

CRITICAL ANALYSIS OF GENDER EQUALITY ISSUES IN JUDICIAL PROFESSION IN INDIA

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Abstract

Feminism is the greatest revolution of modernity and it has still not come to an end and discussion on the aforementioned topic of gender equality and gender bias issues in judicial profession is the reflection of the issues intertwined with it as well as small contribution in this revolution by the researcher to uplift the standard of society which is still following patriarchal mindset, wherein, the women have to struggle to make space in higher decisive positions. In this research paper, researcher attempts to explore the nature and extent of gender bias issues and women subordination in field of judicial profession right from the stage of appointment, appraisal, selection and promotion, methods by which and ways in which this happens, reasons behind the same and then further analyses the effectiveness and adequacy or otherwise of current legal framework to combat these issues and makes humble attempt to put forth solutions to improvise the current lamenting and dissatisfactory scenario.

Keywords: Judiciary – Gender equality and gender bias issues- current legal framework - solutions.

1. Introduction

Feminism is the movement which demands for emancipation, equality and liberation of women and stresses the need for thorough social transformation through transformation of law, culture and social patterns which restricts women's potential. One might think this is now obsolete topic as women are now given full freedom to realise their dreams but this is not true, even after 78 years of Indian Independence, we don't have single female Chief Justice of India and only one female Prime Minister and two female Presidents till date. This clearly shows that lot more is required to be done or things done requires analysis as to what is lacking in the efforts or what are the ground realities and hindrances in the path of realizing the goals of equality and equal

opportunities for progress and development of men and women. However, this research paper restricts the study of gender equality and bias issues in judicial profession to only female and not transgender persons as it requires separate discussion. Still many first generation female lawyers do not get good exposure and practicing experience and there are issues like sexual harassment, non-allotment of proper cases to female prosecutor, societal bias in giving cases to female lawyers and considering legal field as man's field, discrimination at time of appointment for legal and judicial positions, improper interpretation of law provision of continuous period of service as criteria for selection of judges adversely affecting various experienced women lawyers from their selection or nomination to the post of senior counsel or judicial recruitment and promotion, all male collegium working atmosphere, resultant poor gender equality ratio or composition in Higher Judiciary, lack of sensitization for upliftment of women advocates and so on discussed in detail in the following lines stressing the need for research on this aspect to find out proper solutions to these problems and to develop better judiciary system comprising of proper representation from all sections, caste, every strata of society sensitive to realise the goals of social, economic and political justice and equality of status and opportunity enshrined in Indian Constitution in its true spirit.

➤ **Literature Review**

Researcher has referred following online research articles by various legal experts to analyse the issues regarding the research problem at hand also mentioned in list of references:

1. Research Paper entitled "Gender Inequality in Judicial Appointments" by Shantanu Dixit published in Chanakya Law Review, Vol. 1, Issue 1, July -Dec. 2020 pp. 62-73 was referred. In this research paper, author very nicely explained reasons for gender inequality in judicial appointments.
2. Research Article entitled "Sexism in Indian Judiciary runs so deep it's unlikely we will get our first woman CJI" Dt. 19th June, 2019 by Kiruba Munusamy was referred to explain the nature and extent of gender bias in legal profession and Indian Judiciary.
3. The Leaflet Article entitled "Appointment as a judge to the higher judiciary is still a mirage for most women lawyers" published on 11th August, 2022 by AOR, SC Mr. Paras Nath Singh was referred to understand and depict the opinions of various judges and senior female lawyer like Ms. Indira Jaising about the reasons for such gender disparity in higher judiciary.

4. The Leaflet Article entitled “This international women’s day, we must ask why gender representation continues to elude our judiciary” published on 04th March, 2025 was referred to understand the systemic lacunae responsible for the current research problem at hand and judicial approach regarding the same.
5. The Leaflet Article entitled “Representation not enough if women judges cannot be provided sensitive work environment, guidance, rules Supreme Court reinstating two women civil judges” published on 03rd March, 2025 was referred which explained the facts and ratio laid down in the case of Sarita Choudhary v. High Court of Madhya Pradesh in the backdrop of topic of poor working environment for female judges in Judiciary.
6. Researcher also verified the data regarding women representation in Judiciary at all level based on latest reports available on authentic website, sources of which are mentioned in footnote at relevant point as well as in list of references.

Thus, all these research papers and articles explained different aspects of research problem, researcher has analysed these aspects and put forth in comprehensive manner in this research paper.

➤ **Hypothesis**

Current legal and judicial institutional framework is not adequate to address the concerns of gender equality and bias and proper representation of females as well as Dalit or SC or ST or backward classes female in higher decisive positions.

