

BEYOND THE OLD BOY'S CLUB: A COMPARATIVE STUDY OF WOMEN'S REPRESENTATION IN THE HIGHER JUDICIARY OF INDIA & UNITED KINGDOM

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ABSTRACT

In a democracy as large as India, representation forms the foundation of its democratic principles and values. Women's representation in the judiciary, a historically male-dominated domain, has seen incremental progress yet remains far from achieving parity with men. Despite notable advancements, the Indian judiciary has remained essentially male-centred with significant fewer women who are involved in it either as puisne judges or Chief Justices at both the Supreme Court and various High Courts. Also, the collegium system, responsible for judicial appointments in the higher judiciary, also suffers from a significant gender imbalance. In contrast to this, the United Kingdom has made progress towards gender equality although there are still challenges that need to be addressed. This paper delves into the structural, cultural, and institutional barriers that hinder women's full representation in the higher judiciary of both countries. By analyzing the composition and dynamics of the judiciary, the study highlights the critical importance of gender diversity in ensuring a legal system that embodies the interests of all societal segments. The paper emphasises the significance of female representation not only for a more inclusive legal system but also for inspiring future generations of women in law. Through this comparative lens, the paper aims to offer insights and recommendations to break through the deep-rooted mentality of the "Old Boy's Club" and promote a more equitable judiciary in India and the United Kingdom.

Keywords: Higher Judiciary, Collegium, Representation, Gender Parity, Old Boys Club, Patriarchal System.

INTRODUCTION

India, well-known for its diverse culture, customs, traditions, and multiple opinions, often struggles with gender diversity issues that lean more towards exclusion than empowerment, a

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situation that has worsened over time.¹ Diversity is a fundamental feature of democratic nations. While India is the largest democracy in the entire world, its judiciary presents a troubling picture of a lack of diversity, particularly in terms of gender. In many democracies, including India, the judiciary does not mirror the country's extensive diversity.²

In a pluralistic democracy like India, which prides itself on wide-ranging social, geographical, and religious diversity, a representative and inclusive judiciary is crucial for maintaining public faith in the justice system as it brings various voices and perspectives into the courtroom and beyond. Although women's participation in the workforce and public life has increased, they are still significantly underrepresented in decision-making roles. The quantum of representation of female judges in senior judicial positions is very low.³ The impact of women judges in senior positions extends beyond symbolism. It ensures that justice is delivered by individuals who understand the diverse experiences of the society they serve.

Historically, the corridors of power within the judiciary have been predominantly male.⁴ This underrepresentation of women in the senior positions of the judiciary is not merely a statistic; it's a fundamental flaw in the very concept of justice and raises a crucial question: *how can a system truly embody justice if it fails to reflect the diversity of the society it serves?* If we look from a feminist perspective, there are numerous obstacles on the path of building an inclusive judiciary like inadequate support systems and implicit biases against women create hurdles. Socially ingrained gender roles, harassment, and a history of discrimination further exacerbate the issue.

The judiciary, as an institution, holds a unique position of power and responsibility in upholding the principles of fairness, equality, and justice. Its decisions impact all facets of society, shaping lives and communities. Yet, when this critical institution is overwhelmingly composed of one gender, it risks perpetuating a narrow perspective that does not fully encompass the experiences, challenges, and needs of the entire population. This study aims to shed light on the reasons behind the gender disparity in the higher judiciary. It compares the

¹ Uday Shankar & Srichetha Chowdhury, 'Representative Judiciary in India: An Argument for Gender Diversity in the Appointment of Judges in the Supreme Court' (2019) 2 ILILR 200.

² Lavanya Sahil Gupta, 'Third Pillar of Democracy- Inclusivity of Indian Judiciary' (2023) 5(5) IJLLR < <https://www.ijllr.com/post/third-pillar-of-democracy-inclusivity-of-indian-judiciary> > accessed 23 May 2024.

³ 'International Day of Women Judges' (United Nations, 10 March 2024) < <https://www.un.org/en/observances/women-judges-day> > accessed 20 May 2024.

⁴ Nancy Kanyago, 'Women's representation in the judiciary has come a long way but remains far from being equal' (The Commonwealth, 31 March 2023) < <https://thecommonwealth.org/news/blog-womens-representation-judiciary-has-come-long-way-remains-far-being-equal> > accessed 19 May 2024.

current state of women's representation in senior judicial positions in India and the United Kingdom, using both quantitative data and qualitative insights. Given that India's legal system is majorly based on English law, the United Kingdom offers a meaningful basis for examining gender representation in the higher judiciary. Through this comparative lens, the study identifies the unique challenges faced by female judges in reaching senior judicial roles and aims to propose actionable steps that can help dismantle the remaining glass ceilings. This study is not merely about numbers; it's about ensuring that the voices of women are heard and represented at the highest levels of the judiciary. By dismantling the existing imbalance, we can move towards a future where the scales of justice truly embody the ideals of justice and fairness for all.

OPENING THE CLOSED DOOR: A HISTORICAL OVERVIEW

Rise of Women in Higher Judiciary in India

India is among the countries where women are revered and often worshipped as goddesses, a tradition that has been upheld for centuries. As societies developed and established social norms over time, gender roles became increasingly defined and segregated. Women were frequently restricted to domestic responsibilities within the household and in contrast, men were expected to fulfill the role of breadwinners outside the home. This practice entrenched the misconception that a woman's place is within the boundaries of her home.⁵ Post-independence, India has been battling gender biases and prejudices, a struggle mirrored in its judiciary.⁶ The vision of creating a judiciary that reflects the nation's diversity remains a slow and challenging process.

