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Breaking through the Old Boys' Club

The Rise of Women in the Lower Judiciary

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Vol. 55, Issue No. 4, 25 Jan, 2020 (/journal/2020/4)

Updated on 27 January 2020

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While there is some empirical work on the state of gender diversity in the higher judiciary in India, academic work on this topic in the context of the lower judiciary is sparse. A data-driven analysis of the trends of women's entry into the lower judiciary between 2007 and 2017, across multiple states at two levels (civil judge [junior division] and district judge [direct recruitment from the bar]), points to a direct relationship between methods of recruitment and women's representation in the judiciary. At the same time, this data helps identify barriers that frustrate the goal of improved gender representation.

Diversity in public institutions (such as, gender, caste, religion, ethnicity, social and economic backgrounds, physical ability) arguably sensitises the institutions to community needs, enhances social dialogue and improves communication across society. This article focuses on diversity in the lower judiciary. Although a subject of academic and popular discourse globally, in India, this issue has received only intermittent attention. Since its inception, the Supreme Court has seen only eight women judges. Currently, not more than 10% of the judges in high courts are women (Ghosh et al 2018). This is not the first time that the lack of representation has been flagged as a concern. The National Commission for Scheduled Castes (2011) recommended that reservation for Scheduled Castes (SCs) and Scheduled Tribes (STs) be introduced in the judiciary to ensure greater representation. The 99th Report on the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (2019) recommended reservation for women in state judicial cadres and law schools.

Some data is available around diversity in the higher judiciary (Chandra et al 2018; Kumar 2016; Chandrachud 2011a, 2011b) and to a limited extent, in family courts in India (Chanda 2014). But, when it comes to the lower/subordinate judiciary, there is no regularly collated and publicly available historical data on the appointment of judges. In February 2018, a research study showed that only 28% of the judges in the lower judiciary are women (Ghosh et al 2018), providing state- and district-wise data on the composition of the lower judiciary. The Ministry of Law and Justice

separately reported that the Other Backward Classes (OBCs) constitute 12% of the lower court judges across 11 states, whereas Dalits and SCs comprise less than 14% and tribals about 12% of the subordinate judiciary (Thakur 2018).

There are many dimensions to the diversity debate, but we focus on gender diversity in the lower judiciary. Some argue that a representative judiciary (where, for example, women in the judiciary equal the share of women in the population) is integral to democratic legitimacy, as it inspires confidence amongst the people, and that women in greater numbers also encourage and mentor other women to enter the system (Hunter 2015; Bowcott 2012). Others argue that a more balanced judiciary will reduce subconscious biases in judicial decision-making (Eyman 2015). In India, policy attempts to improve judicial diversity have rarely ventured beyond reservation. There is no reservation in the higher courts, but many states have reservation for SCs, STs, OBCs and women in the lower judiciary. These policies differ across states and were instituted at different times.

Gender diversity in the judiciary has been addressed at the Supreme Court and high courts, but never in the lower judiciary (Chanda 2014; Chandra et al 2018). This empirical study analyses data about women's entry into the lower judiciary between 2007 and 2017 across multiple states at two levels—civil judge (junior division) and district judge (direct recruitment from the bar). Identifying trends of women's entry into the lower judiciary through direct recruitment might help identify barriers that frustrate the goal of improved gender representation.

Background and Context

India has a three-layered judicial system: the Supreme Court, the high courts, comprise the “higher judiciary,” and the district and taluka courts in each state are called the “subordinate” or “lower” judiciary. It is the high courts, and not the Supreme Court, that exercise control over the administrative matters of the state judiciary by virtue of Articles 227 and 235 of the Indian Constitution respectively. The subordinate judiciary comprises three tiers of judges, ordered hierarchically thus: (i) district/sessions judges, (ii) civil judges (senior division), including chief and additional metropolitan and judicial magistrates, and (iii) civil judges (junior division), including judicial magistrates of the first class and metropolitan magistrates. Recruitment to the higher judiciary and lower judiciary differs substantially. As per Article 124 of the Constitution, judges to the high courts and the Supreme Court are appointed by the President after consultation with a collegium of judges from the higher judiciary.