➤ **Objectives of research paper or Statement of Research problem**

1. To put forth women’s experiences about problems faced under the current scenario in achieving the goals of success, attaining equal opportunities to handle the cases, gain equal exposure and experience and higher position in the legal and judicial field as that of male counterparts.
2. To challenge the structure of legal and social thought which is male in some culturally specific sense implying the need for some radical changes and revisions in law and system rather than simply ameliorative amendments.

➤ **Limitations of the study**

This study is limited to doctrinal research based on articles and legal provisions and judicial decisions regarding judicial appointment, termination of judicial service and appraisal of work

and does not cover any non-doctrinal research or survey and international comparison of legal scenario and system due to efflux of time and limited resources.

➤ **Research Methodology**

Doctrinal research methodology is adopted to study the aforementioned research problem. Primary source like bare act of Constitution of India is referred for understanding and explaining gender equality provisions and absence of explicit provisions for reservation of seats in judicial appointment provisions or provisions for balanced collegium comprising of female judges also. Secondary sources like various research articles on the topic available on various authentic websites are also referred for the study.

2. Critical analysis of gender bias issues in Indian Judiciary:

➤ **Nature and extent of gender bias issues with examples**

- First female judge to be appointed in Supreme Court was Justice Fathima Beevi on 6th October, 1989 i.e. after almost 39 years of establishment of Supreme Court in India and since then only 11 female judges are appointed in Supreme Court. Justice Indu Malhotra was the first female judge to be appointed directly from practice in 2018 i.e. after almost 68 years since the establishment of Supreme Court and at present there is only one sitting female judge out of total 34 judges in Supreme Court viz. B. Nagarathna and she will become the Chief Justice in 2027 i.e. first female CJI probably and that too for very short duration of 36 days due to the retirement.¹ At present, she is the first female to enter into collegium.
- This data itself reflects how we are lagging behind to remove gender bias and patriarchal stereotype mindset in society acting as major hindrance for proper representation of females in higher position.
- Another shocking recent incident regarding addressing the identity about Senior Advocate Ms. Indira Jaising – During one contempt petition hearing, when Mr. Grover was representing Advocate Indira Jaising, Attorney General K. K. Venugopal remarked that he (Grover) should refer to her as his wife to which Indira Jaising strongly objected and said “I am the person in my own right” and that we individuals with one own identity and should not be addressed as somebody’s wife or husband and asked Attorney to withdraw such an

¹ https://en.wikipedia.org/wiki/List_of_female_judges_of_the_Supreme_Court_of_India , accessed on 23-12-2025.

orthodox mentality comment.² There was another incident when senior advocate addressed her as “that woman” and referred to other male lawyer as “my learned friend” – this fact itself shows how much backward is still the mindset of most of the males in society who are not ready to treat women at par with them or give equal respect.³

- As per recent data of 2025, only 109 judges out of total 755 High Court Judges are female i.e. only 14% judges are female in total High Court Judges all over India. In 2023, it was 13% and 11% in 2011.⁴ The ratio has not much increased over the span of 14 years. Five High Courts have not even a single woman judge as of now viz. Manipur, Meghalaya, Patna, Tripura and Uttarakhand High Courts.
- As per recently available data of 2025⁵, women judges in district and lower courts constitute 35% - 38%⁶ of total judges in District and lower Courts. So, if analyse this data, female judges entering into system are at least good in number though not as much as male judges but they are not getting elevated to higher judiciary due to various reasons described in this research paper.
- As said above till now there was not even a single female judge in collegium that fact itself shows almost nil representation of females in selection of judges in Supreme Court.
- Judiciary at times itself is suffering from this gender biased and male chauvinist mindset. Following examples of one lawyer in her article will justify the meaning of this statement: Kiruba Munusamy in her article Dt. 19th June, 2019 narrated the incident of comments by judge on her short haircut and that they are attractive than her argument thereby discouraging her morale and undermining her ability. Harsh fact was that she had to apologise to this judge for putting one’s own point against such comment. She also narrated other incident wherein she was insulted and quietened by the judge in a case of transwoman police appointment wherein she was appearing on behalf of petitioner.⁷

² <https://www.ndtv.com/india-news/indira-jaising-on-attorney-general-kk-venugopals-remark-i-am-person-in-my-own-right-2004382> accessed on 23-12-2025

³ <https://theprint.in/opinion/sexism-in-indian-judiciary-runs-so-deep-its-unlikely-we-will-get-our-first-woman-cji/251727/> accessed on 23-12-2025

⁴ <https://theprint.in/judiciary/8-of-25-high-courts-have-only-1-woman-judge-data-shows-poor-representation-in-higher-judiciary/2495899/> accessed on 23-12-2025

⁵ <https://forumias.com/blog/women-representation-in-judiciary-significance-challenges-explained-pointwise/> accessed on 23-12-2025.