The Indian judiciary is founded on Brahmanical patriarchy,⁷ resulting in upper-caste men being prioritised for judicial appointments, while women judges remain significantly underrepresented. Patriarchal and conservative attitudes continue to pervade the legal. Achieving equal representation of women across all levels of the judiciary is crucial for maintaining the principles of the rule of law, delivering justice impartially, and ensuring a fair judicial system. An increase in women judges has historically strengthened judicial discourse

⁵ Anushka Singh, 'Representation of Women in Indian Judiciary' (2022) 1(6) IJMDES < <https://journal.ijmdes.com/ijmdes/article/view/56/55>> accessed 25 May 2024.

⁶ Shankar & Chowdhury (n 1).

⁷ Yoshita Sood & Seerat Showkat, 'Ramifications of the Dearth of Female Representation in Indian Judiciary: An Appraisal' (2021) 1(3) IJPSL < https://ijpsl.in/wp-content/uploads/2021/03/Ramifications-of-the-Dearth-of-Female-Representation-in-Indian-Judiciary-An-Appraisal_Yoshita-Sood-Seerat-Showkat.pdf> accessed 23 May 2024.

and built trust among litigants. Their presence enhances the judiciary's legitimacy by demonstrating that it is open and accessible to all seeking justice.⁸

In nearly four decades since the Supreme Court of India was established in 1950, not a single woman was appointed as a judge until Justice Fathima Beevi made history in 1989 by becoming the first female Supreme Court judge. In the 74 years since its inception, only 11 out of 274 Supreme Court judges (4.01%) have been women, highlighting the significant barriers women face in reaching top judicial positions. The appointments in 2021 of Justice Hima Kohli, Justice B.V. Nagarathna, and Justice B.M. Trivedi marked the largest number of women ever elevated to the Supreme Court bench in a single instance.⁹ So far only two women, Justice Banumathi and Justice Ruma Pal, have been part of the collegium and currently, there is no female representation in the collegium.¹⁰ The prospects for women achieving high judicial positions in a predominantly male-dominated and competitive field appear bleak.

The fact that it took 68 years until 2018 for the Supreme Court to appoint its first ever female judge Justice Indu Malhotra, directly from the bar is staggering. It highlights how the old conventions and pathways to the apex court disproportionately disadvantaged women lawyers and kept them out of the highest judicial ranks for generations.¹¹ During a 2018 panel discussion organised by the Vidhi Centre for Legal Policy, Justice Indu Malhotra shed light on the enduring issue of gender prejudice that continues to pervade the legal profession and judicial system in India. She pointed out that women judges often have to work twice as hard to prove their competence, especially in complex commercial matters, and face skepticism even from senior colleagues.¹²

The journey towards gender parity in India's higher judiciary began with pioneering achievements like Anna Chandy becoming the country's first female high court judge in 1959. This appointment was hailed as a watershed moment, signaling the potential for women to ascend to positions within the higher judiciary. However, the reality has proven to be far more

⁸ Ritika Kanwar, 'The Rare Birds: Dearth of Female Representation in Indian Judiciary' in Prasanna S (ed), *A Landmark of the Indian Constitution* (Institute of Legal Education 2023).

⁹ Gauri Kashyap, '4% of Supreme Court Judges of All Time are Women' (*Supreme Court Observer*, 30 June 2023) < <https://www.scobserver.in/journal/4-of-supreme-court-judges-of-all-time-are-women/> > accessed 3 June 2024.

¹⁰ Kanwar (n 8).

¹¹ Sood & Showkat (n 7).

¹² Mehal Jain, 'There is a Gender Bias in Legal Profession and Judiciary: Justice Indu Malhotra' (*LiveLaw*, 14 October 2018) < <https://www.livelaw.in/there-is-a-gender-bias-in-legal-profession-and-judiciary-justice-indu-malhotra/> > accessed 19 May 2024.

complex and challenging. Like most other sectors, the judiciary was male-dominated historically. However, despite being trailblazers such as Justice Leila Seth, India's first female Chief Justice of a high court and Justice Ruma Pal, who held forth for the longest record period as an Indian Supreme Court judge, their journey to these positions has had its fair share of obstacles.¹³

India elected its first woman Prime Minister within two decades post-independence but is yet to appoint a female Chief Justice even after seven decades of freedom. An example of this disparity is seen in the 2000 Supreme Court appointments of Y.K. Sabharwal, Ruma Pal, and Doraiswamy Raju JJ. Despite equal seniority, Justice Ruma Pal was sworn in after Justice Sabharwal, affecting her seniority and career progression.¹⁴ The journey towards a gender-balanced judiciary continues to face numerous obstacles, but the presence and contributions of women judges are crucial for a more equitable and just legal system.

Pioneering Women in the United Kingdom's Higher Judiciary

The journey of female judges in the United Kingdom's senior judiciary is marked by groundbreaking achievements and persistent struggles. Women have made significant strides, breaking numerous barriers and setting precedents that have paved the way for future generations. Yet, the path has been arduous, with many milestones reached only after overcoming substantial resistance.

