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GENDER IMBALANCE IN THE LOWER JUDICIARY

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FEBRUARY 2018

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This Report is an independent, non-commissioned piece of academic work.

The authors would like to thank Nakul Toshniwal and Dasra for supporting our work; Vidhi Senior Resident Fellows Neha Singhal and Sumathi Chandrashekar; Vidhi Research Fellow Shriyam Gupta; and Vidhi interns Abhishek Vyas, Gokul Gowder, Kelsey Walsh, Mridula Sarji, Niharika Tyagi, Shruti Kapur, Swagat Baruah, and Vandita Morarka.

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I. INTRODUCTION

The question of judicial diversity has long featured in global discourse,¹ encompassing demographic characteristics such as gender, race, ethnicity, religion, socio-economic background etc. as well as professional background.² Arguments in favour of prioritising judicial diversity emphasise that it provides decision-making power to previously disenfranchised sections of society,³ and that a diverse bench is an essential component of a fair and impartial judiciary.⁴ Additionally, it has also been contended that a diversity of viewpoints on the bench enhances the courts' representativeness and democratic legitimacy.⁵

But in the Indian context, popular discourse on courts tends to exclusively focus on case delay, ignoring other systemic problems that are equally important for maintaining public confidence in the judiciary, and for ensuring that the courts function in a just and equitable manner. Media reports will occasionally highlight the predominance of upper-caste male judges in the Indian judiciary. But the issue rarely, if ever, receives the sustained and in-depth coverage it needs to be adequately studied and addressed. In an attempt to encourage such coverage, this Vidhi Briefing tries to highlight the state of gender representation in the Indian judiciary. Caste, religion, socio-economic background etc. are as indubitably central to efforts to improve judicial diversity in India, but are beyond the scope of the present Briefing.

Addressing gender diversity in particular, as several scholars have pointed out, the presence of women judges signals equality of opportunity for women in the legal profession and an appointments process that is merit-based, fair, and non-discriminatory; and the inclusion of women judges provides active mentoring for other women who wish to pursue careers in law and the judiciary.⁶ This has been reiterated by several international organisations, such as the International Commission of Jurists and the Organisation of Economic Cooperation and Development, who have additionally underscored the role of gender balance in preserving courts' legitimacy as representative of the societies they serve, enabling courts to understand the real-world implications of their rulings, and reducing barriers to women's access to justice, such as stigma associated with reporting violence and abuse.⁷ Some of these arguments, of course, are more

¹ See generally: Robert P. Davidow, "Judicial Selection: The Search for Quality and Representativeness", 31 *Cas. W. Res. L. Rev.* 409 (1981); Jeffrey D. Jackson, "Beyond Quality: First Principles in Judicial Selection and Tier Application to a Commission-Based Selection System", 34 *Fordham Urb. L.J.* 125, 145 (2007); Edwards, Harry T. (2002) "Race and the Judiciary," *Yale Law & Policy Review*: Vol. 20: Issue. 2, Article 5; Rosemary Hunter, "More than just a different face? Judicial Diversity and Decision-Making" 68 *Current Legal Problem*, Volume 68, Issue 1, 1st January (2015), Pages 119-141.

² Judicial Diversity, Brennan Centre for Justice at New York University School of Law, available at: <https://www.brennancenter.org/analysis/judicial-diversity-0> (last accessed on January 17, 2018).

³ Malia Reddick, Michael J. Nelson, and Rachel Paine Caufield, "Racial and Gender Diversity on State Courts, An AJS study", available at: http://www.judicialselection.us/uploads/documents/Racial_and_Gender_Diversity_on_State_Courts_8F60B84D96CC2.pdf (last accessed on January 17, 2018).

⁴ *Ibid.*

⁵ Ciara Torres-Spelliscy, Monique Chase and Emma Greenman, "Improving Judicial Diversity", Brennan Centre for Justice, (2010) available at: http://www.brennancenter.org/sites/default/files/legacy/Improving_Judicial_Diversity_2010.pdf (last accessed on January 17, 2018).

⁶ Rosemary Hunter, "More than just a different face? Judicial Diversity and Decision-Making" 68 *Current Legal Problem*, (2015), at p. 122.

⁷ Public Governance and Territorial Development Directorate, Organisation of Economic Cooperation and Development, "Fostering Diversity in the Public Service", (2009) available at <https://www.oecd.org/gov/pem/paper-fostering-diversity-public-service.pdf> (last accessed on January 17, 2018); Kate Brooks, "Women in the Judiciary: What solutions to advance gender-responsive and gender-

controversial than others. For instance, there is little agreement on the effects of greater women judges on adjudication, the courtroom experiences of women litigants and witnesses, and other positive externalities. But regardless, at the most basic level, equality of opportunity for women should be a given in an institution tasked with upholding these values in a democratic setup.

In India, however, the state of women representation in the judiciary is abysmal. Since its inception in 1950, the Supreme Court of India has only seen 6 women judges, and currently has one woman judge out of 25.⁸ Across India's 24 High Courts, slightly over 10% judges are women, with not even a single woman judge in eight High Courts.⁹ Further, women have occupied the post of a High Court judge only 86 times since the elevation of the first woman judge to the Kerala High Court in 1959 (as of November 2017).¹⁰

Despite the severe underrepresentation revealed by these figures, there are no systematic efforts to regularly compile and publish even basic data on the proportion of women judges in different levels of Indian courts. This undercuts efforts to understand and diagnose the extent of underrepresentation in the judiciary, and is in contrast with other jurisdictions such as the United Kingdom, which has embraced the importance of judicial diversity and maintains an office to report on and suggest reforms to improve judicial diversity.¹¹ For High Courts and the Supreme Court in India, the percentage of women judges can still be calculated from public data, and historic and current statistics are available from news reports. But for the lower judiciary, given the large numbers of districts and judges, corresponding nationwide statistics are scarcely available. Further, though the higher judiciary is the subject of much academic enquiry, the lower judiciary receives comparably less attention in academic and policy circles. Estimates in popular media have had to mostly focus on specific regions, such as those published by *The Hindu* and National Social Watch, pegging the percentage of women lower court judges at under 30%.¹² Last year in Parliament, in response to questions, two ministers cited the overall proportion of women judges in lower

diverse justice systems?," 10th March, 2017, available at <http://oecdinsights.org/2017/03/10/gender-responsive-and-diverse-justice-systems>, last accessed on January 17, 2018); International Commission of Jurists, "Women's Access to Justice for Gender-Based Violence: A Practitioner's Guide," February 2016, available at <http://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-access-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf> (last accessed on January 17, 2018).

