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**GENDER INEQUALITY IN JUDICIAL APPOINTMENTS**

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**ABSTRACT**

*Gender bias in appointments at different judicial levels, regardless of whether in unequivocal or understood structures, has been a conspicuous reason for the skewed gender ratio in the higher Indian judiciary. These biases have affected the representation of women class in the judicial sector to the best of its ability. To guarantee diversity & proper representation of other classes in the country there is a requirement of changes in the appointment system of judges. Be that as it may, the burden & disadvantage experienced by women candidates to judicial office rooted in deeply entrenched structural discrimination and avoidance, imbricated in the constitution of the judge, judging, and legal authority as male, manly, white, heterosexual, and class-advantaged. Contentions for more extensive representation in judicial office need to address all the more effectively how the judge, judging, and legal authority are comprised.*

*The paper is concluded on a note that there are no provisions in the Constitution of India that guide the country to deal with the issue of gender inequality in the judicial arena. Also, there are no provisions for reservations in the higher judiciary, though the respective states can make laws for reserving seats in the lower judiciary & hence if the selection process is exposed & the selectors can claim for credit then there will be more women judges. However, if the process is sheltered & there is accountability, then the number of women judges is likely to be less.*

**KEYWORDS:** Gender bias, Constitution of India, judiciary, women representation.

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## INTRODUCTION:

The differences between men and women have always forced a woman to work harder and harder for anything that she is doing. She has had to work to do the same thing as the men and then work harder to prove that she is equal to men if not superior. This constant testing in a man's world creates hesitation for women and intolerance by people around them. The stereotype that a woman's place is inside the home acts as a major obstacle in the path of gender equality and justice. It's very apparent that in the trials of her development, even though there has been a success, that rate is strikingly low.

In the country of India, we have come so far from when we first promised and aimed that our independent nation will treat all classes of people equally and elevate them to an equal platform. The equality of status and opportunity was one of the objectives. However, in the present times, the situation, even with certain changes, is not satisfactory.

Women have always had to fight for their rights. From saying that they can own property to believing that they can work outside the homes; there have been strong attempts to make these a reality. Today, we do find the women class working in different workplaces, positions, taking up tasks, and putting their heart and soul into them. The question is if it is enough that they have their presence in these fields in small numbers. If it is enough that we have had only one female Prime Minister in India till date or that the female Members of Parliament don't even make the 20% of the Lower House<sup>2</sup>. And if we don't run away from the truth, then we'll say that it is not enough.

In India, male dominance in power positions is a frequent sight. The most important of the posts and jobs have always been entrusted with men. This existence of patriarchal influence has had the judiciary in its realm too for as long as we know it. There needs a simple fact stated for proving the orthodoxy of the previous statement viz. India has never had a female Chief Justice of India till date and we are currently observing the term of a male CJI for the 47<sup>th</sup> time since independence. The unfortunate part is that this isn't changing in the immediate future for at least the next five years.<sup>3</sup> This gap between genders in holding the important decision-making / adjudicatory position runs deeper than this. There have been only eight female judges

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<sup>2</sup> Sruthi Radhakrishnan, "New Lok Sabha has highest number of women MPs", THE HINDU, <https://www.thehindu.com/news/national/new-lok-sabha-has-highest-number-of-women-mps/article27260506.ece> (last visited March 15, 2021).

<sup>3</sup> Kiruba Munusamy, "Sexism in Indian Judiciary Runs So Deep its Unlikely We Will Get Our First Woman CJI", THE PRINT, <https://theprint.in/opinion/sexism-in-indian-judiciary-runs-so-deep-its-unlikely-we-will-get-our-first-woman-cji/251727/> (last visited March 15, 2021).

in the Apex Court till date including the three justices serving their terms at the present.<sup>4</sup> This inequality is not a phenomenon just of the Top Court but of High Courts and other lower courts as well.