⁶ <https://indiajusticereport.org/> accessed on 24-12-2025.

⁷ Supra Note 3

- Recently in 2023, when it was asked in Lok Sabha regarding the data about representation of female judges and transgender person in Judiciary and efforts made to increase the strength, the then Law Minister Mr. Rijuju answered that as the appointment of judges are governed by Art. 124, 217 and 224 of Constitution of India which does not provide for any class or caste representation or reservation in specific this issue cannot be handled directly but simply suggestions are given to chief justices to make Judiciary more diverse and inclusive comprising of more women judges including from SC, ST and backward classes. One thing is clear Parliament is not envisioning any change in law for dealing with this problem directly.
- As per SC's list of senior advocates Dt. 12-12-2025, there are only 44 female advocates in this list of total 682 advocates i.e. simply 6.45%. In 2019 it was 4 % only so the ratio has not much increased.
- Various comments of judges and leading female lawyer and ex-additional Solicitor General Ms. Indira Jaising⁸ will further explain this issue:
 - 1) Justice D. Y. Chandrachud said on this topic that unless the conventional yardsticks for assessing women lawyers are not changed, the problem of inability to bring more women judges in bench is going to persist. So simply by making provision for reservation or changing collegium composition will not increase the number of female judges in higher judiciary unless systemic changes are not made.
 - 2) Senior Advocate Ms. Indira Jaising said there is need for awareness, encouragement and sensitisation of women lawyers in the Bar to increase the ratio of female judges in Judiciary because after all good judges come from good practising lawyers. She said that there is need to change the mindset that women lawyers are meant for transactional work and not litigation. Proper encouraging atmosphere for that is required to be created in law courts. She further stressed that there is need of not only more female judges but also more Dalit female judges then only there will be first generation women judges and diversity within women judges.
 - 3) Former CJI C. V. Ramanna said in the online event held for celebration of first International Day for Women Judges in 2022, collegium headed by him has

⁸ <https://theleaflet.in/equality/this-international-womens-day-we-must-ask-why-gender-representation-continues-to-elude-our-judiciary> accessed on 22-12-2025

recommended the names of 192 persons to be appointed as High Court Judges out of which 37 were women judges, but however only 17 women were appointed and rest are pending approval by Government. So, at times even if the collegium recommends the name, it is not necessary that those women judges will get elevated as State holds control to certain extent, which requires reconsideration.

- 4) Former CJI Bobde stressed on addressing and removing the structural inequality clearly reflected in overburdened working women expectations to take care of household and children which at times act as a hindrance for taking up career in judiciary and suggested to provide institutional support work and family life balancing. This is one of the factors besides other factors.

➤ **Critical Analysis of Legal Framework and Judicial Approach:**

- It should be noted that as per Art. 233(2), person should have at least seven years of years of experience as an advocate and it is one of the criteria to appointed as District Judge but this is interpreted as continuous years of practice which is wrong and becomes the major disqualifying criteria for many women advocates who have to leave practice for the family responsibilities.
- Moreover proper work environment is also needed to sustain and increase the female judges ratio and this was stressed by SC in its judgment in the case⁹ of independent writ petitions by 2 female judges of Madhya Pradesh State Judicial Services (Junior Division Civil Judge) whose services were terminated on the ground of poor performance and other reasons without giving her opportunity to be heard as they were on probation and Art. 311(2) of Constitution was considered not applicable to them as they were not on permanent positions. In this landmark judgment by the multi gendered bench comprising of J. Nagarathna, SC held the termination to be improper, arbitrary and devoid of consideration of emotional and psychological problems which women faces on account of miscarriage. SC further held that Art. 311(2) does not mention that it does not apply to probationers and on that ground also the termination was invalid and reinstated these judicial officers. This case reflects the pathetic condition of government and judiciary which is insensitive to bring gender equality in higher positions in real sense and provide

⁹ Sarita Choudhary v. High Court of Madhya Pradesh (Writ Petition (C) No. 142 of 2024)

proper working environment wherein female judges do not have to fight for their rights and positions after maternity leaves and breaks.¹⁰