⁸ Kanu Sarda, "Only Six Women Judges in the SC since 1950", *The New Indian Express*, 13th November, 2016, available at: <http://www.newindianexpress.com/thesundaystandard/2016/nov/12/only-six-women-judges-in-supreme-court-since-1950-1537905.html> (last accessed on October 31, 2017). Further, it took more than four decades after independence for a woman to be appointed as a Supreme Court judge and the Supreme Court has never had more than one woman judge at any given point in time.

⁹ Department of Judges, "List of High Court Judges," available at: <http://doj.gov.in/appointment-of-judges/list-high-court-judges> (last accessed on November 2, 2017). Judges of the High Court include Permanent and Additional Judges. Out of the total 696 judges across the High Courts, only 70 of them are female (as of November 2, 2017).

¹⁰ Aditya AK, "Through the Looking Glass Ceiling: Woman Judges (or the lack thereof) in the Higher Judiciary," *Bar and Bench*, 4th November, 2017, <https://barandbench.com/woman-judges-higher-judiciary/> (last accessed on January 17, 2018). This number excludes former judges of the Calcutta and Madras High Courts, and includes judges who have occupied posts in more than one high court.

¹¹ Judicial Diversity Statistics 2017, Introduction from the Lord Chief Justice, Courts and Tribunals Judiciary UK, available at <https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/diversity/judicial-diversity-statistics-2017/> (last accessed on January 17, 2018).

¹² K. Chandru, "Judges, Caste, and Social Justice," *The Hindu*, 16th March, 2016. Available at <http://www.thehindu.com/opinion/op-ed/judges-castes-and-social-justice/article6996279.ece> (last accessed on January 17, 2018); Shiva Tokas, "Position of Women in Indian Judiciary: An Analysis," *National Social Watch*, 2012, available at <http://www.socialwatchindia.net/images/documents/285/women%20in%20judiciary%20an%20analysis.pdf> (last accessed on January 17, 2018).

courts.¹³ But this proportion was not broken down state-wise for all states, and as the Union Minister of Law and Justice clarified, this was not a regular exercise for the central government.¹⁴

Compiling basic data on the gender composition of the judiciary is the first step in addressing issues with it, serving as a key indicator of potential problems with judicial appointments and promotions. These statistics in and of themselves cannot yield appropriate reform suggestions, but are necessary before other required forms of analysis can be undertaken. As the Organisation of Economic Cooperation and Development report reiterates, good data is a prerequisite to provide evidence for making the case for diversity and inclusion in public institutions: it helps substantiate the need for diversity and build confidence in reform initiatives.¹⁵ The lack of systematic, regularly collected metrics on gender diversity also contributes to the relatively low attention it receives in discourse on issues facing the Indian judiciary.

The present Vidhi Briefing seeks to take a step forward in filling this vacuum by, for the first time, providing state and district-wise data on the gender composition of the lower judiciary. Where possible, it also provides data on gender composition at each of the three tiers of lower courts. Through its findings, a stark picture emerges of the abysmal representation of women in the lower judiciary, and we see a nearly uniform trend of the proportion of women judges decreasing as one moves up levels of lower courts. The Briefing explores preliminary questions raised by these findings, concerning equity between genders in appointments and promotions, and potential factors behind the gender imbalance in the judiciary. It concludes by highlighting the need to collect systematic diversity statistics and change discourse on judicial appointments and reform to accommodate concerns over gender discrimination.

The findings presented here raise several potential implications that require further analysis and qualitative interviews, and since this is beyond the scope of the present Briefing, these implications will be examined in-depth in future reports on the topic. Through these reports, we hope to bring much-needed attention to issues concerning the lower judiciary which, despite being the first or only point of contact for most litigants, is relatively neglected in academic and policy discourse compared to the higher judiciary. We also hope to spark conversation on additional data and research needed to understand possible causes for low gender representation and ways to rectify this. A lack of equal representation, particularly when as severe as it appears to be in India, raises serious concerns over fairness and impartiality, which merit deep and sustained investigation.

Before representing our findings, we briefly outline our research methodology.

¹³ Lok Sabha, Unstarred Question No. 5218, to be answered on Wednesday 5th April, 2017, available at <http://164.100.47.190/loksabhaquestions/annex/11/AU5218.pdf> (last accessed on January 17, 2018); PTI, “Judiciary Open to Have More Women Judges, but Reservation Not Envisaged, says Centre,” Firstpost, 21st July, 2017, available at <http://www.firstpost.com/india/judiciary-open-to-have-more-women-judges-but-reservation-not-envisaged-says-centre-3840823.html> (last accessed on January 17, 2018).

¹⁴ PTI, “Judiciary Open to Have More Women Judges, but Reservation Not Envisaged, says Centre,” Firstpost, 21st July, 2017, available at <http://www.firstpost.com/india/judiciary-open-to-have-more-women-judges-but-reservation-not-envisaged-says-centre-3840823.html> (last accessed on January 17, 2018); Pradeep Thakur, “Women Account For Less Than 28% of Total Judges in the Country”, The Times of India, 30th October, 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 December 14, 2017).

¹⁵ Public Governance and Territorial Development Directorate, Organisation of Economic Cooperation and Development, “Fostering Diversity in the Public Service”, 2009 available at <https://www.oecd.org/gov/pem/paper-fostering-diversity-public-service.pdf> (last accessed on January 17, 2018).

II. RESEARCH METHODOLOGY

The present Briefing sought to gather data pertaining to the names and designations of lower court judges across all districts. While the Supreme Court and High Courts are considered to be the ‘higher judiciary’, the District Courts and the courts below it comprise the ‘lower’ or ‘subordinate’ judiciary. These courts lie under the administrative control of High Courts. Each judicial district in India has one District Court, below which lie civil and criminal courts of original jurisdiction.

We extracted the district-wise names and designations of 15,806 judges in the lower judiciary over March-July, 2017. This process was time-intensive since data on names and designations of lower court judges is scattered across e-Courts websites for each of these courts, and has not been recorded in a uniform format throughout. For a minority of states, the data instead had to be extracted from the respective High Court websites, viz. Assam, Bihar, Chhattisgarh, Delhi, Goa, Madhya Pradesh, Odisha, Sikkim, Uttar Pradesh and West Bengal. The data was collated using a combination of manual labour and a data scraping programme run on a language framework programme, Node.js, which was specifically designed for the purposes of this Briefing. The names and designations of judges were manually verified after extraction, and serious discrepancies were manually corrected. In total, data was available for 651 districts. We had to leave out Arunachal Pradesh (16 districts) and Lakshadweep (1 district) due to non-availability of data.