For the lower judiciary, each state has its own judicial service rules that govern the recruitment process. Articles 233 and 234 of the Constitution provide for appointments to be made by the governor of a state in consultation with the state high court, and for persons other than district judges, the governor must also consult the State Public Service Commission. The appointment to the subordinate judiciary is governed by state judicial service rules, which are framed by the governor under Article 309 of the Constitution. For recruitment as civil judge (junior division), the rules provide for an entry-level competitive examination, open to law graduates, which consists of three rounds—preliminary and mains examinations followed by an interview. The age limit specified generally allows fresh graduates to apply for this post. Civil judges (senior division) are appointed by promotion from the post of civil judge (junior division). Among district judges, around 75% are either promoted internally through merit-cum-seniority or through a limited

competitive examination, while 25% are recruited directly from amongst advocates or pleaders with a minimum of seven years' continuous practice, through an examination conducted by the high court.

For this article, we study patterns of women's entry into the lower judiciary across the years 2007 and 2017 for 17 states at the level of civil judge (junior division), and 13 states at the level of district judge (direct recruitment from the bar), as they are the first points of external entry into the lower judiciary. The study has been informed by the selection lists of judicial exam candidates obtained under the Right to Information Act (RTI Act), 2005 from high courts and state law departments.

Research Methodology

Data collection: Data for this study was collected by filing requests under the RTI Act to 24 high courts (the Hyderabad High Court was split into Andhra Pradesh High Court and Telangana High Court after we filed our requests) and 30 state law departments, seeking information about the selection and appointment lists of judges appointed between 1 January 2007 and 31 December 2017, segregated by sex, social status (SC/ST/OBC), and religious background for the two cadres. Responses were received from 11 high courts and eight state law departments, of which 17 shared information, while two rejected our requests.¹ While we asked for both selection and appointment lists of candidates, we were mostly supplied with the former. Selection lists indicate candidates who cleared the examination process and are invited to join the judiciary. Appointment lists provide the names of persons who finally join the judicial services.

Overview of the data set: This study undertakes an analysis of the 17 states that responded to the RTI requests. Of these, time series data is available for 15 states while for two states (Assam and Uttarakhand), only cumulative data is available for the entire study period, that is, between 2007 and 2017. In some cases, recruitment cycles spilled over multiple years, for example 2006–07 or 2017–18. These were Karnataka (2006), Rajasthan (2005), Tripura (2006), and Uttar Pradesh (UP) (2006). All of these cases are included in the data set as data for 2007. For our study, entry patterns of women in 15 states over 78 recruitment cycles for recruitment to the cadre of civil judge (junior division) were studied for this period, and 5,174 names were categorised on the basis of gender. Since most states have given data for the civil judge (junior division) level, this article will primarily focus on this level of the judiciary. A later section analyses the data from the district judge (direct recruitment from the bar) cadre for the 13 states that provided 536 names.

Limitations: It is assumed that the data received from the states in the form of RTI responses is correct and absolute. Where only the total number of selected candidates was available, data verification was attempted, but discrepancies might persist. The data is derived from selection lists and not appointment lists. It is assumed that every person who appears in a selection list was also subsequently appointed in that recruitment year for that state. It is possible, however, that selected individuals chose not to join the services at all, or that individuals were selected by multiple states in a given year and chose to join only one. These circumstances cannot be captured in this data set. Selection lists usually mentioned the gender of or used gender-identifying prefixes for candidates. There was no reference in the data set to candidates belonging to a gender other than male or female. Occasionally, gender was attributed to names where no identifying information was

available. For this, a public database (Gender API 2019) that identifies the gender of 95,051 Indian names (based on sources like governmental data and social networks) was relied upon. Wherever possible, estimations have been verified from district court websites (District Courts 2020), which generally mention gender prefixes, and have pictures of judges.

