



Jindal Global Law School
India's First Global Law School



O.P. Jindal Global University
A Private University Promoting Public Service
NAAC Accreditation - 'A' Grade

Concept Note:
Conference on Judicial Diversity
Vidhi in Collaboration with Centre for Health Law, Ethics and Technology (CHLET),
Jindal Global Law School
11th and 12th August, 2018

Background:

Greater social representation within judicial institutions is an important goal for a constitutional democracy. In the United Kingdom, for instance, the old system of judicial appointments was replaced by a Judicial Appointments Commission to bring in greater transparency and merit-based criteria in the appointment of judges. A 'Judicial Diversity Taskforce' was also appointed to oversee the implementation of the recommendations and make the judiciary more inclusive. South Africa, on the other hand, has a constitutional mandate to maintain a reflection of its social composition in their judiciary, which includes both racial and gender composition. In India, although there has been some public discourse around the need for ensuring a more representative judiciary, especially at the higher level, there is little consensus on the measurable impact of such diversity and the manner in which it should be implemented.

Representation of socially marginalized groups in the Indian higher judiciary remains dismal. Since its inception, the Supreme Court has seen only 7 women judges. Only 10% of the judges are women in the High Courts,¹ and representation is only slightly better in the lower judiciary. In *Tilting the Balance: Gender Imbalance in the Lower Judiciary*², the Vidhi Centre for Legal Policy provided both state and district-wise data on gender composition within the lower judiciary. Only 28% of all judges in the lower judiciary are women; caste representation fares worse. Recently it was reported³ that 'Other Backward Classes' constitute just 12% of the lower court judges in India from among 11 states that shared their data with the Law Ministry. Dalits

¹ Pradeep Thakur, "Women Account for less than 28% of Total Judges in the Country", Times of India, October 30th, 2017, available at <https://timesofindia.indiatimes.com/india/women-account-for-less-than-28-of-total-judges-in-country/articleshow/61329003.cms>, last accessed on June 25th, 2018.

² Arijeet Ghosh, Diksha Sanyal and Nitika Khaitan, "Tilting the Balance: Gender Imbalance in the Lower Judiciary", Vidhi Centre for Legal Policy, February 2017, available at <https://vidhilegalpolicy.in/reports/report-on-gender-imbalance-in-the-lower-judiciary>, last accessed on June 25th, 2018;

³ Pradeep Thakur, "Data: OBCs Just 12% of Lower Court Judges", Times of India, January 29th, 2018, available at <https://timesofindia.indiatimes.com/india/data-obcs-just-12-of-lower-court-judges/articleshow/62687268.cms> last accessed on May 23rd, 2018.

comprise less than 14% of judges and tribals 12% in the subordinate judiciary, including district courts. The percentage of Dalits was below their share of the population, i.e. 16.6% according to the 2011 census. Tribal representation is a little higher than the 8.6% of India's population they account for. A few attribute this marginally better representation of Dalits and tribals vis-a-vis OBCs to affirmative action.⁴

While there is some conversation around gender and caste diversity within the judiciary, many other forms of marginality continue to be invisible. For instance, these include religion, disability, class, and sexual orientation. Many authors have documented an informal selection process that tries to ensure a geographical balance on the Supreme Court bench.⁵ However, the manner of ensuring such a balance in appointment lacks transparency.

Since 2011, the policy of affirmative action has attempted to ensure greater diversity within the judiciary based on the recommendation made by the National Commission for Scheduled Castes in its report titled, "*A Report on Reservation in the Judiciary*".⁶ However, there is little empirical evidence on the relative success of the policy. In order to take this discourse forward, there is an urgent need to collate public data on the socio-economic background of judges in the lower and higher judiciary. This conference will serve as a forum for initiating and sustaining this discourse from multiple stakeholder perspective.

The Judicial Reforms team at Vidhi Centre for Legal Policy and the Centre for Health Law, Ethics and Technology at Jindal Global Law School are organizing a two day conference on 'Judicial Diversity' in India.

Objectives of the Conference:

- Identify the underlying causes that prevent marginalized groups from being represented in both the higher and lower judiciary;
- Use this forum to build a mechanism to use and share data among different stakeholders;
- Explore short-term and long-term measures to improve judicial diversity; and
- Initiate a conversation to establish an objective set of criteria to evaluate the impact of diversity within the judiciary.
- Seek ideas for further research and research questions.

⁴ *Ibid.*

⁵ Abhinav Chandrachud, "*Criteria for Selecting Judges*" in "*Supreme Whispers: Conversations with Judges on the Supreme Court of India*". Penguin Viking India, 2018, p.173.

⁶ National Commission for Scheduled Castes, "*A Report on Reservation in the Judiciary*", available at <http://ncsc.nic.in/files/Reservation%20in%20Judiciary.pdf> last accessed on June 25th, 2018.

Format

This will be a two-day conference organized in the form of a roundtable discussions centered around various themes within Judicial Diversity. Deliberations by stakeholders on each of these themes is the primary goal of this conference. There will be 3 to 4 speakers for every roundtable, with each speaker having 10 minutes to speak. The session will be moderated by one of the speakers.