In most cases, the gender of the judge was determined through gendered prefixes attached to their names on the official website from which their names were taken (Mr./Ms./Mrs./Shri/Smt.) For the remaining names, we used Gender-API.com,¹⁶ a website containing a database of 18,77,786 names validated from 178 different countries, including India.¹⁷ This website combines data from multiple sources such as e-commerce websites, social media profiles, and publicly available government sources; and each name is verified by multiple sources before being added to the main database. Using this database, we assigned gender to 3,187 of the 15,806 names that we had collated. For 153 names (around 1% of our dataset), we were unable to assign any gender and the gender for such names has been marked ‘unknown’. Some of these names contained only initials for the first name, making it impossible to identify the gender. Others were unavailable on Gender-API.com.

¹⁶ The website is available on the URL: <https://gender-api.com/en/> (last accessed on November 2, 2017).

¹⁷ *Ibid.*

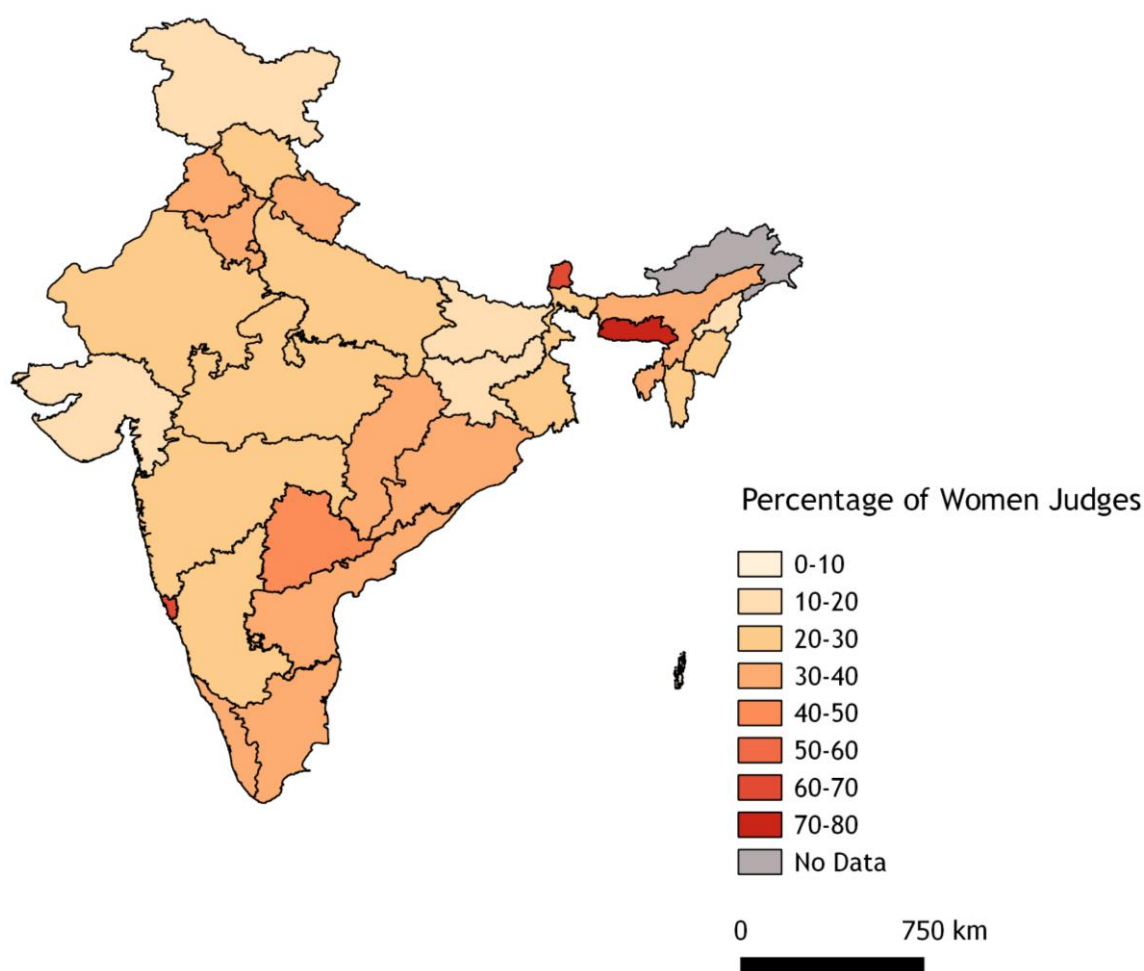
III. STATE AND DISTRICT-WISE GENDER COMPOSITION

Table 1 represents the gender composition of men and women across all districts in India. Map 1 and Table 2 break this down by state.

Table 1: Overall Gender Composition of the Lower Judiciary

Gender of Judges	Total Number	Percentage
Male	11,397	71.4%
Female	4,409	27.6%
Unknown	153	1%
Total	15,959	100%

Map 1: State-wise Percentage of Women in the Lower Judiciary¹⁸



¹⁸ No data was available for Lakshadweep and Arunachal Pradesh. Intervals in the legend are exclusive of the lower limit and inclusive of the upper limit i.e. 20 as a value will be included in the interval '0-20' and values slightly above 20 will be included in the interval '20-40.'

Table 2: State-wise Gender Composition of the Lower Judiciary

State/Union Territory	Male Judges		Female Judges		Unknown
	Number	Percentage	Number	Percentage	
Andaman and Nicobar Islands	9	100%	0	0%	0
Andhra Pradesh	341	61.55%	208	37.54%	5
Assam	179	61.72%	110	37.93%	1
West Bengal	526	71.47%	210	28.53%	0
Bihar	857	88.16%	110	11.52%	3
Chandigarh	21	70%	9	30%	0
Chhattisgarh	265	65.92%	134	33.33%	3
Dadra and Nagar Haveli	3	100%	0	0%	0
Daman and Diu	3	75%	1	25%	0
Delhi	274	66.19%	140	33.81%	0
Goa	15	34.1%	29	65.9%	0
Gujarat	811	82.83%	148	15.11%	20
Haryana	312	65.14%	165	34.44%	2
Himachal Pradesh	86	71.67%	33	27.5%	1
Jammu and Kashmir	166	81.38%	38	18.62%	0
Jharkhand	322	84.96%	53	13.98%	4
Karnataka	646	70.52%	258	28.16%	12
Kerala	295	66.75%	147	33.25%	0
Madhya Pradesh	938	74.98%	312	24.94%	1
Maharashtra	1484	70.84%	574	27.39%	37
Manipur	12	46.15%	7	26.92%	7
Meghalaya	11	26.2%	31	73.80%	0
Mizoram	6	25%	5	20.83%	13
Nagaland	32	78.05%	8	19.51%	1
Odisha	365	60.84%	213	35.5%	22
Puducherry	12	50%	10	41.66%	2
Punjab	306	60.71%	197	39.08%	1
Rajasthan	703	73.15%	255	26.53%	3
Sikkim	6	35.3%	11	64.7%	0
Tamil Nadu	607	62.13%	357	37.03%	12
Telangana	197	55.97%	155	44.03%	0
Tripura	64	65.98%	33	34.02%	0
Uttar Pradesh	1401	78.4%	383	21.4%	3
Uttarakhand	122	65.24%	65	34.76%	0