In this project, the researcher has tried to discuss the gravity of this situation. Gender inequality in judicial appointments is a serious issue and it needs to be addressed if we expect equal and diverse representation of all genders in the next 50 years.

## **GENDER INEQUALITY IN THE INDIAN JUDICIARY & JUDICIAL APPOINTMENTS:**

Under Articles 124 and 217 of the Constitution of India, the President of India appoints the judges' of the Supreme Court and the High Courts, respectively, after consulting with the Chief Justice of India. In the case of the High Court, the Governor of the state and the Chief Justice of the High Court also have to be consulted. Further, Article 233 provides for the appointment of judges of the District Court by the Governor after consultation with the respective High Court. The provisions have ensured the independence of the judiciary. The word 'consultation' has been extensively discussed and interpreted in many cases. In the case of *S.P. Gupta v. Union of India*<sup>5</sup>, the Court, with a majority opinion, had held that the opinions of the Chief Justice of India and Chief Justice of High Court were only consultative and that the actual decision of appointment rested solely with the Executive *i.e.* the President. The 'consultation' was said to not have a binding effect on the final decision of the President. In *Supreme Court Advocates-On-Record Association v. Union of India*<sup>6</sup>, this interpretation in *SP Gupta* was overruled. The Court in this case held that the role of the CJI is primary while appointing and transferring judges. The Court intended to protect the integrity and to guard the independence of the judiciary. The meaning of 'consultation' was conferred upon and it was held that the President cannot make appointments or transfers of judges under Article 124 or Article 217 unless such decision confirmed with the opinion of the CJI considering that he is the superior judge. The 'opinion' of the CJI was narrowed down and sharpened in the case *Re Special Reference No. 1 of 1998*<sup>7</sup> and it was held that under the provisions of Article 217 (1) and 222 (1), the expression 'consultation with the Chief Justice of India' means that there should be a

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<sup>4</sup> Kriti Dwivedi, "Indira Banerjee Appointed Judge of Supreme Court", SHETHEPEOPLE, <https://www.shethepeople.tv/news/indira-banerjee-appointed-judge-supreme-court/> (last visited March 15, 2021).

<sup>5</sup> *S.P. Gupta v. Union of India*, 1981 Supp SCC 87.

<sup>6</sup> *Supreme Court Advocates-On-Record Association v. Union of India*, (1993) 4 SCC 441.

<sup>7</sup> *Re Special Reference No. 1 of 1998*, (1998) 7 SCC 739.

majority of judges during the formation of CJI's opinion and his individual and personal opinion would not constitute as a valid consultation.

However, one thing that the above provisions failed to do was bring gender balance into the system. The judiciary, unfortunately, is not immune or untouched to the issue of gender inequality in opportunities. Many reports have displayed this drastic disparity in the number of male and female judges. These numbers are only considering two genders; male and female. The official third gender *i.e.* the transgender is not even in discussions as of now and it seems that it will have to be a talk for another day.

The issue at hand, the underrepresentation of females, is something that has been talked about for many years now. This particular class of society has had to fight decades since independence to be treated equally as their male counterparts. There have been achievements so far but we still have a long way to go. A start in this is when women are given equal positions on the decision-making table. On a position that can bring about change on a substantial scale and degree. And this isn't about giving them power for the sake of quieting the complaints for the time being. We need to do this because equality is one of the aims of the Constitution and because it is necessary for the balanced working of society as a whole. That will not be possible till both see eye to eye while standing on the same platform.