Findings

Civil judge (junior division): Table 1 and Figure 1 show a consistent, observable trend across 15 states of the number of women entering the judiciary at the lowest level increasing between 2007 and 2017. In total, 36.45% women entered the state lower judiciary in this period. Barring Delhi and Tripura, the number of women entering the lower judiciary over the last 10 years has increased. In their latest recruitment cycles, seven out of 15 states which provided data, that is, Chhattisgarh, Kerala, Meghalaya, Mizoram, Nagaland, Rajasthan and Sikkim, saw a minimum of 50% women entering the system. As shown in Figure 2, five states (Gujarat, Karnataka, Manipur, Tripura and UP) saw the rate of entry fall below 45% in the latest recruitment cycle, but these states (barring Tripura) showed overall improvement over 10 years. Gujarat, even with a comparatively low average rate of entry of women (21.66%), saw an increase from 12.38% (13 women out of a total of 105 recruits) to 32.07% (17 women out of 53 recruits). Manipur too saw a significant increase from 2008 (16.66% or one woman out of six recruits were selected) to 2015 (42.87% or three women out of seven recruits were selected).

Table 1: Women's Entry at the Civil Judge (Junior Division) Level, 2007–17

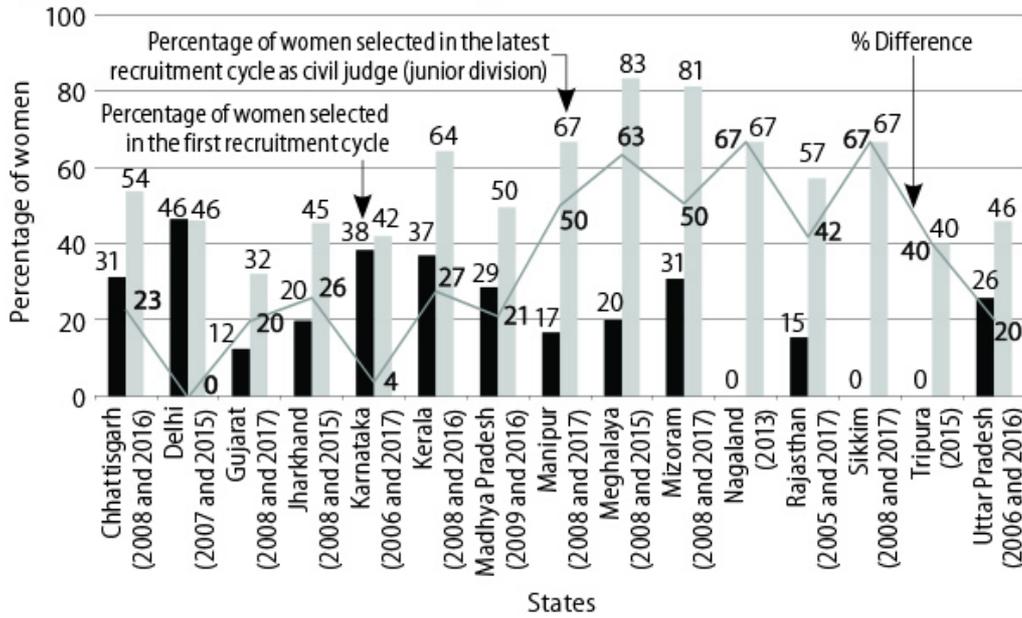
S No	State	Number of Recruitment Cycles Tracked	Percentage of Women Selected in the First Recruitment Cycle	Percentage of Women Selected in the Latest Recruitment Cycle (Civil Judge) (Junior Division)	Percentage of Women Selected in the Last 10 Years	Rate of Change (%)	Average % of Women Entering the Judiciary in the Last 10 Years	Standard Deviation
1	Chhattisgarh	6	31.18 (2008)	53.73 (2016)	45.48	72.31	45.54	12.25
2	Delhi	6	46.43 (2007)	46.03 (2015)	46.49	-0.85	51.66	15.23
3	Gujarat	6	12.38 (2008)	32.07 (2017)	17.32	159.07	21.66	10.84
4	Jharkhand	4	19.69 (2008)	45.45 (2015)	33.8	130.76	34.20	10.76
5	Karnataka	5	38.28 (2006)	41.94 (2017)	34.33	9.53	35.19	7.31
6	Kerala	8	36.84 (2008)	64.28 (2016)	50.41	74.48	43.70	13.03
7	Madhya Pradesh	8	28.57 (2009)	49.50 (2016)	42.86	73.26	39.09	13.66
8	Manipur	6	16.66 (2008)	42.87 (2015)	35	157.14	34.92	38.20
9	Meghalaya	4	20 (2008)	83.3 (2015)	61.29	316.67	55	27.01
10	Mizoram	2	30.76 (2008)	81.25 (2017)	58.62	164.06	56	35.69
11	Nagaland	1	66.66 (2013)	66.66 (2013)	66.67	NA	66.66	
12	Rajasthan	6	15.38 (2005)	59.72 (2016)	45.64	288.19	43.45	18.48
13	Sikkim	4	0 (2008)	66.67 (2017)	70	66.67	58.33	41.94
14	Tripura	8	40 (2006)	40 (2015)	36	0	42.51	27.28
15	Uttar Pradesh	4	25.72 (2006)	39.11 (2015)	33.66	52.06	31.54	6.59
	Total	78	27.62	49.22	36.45	78.20	43.96	-