As is evident from Table 1, the overall representation of women in the lower judiciary is extremely poor. Further, when we look at the state-wise data, we find that only in three of the smallest states—Goa, Meghalaya, and Sikkim, with a collective total of a mere 103 judges—does the percentage of women judges cross 60%. Barring Telangana and Puducherry, the percentage of women judges remains below 40% for all other states, regardless of geography, cultural considerations or other differences. Providing such a break-down of data can be instructive in isolating which factors may affect gender composition, and can hold useful lessons for policymakers, though most states in India seem to be faring in the same range.

Another relevant factor to study while comparing states is provisions for reservations. Policies providing reservation for women have been implemented in several contexts in the past. For example, the 73rd Amendment to the Constitution, which inserted Article 243D, provided for one-third of seats in Panchayats at all levels to be reserved for women.¹⁹ While the efficacy of this reservation is still debated, the number of elected women representatives has increased dramatically since 1993.²⁰

Alongside demands for reservation for women in relation to political representation, discourse around the need for representation of women in the judiciary has also grown in the last decade.²¹ Though there is no reservation for women in the higher judiciary, a number of states have provided quotas for women in the lower judiciary. States like Andhra Pradesh, Assam, Bihar, Chhattisgarh, Jharkhand, Karnataka, Odisha, Rajasthan, Tamil Nadu, Telangana and Uttarakhand provide for reservation which ranges between 30%-35%²² of the total seats, for which recruitment is done through direct appointment. (As is explained in-depth in Part IV of this Briefing, direct recruitment occurs for the entry-level positions of Civil Judges (Junior Division) and the higher-ranking posts of District Judges). Table 3 reproduces the relevant provisions on reservation in various states as well as the percentage of women judges in those states.

¹⁹ Article 243D (3), Constitution of India.

²⁰ Ministry of Panchayati Raj, “Newsletter of Ministry of Panchayati Raj,” January to February 2014, available at: <http://www.panchayat.gov.in/documents/10198/329317/1ENGLISH.PDF> (last accessed on December 15, 2017); Press Trust of India, “Women Constitute 46% Representation in Panchayati System: Minister,” NDTV, 17th December, 2015, available at: <https://www.ndtv.com/india-news/women-constitute-46-per-cent-representation-in-panchayati-system-minister-1256125> (last accessed on February 12, 2018).

²¹ Soni Mishra “Interview with Justice M. Fathima Beevi, Retired Supreme Court Judge,” The Week, 13th November, 2016, available at: <http://www.theweek.in/theweek/cover/reservation-will-help-women.html> (last accessed on December 15, 2017); Jayanthi Natarajan, “The Glass Ceiling in the Judiciary Seems Very Hard to Break for Women,” Hindustan Times, 6th April, 2017, available at: <http://www.hindustantimes.com/opinion/the-glass-ceiling-in-the-judiciary-seems-very-hard-to-break-for-women/story-KKqCwswlQy1EyQoDoPzCqM.html> (last accessed on December 15, 2017); PTI, “Judiciary Open to Have More Women Judges, but Reservation Not Envisaged, says Centre,” Firstpost, 21st July, 2017, available at: <http://www.firstpost.com/india/judiciary-open-to-have-more-women-judges-but-reservation-not-envisaged-says-centre-3840823.html> (last accessed on December 15, 2017).

²² Jharkhand provides for 5% reservation in the lower judiciary (excluding the higher tiers i.e. judges at the District Court level).

Table 3: State-wise Reservations for Women in the Lower Judiciary

State	Percentage of Reservation	Provision	Percentage of Female Judges in the State	Year in which it was introduced	Reservation applicable to
Andhra Pradesh	33.33%	Section 7 of Judicial Service Rules, 2007; read with Section 22-A of AP State and Subordinate Service Rules, 1996	37.54%	2007	District Judges (Direct Recruitment from Bar); Civil Judges (Junior Division)
Assam	30% ²³	The Assam Woman (Reservation of Vacancies in Services and Posts) Act, 2005; and High Court Notification No. HC. VII- 04/2009/980/A, dated 02.02.2009	37.93%	2009	Data not available ²⁴
Bihar	35%	Bihar Uchcha Nyayik Seva (Sansodhan) Niymawali, 2016; and Bihar Asainik Seva (Sansodhan) Niymawali, 2016	11.52%	2016	District Judges (Direct Recruitment from Bar); Civil Judges (Junior Division)
Chhattisgarh	30%.	Rule 6, Chhattisgarh Lower Judiciary Service Rules; and Section 6(2) of the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006	33.33%	2006	District Judges (Direct Recruitment from Bar); Civil Judges (Junior Division)
Jharkhand	5% ²⁵	Jharkhand Judicial (Recruitment) Rules, 2004	13.98%	2004	Civil Judges (Junior Division)
Odisha	33.33%	Rule 17, Orissa Superior Judicial Service and Judicial Service Rules, 2007	35.5%	2007	Civil Judges (Junior Division)
Rajasthan	30%	Rule 10, Rajasthan Judicial Service Rules, 2010	26.53%	2010	District Judges (Direct Recruitment from Bar); Civil Judges (Junior Division)
Telangana	33.33%	Section 7 of the Telangana State Judicial Service Rules, 2017; read with Rules 22 and 22-A of the Telangana State and Subordinate Service Rules, 1996	44.03%	2017	District Judges (Direct Recruitment from Bar); Civil Judges (Junior Division)

²³ Confirmed from Gauhati High Court Registry via telephone.

²⁴ The relevant High Court notification was not made available to us despite multiple attempts to obtain it.

²⁵ Pradeep Thakur, "Women Account For Less Than 28% of Total Judges in the Country", The Times of India, 30th October, 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 December 14, 2017). This was also confirmed from the Jharkhand High Court Registry via telephone.