In the UK, women like Rose Heilbron (the first woman to get first-class honours in law from the University of Liverpool in 1935) and Elizabeth Lane (England's first female county court judge in 1962 and high court judge in 1965) were pioneers in cracking the judicial glass ceiling.¹⁵ The momentum accelerated with Brenda Hale becoming the first female UK Supreme Court Justice in 2009 and its first female President in 2017, having been the first woman Law Lord in 2004. Her career exemplifies the slow but steady progress toward gender parity in the highest echelons of the judiciary.

¹³ Aditya AK, 'Through the Looking Glass Ceiling: Woman Judges (or the lack thereof) in the Higher Judiciary' (*Bar and Bench*, 4 November 2017) <<https://www.barandbench.com/columns/woman-judges-higher-judiciary>> accessed 19 May 2024.

¹⁴ Kairavi Raju, 'The Unattainable Bar: A Lack of Gender Diversity in the Indian Judiciary' (2019) 9 RMLNLU Law Review 25.

¹⁵ 'Then: The Legal Pioneers' (*Women in Law: Inspired and Inspirations*) <<https://womenandthelegalprofession.wordpress.com/then/>> accessed 20 May 2024

Lady Hale was one of the five women to have been appointed to the Supreme Court along with Lady Black of Derwent, Lady Arden of Heswall, Lady Rose of Colmworth & Lady Simler.¹⁶ In 2004, Linda Dobbs broke new ground as the first Black female High Court judge, and in 2015, Bobbie Cheema-Grubb became the first Asian female High Court judge. These appointments highlighted the increasing, albeit gradual, diversity within the judiciary.¹⁷

While the Judicial Appointments Commission aided diversity in tribunals and lower courts, its limited remit over Supreme Court appointments slowed progress in superior courts. The UK Supreme Court initially had only one woman justice out of 12 in 2012, briefly increasing to three before regressing to just one woman with no visible ethnic minority representation by 2023, highlighting the persisting lack of diversity at the highest levels.¹⁸ In 2023, a significant milestone was achieved when Dame Sue Carr became the first woman appointed as the Lady Chief Justice, President of the Courts of England and Wales, and Head of the Judiciary resulting in a groundbreaking feat.¹⁹ However, despite this progress, substantial work remains to ensure the judiciary truly reflects the diversity of the population it serves.

PRESENT LANDSCAPE OF WOMEN IN THE HIGHER JUDICIARY

Missing Female Voices in India's Highest Courts

A well-rounded judiciary requires a diverse bench, reflecting the representation of the society it serves. This ensures a voice for minority groups and strengthens the court's legitimacy. Both the International Commission of Jurists and the OECD have underscored the critical importance of achieving gender equality within the courts to maintain their legitimacy as representatives of society and sustain public trust in the judiciary.²⁰ The lack of diversity, particularly at the Supreme Court level, raises concerns about the judiciary's ability to fully reflect the diversity of the society it serves and to understand the nuances and societal impacts

¹⁶ Clive Coleman, 'Baroness Hale: The Supreme Court trailblazer' (*BBC*, 21 July 2017) < https://www.bbc.com/news/United_Kingdom-40679299 > accessed 20 May 2024.

¹⁷ Shaista Gohir, 'Are Women Smashing Concrete Ceilings in Law?' (*MWN Hubb*, 10 March 2021) < <https://www.mwnhub.com/read-detail.php?id=76> > accessed 20 May 2024.

¹⁸ Rachel Cahill-O'Callaghan & Pauline Roberts, 'Hearing the Voice of the Woman Judge: Diversity, Equality, and Participation' (2023) 127(3) *Dickinson Law Review* < <https://ideas.dickinsonlaw.psu.edu/dlr/vol127/iss3/4/> > accessed 17 May 2024.

¹⁹ Qarrar Somji, 'Our First-Ever Lady Chief Justice' (*Witan Solicitors*, 8 November 2023) < https://witansolicitors.co.uk/United_Kingdom/lady-chief-justice/ > accessed 20 May 2024.

²⁰ International Commission of Jurists, 'Women and the Judiciary- Geneva Forum Series no 1' (*ICJ*, 2013) < <https://www.icj.org/wp-content/uploads/2014/10/Universal-Women-and-Judiciary-Gva-For-1-Publications-Conference-Report-2014-ENG.pdf> > accessed 18 May 2024.

of its rulings.²¹ It also potentially undermines public trust and confidence in the impartiality and fairness of the judicial system. Nevertheless, historical patterns in India reveal a stark lack of gender diversity in judicial appointments to the Supreme Court over several decades, with only a handful of women judges appointed.

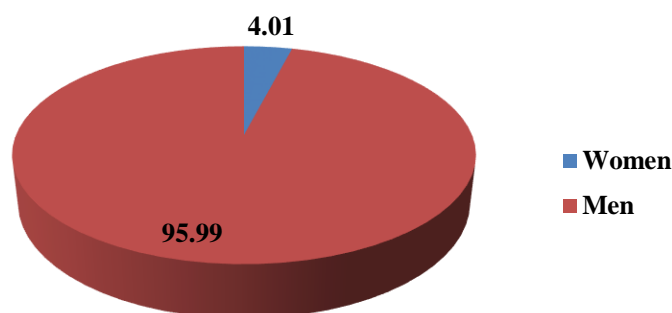


Chart 1: Representation of Women & Men in the Supreme Court of India since 1950

Despite an increasing quantum of women in the legal profession and societal shifts recognizing women's rights, the collegium system responsible for judicial appointments has not effectively increased the likelihood of female judges being elevated to the SC of India. From its establishment, the appointment system failed to appoint a woman judge until 1989. Over the past 74 years since its establishment in 1950, only 11 out of 274 Supreme Court judges have been women.²²

The appointment of Justice M. Fathima Beevi in 1989 as India's first female Supreme Court judge was a watershed moment.²³ Her appointment was significant as it fulfilled the need for both a woman and a Muslim judge, enhancing the court's representation of minorities. This move simultaneously addressed the tokenistic representation of women in the Supreme Court of India and catered to the sentiments of a minority religious group.²⁴

²¹ 'Report on the Implementation of the OECD Gender Recommendations' (OECD, 2017) <<https://www.oecd.org/mcm/documents/C-MIN-2017-7-EN.pdf>> accessed 18 May 2024.

