

A PUBLICATION OF MOTHERHOOD UNIVERSITY, ROORKEE

(Recognized by the UGC with the right to award degrees u/s 22(1) of the UGC act 1956 and established under Uttarakhand Government Act No. 05 of 2015)



**Motherhood International Journal of Multidisciplinary
Research & Development**

A Peer Reviewed Refereed International Research Journal

Volume I, Issue III, February 2017, pp. 19-25

ONLINE ISSN-2456-2831



**Injustice with the Fountain of Justice:
Tragically Low Appointments of Female Judges**

**Prof. (Dr.) S. B. Sharma
Dean, Faculty of Sciences
Motherhood University, Roorkee
District Haridwar, Uttarakhand**

Abstract

Legal profession is of a very high importance in our country and an integral part of our judicial system. Today, in our country legal profession is no more a simple court affair and therefore, has become one of the most growing and profitable profession. Thus, leading to the demand of highly competitive law graduates even in the corporate sector. It also has a very good feature of self-employment and therefore, an individual can make his own path in this profession. At the lower level i.e. studying or preparing for law exam, there is not so much of disparity between males and females, but as we move up in the ascending order from law students to lawyer and then judges, the disparity increases at an amazing level. Female lawyers and judges are mostly from Metropolitan or Developed States or States with huge population like Uttar Pradesh. Though on the other, hand states like Himachal Pradesh, Uttarakhand, Chhattisgarh, Jammu & Kashmir and Sikkim, which are not so developed have very less female lawyers and female judges.

Keywords: Legal profession, judicial system.

The importance of a proper and effectively functioning judicial system in a country cannot be overstated. The judiciary is vital to the rule of law, the fair administration of justice and the protection of human rights. In this context, and because judicial decisions and the administration of justice have vast and varied effects on everyday lives, the competence, legitimacy and integrity of a country's judiciary is key and the composition of the judicial profession a matter of major significance. Judicial officers must be individuals of integrity and ability with appropriate expertise and procedures for judicial appointments must ensure the independence and impartiality of the profession. In addition, judiciaries must be representative of the societies they serve and there must be no discrimination in appointments on any grounds, including sex.

The structure of the judiciary must reveal the structure of society if it is to be supposed as appropriate and capable of delivering equal justice and safeguarding equality before the law. While a diversity of judicial recruitment and appointment systems may be acceptable, they must always ensure judicial independence and impartiality, guard against improper political or other influence, and prioritize diversity and gender equality. In some contexts women remained reluctant to enter the judiciary due to various forms of discrimination, opposition and harassment the women judges face. Such attitude acts as a powerful deterrent to women entering the profession.

A November 2015 *India Today* report shares some interesting facts, ‘There are just 62 (9.2 per cent) women judges compared to 611 male judges (in high courts) in the entire country. In 24 state high courts, nine HCs did not have a single woman judge. Three high courts had only one woman judge.’ Is this a case of gender discrimination or does it imply that only male judges possess the best legal brains and women are incompetent?’

According to a November 2015 *Mail Today* report, when a five-judge Constitution bench headed by Justice Khehar was in the process of inviting suggestions to improve the collegium system for the appointment of judges, a large number of female lawyers complained of “gender discrimination” in appointment of judges to higher judiciary. When faced with such complaints, the respected Justice Khehar asked, “We would first like to know what the ratio of female advocates to male advocates is. That is very important. The ratio of female judges to male judges must be in the same ratio.”

Further, women lawyers told the court that would not be a fair criteria. “Please do not compare the number of women lawyers at bar and juxtapose it with the ratio of female and male judges. Women were allowed to practise in court only in 1922. Women face a lot of problems in practising in court. Despite that, they are coming out in large numbers to practice,” said senior lawyer Mahalakshmi Pavani representing the Supreme Court Women Lawyers Association (SCWLA).

Women’s rights to equality and non-discrimination are crucial to defining the importance of ensuring women’s full and equal participation in the judiciary. Yet the necessity of women’s full participation goes beyond this too, as it, “is essential not only for their empowerment but also for the advancement of society as a whole”.

Although the study of law and membership of the legal profession was historically predominantly a male career path, this has now changed in a large number of jurisdictions and in many contexts women now comprise more than half of law school graduates. In some legal systems this number increases to almost two-thirds. However, assumptions that greater numbers of women studying law will steadily of its own accord give rise to greater numbers of women in the judiciary do not always prove true. Similarly, greater numbers of women in the judiciary overall does not correlate to increased levels of women in senior and leadership positions.

Changing the composition of a country's judiciary and ensuring the full and equal participation of women in practice require dedicated commitment and action. Such transformation will not happen on its own. A range of practical and structural measures, including temporary special measures, are required to ensure women's equal enjoyment in practice of the right to hold judicial office.