The case of *Kesavananda Bharati v. State of Kerala*<sup>8</sup> is seen as a monumental judgment in the legal history of the country. It was said to have changed the law of the country overnight. The opinion of the judge, J. Khanna, is seen to have furthered this phenomenon when he gave his vote and the majority then stood at 7:6. When we read about such events of the past and many other such moments, we can easily observe how all of these were 'man'-made changes. On the Constitutional Bench consisting of 13 judges, there wasn't a single female judge. Even the cases which have brought important changes in the lives of Indian women or in general were deprived of female representation on the Coram. Cases like *Shah Bano Begum*<sup>9</sup>, *Chandrima Das*<sup>10</sup>, and *Lily Thomas*<sup>11</sup> are some of the common examples. The first woman judge in our Apex Court was J. M. Fathima Bevi appointed in 1989.<sup>12</sup> Furthermore, very recently, a

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<sup>8</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

<sup>9</sup> *Mohd. Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945.

<sup>10</sup> *Chairman Railway Board v. Chandrima Das* (2000) 2 SCC 465.

<sup>11</sup> *Lily Thomas v. Union of India* (2000) 6 SCC 224.

<sup>12</sup> "In a First, Three Women Judges in Supreme Court", *ECONOMIC TIMES*, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/in-a-first-three-women-judges-in-supreme-court/articleshow/65305504.cms> (last visited March 19, 2021).

landmark judgment was delivered in the case of *Vineeta Sharma v. Rakesh Sharma*<sup>13</sup> which has affirmed the rights of a Hindu daughter in the family property as that of the son in the family. Now, there is no question on the efficiency of the judgment or the judge who delivered it, but again, even on this Bench, there were only male judges. And this is a natural result of the fact that there aren't enough female judges in the Supreme Court of India. As of now, we have had three female judges, Indu Malhotra, R. Banumathi, and Indira Banerjee JJ at the same time.<sup>14</sup> Only three female judges in the strength of thirty-four judges. However, after the retirement of J. Banumathi, we are back at having only two female justices against their other male counterparts. Yes, this male-dominated Apex Court has brought the concept of gender equality in the patriarchal society into a reality but has also undeniably considered itself as the superior one to do so.

Today, when we analyse the changes that have taken place by the virtue of legislation and judgments, it is easy to say that we have come a long way crossing very many hurdles on the path. But, the situation currently is exactly what we aimed for or needed, is the question the answers and requirements to which are almost utopian. Utopian and too ideal even after various affirmative actions have been taken in the name of women empowerment. The Constituent Assembly, which led to the creation of the Grund norm of the country, had a membership of 389 people including 15 women.<sup>15</sup> This was 4% of women in the assembly. Now, in the 17<sup>th</sup> Lok Sabha, we have 78 elected women MPs out of 542 constituencies. This is just 14% of women's representation and the highest it has ever been.<sup>16</sup> So, from the time of independence, there isn't much elevation of the women class on these important authority positions. This is a mere display of how we haven't had that much transformation from the time the Constitution of India came into existence wherein equality of 'status' and 'opportunity' are constitutional goals. Other than this, the low elected representation of women also shows how little faith the public puts in female candidates.

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<sup>13</sup> *Vineeta Sharma v. Rakesh Sharma*, 2020 SCC OnLine SC 641.

<sup>14</sup> "In a First, Three Women Judges in Supreme Court", *ECONOMIC TIMES*, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/in-a-first-three-women-judges-in-supreme-court/articleshow/65305504.cms> (last visited March 19, 2021).

<sup>15</sup> "Women's Day: 15 women who contributed in making the Indian Constitution", *INDIA TODAY*, available at: <https://www.indiatoday.in/education-today/featurephilia/story/women-s-day-the-only-15-women-who-contributed-to-making-the-indian-constitution-1653496-2020-03-07> (last visited March 19, 2021).

<sup>16</sup> Sumant Sen, "17<sup>th</sup> Lok Sabha has the highest proportion of women", *THE HINDU*, available at: <https://www.thehindu.com/news/national/representation-of-women-in-17th-lok-sabha/article28769003.ece> (last visited March 19, 2021).