²² Sucheta, 'The Exemplary Eleven: Stories of the Remarkable Women Judges of the Supreme Court', (SCC Times, 8 March 2023) <<https://www.sconline.com/blog/post/2023/03/08/supreme-court-exemplary-eleven-women-judges-stories-international-womens-day-celebrations-legal-news-updates/>> accessed 1 July 2024.

²³ Kashyap (n 9).

²⁴ Raju (n 14).

After her retirement in 1992, Justice Beevi went on to serve as the Governor of Tamil Nadu. Another pioneering figure, Justice Sujata V. Manohar, appointed in 1994,²⁵ played a crucial role in the landmark case of *Vishakha v State of Rajasthan*.²⁶ The table represents the women judges who have served and are currently serving in the Supreme Court so far.

S.no.	Name of the Justice	Tenure	Description
1.	Justice M. Fathima Beevi	1989-1992	First female judge of the SC of India
2.	Justice Sujata Manohar	1994-1999	Earlier Chief Justice of Kerala HC
3.	Justice Ruma Pal	2000-2006	Longest serving female judge of the SC & first woman Judge to be a member of SC Collegium.
4.	Justice Gyan Sudha Misra	2010-2014	Earlier Chief Justice of Jharkhand HC
5.	Justice Ranjana Desai	2011-2014	Earlier Judge of Bombay HC
6.	Justice R. Banumathi	2014-2020	Second woman after Justice Ruma Pal to be a part of the SC Collegium.
7.	Justice Indu Malhotra	2018-2021	First female judge to be directly elevated from the Bar.
8.	Justice Indira Banerjee	2018-2022	Earlier Chief Justice of Madras HC
9.	Justice Hima Kohli	2021-2024	Earlier First woman Chief Justice of Telangana HC
10.	Justice Bela M. Trivedi	2021-2025	Earlier Judge of Gujarat HC

²⁵ Namita Bhandare, '67 years of Supreme Court, 6 women judges' (*Livemint*, 2 September 2017) <<https://lifestyle.livemint.com/news/talking-point/67-years-of-supreme-court-6-women-judges111646982953504.html>> accessed 25 May 2024.

²⁶ *Vishakha v State of Rajasthan* (1997) 6 SCC 241.

11.	Justice BV Nagarathna	2021-2027	Expected to become 54th and the First Woman Chief Justice of India for a period of 36 days.
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Table 1: Women Judges of the Supreme Court of India

Additionally, the collegium system primarily appoints judges from the ranks of high court chief justices, but few women have held such positions, further perpetuating the lack of gender diversity. If the collegium system aims to appoint mostly high court chief justices to the Supreme Court, it must prioritize appointing women to these positions at a much higher rate to address the gender disparity. However, current trends indicate a low rate of appointing women as high court chief justices compared to men.²⁷ Currently, only 2 female judges are serving as Chief Justice of the High Court among the 25 High Courts they are Justice Kumari Ritu Bahari from Uttarakhand High Court and Justice Sunita Agarwal from Gujarat High Court.²⁸ Across the 25 High Courts in India, there are 769 judges of which female judges are around 108 as on 1st June 2024 and the High Courts of Meghalaya & Tripura have zero female judges.²⁹

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²⁷ Aparna Chandra and others, 'From Executive Appointment to the Collegium System: The Impact on Diversity in the Indian Supreme Court.' (2018) 51(3) *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* <<https://www.jstor.org/stable/26630269>> accessed 1 June 2024.

²⁸ 'List of Chief Justices of the High Courts' (*Department of Justice, Ministry of Law and Justice, Government of India*, 1 June 2024) <<https://cdnbbsr.s3waas.gov.in/s35d6646aad9bcc0be55b2c82f69750387/uploads/2024/06/202406031122014426.pdf>> accessed 1 June 2024.

²⁹ 'List of High Court Judges' (*Department of Justice, Ministry of Law and Justice, Government of India*, 1 June 2024) <<https://doj.gov.in/list-of-high-court-judges/>> accessed 1 June 2024.