➤ **Reasons for Gender bias or inequality issues in Judiciary:**

Major reasons for gender bias issues narrated above and exemplified by the poor female judges ratio throughout the judiciary can be divided into 2 broad categories:

- 1) **Structural bias** – It means system or the rule itself breeds bias based on caste, class, gender and so on. Two best examples are rule of transfer of judges and rule of seniority.
 - There is judges transfer policy at trial court level and due to this transfer policy also, women judges especially married women judges prefer this profession less as times may change, but her tasks have not reduced and she is expected to perform all motherly duties, household responsibilities over and above her career duties and career goals are always to be compromised for females but not of males in the house and this norm remains same irrespective of caste, class, religion and strata of society from which any person comes. Hence this judicial transfer policy according to which any trial court judge is never posted at his/her place of residence or spouse's place of residence acts as major factor of hindrance for women to take up this profession and hence it requires reconsideration. Moreover, it should be noted that there is no such policy at High Court level so the very object for which it is framed raises questions and this policy requires revision and transparency.
 - Seniority rule which is same for male and female judges becomes another example of structural bias on account of which very less women HC judges get elevated to SC as tenure of service and effectiveness of very few female judges will be at par with male judges and this is the major reason, why till now we do not even once have female Chief Justice of India and only 11 female judges till date in SC.
- 2) **Discretionary bias**- Even after coming into merits, lot of discretion is given to collegium as well as State whether to select or elevate any women judge or not and as said above till date there were all male collegium in SC and it is not necessary that all male are of progressive mindset hence at times preconceived notions and male

¹⁰ <https://theleaflet.in/leaflet-reports/representation-not-enough-if-women-judges-cannot-be-provided-sensitive-work-environment-guidance-rules-supreme-court-reinstating-two-women-civil-judges> accessed on 22-12-2025

chauvinist mindset of such people in collegium also acts as hindrance for less number of female judges in High Courts and Supreme Court and as said above at times even after the names of female judges are recommended by collegium another hurdle State government comes into picture. So it is very much necessary that this entire judges selection process becomes open and transparent process and not the sheltered one like present to keep more check on the actions of collegium as well as government.

3. Conclusion and Suggestions:

Conclusion

Based on the discussion of various issues and data put forth above regarding poor representation of female judges and various reasons regarding system and norms being insensitive to match with the real problems and family expectations of female lawyers and judges, researcher answers the hypothesis in affirmative.

Suggestions:

Following suggestions are put forth by researcher to improvise the current mechanism based on above analysis done through doctrinal research:

1. There is need for sensitisation amongst female lawyers and various senior lawyers should encourage them to grow well in this field even on litigation part.
2. Judges sensitisation is the need of the hour who does not discourage female lawyers from presenting their case. Seminars should be organised for sensitisation of lawyers so that women lawyers and public prosecutors get equal opportunities and proper training and exposure in this profession as that of male counterparts. Contant efforts will bring reformation in ages old patriarchal or male dominant mindset.
3. State should take active steps to regulate improper and arbitrary termination of female judges.
4. Major problem is so called transfer of district judges and lower court judges rule which is itself improper because of absence of any such rule for High Court Judges and this acts as a refraining factor for women to choose career in Judiciary.
5. Moreover, interpretation regarding continuous practice experience for Art. 231(2) requires reconsideration as it is major hindrance factor for many female lawyers who mostly faces career breaks due to family responsibilities.

6. Like UK, State should not interfere in appointment of judges, political and executive interference makes the judiciary overall as field to which women or any person does not wish go now and an independent body should be established that handles appointment, transfer and promotion of judges and ensures job security and work place safety and diversity in benches at all levels.
7. Proper work atmosphere is required to be maintained in judiciary to sustain the female judges in the system and ensure their career growth and job safety.
8. Collegium and judges selection process should be made open and transparent to prevent the cases of injustice and malicious transfer of judges and ensure proper promotion of women judges in higher judiciary and this step will itself make judiciary independent and free from executive and political interference. Unless independent body based selection process is put into practice, collegium should be comprised of 1 woman judge as well as judge belonging to SC, ST and backward classes category so that diverse benches and proper representation takes place in judiciary.
9. Reservation of seats for women judges will not solve this problem unless all these grass root level changes are made in the system and society. However, women reservation quotas can be introduced in slow and phased manner as per the eligible candidates available in the system and that too for short duration till positive changes are not seen in this scenario of poor representation of women judges.
10. Moreover, concept of lateral entry can be introduced for direct recruitment of female judges from the field of research and academics. This can boost the morale of academicians who contribute a lot in building generations of good lawyers in the country.

➤ **List of References:**

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