Assam and Uttarakhand provided us with only cumulative data between 2007 and 2017, hence no recruitment cycle could be tracked.

In Nagaland, only one recruitment drive has taken place between 2007 and 2017.

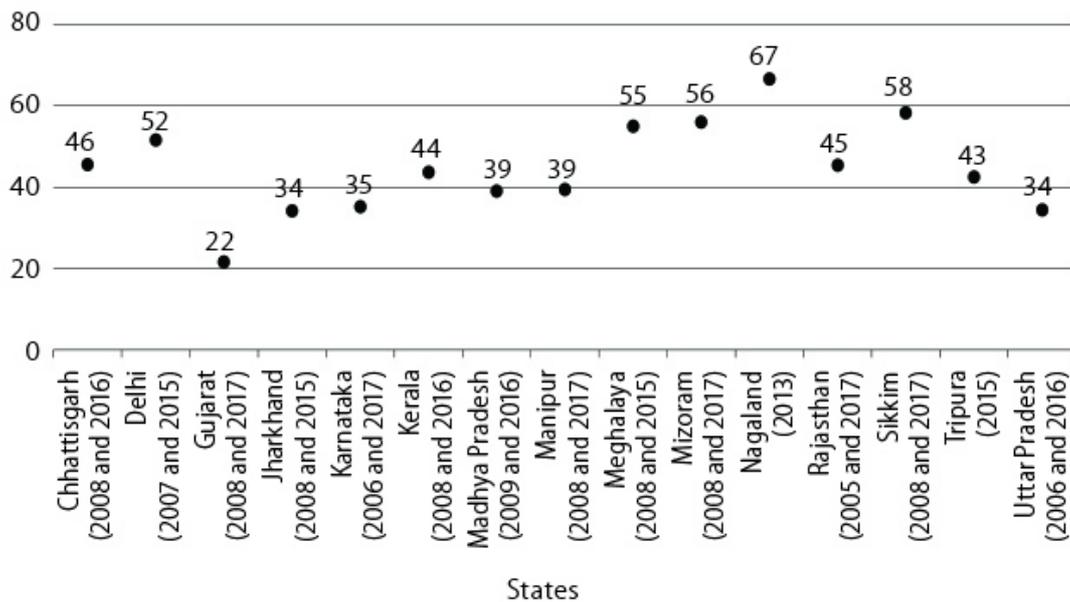
Source: Compiled by the authors from responses to RTI requests.

Figure 1: Percentage of Women Selected in the First and Latest Recruitment Cycles of Various States for Civil Judge (Junior Division)



Source: Compiled by the authors from responses to RTI requests.

Figure 2: Average Rate of Entry of Women between the First and Latest Recruitment Cycles of Various States for Civil Judge (Junior Division) between 2007 and 2017



Source: Compiled by the authors from responses to RTI requests.