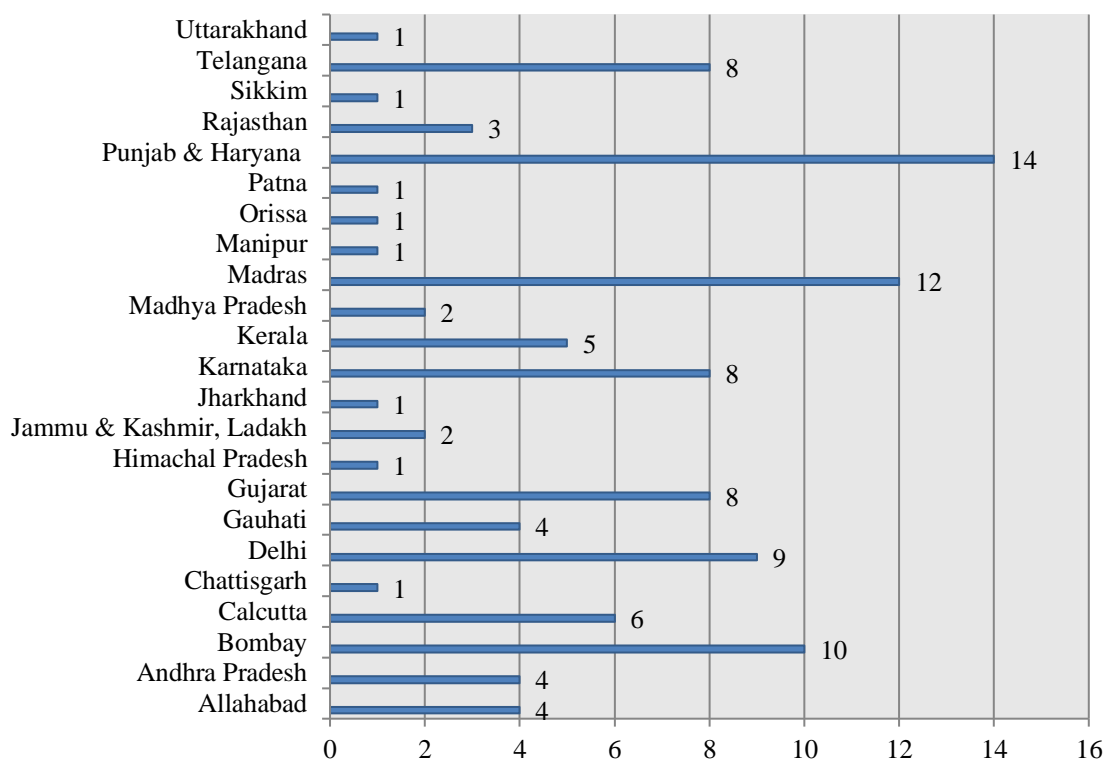


Chart 2: Representation of Women High Courts in India including additional judges

This chart displays the representation of women in High Courts across various Indian states and territories, including additional judges. It reveals a significant disparity across different states and territories. While some courts like Punjab & Haryana and Madras show relatively high numbers of women judges (14 and 12, respectively). Several courts, including Delhi, Bombay, and Gujarat, have between 8 to 10 women judges. Some states like Kerala and Karnataka have moderate representation with 5 to 8 women judges. However, many High Courts, such as Uttarakhand, Sikkim, Patna, Orissa, Manipur, and Chhattisgarh, have minimal representation with only 1 woman judge each.³⁰

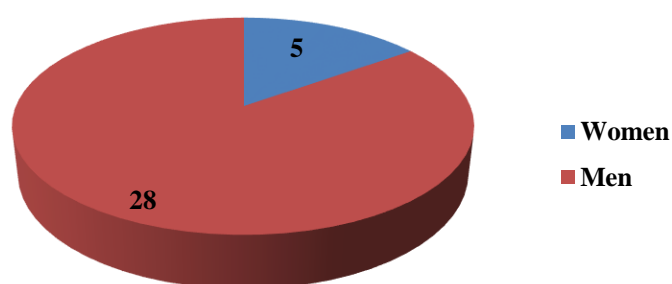
This disparity likely reflects broader issues of gender equality in India's legal system and society at large. The underrepresentation of women in many High Courts may stem from historical barriers to women entering the legal profession, biases in the appointment process, or societal expectations that have traditionally limited women's career advancement in law. This data serves as a valuable metric for assessing the judiciary's inclusivity and could inform policy discussions on increasing gender diversity in India's higher courts.

³⁰ Ibid.

Women's Representation in Higher Judiciary in the United Kingdom

The senior judiciary in England and Wales comprises the High Court, the Court of Appeal, and the United Kingdom Supreme Court. This paper primarily examines the senior judiciary due to the greater challenges in enhancing diversity at these highest levels. Despite efforts to facilitate career progression within the judiciary, promotions from the Circuit bench to the High Court remain rare. Consequently, while diversity has improved in the lower judiciary, it is unlikely to extend to the senior judiciary in the near future. Therefore, assessing diversity across the entire judiciary can provide a skewed perception of progress and future prospects. Diversity at the upper levels of the judiciary is critical for several reasons. It is essential for public confidence and democratic legitimacy, and it significantly influences the law and judicial decision-making. The composition of the senior judiciary impacts the broader legal framework and societal norms, making diversity in these positions especially important.³¹

The United Kingdom Supreme Court is the highest court established in 2009, which replaced the Appellate Committee of the House of Lords. Since its inception, 33 judges have served as full-time justices in the UK Supreme Court. However, only five of them have been women, a strikingly low representation.³² Moreover, there has not been a single justice visibly from an ethnic minority background or with a disability, underscoring the lack of diversity. Currently Lady Rose & Lady Simler are serving in the Supreme Court of UK.³³ This considerable underrepresentation outlines the ongoing challenges in achieving a diverse senior judiciary.



³¹ Erika Rackley, *Women, Judging and the Judiciary: From Difference to Diversity* (1st edn, Routledge 2012).

³² 'Former Justices' (*The Supreme Court of the United Kingdom*) <<https://www.supremecourt.uk/about/former-justices.html>> accessed 1 July 2024.

³³ 'Biographies of the Justices' (*The Supreme Court of the United Kingdom*) <<https://www.supremecourt.United Kingdom/about/biographies-of-the-justices.html#top>> accessed 1 June 2024.