This gender imbalance in representation has its imprints over the judicial section as well. We saw it is in the Supreme Court, but the High Courts and Subordinate Courts make this condition more visible. In the High Courts in India, we have 688 judges as of now and among them, only 80 are women.<sup>17</sup> This is just 11.6% of women among all the High Court judges. Further, there is only one of these, J. Gita Mittal who is currently holding the post of Chief Justice and it is of Jammu & Kashmir and Ladakh High Court.

The data for the higher judiciary is easily available but when it comes to the Subordinate Courts, where you have to dig much deeper, there wasn't any specific data till very recently. A study was conducted by Arijeet Ghosh and his co-researchers in the lower judiciary for finding out the state-wise and district-wise data on gender composition in these courts.<sup>18</sup> It was found out that women composed only 27.6% in all of the lower judiciary with just 4,409 judges.<sup>19</sup> This report later talk about the factors that contribute to this imbalance which is discussed in next heading.

When we think about the implications of this gender imbalance then the reality would look more practical for as of now men hold a superior position in this profession than their female counterparts. Because of less participation of women in the judiciary, the issue of lack of diversity in the courts gets highlighted which in turn shows how inequality is prevalent along with lack of opportunities in this democratic country?<sup>20</sup> All the benefits that could be brought about while deciding about a matter, for instance, diversity would mean different perspectives and experiences and that case might get deliberated upon differently. An example for this can be seen in the case of *Vishaka v. State of Rajasthan*<sup>21</sup> wherein the pathetic condition of sexual harassment faced by women at their workplaces was addressed efficiently when there was no law as a reference, and this the presence of J. Sujata Manohar ensured such a move by bringing the view of gender sensitization to the Bench.<sup>22</sup>

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<sup>17</sup> Pallavi Saluja, "The next judges of the Supreme Court: Which High Court Chief Justices are most likely to be elevated? Will we see a woman CJI this decade?" BAR & BENCH, available at: <https://www.barandbench.com/columns/the-next-judges-of-the-supreme-court-which-high-court-chief-justices-are-most-likely-to-be-elevated-will-we-see-a-woman-cji-this-decade> (last visited March 20, 2021).

<sup>18</sup> Arijeet Ghosh et al., "Tilting the Scale: Gender Imbalance in the Lower Judiciary", Vidhi Centre for Legal Policy, February, 2018, p. 3.

<sup>19</sup> *Ibid* p. 5.

<sup>20</sup> Srichetha Chowdhury and Uday Shankar, "Representative Judiciary in India: An Argument for Gender Diversity in the Appointment of Judges in the Supreme Court", ILI L. Rev., Vol. 2, 2019, p. 206.

<sup>21</sup> *Vishaka v. the State of Rajasthan*, AIR 1997 SC 3011.

<sup>22</sup> *Supra* note 20, p. 211.

Equal representation of women in the judicial department can bring many positive changes in the country starting with the part that a class of the society that was under oppression for a long time will finally have a stronger or persuasive voice.<sup>23</sup> Biases such as impartiality and inequality will be lessened from the judiciary thus making it a more approachable platform of dispute resolution. The equal presence of women in these significant positions will act as an inspiration for many other women in the country. The insensitive behaviour and approach towards female victims or even the female lawyers/judges will get remarkably reduced.<sup>24</sup>