Ensuring women's full and equal participation within the judiciary necessitates the same level of diversity and equal participation of women in the composition of judicial nominating or selection bodies and professional structures, such as higher judicial councils. Where a specific body or entity is charged with the nomination, appointment, assignment and promotion of judges and/or where judicial appointments involve the legislative or executive arm of government, a paucity of diversity and female representation in those spheres will necessarily negatively impact on women's full and equal participation in the judiciary. Sustainable and effective programmes to improve women's full and equal participation cannot succeed over time unless women have an equal role and voice in key decision-making fora.

Ending harassment and discrimination Ensuring women's equality within the judiciary on a statistical or quantitative basis is critical, but not sufficient on its own. The qualitative experience of women judges within the profession must be assessed and effective measures taken to end the various forms of harassment and discrimination that female judicial officers report facing on a day-to-day basis.

Pregnancy-related discrimination must be eradicated. In some extreme cases, women judges reported being asked to resign when they became pregnant or being told they could not sit in court or issue decisions due to concerns as to their capacity for rational thought. Others noted that authorities had simply failed to put in place procedures for female judicial officers to obtain appropriate maternity leave and pay.

Harassment of female judicial officers by male peers must also be prevented and redressed. Women judges, particularly young women, regularly report facing sexual harassment by colleagues, especially superiors. Others speak of other forms of harassment, for example overt scrutiny and public commentary concerning their reactions to explicit sexual or medical material. Others report refusal by junior officers or court staff to comply with their orders.

Women judicial officers must be protected from threats and violence. Security concerns regarding risks of violence involving non-State actors may be particularly acute in jurisdictions in which religious and ideological opposition to the participation of women within the judiciary is pervasive.

The toxicity of deficits is in judicial independence & impartiality. An independent and impartial judiciary and respect for the rule of law constitute a vital backdrop to any sustainable progress towards women's full and equal participation in the judiciary.

When measures are put in place to improve women's representation in the judiciary outside democratic contexts or in circumstances in which the judiciary is not independent and other rule of law safeguards are weak, the judicial advancement of women risks becoming identified with authoritarian government or with judiciaries that are subject to improper political influence and with corruption.

The importance of mentors, allies and solidarity Full and equal participation of women necessarily requires women's exercise of the will to act and seek judicial appointment. To that end, the importance of role models, mentors and solidarity and support networks cannot be underestimated.

Senior women judges and lawyers play a particularly significant role in encouraging their peers and younger women to seek, accept and embrace judicial appointment. This support can and should take a number of forms. Informal mentoring networks can provide a vital basis of support. Similarly, regular meetings of women judges and lawyers provide invaluable opportunities for exchange, regeneration, reflection on challenges faced and the identification of key support needs. Enhancing the capacity and infrastructure of associations of women judges and women lawyers is also critical in efforts to advance the role of women within the judiciary. These associations can fulfil a solidarity and support function for individual women judges, and can be a source of training and education. They are often also instrumental actors in advancing women's full institutional representation.

Women judges and lawyers associations may also be able to raise awareness of judicial vacancies among their members, to encourage applications from female candidates, and to collectively call for or support the nomination of certain candidates.

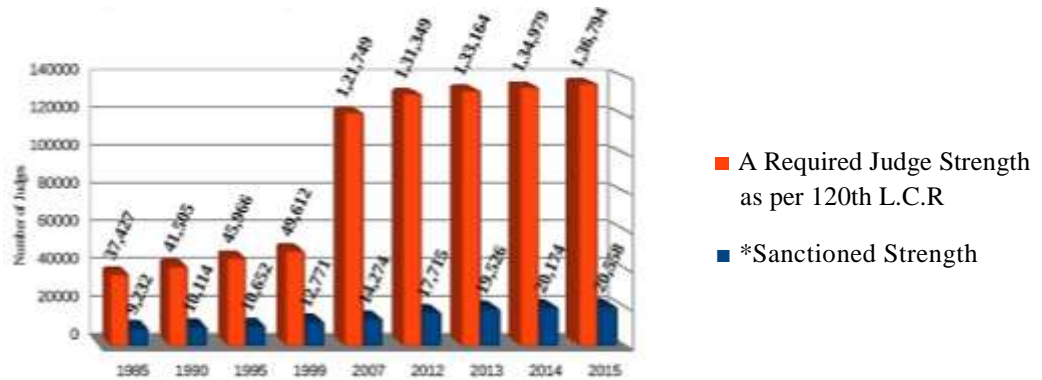
National Judicial Appointments Commission (NJAC) was a proposed body which would have been responsible for the appointment and transfer of judges to the higher judiciary in India. The Commission was established by amending the Constitution of India through the ninety-ninth constitution amendment vide the Constitution (Ninety-Ninth Amendment) Act, 2014 passed by the Lok Sabha on 13 August 2014 and by the Rajya Sabha on 14 August 2014. The NJAC would have replaced the collegium system for the appointment of judges as invoked by the Supreme court via judicial fiat by a new system.