Chart 3: Representation of Women & Men in UK Supreme Court since 2009³⁴

The selection process for United Kingdom SC justices is managed by an independent selection commission convened by the Lord Chancellor. This commission comprises the President of the UKSC as the chair, a senior UK judge nominated by the UKSC President, a member of the Judicial Appointments Commission, and one member from the Scottish and Northern Irish Judicial Appointments Boards respectively.³⁵ Despite the structured and independent selection process, achieving gender diversity in the senior judiciary remains challenging. Factors such as entrenched biases, structural inequalities, and the slow pace of cultural change within the legal profession contribute to these challenges. While there have been improvements in diversity within the lower judiciary, these changes have yet to significantly impact the senior judiciary.

A significant milestone was achieved in 2023 when Dame Sue Lascelles Carr, Baroness Carr of Walton-on-the-Hill, became the first woman to lead the judiciary of England and Wales as the Lord Chief Justice, a position established in the 13th century. Before this historic appointment, she served as a HC judge from 2013 to 2020 and as a Lady Justice of Appeal from 2020 to 2023, paving the way for her ascent to the highest judicial office.³⁶ Dame Victoria Madeleine Sharp, DBE, PC, has been the President of the King's Bench Division of the HC since 2019, representing another significant achievement for women in the judiciary.³⁷ Lady Justice Whipple DBE is a Lady Justice of the Court of Appeal and serves as the Lead Judge for Diversity & Inclusion, Leadership Development, and Wellbeing, demonstrating the judiciary's ongoing commitment to fostering a more inclusive environment.³⁸ The representation of women in the Court of Appeal of England and Wales is not where it could be. While there has been some progress, data suggests women are still significantly outnumbered by men.

³⁴ Ibid.

³⁵ Appointments of Justices, (*The Supreme Court of the United Kingdom*) <<https://www.supremecourt.United Kingdom/about/appointments-of-justices.html>> accessed 1 June 2024.

³⁶ Somji (n 19).

³⁷ Monidipa Fouzder, 'First woman president of Queen's Bench Division sworn in' (*The Law Society Gazette*, 26 June 2019) <<https://www.lawgazette.co.United Kingdom/news/first-woman-president-of-queens-bench-division-sworn-in/5070746.article>> accessed 22 May 2024.

³⁸ 'Lady Justice Whipple' (Courts and Tribunals Judiciary United Kingdom, 7 June 2021) <<https://www.judiciary.United Kingdom/guidance-and-resources/lady-justice-whipple/>> accessed 22 May 2024.

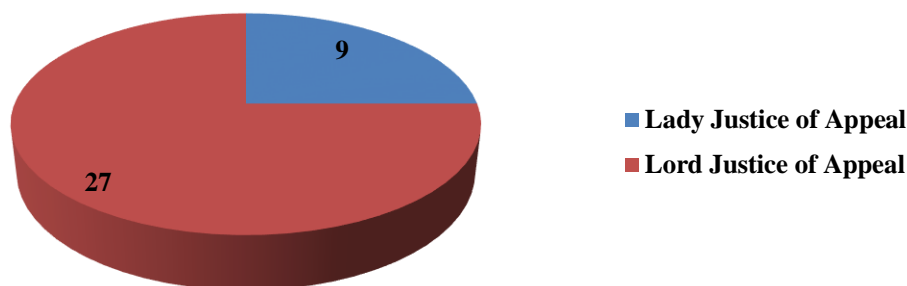
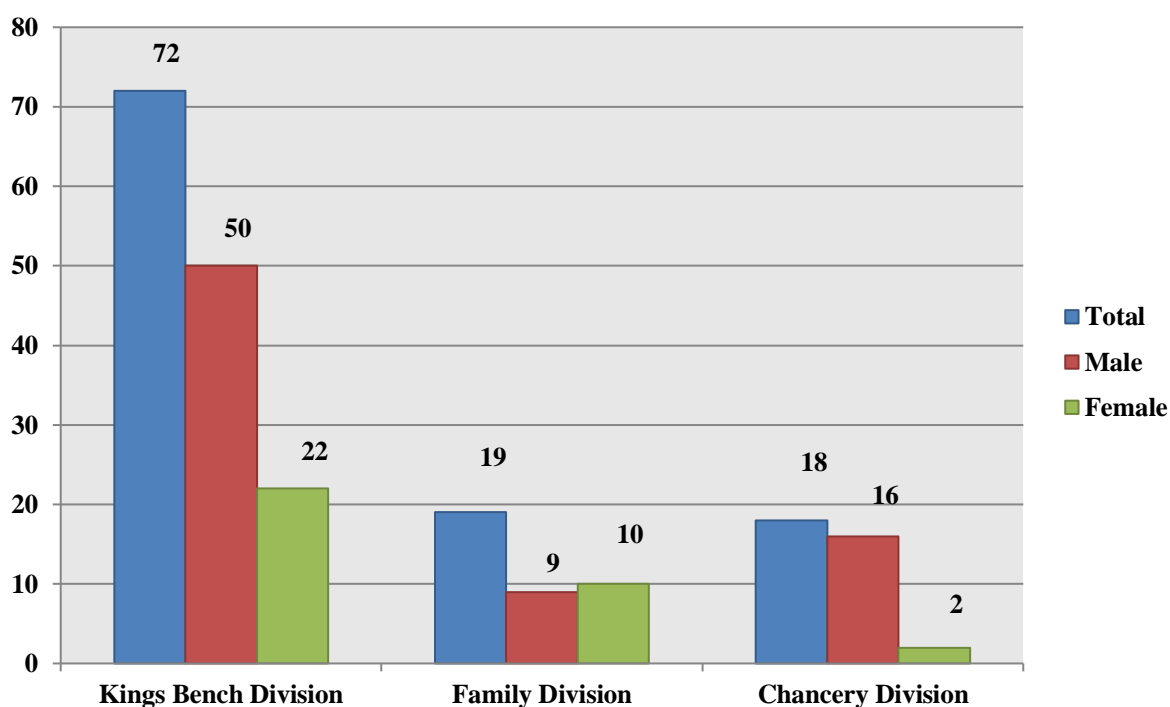