## **REASONS FOR THE EXISTENCE OF GENDER INEQUALITY IN THE JUDICIARY**

One of the major reasons for the existence of gender imbalance in the higher judiciary has been gender bias in judicial appointments. This gender bias can be observed in two ways: “Structural bias” and “Discretionary bias”.<sup>25</sup> The former is when the technicalities or policies of the selection process are inculcated with prejudice based on caste, gender, class, *etc.* Because of this, one group of candidates are preferred over another. At the high judicial lever *i.e.* the SC, the “seniority norm” affects the selection of women HC judges to the post of SC judges. This norm is the same for both males and females, but most of the time the social and cultural standing of a woman makes it disadvantageous for her to be able to stand in a similar position as that of her male counterparts. This isn’t just theoretical but too practical to be neglected and stating that we have had just eight women judges in the Apex Court till date says it all.<sup>26</sup> At the lower judicial level, the “judicial transfer policy”, according to which the appointment of a judge is prohibited to the place of their residence or that of their spouse, confines the chances of having more women judges from getting appointed. The fact that there are more male judges than female judges, if such a policy is in place, and then it is affecting the possibilities of having more women on the benches. More importantly, a transferable job is not feasible for a woman as it is for a man, and especially not for a married woman. Her household and motherly duties are considered above her career and her husband’s career is of more significance irrespective of which position she would be in; these perceptions work against the career goals of the woman making her sacrifice in the way a man would never have too.<sup>27</sup>

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<sup>23</sup> *Ibid* p. 208.

<sup>24</sup> *Supra* note 20, p. 208.

<sup>25</sup> Aishwarya Chouhan, “Structural and Discretionary Bias: Appointment of Female Judges in India”, *Geo. J. Gender & L.*, Vol. 21, 2020, p. 727.

<sup>26</sup> *Ibid* p. 735.

<sup>27</sup> *Supra* note 20, p. 745.

The second bias, that is, discretionary bias, is when consciously or unconsciously a preference is exercised by people making a decision. The general consciousness of the “all-male collegium” affects frequent appointment of women.<sup>28</sup> The influence of sexism in the minds of people in the legal profession affects the eligibility and positioning of women in the competition of their male counterparts.<sup>29</sup> And so, this influence is present in the judicial appointments as well.

Furthermore, the reason why such biases have had an opportunity to impact is because of the “sheltered selection process” in the judiciary. This process is when the selectors are covered from electoral accountability and because of this, they are less likely to appoint women judges as against the “exposed selection process” where selectors are exposed and credit claiming takes place.<sup>30</sup> With regard to the selection of judicial offices in the higher judiciary, the matter has a good amount of visibility in comparison to the lower judiciary. For example, the elevation of a judge to the SC will be in the news and the public will be aware about the same. This point of visibility works positively in the countries with exposed selection but when it is sheltered, there is no incentive to come out of this and so it negatively impacts the appointment of women judges.<sup>31</sup> In the exposed one, it is the Executive or at times the Legislature making the appointments. Understandably, the application of this method is difficult in India amidst the rulings regarding judicial appointments and the importance given to the opinion of the CJI and the principle of separation of power.

The Presence of women in Legislature creates a spill over effect thus impacting positively on the number of women in the higher judiciary.<sup>32</sup> The participation of women in the Legislature and Judiciary may be two different things but are connected in a way that the low representation of women in one affects the other. As we have seen above, the representation of women in the Parliament is very low and accordingly, so is in the Judiciary. It is also said that this low number of women judges affects the participation of women in other governmental institutions.<sup>33</sup>

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<sup>28</sup> *Ibid* p. 752.

<sup>29</sup> Kiruba Munusamy, “Sexism in Indian judiciary runs so deep it’s unlikely we will get our first woman CJI”, THEPRINT, available at: <https://theprint.in/opinion/sexism-in-indian-judiciary-runs-so-deep-its-unlikely-we-will-get-our-first-woman-cji/251727/> (last visited March 23, 2021).

<sup>30</sup> Christopher Shortell and Melody E. Valdini, “Women’s Representation in the Highest Court: A Comparative Analysis of the Appointment of Female Justices”, *Political Res. Q.*, Vol. 69 No. 4, December 2016, p. 865.

<sup>31</sup> *Ibid* p. 867.

<sup>32</sup> *Supra* note 25, p. 869.

<sup>33</sup> Dinesh Kumar, et al., “Gender Discrimination in Indian Judicial System: Causes and Implications”, *Int. J. Recent Res. Asp.*, Special Issue, April 2018, p. 698.