As per the amended constitution, the functions of the Commission would have included the following:

- Recommending persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts.
- Recommending transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court.
- Ensuring that the persons recommended are of ability, merit and other criteria mentioned in the regulations related to the act.

Judicial Activism

Judicial Activism may be defined as the pro-active role played by the judiciary in ensuring that the rights and liberties of the people are protected. It may be understood as the role of the court in stepping out from its normal interpretative role.



* Sanctioned Strength for the years 1985 till 1999 taken from First National Judicial Pay Commission, 1999 while from 2007 till 2015 as per inputs provided by High Courts
A Census Population figures 1981, 1991, 2001, 2011 equally divided in a decade; 2021 figures taken from Population Reference Bureau

Women judges in Supreme Courts/ High Courts (As on 1.04.2014)

Name of the Court	Female	Male	% Female
Supreme Court	2	28	7%
High Courts			
Allahabad	5	83	6%
Andhra Pradesh		32	6%
Bombay	0	56	13%
Calcutta		35	10%
Chhattisgarh	0	12	0%
Delhi	9	27	25%
Gauhati	1	12	8%
Gujarat	3	28	10%
Himachal Pradesh	0	6	0%
Jammu & Kashmir	0	10	0%
Jharkhand	1	9	10%
Karnataka	3	30	9%
Kerala	1	29	3%
Madhya Pradesh	2	28	7%
Madras	6	38	14%
Manipur	0	2	0%
Meghalaya	0	3	0%
Odissa	1	16	6%
Patna	2	29	6%
Punjab & Haryana	7	39	15%
Rajasthan	3	25	11%
Sikkim	0	2	0%
Total	58	551	10%

When the court moves beyond its normal role of mere adjudicator of disputes and becomes a player in the system of the country laying down principles and guidelines that the Executive must carry out, that role of the court may be said to be judicial activism.

Perception of judicial activism is bound to be subjective depending upon the social philosophy and conception of judicial function held by a person. Judicial activism is a weapon in the hands of judiciary to provide justice to the people and it can be used by the judiciary in favour of social interest or for common good.

Women in Decision making

Why do some people believe that women only make "spontaneous decisions" or decisions from the "gut?" Why are women in management perceived as weaker decision-makers than men when decision-making capabilities have nothing to do with gender? Good decision-making has nothing to do with gender.

The importance of a proper and effectively functioning judicial system in a country cannot be overstated. The judiciary is vital to the rule of law, the fair administration of justice and the protection of human rights. Yet women's full participation in the world's judiciaries generally remains unfulfilled, and their underrepresentation in a great number of jurisdictions remains marked. Global figures indicate that on average women comprise just over 25 percent of the world's judicial officers, and although in some jurisdictions these percentages are higher, in many other countries and regions the numbers fall to far below 10 percent.⁴

- Advancing women's full participation in the judiciary also plays a role in promoting gender equality in broader ways:
- Female judicial appointments, particularly at senior levels, can shift gender stereotypes, thereby changing attitudes and perceptions as to appropriate roles of men and women.
- Women's visibility as judicial officers can pave the way for women's greater representation in other decision-making positions, such as in legislative and executive branches of government.
- Higher numbers, and greater visibility, of women judges can increase the willingness of women to seek justice and enforce their rights through the courts.
- In some contexts, female judicial officers may demonstrate a strong commitment to the recognition and protection of women's equality and rights which is then reflected in judicial reasoning and court decisions, particularly in cases concerning gender-based violence, divorce and family law and labour rights matters. However, this impact has not been

thoroughly researched and requires dedicated and comprehensive multi-regional and country-specific analysis.

An increased presence of women will infuse public confidence in the courts and also in the selection process. It is undeniable that there is a kind of old boys' stick. There is a well-founded expectation that women litigants would feel less intimidated in the presence of female judges, and that women judges in turn would exhibit greater sensitivity to their grievances. A larger number of women in the judiciary would promote gender equality if only because their proportionate presence in the profession would itself reflect it.

References

- <http://www.nludelhi.ac.in/>(accessed on 11th December 2016)
- http://articles.timesofindia.indiatimes.com/2009-08-03/india/28198811_1_woman-judge-women-judges-highcourts (accessed on 11th December 2016)
- Bradwell v. Illinois, 16 Wall. 130 (1872) 490, the refusal to admit a woman to the legal profession was upheld by the United States Supreme Court, on the basis of women's differences.
- HARV. L. REV. 487 (1981); Krieger and Cooney, "The Miller-
- Wohl Controversy: Equal Treatment, Positive Action and the Meaning of Women's Equality", 13 GOLDEN GATE U.L. REV. 513 (1983).