Shrine are some notable examples which lay down the significance and impact of women in the judicial sphere.²⁷

THE RELEVANCE OF WOMEN’S INVOLVEMENT IN THE JUDICIARY

A more diversified and varied judiciary will result in good institutional improvements. Women judges and advocates can sympathise more with female victims. The inclusion of women in the judiciary and legal profession will significantly enhance justice, which is more balanced.

Increasing the number of women serving on juries may contribute significantly to a more impartial and sympathetic handling of sexual assault cases. Gender sensitisation has been brought up numerous times, particularly in situations where male judges failed to demonstrate compassion for the female victims. If the court is seen as a place of privilege, exclusivity, and elitism, then people will not trust it. Consequently, women’s presence is necessary for the validity of the Indian judicial system. The discrimination faced by women provides a different perspective to the court by a female judge due to the relatability of bias of the society. This enables a sympathetic approach towards female victims. Furthermore, by being present, they effectively convey to the general public that women are capable of holding positions of power and responsibility inside the legal system. Moreover, the presence of female justices might, for instance, advocate for a victim-centric legal system where the rights and demands of the victim take precedence above those of the guilty.²⁸

INITIATIVES FOR WOMEN IN INDIAN JUDICIARY

India has implemented a number of measures to help women join the Indian courts. The formation of the National Commission for Women in 1992 stands out as a significant initiative that advises the government regarding matters related to the status of women in India. The commission safeguards women’s rights and promotes their fair participation

²⁷ Vipra Jain, “Women in Indian Judiciary” 3 (3) *Indian Journal of Integrated Research in Law* 1-8 (2023).

²⁸ Ayesha Malik, “The Importance of Women in the Judiciary to Integrate the Gender Perspective and Bring Equal Visibility” UNODC, *available at*: <https://www.unodc.org/dohadeclaration/en/news/2021/152/the-importance-of-women-in-the-judiciary-to-integrate-the-gender-perspective-and-bring-equal-visibility-.html> (last visited on: 18.03.2025)

across all sectors, including the judiciary.²⁹ Furthermore, the reservation policy to increase the representation of women by the government is another important step towards equality in the judiciary. Women presently constitute approximately 28% of the total number of judges in India after the implementation of the reservation policy in 1993. Progressive reforms for women pursuing legal careers have been initiated by the Bar Council of India. Scholarships for female students to pursue legal careers are introduced by colleges to motivate female representation in judicial roles. However, more initiatives from the government and from within the judiciary are required to achieve gender equality.³⁰

SUGGESTIONS FOR WOMEN REPRESENTATION IN THE INDIAN JUDICIARY

*N.V. Ramana Recommendations*³¹:

- a) 50% representation: The former Chief Justice of India expressed his endorsement of 50% female representation in the judiciary.
- b) Legal Education: He has brought attention to the necessity of expanding the representation of women in this field.
 - i. Colleges and universities that offer legal education should set aside a specific number of seats for female candidates.
 - ii. Due to this reservation, 40-50% of state judges in Assam, Andhra Pradesh, Telangana, Odisha, and Rajasthan are now female.
- c) Having access to basic amenities: He stated that there is an urgent need to address the lack of basic amenities, particularly for women.
- d) Need for a distinct entity: He insisted time and time again that the National Judicial Infrastructure Corporation be established as a separate organisation in order to implement inclusive court complexes and establish a comfortable environment in them.

²⁹ Pritam Jyoti Pegu Yasmin and Arkida, "Role of the Indian State and Judiciary in Ensuring Gender Justice: A Paradigm Shift in the Nature of Policy Making and Pro-active Role of the Judiciary" 8 (1) *Palarch's Journal of Archaeology of Egypt/Egyptology* 3675-3687 (2020).

³⁰ Anushka Singh, "Representation of Women in Indian Judiciary" 1 (6) *International Journal of Modern Developments in Engineering and Science* (2022).

³¹ Utkarsh Anand, "Prefer 50% Women at All Judicial Levels: CJI Ramana" *Hindustan Times*, Sept. 2021, available at: <https://www.hindustantimes.com/india-news/prefer-50-women-at-all-judicial-levels-cji-ramana-101630779145103.html> (last visited on: 18.03.2025).

Other Suggestions:

- a) The development of an Indian legal system that is gender-neutral will depend on the maintenance and advancement of gender diversity in the higher judiciary, with a set proportion of its members serving as female judges.
- b) Systematising and emphasising inclusivity is necessary to bring about institutional, social, and behavioural change among India's population.

CONCLUSION

India ranks 129th out of 146 nations in the World Economic Forum³² ranking on Gender disparity because of underperformance in areas of women empowerment, economic advancement, health and education. Spending on programmes tailored to a particular gender has also decreased over time. Therefore, much needs to be done to improve these metrics' performance, as well as the timely and efficient execution of government programmes and policies and the proper, sustainable administration of justice by the courts. Only then will society truly adopt a gender-just faith. In India, where the judiciary follows the "rule of precedents" and the *Doctrine of Stare Decisis*, the orders and judgements passed have a tremendous impact on future judgements. The gender-biased judgments disrupt impartial investigations due to prejudice established. This requires the inclusion of women in judicial roles to sympathise with victims. Nonetheless, gender diversity in Indian judiciary has advanced significantly, but more work remains. In the upcoming years, there is a substantial expectation that the number of women pursuing careers in law will lead to a notable increase in the representation of women in the Indian judiciary. Recognising the Indian judiciary's efforts to advance inclusion and gender diversity is crucial. Nonetheless, further laws and programmes are required to help women advance to positions of leadership in the judiciary. Recognising the difficulties women encounter in the Indian judiciary, such as harassment, stereotyping, and gender bias, is also crucial. To guarantee that all women in the judiciary work in a secure and welcoming atmosphere, these concerns must be resolved. All things considered, women's prospects in the Indian judiciary appear bright. We can expect for a judiciary that truly reflects the Indian populace as more women enter the field and as policies and programmes promoting gender diversity and inclusivity are implemented.

³² World Economic Forum, "Global Gender Gap Report 2024"; available at: https://www3.weforum.org/docs/WEF_GGGR_2024.pdf (last visited on: 11.04.2025)