There are furthermore reasons for the existence of imbalance in the lower judiciary such as the number of women that participate in the various steps that are required for becoming a judge, the incentives, and the work environment that is provided to women by the judiciary.<sup>34</sup> If we see, as a whole in the judicial structure, then women have not been credited much for their work and their competency is not given a place in the courtrooms. Most of the time it is the male lawyers who are made to feel like they belong in the courtrooms while passing sexist comments on their female colleagues on trivial bases such as appearance.<sup>35</sup> This behaviour is displayed not just by the lawyers but the judges as well shows the general belief of how a woman does not belong in that part of men's world. This factor affects the number of women in the legal profession a lot. Upon entering this career, there are several hardships that a woman has to face such as lack of support from family, religion and caste, marital status, male favourability at courts and offices, sexual harassment or comments, *etc.*<sup>36</sup> And therefore, these all affect the number of women entering the legal profession altogether.

## RESERVATION FOR WOMEN JUDGES

The previous year, the Law Ministry had given its opinion on reservations in judicial appointments. It said that the appointment of SC and HC judges takes place under Articles 124 and 217 of the Constitution and these provisions make no expression of having reservations for any gender, caste, or class.<sup>37</sup> Other than recommending the Chief Justice of HC to consider the candidates belonging to classes such as women, SC/ST and minorities, the Ministry made a clear point there was no intention of amending the provisions of Articles 124 and 217.<sup>38</sup>

There was a report by a Parliamentary Standing Committee released in 2018 under which the Panel displayed concern over the under representation of women in the legal profession and

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<sup>34</sup>“Gender disparity in lower judiciary shows study”, THE HINDU, available at: <https://www.thehindu.com/news/cities/Delhi/gender-disparity-in-lower-judiciary-shows-study/article22766885.ece> (last visited March 23, 2021).

<sup>35</sup> *Supra* note 24.

<sup>36</sup> Saurabh Kumar Mishra, “Women in Indian Courts of Law: A Study of Women Legal Profession in the District Courts of Lucknow, Uttar Pradesh, India”, e-cadernos CES 24, 2015, p. 80.

<sup>37</sup> Soibam Rocky Singh, “No move to introduce quota for women judges: Law Ministry”, THE HINDU, available at: <https://www.thehindu.com/news/national/no-move-to-introduce-quota-for-women-judges-law-ministry/article25902537.ece> (last visited April 1, 2021).

<sup>38</sup> *Ibid.*

suggested that there should be seats reserved for women in law schools and the Subordinate judiciary for increasing the percentage of women judges to about 50%.<sup>39</sup>

The low representation of women is an issue that has to be dealt with sooner rather than later. It has taken decades for the Top Court of the country to have three female judges at a time. Therefore, reservations for women must be sought in the appointments made for the Higher Judiciary. A “ladies quota” must be created and it should not be an informal criterion like the seniority rule but it more substantial in implementation so that it does not remain like an empty shell.<sup>40</sup>

In the case of *Government of Andhra Pradesh v. P.B. Vijay Kumar*<sup>41</sup>, the Court while dealing with a matter of women reservations in public employment drew a parallel from Article 16(4) saying that it talks about uplifting backward classes by taking certain affirmative actions and since women have stayed backward in the country for so long, taking the provisions of this article as an authority, a similar level of policies should be created under Article 15(3) for uplifting the position of women. The Court was correct in stating this considering the fact that we do have a provision for making special provisions for women under Article 15(3), and therefore, all we need to do is put it into application efficiently.

When we see the role of reservations in the judiciary, then many states have implemented reservations in their lower judiciary. States like Telangana, Rajasthan, Tamil Nadu, Karnataka, and more, have reserved seats for women in 30-35% range, and the recruitment here is done through direct appointment.<sup>42</sup> Some states have a better representation percentage of women with reservations but there are also states like Bihar and Jharkhand where the representation of women is very low (even though there are reservations provided).