Tamil Nadu	30%	Rule 10 of the Tamil Nadu Judicial Service Rules; read with Section 26 of the Tamil Nadu Government Service (Conditions of Service) Act, 2016	37.03%	2007	Posts to be filled through direct recruitment to 25% posts of District Judge at Entry Level, and to Civil Judges (Junior Division)
Uttar Pradesh	20% ²⁶	Rule 7, Uttar Pradesh Higher Judicial Service Rules, 1975	21.4%	2007	District Judges (Direct Recruitment from Bar)
Uttarakhand	30% ²⁷	Section 7, Uttarakhand Higher Judicial Service Rules, 2004	34.76%	2004	Data not available
Karnataka	30% ²⁸	Data not available	28.16%	Data not available	Data not available

Clearly, the proportion of women judges in states with reservation varies widely: whereas Telangana is one of the few states with over 40% representation of women judges, states like Bihar and Jharkhand fall short of the national average. The demand for reservations in the judiciary has gained prominence over the years,²⁹ and more rigorous study is urgently needed before the success of reservations can be assessed. In particular, a comparison of the proportion of women judges before and after reservation was introduced would help ascertain its impact.

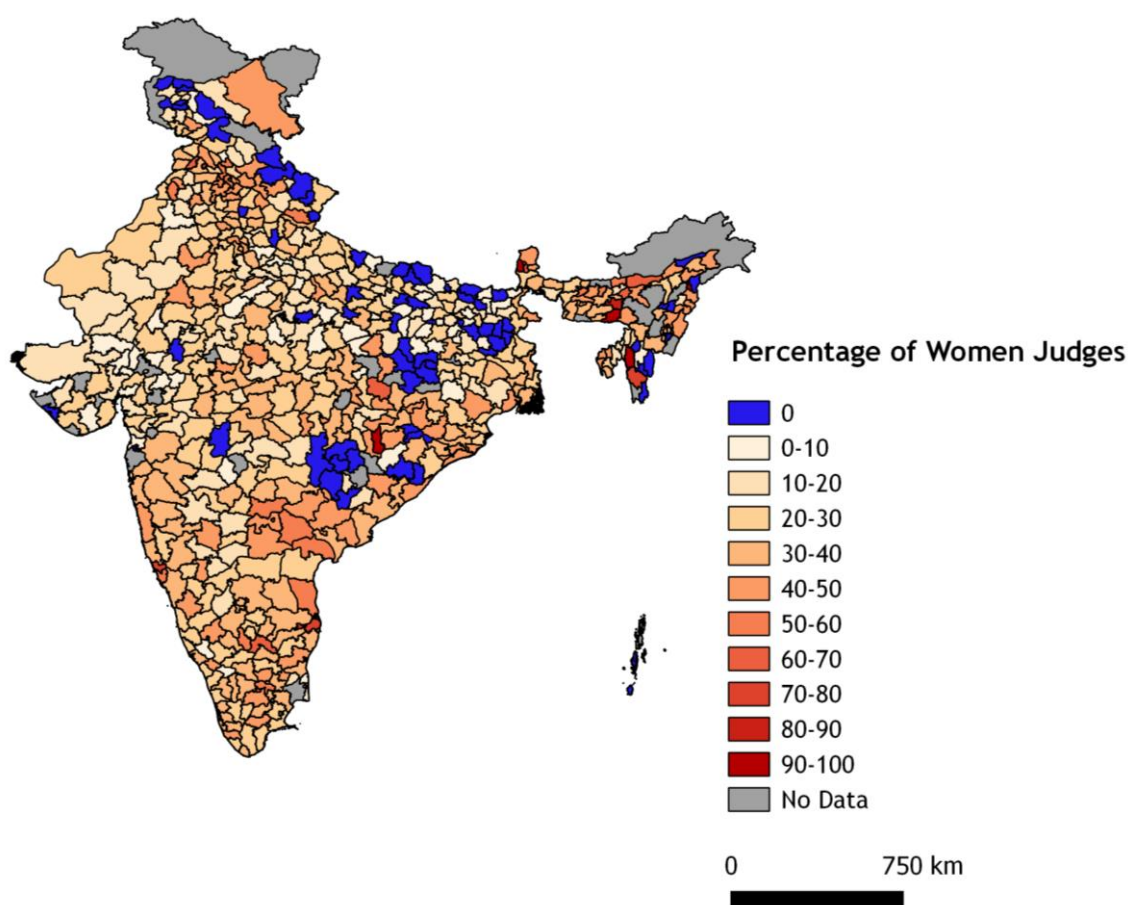
In addition to the state-wise gender composition of the lower judiciary, our data also allows us to represent this composition by district. Breaking down this dataset by district yields different insights than doing so by state. Combined with other rich district-wise datasets on socio-economic metrics, this information can help in identifying trends in operation below the state-level. For the purposes of this Briefing, we have limited ourselves to visually representing the district-wise data in Map 2, and we hope to use this as a base for more in-depth investigations into inter-district differences in future reports. This data is also available in tabular form on our website, accompanying this Briefing.

²⁶ Pradeep Thakur, “Women Account For Less Than 28% of Total Judges in the Country”, The Times of India, 30th October, 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 December 14, 2017).

²⁷ Confirmed from Uttarakhand High Court Registry via telephone.

²⁸ Confirmed from Karnataka High Court Registry via telephone, as well as from a practicing advocate in the High Court.

²⁹ PTI, “Leaders at NDA Meet Seek All India Judicial Service”, 17th December, 2017, available at: <https://www.bloomberquint.com/law-and-policy/2017/12/17/leaders-at-nda-meet-seek-all-india-judicial-service> (last accessed on February 10, 2018).

Map 2: District-wise Percentage of Women Judges in the Lower Judiciary³⁰

Overall, Map 2 confirms that at the district-level, below 40% representation of women judges remains the dominant norm, but it also yields certain additional insights that can be useful for policymakers in designing targeted interventions for specific districts that need greater attention. For instance, in Bihar, districts such as Champaran (73 male judges to 4 female judges), Bhagalpur (36 male judges to 5 female judges) and Patna (72 male judges to 20 female judges) might require greater attention compared to other districts while trying to address gender representation in the courts. Similarly, in states like Gujarat and Uttar Pradesh, districts such as Ahmedabad (117 male judges to 17 female judges), Mehsana (40 male judges to 1 female judge), Gandhinagar (36 male judges to 2 female judges), Bareilly (38 male judges to 9 female judges), Etah (25 male judges to 2 female judges), and Aligarh (35 male judges to 3 female judges) respectively, may require considerable attention from policy makers.

³⁰ Intervals in the legend are exclusive of the lower limit and inclusive of the upper limit i.e. 20 as a value will be included in the interval '0-20' and values slightly above 20 will be included in the interval '20-40.'