Chart 4: Representation of Lord & Lady Justices in the Court of Appeal³⁹

However, the representation of women in the High Courts of the UK still lags behind, with only 34 out of 109 judges (31.1%) across the King's Bench division, Family division, and Chancery division being female.⁴⁰ This disparity highlights the persistent gender imbalance within the higher ranks of the judiciary, despite some progress.



³⁹ 'Lord and Lady Justices of Appeal' (*Senior Judiciary, Courts and Tribunals Judiciary United Kingdom*) <<https://www.judiciary.UK/about-the-judiciary/who-are-the-judiciary/senior-judiciary-list/lord-and-lady-justices-of-appeal/>> accessed 22 May 2024.

⁴⁰ 'Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2023 Statistics' (*Ministry of Justice, Government of the United Kingdom*, 8 September 2023) <<https://www.gov.UK/government/statistics/diversity-of-the-judiciary-2023-statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2023-statistics#further-information>> accessed 20 May 2024.

Chart 5: Representation of Male & Female Judges in the UK High Court⁴¹

Efforts are underway to address these disparities, but significant challenges remain in dismantling deeply entrenched biases, structural barriers, and cultural norms that have historically impeded the advancement of women and minorities within the legal profession and judiciary. To achieve a truly diverse judiciary, continuous efforts must focus on dismantling barriers and promoting an inclusive culture within the legal profession.

INDIA vs. UK: LACK OF FEMALE VOICES IN SENIOR JUDICIAL POSITIONS

Despite acknowledging the value of a judiciary that mirrors the composition of its society, both India and the UK continue to struggle with the underrepresentation of women in their highest courts. The lack of representation not only undermines public trust and legitimacy but also fails to bring diverse perspectives that can inform judicial decision-making and its societal impact.

In India, the collegium system of judicial appointments has faced criticism for perpetuating the limited participation of women, especially at the Supreme Court level. The system's tendency to appoint the chief justice of high courts to the SC has inadvertently disadvantaged women, as very few have held these chief justice positions. The reality is that only 4% of female judges have ever reached the Supreme Court of India since 1950, a fact partly accounted for by this systemic barrier.⁴² By contrast, the UK has an independent selection commission for Supreme Court appointments which one could expect to be more conducive to diversity. However, these figures are hardly any better as there are only five women justices out of thirty-three appointed to the court in 2009 and so far no minority or disabled judge. However, this demonstrates that long-held prejudices and structural inequalities in law go beyond its appointment processes.

There has been some progress made recently in the UK with the first-ever Lady Chief Justice being appointed together with the first-ever female President of King's Bench Division but India still does not have a Chief Justice at the Supreme Court. Similarly, The UK High Courts boast higher percentages of women judges than India's high courts do, even though they fall short of gender parity. While the percentage of women at 31.1% has improved for UK High Courts, there is still much work to be done before we can say true balance has been achieved. Both India and the UK face the difficulty of eradicating long-established cultural practices and

⁴¹ 'Senior Judiciary' (*Courts and Tribunals Judiciary, UK Judiciary*) <<https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/senior-judiciary-list/>> accessed 1 July 2024.

⁴² Kashyap (n 9).

stereotypes that have traditionally prevented women from succeeding in legal leadership positions. Achieving genuine gender diversity in the senior judiciary will necessitate sustained efforts to recognize and deal with barriers, create inclusive cultures, and facilitate equal access to promotion opportunities.

There are inherent biases within the judicial system that favor some candidates against others during appointments and selections. These prejudices stem from widespread societal stereotypes related to factors like age, caste, race, gender, class, and ethnicity. Norms such as prioritizing seniority and elevating the most senior high court judge to the apex court inherently disadvantage women, limiting their chances of reaching the higher judiciary.⁴³ Even in the lower courts, policies around appointments and transfers treat gender as an obstacle to women's career advancement. Prohibitions against posting women judges near their homes or matrimonial residences force them to reconsider personal and family responsibilities imposed by societal gender roles.⁴⁴

Beyond systemic obstacles, discretionary biases arise from the conscious or unconscious preferences of decision-makers during hiring and transfers. These structural and discretionary prejudices intersect with multiple, compounding forms of discrimination that women face based on their diverse identities related to factors like caste, class, education, rurality, and professional background. Globally, the highest positions in legal institutions have traditionally been occupied by a homogeneous set, reflecting singular perspectives shaped by social, cultural and historical contexts that excluded other groups.

As a CEDAW signatory, India and the United Kingdom have a duty to eliminate discrimination and enable equal representation of women across public and private spheres. However, merely restructuring the collegium system will be inadequate without shifting entrenched mindsets and value systems. The limited pool of women advocates further restricts the appointments of female judges at higher levels. Conventional notions still prevail regarding female judges as unfit due to a lack of assertiveness and willingness to compromise within the profession.