There can be a positive change brought by reserving quotas for women in judicial appointments. With regard to higher judiciary, more women might get the opportunity to become a judge with such a kind of policy. Because of the competition, there are only a few that get in, but the number will surely increase with reserving seats for women. The presence of women is important not just for the number to show but because it will help in addressing

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<sup>39</sup> Poorvi Gupta, “Parliamentary Panel Seeks 50% Quota for Women judges”, SHETHEPEOPLE, available at: <https://www.shethepeople.tv/news/parliamentary-panel-seeks-50-quota-women-judges/> (last visited April 1, 2021).

<sup>40</sup> *Supra* note 19, p. 209.

<sup>41</sup> *Government of Andhra Pradesh v. P.B. Vijay Kumar*, AIR 1995 SC 1648.

<sup>42</sup> *Supra* note 17, p. 7.

certain issues in a way to have positive socio-political results.<sup>43</sup> The lack of proper representation of women has already given space to biases to exist in the judiciary. Further, the courts address so many cases relating to women issues but a lot of times, there is no woman on the Bench itself and these questions the “legitimacy of the court”. The presence of women gives an encouraging message to other females about joining the legal profession. Lastly, there is a possibility that the issues dealt by the Court in a way would be addressed differently was a woman been present for it. For instance, the case of sexual harassment complaint made against the then CJI could’ve been dealt with differently had it not been an “all-male Bench”.<sup>44</sup>

A reference can be made to the UK’s system of judicial appointments; the “Judicial Appointments Commission” (JAC). This is an independent body making the appointment for the judicial posts. The Executive has the last word in a decision but the existence of JAC addresses important concerns of eligibility criterion, transparency, and diversity on the Bench among others. The JAC has taken efforts to bring in applications from candidates from the under-represented groups by organizing “Candidate Seminars”. It also made an attempt to address the institution gender biases which helped in increasing women appointments by 50%.<sup>45</sup> From this we can garner the importance of gender sensitization. The discretionary bias needs to be reduced for the overall improvement in the system.

## CONCLUSION

The reality of gender inequality is very shocking considering we have come a long way from the day the Constitution came into being, but it is not obvious because women have been oppressed for ages in the country. It has been in recent years that an attempt to equalize the rights of men and women has been made via legislation and judicial pronouncements. However, an inherent bias that has existed in the society against the women class remains and promptly gets reflected in the Judiciary as well. The doubt in the ability of women or more like in the inability has made sure that the participation of women in the legal profession remains as low as it could. The improper treatment in the courts from judges and fellow male lawyers

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<sup>43</sup> “Why Indian Judiciary Needs More Women”, HINDUSTAN TIMES, available at: <https://www.hindustantimes.com/editorials/why-indian-judiciary-needs-more-women/story-uU4kDWi5Nd09N6GpgBmYgJ.html> (last visited April 4, 2021).

<sup>44</sup> Deepika Kinhal, “Current Crisis in SC is an Opportunity to Address Serious Gender Disparity on the Bench”, THE INDIAN EXPRESS, available at: <https://indianexpress.com/article/opinion/columns/cji-ranjan-gogoi-clean-chit-sexual-harassment-case-supreme-court-5715766/> (last visited April 4, 2021).

<sup>45</sup> Job Michael Mathew, “Judicial Appointments in India: Towards Developing a More Holistic Definition of Judicial Independence”, NSLR, Vol. 9-10, 2016, pp. 120-121.

has discouraged women from joining the legal world for a long time. At least today, we can say that we have certain (few but still there) examples to look up to in the higher judiciary. What needs to be done to increase the representation of women in the judiciary is either reserves seat for women judges or create a system with proper functioning for the selection process. Such a system should be efficient to deal with the transparency issue, separation of power, independence of the judiciary, and diversity in the courts. We have a referral point for this and all we need to do is step beyond the confinements provided by the two-Judges case giving the ultimate power to the collegium lead by the CJI.

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