We did not have data for the following districts: Nicobar, North and Middle Andaman, YSR (Andhra Pradesh), Baksa (Assam), Dimahasao (Assam), Karbi Anglong (Assam), Bastar (Chhattisgarh), Kabirdham (Chhattisgarh), Koriya (Chhattisgarh), Surguja (Chhattisgarh), Arvalli (Gujarat), Botad (Gujarat), Chhota Udepur (Gujarat), Devbhumi Dwarka (Gujarat), Gir Somnath (Gujarat), Mahisagar (Gujarat), Morbi (Gujarat), The Dangs (Gujarat), Lahul & Spiti (Himachal Pradesh), Ramgarh (Jharkhand), Simdega (Jharkhand), Agar Malwa (Madhya Pradesh), Hingoli (Maharashtra), Palgarh (Maharashtra), Srirampore (Maharashtra), Chandel (Manipur), Tamenlong (Manipur), South Garo Hills (Meghalaya), Lawangtlai (Mizoram), Mokokchung (Nagaland), Wokha (Nagaland), Nabangpur (Odisha), Thanjavur (Tamil Nadu), Thiruvarrur (Tamil Nadu), Siddharth Nagar (Uttar Pradesh).

IV. TIER-WISE PROPORTION OF WOMEN JUDGES

Apart from providing a state-wise and district-wise breakdown of gender composition, our data also allowed us to track the percentage of women in different tiers of lower courts.

Lower courts in India comprise three tiers of judges: District Judges, Civil Judges (Senior Division) and Civil Judges (Junior Division). Each of these three tiers, in turn, includes various designations, depending on what is specified in the Judicial Service Rules of each state. For instance, District Judge commonly includes Additional and Assistant District Judges; Sessions and Additional Sessions Judges, etc.; Civil Judge (Senior Division) includes Chief and Additional Metropolitan and Judicial Magistrates; and Civil Judge (Junior Division) includes Judicial Magistrates of the First Class, Metropolitan Magistrates and so on.

Judges are recruited differently to these positions. At the lowest level of Civil Judge (Junior Division), candidates are appointed through the lower judicial service exam and can usually sit for these exams as law graduates, though some states may require a few years of practice. The middle tier of Civil Judge (Senior Division) is filled exclusively by promoting Civil Judges (Junior Division). The highest tier of District Judges may be filled in any of three ways:

- a) Promotion based on merit-cum-seniority, from Civil Judges (Senior Division): Candidates must pass an exam on their knowledge of case law, and the quota for this category is 50%.
- b) Promotion based strictly on merit, through competitive exams held among Civil Judges (Senior Division) with a minimum of five years of service (10-25% quota).
- c) Direct recruitment, from advocates or pleaders with a minimum of seven years' practice, through exams that the High Courts conduct. The quota for this is 25%.

Our findings reveal stark differences in gender composition between these tiers, which may be caused by several factors. One factor certainly is the number of female lower court judges in previous years. If there were fewer female Civil Judges (Junior Division) in 1995, for instance, than now, fewer women judges would currently occupy higher posts in the lower judiciary, since higher posts are mostly filled through promotion from Civil Judges (Junior Division). Apart from this, however, differences in the gender balance between these tiers may also hint at potential bias in promotional processes. Given that men and women are equally meritorious, in the absence of discrimination, one would assume that the proportion of women judges will remain the same from the lowest to the higher tiers, for any given batch of judicial officers. While the historical data required to assess this is not readily available, several women judges and lawyers have reported discrimination in appointment and promotions, as is discussed in Part V.

For this Vidhi Briefing, we have conducted a preliminary study on the tier-wise representation of women.³¹ Table 4 reflects our findings on the percentages of women in the three tiers of the lower judiciary across ten states. We included designations under the three different tiers according to the state Judicial Service Rules. Designations that were not specified in the Rules as belonging to one tier or another have been captured under 'Other.'

³¹ Conducting this study involves extensive verification with each individual High Court registry, since the relevant State Judicial Service Rules often do not clarify which designations are included under which tiers. We have thus reserved a thorough study for the next phase of our project, and have calculated preliminary percentages based on the relevant Service Rules for a selection of states only.

Table 4: Tier-wise Representation of Women in the Lower Judiciary

State	Tier	Total Number of Judges	Percentage of Women Judges
Andhra Pradesh	District Judge	105	24.76%
	Civil Judge (Senior Division)	120	34.16%
	Civil Judge (Junior Division)	290	44.13%
	Others	41	26.82%
Assam	Grade I ³²	73	27.39%
	Grade II	69	33.33%
	Grade III	115	48.69%
	Others	28	25%
Madhya Pradesh	District Judge	359	13.65%
	Civil Judge (Senior Division)	438	18.95%
	Civil Judge (Junior Division)	422	42.18%
	Others	32	6.25%
Rajasthan	District Judge	326	14.42%
	Civil Judge (Senior Division)	276	32.97%
	Civil Judge (Junior Division)	289	36.68%
	Others	71	15.49%
West Bengal	District Judge	246	16.26%
	Civil Judge (Senior Division)	147	21.76%
	Civil Judge (Junior Division)	287	43.20%
	Others	35	17.14%
Gujarat	District Judge	218	10.6%
	Civil Judge (Senior Division)	272	18.4%
	Civil Judge (Junior Division)	442	15.6%
	Others	47	4.25%
Tamil Nadu	District Judge	182	35.16%
	Civil Judge (Senior Division)	280	35.71%
	Civil Judge (Junior Division)	414	37.68%
	Others	77	40.25%

³² While the Assam State Judicial Service Rules refer to the three cadres as Grade I, II, and III, they correspond to District Judge, Civil Judge (Senior Division) and Civil Judge (Junior Division).

Uttarakhand	District Judge	40	20%
	Civil Judge (Senior) Division	44	27.27%
	Civil Judge (Junior) Division	73	53.42%
	Others	27	14.81%
Himachal Pradesh	District Judge	29	6.89%
	Civil Judge (Senior) Division	31	22.58%
	Civil Judge (Junior) Division	49	42.86%
	Others	-	-
Telangana	District Judge	80	28.75%
	Civil Judge (Senior Division)	70	45.71%
	Civil Judge (Junior Division)	177	51.98%
	Others	25	32%

The data thus shows a near-uniform trend of the proportion of women judges decreasing as one moves up the tiers of the lower judiciary.³³ As explained earlier, this may hint at biased promotional processes within the lower judiciary. While anecdotal evidence for this has been well-documented in several reports and articles,³⁴ more rigorous and systematic study is needed state-wise before this can be adequately corroborated.

³³ In fact, this decreasing proportion of women judges is observed as one moves up from the lower to the higher judiciary as well: as discussed in the introduction to this Briefing, the proportion of women judges drops from 28% in the lower judiciary to less than 10% in the High Courts, to merely one woman judge in the Supreme Court at present.