⁴³Abhinav Chandrachud, 'Age, Seniority, Diversity' (*Frontline*, 16 April 2013) <<https://frontline.thehindu.com/cover-story/age-seniority-diversity/article4613881.ece>> accessed 20 May 2024.

⁴⁴ Majda Halilovic and Heather Huhtanen, '*Gender and the Judiciary: The Implications of Gender within the Judiciary of Bosnia and Herzegovina*' (ISBN: 978-92-9222-328-1, DCAF – Geneva Centre for Security Sector Governance 2014).

Time and again many pioneers like the Hon'ble Chief Justice of India DY Chandrachud,⁴⁵ ex-Attorney General of India KK Venugopal,⁴⁶ and ex-CJI NV Ramana have voiced concerns for fair representation. Justice BV Nagarathna in the 28th Justice Sunanda Bhandare Memorial Lecture, 2024 stressed that *“without persistent and targeted state action to empower women, equality would become nothing more than a mere slogan. Despite social reforms and progress, the social structure remains deeply biased against women. This pernicious bias affects women from the womb to the tomb.”*⁴⁷

TOWARDS SUBSTANTIVE CHANGE: RECOMMENDATIONS FOR ENHANCING WOMEN'S REPRESENTATION

For the judiciary to achieve meaningful diversity and inclusion, a dedicated Diversity and Inclusion Committee is essential. This committee would hold the judiciary accountable for progress and ensure continued focus on this critical objective. This committee would be tasked with monitoring, evaluating, and regularly reporting on diversity metrics across all levels of the judicial system. Additionally, there should be comprehensive annual reporting on gender representation with specific targets and action plans for redressing any shortfalls. Further, in order to improve transparency and make tangible progress towards diversity goals, accountability measures should be introduced for judicial bodies as well as individual decision-makers responsible for appointments and promotions. Creating a more welcoming and respectful environment for all within the judicial system is a top priority. This can best be achieved through extensive training programs about unconscious bias, and inclusiveness, as well as respect for all judicial officers, staff, and stakeholders among others. Fostering open dialogues along feedback mechanisms helps bring out issues concerning discrimination.

Supporting and developing the career potential of existing female judges is equally important. Ensuring equal access to professional development opportunities, such as specialized training, workshops, and judicial exchanges, is also crucial. To achieve greater diversity in the applicant

⁴⁵ Padmakshi Sharma, 'Why There Are Less Women In Higher Judiciary? CJI DY Chandrachud Answers At ABA Conference' (*Livewlaw*, 4 March 2023) < <https://www.livewlaw.in/top-stories/cji-dy-chandrachud-women-judges-less-in-higher-judiciary-223051> > accessed 30 May 2024.

⁴⁶ Livewlaw News Network, 'There Has Never Been A Woman CJI; Greater Women Representation In Judiciary Will Help Balanced Approach In Sexual Violence Cases: AG KK Venugopal' (*Livewlaw*, 2 December 2020) < <https://www.livewlaw.in/top-stories/greater-women-representation-in-judiciary-will-help-balanced-approach-in-sexual-violence-cases-ag-kk-venugopal-166665> > accessed 30 May 2024.

⁴⁷ Bhadra Sinha, 'More women judges a constitutional imperative for better justice, says Justice Nagarathna' (*The Print*, 6 January 2024) < <https://theprint.in/judiciary/more-women-judges-a-constitutional-imperative-for-better-justice-says-justice-nagarathna/1912770/> > accessed 19 May 2024.

pool for judicial roles, conducting outreach programs and mentorship initiatives targeting underrepresented groups can encourage them to consider judicial careers. Additionally, reviewing and revising appointment procedures to reduce potential biases and ensure a level playing field is vital.

CONCLUSION: A SHARED PATH FOR INDIA AND THE UK

Achieving true gender equality and empowerment within the judiciary is not merely a matter of numerical representation; it demands a profound and substantive transformation of attitudes, practices, and systems that have historically marginalized women. Beyond the statistics, the quest for substantive change requires a multi-faceted approach that addresses the deep-rooted biases, structural barriers, and socio-cultural norms that have perpetuated the underrepresentation of women in the higher echelons of the judiciary. It is a collective responsibility, incumbent upon governments, judicial bodies, legal professionals, and society at large, to dismantle the obstacles that impede the ascent of women in the judiciary. Only through sustained efforts, unwavering commitment, and a holistic approach can we create a truly inclusive and representative judiciary that reflects the diversity of the societies it serves.

The jurisprudential aspect of gender diversity entails not only an increased quantum of women judges but also an amplification of women seeking justice and courts delivering gender-sensitive judgments informed by diverse female experiences. However, the isolated measure of necessary representation of women judges would not sufficiently mean advocating for gender justice or feminist-conscious judicial structures. Some feminist male judges may also contribute to social transformation by delivering more empathetic judgments towards gender-sensitive issues. The essential aspect is to garner actual lived experiences of marginalization and gender discrimination to radically induce an attitudinal transition in the behaviours of judges and judicial reasoning.

Ultimately, a diverse and representative judiciary is not just a matter of optics but a fundamental principle of justice and democratic legitimacy. As India and the United Kingdom continue their efforts to enhance gender diversity, they must remain cognizant that the composition of their highest courts shapes the broader legal framework, societal norms, and public perception of fairness and equality.