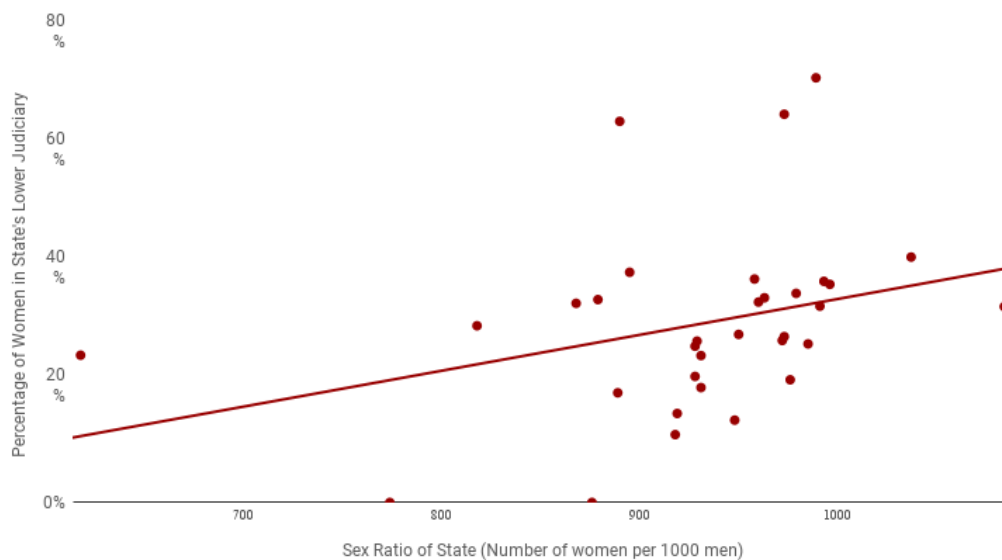
³⁴ This is discussed in Part V of this Briefing.

V. INSIGHTS INTO GENDER IMBALANCE

Numerous factors impact the gender composition of the lower judiciary, from the number of women participating in the different steps required to become a judge, to the incentives and work environment provided to women by the judiciary. These different interlinked factors may easily be described in terms of a funnel, comprising the various stages of the process of becoming a judge. The number of women judges who are appointed is linked to the number of women who appear for the judicial exams, which in turn is linked to the number of women who graduate as lawyers. This is linked to the number of women who choose law over other options for tertiary education, which in turn is linked to the number of women who are able to complete primary and secondary education, and ultimately, to that state or district's sex ratio. Establishing any causality or strong correlations around any of these stages requires analysis beyond the scope of this paper, but a preliminary exploration of some of these factors may help shed some light on these findings.

Beginning with sex ratio, we found that there is a moderate correlation of 0.44 between sex ratio and the representation of women in the lower judiciary (Figure 1).³⁵ This means that where sex ratio increases, there is a moderate increase in the female representation of judges in the lower judiciary. This correlation, however, is only moderate and there are exceptions. For instance, although Kerala has the best sex ratio amongst all states, only 33% of women are part of its lower judiciary. States such as Punjab, Sikkim, Meghalaya and Tamil Nadu, on the other hand, have a lower sex ratio than Kerala but have a higher representation of women judges in lower courts.

Figure 1: Correlation between Sex Ratio and Percentage of Women Judges in States



³⁵ For this purpose, we have used the Spearman's Rank Correlation Coefficient method. This method indicates the direction of association between X (the independent variable) and Y (the dependent variable). If Y tends to increase when X increases, the Spearman's correlation coefficient is positive (directly correlative). If Y tends to decrease when X increases, the Spearman's correlation coefficient is negative (indirectly correlative). Also, a correlation of zero indicates that there is no tendency of Y to either increase or decrease when X increases. The Spearman correlation between two variables will be high when observations have a similar (or identical for a correlation of 1) rank between the two variables, and low when observations have a dissimilar (or fully opposed for a correlation of -1) rank between the two variables.

Apart from this, other factors that are conventionally highlighted as reasons for the gender imbalance in the judiciary include the disproportionately low number of women lawyers and the challenges they face on entering litigation. For instance, only 10% of advocates are estimated to be women,³⁶ and when it comes to Senior Advocates in the Supreme Court, the percentage drops to 2.9% (as of March 2016).³⁷ Several prominent women lawyers, ranging from Indira Jaising to Meenakshi Arora, have spoken up about discrimination that women litigators encounter and an entrenched 'old boys' club mentality' that makes it harder for women to lobby for judicial posts.³⁸ Such instances range from judges accepting certain arguments from male advocates only to clients not trusting women advocates with high-stake cases. Consequently, women's litigation careers suffer, and very few successful women lawyers can be found at the bar. Sexual harassment and the lack of supportive infrastructure, from toilets to maternity leave, also contribute to a high attrition rate amongst women lawyers, with many preferring to join the corporate sector instead.³⁹ All these factors come together to result in disproportionately low women bar appointees to the bench. For instance, in its 68 years of existence, the Supreme Court has only seen one woman elevated from the bar to the bench, as recently as January 2018.⁴⁰

Several prominent lawyers and judges have also described outright bias against women in appointment and promotion processes. For instance, former Delhi High Court Chief Justice AP Shah has described how a woman lawyer he had recommended for judgeship was rejected on the grounds that she was 'rude,' though he believes similar behaviour exhibited by a male lawyer would not have been judged as harshly.⁴¹ Former SC Justice Gyan Sudha Misra too has spoken out about higher standards being applied to women judges over male judges for elevation. Appointment processes involving subjective criteria like interviews also leave open more room for potential bias and discrimination, than those based on objective examinations.⁴² Women aligned to the chambers of an influential advocate, or related to a judge or senior lawyer, are more likely to be elevated to judgeship despite this bias. Women without access to these networks, however, have little chance

³⁶ Jayanthi Natarajan, "The Glass Ceiling in the Judiciary Seems Very Hard to Break for Women," Hindustan Times, 6th April, 2017, available at <http://www.hindustantimes.com/opinion/the-glass-ceiling-in-the-judiciary-seems-very-hard-to-break-for-women/story-KKqcwswlQy1EyQoDoPzCqM.html> (last accessed on December 15, 2017).

³⁷ Ritika Jain, "10% of the Judiciary are Women", DNA India, 8th March, 2016, available at <http://www.dnaindia.com/india/report-10-of-the-judiciary-are-woman-2186610> (last accessed on January 17, 2018).

³⁸ Soni Mishra, "Interview: I was Sexually Harassed in the Corridors of the Supreme Court," The Week, 13th November, 2016, available at <http://www.theweek.in/theweek/cover/interview-indira-jaising-senior-lawyer.html> (last accessed on January 17, 2018); Soni Mishra, "The Sexist Bar", The Week, 13th November, 2016, available at <http://www.theweek.in/theweek/cover/gender-discrimination-in-judiciary.html> (last accessed on January 17, 2018); Vidhi Doshi, "Indira Jaising: 'In India, You can't Even Dream of Equal Justice. Not at All,'" The Guardian, 9th March, 2017, available at <https://www.theguardian.com/global-development-professionals-network/2017/mar/09/indira-jaising-india-is-in-crisis-this-fight-is-going-to-go-on> (last accessed on January 17, 2018).

³⁹ Soni Mishra, "The Sexist Bar", The Week, 13th November, 2016, available at <http://www.theweek.in/theweek/cover/gender-discrimination-in-judiciary.html> (last accessed on January 17, 2018); Mishra describes how according to Supreme Court Senior Advocate Meenakshi Arora, "40 women joined practice with her in the Supreme Court; three or four years later, only four or five were left." Mishra further writes, "The situation is not very different even now. [Lawyer Rucha Anant] Pandey says her class that passed out from the National Law University in Raipur in 2015 had girls and boys in equal proportion, but only three of the women students have taken to litigation."

⁴⁰ PTI, "In 70th Year of Independence, India's Supreme Court to Get Seventh Woman Judge," Firstpost, 12th January, 2018, available at <https://thewire.in/212975/70th-year-independence-indias-supreme-court-get-seventh-woman-judge/> (last accessed on January 17, 2018).

⁴¹ Soni Mishra, "The Sexist Bar", The Week, 13th November, 2016, available at <http://www.theweek.in/theweek/cover/gender-discrimination-in-judiciary.html> (last accessed on January 17, 2018).

⁴² *Ibid.*

of being able to do so on their own merit. Even after women judges are appointed to the highest posts, they continue to be judged more harshly. One retired woman SC judge reported that her judgments were accepted only when upheld by a larger bench, and another stated that a fellow male judge would constantly question her understanding of an issue.⁴³

All these factors together no doubt play a role in perpetuating the gender imbalance within Indian courts. To contextualise these factors for the lower judiciary in particular, additional datasets on the number of women who have graduated law schools and appeared for the All India Bar Examination, and/or are enrolled in State Bar Councils would be of great use. These datasets could be used to track the life-cycle of a woman candidate in the judiciary from the date of her enrolment to the date of her retirement, helping identify stages at which she may have faced disadvantage and exclusion, if any.

⁴³ *Ibid.*

VI. CONCLUSION

Two main recommendations emerge from this Vidhi Briefing.

A. Regular compilation of judge-related data

One concern is the need to regularly collect and publish statistics on the social composition of the judiciary. While responding to a question in Parliament concerning women representation in the judiciary, the Union Law Minister stated that since High Courts had administrative control over lower court judges, the Union Law Ministry did not maintain statistics on the appointment of women judges in states. Further, the Law Minister stated that since there was no reservation in the higher judiciary, the Ministry did not maintain caste- or class-wise data on judges either.

These justifications, however, are inadequate. As elaborated in the introduction, the regular collection of data on diversity is a prerequisite to diagnosing exclusion of social groups in the judiciary and designing appropriate interventions. The appropriate governmental authority, whether this be the Union Law Ministry or the concerned High Court, thus must monitor and make data on diversity in the lower judiciary publicly available.

B. Accommodating diversity concerns in discourse on appointments

Mainstream discourse tends to focus on judicial appointments either in the context of the tussle between the judiciary and executive, or vacancies and delay. There is an urgent need to expand this discourse so it can also accommodate concerns over diversity and equitable social composition. This need is highlighted by several instances where key stakeholders have failed to adequately address such concerns. In 2015, during hearings related to the National Judicial Appointments Commission, the Supreme Court Women Lawyers Association ('SCWA') presented statistics regarding the poor representation of women in the higher judiciary to the Supreme Court.⁴⁴ It also submitted suggestions to the Court to consider meritorious women for adequate representation in higher judicial appointments. The then Chief Justice of India J.S. Khehar suggested that the proportion of women judges should be the same as the proportion of women lawyers. In response, the SCWLA pointed out that the latter would be an inappropriate benchmark, since women face a lot of problems in practising in court. As is evident from the reasons outlined above, the very factors that cause women to drop out of litigation arguably affect the gender imbalance in the judiciary. But the fact that the Chief Justice of India did not recognise this underscores the need for mainstream discourse to become more accommodating of concerns over diversity.

Despite the abysmal representation of women in the lower and higher judiciary, recent developments have suggested an encouraging if slow trend. In 2017, for the first time, all four High Courts of Delhi, Calcutta, Bombay and Madras were headed by women Chief Justices. Last month, Ms. Indu Malhotra became the first woman Senior Advocate in the Supreme Court to be recommended for elevation to the bench (though her recommendation was sent back to the

⁴⁴ Live Law News Network, "After Complaint of Gender Bias, SC Promises More Women Judges in Apex Court, High Courts," 10th November, 2015, Available at: <http://www.livelaw.in/after-complaint-of-gender-bias-sc-promises-more-women-judges-in-apex-court-high-courts/> (last accessed on November 2, 2017).

collegium for reconsideration by the Union Ministry of Law and Justice). Apart from such developments, various leaders in the executive and judiciary have also become more vocal about the need for equitable gender representation in the judiciary. In 2016, the Parliamentary Standing Committee submitted its 87th Report on *Inordinate Delay in filling up the vacancies in the Supreme Court and High Courts*.⁴⁵ In its recommendation, the Standing Committee recognized that the data on women representation in the higher judiciary was not encouraging and suggested that suitable measures be taken to ensure that the higher judiciary would be reflective of the composition of the society and its diversity.⁴⁶ More recently, President Ram Nath Kovind acknowledged the gender imbalance in the judiciary in his National Law Day speech, prompting political leaders to call for reservations.⁴⁷ We hope the recent surge in attention paid to the gender imbalance in the judiciary serves as an impetus for more in-depth research on the issue.

⁴⁵ Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, 87th Report on “*Inordinate Delay in Filling Up the Vacancies in the Supreme Court and the High Courts*”, presented in the Rajya Sabha in December 2016, available at: <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/87th.pdf> (last accessed on November 2, 2017).

⁴⁶ *Ibid.*

⁴⁷ Address by the Hon’ble President of India Shri Ram Nath Kovind on the occasion of the inauguration of the National Law Day conference, 25th November, 2017), available at http://presidentofindia.nic.in/writereaddata/Portal/Speech/Document/387/1_National_Law_Day251117.pdf (last accessed on January 17, 2018).