Karnataka and UP saw minimal changes in the same time period and did not witness major deviations from the average over time. Chhattisgarh, Delhi, Gujarat, Jharkhand, Kerala, Madhya Pradesh (mP) and Rajasthan saw moderate shifts. The highest variation in recruitment is seen in Manipur, Meghalaya, Mizoram, Sikkim and Tripura, but these must necessarily be treated as outliers. These states have a smaller number of courts to staff, and therefore, lower hiring needs. They tend to hire less than 10 persons per recruitment cycle. Illustratively, six states in North East India (Assam, Manipur, Meghalaya, Mizoram, Sikkim and Tripura) collectively recruited 129 judges (67 women) between 2006 and 2017. In contrast, Karnataka recruited 93 judges (39 women) in 2017, mP hired 101 judges (50 women) in 2016, while UP recruited 317 judges (124 women) in 2015.

District judge: For the cadre of district judge, we received information from 13 states in response to our RTI applications. The data set of women entering the judiciary as district judges across these states between 2007 and 2017 is in contrast to the civil judge (junior division) cadre and reveals a dismal story (**Table 2**). In five states—Gujarat (7.02%), Jharkhand (3.33%), mP (10.13%), Uttarakhand (11.76%) and UP (6.47%)—women constituted less than 15% of the total number of judges selected for recruitment. Assam and Tripura saw no women enter through this process at all. Only Delhi and Meghalaya perform better, having crossed the 40% mark. In the study period, a total of 11.75% women joined as district judges through direct recruitment.

Table 2 : Women's Entry into the District Judge (Direct Recruitment from Bar) Cadre (2007–17)

State	Year	Gender		Total	Percentage Female
		Male	Female		
Uttar Pradesh	Cumulative (2007–17)	130	9	139	6.47
Assam	Cumulative (2007–17)	5	0	5	0.00
Delhi	2007	2	3	5	60.00
	2009	4	1	5	20.00
	2013	4	5	9	55.56
	2015	3	0	3	0.00
	Cumulative	13	9	22	40.91
Gujarat	2007	3	1	4	25.00
	2009	9	1	10	10.00
	2011	5	0	5	0.00
	2012	5	0	5	0.00
	2013	4	0	4	0.00
	2014	4	0	4	0.00
	2015	13	0	13	0.00
	2017	10	2	12	16.67
	Cumulative	53	4	57	7.02
Jharkhand	2011	8	0	8	0.00
	2012	21	1	22	4.55
	Cumulative	29	1	30	3.33
Karnataka	2008	6	2	8	25.00
	2011	1	0	1	0.00
	2015	12	1	13	7.69
	2017	26	8	34	23.53
	Cumulative	45	11	56	19.64
Kerala	2009	4	2	6	33.33
	2010	1	0	1	0.00
	2012	2	0	2	0.00
	2013	5	1	6	16.67
	2014	6	2	8	25.00
	2015	8	1	9	11.11
	Cumulative	26	6	32	18.75
Madhya Pradesh	2008	13	0	13	0.00
	2009	9	0	9	0.00
	2011	21	5	26	19.23
	2012	14	1	15	6.67
	2015	9	0	9	0.00
	2016	12	0	12	0.00
	2017	64	10	74	13.51
	Cumulative	142	16	158	10.13
Meghalaya	2013	3	2	5	40.00
Mizoram	2011	3	1	4	25.00
Sikkim	2011	1	0	1	0.00
	2013	1	1	2	50.00
	2017	2	1	3	33.33
	Cumulative	4	2	6	33.33
Tripura	2011	1	0	1	0.00
	2014	2	0	2	0.00
	2016	2	0	2	0.00%
	Cumulative	5	0	5	0.00%
Uttarakhand	Cumulative Data (2007–16)	15	1	16	6.25
	2017	0	1	1	100.00
	Cumulative	15	2	17	11.76

Source: Compiled by the authors from responses to RTI requests.

The disappointing rates of women's entry as district judges can possibly be explained by the nature of eligibility conditions for the post, which could be discouraging women from participating. As laid down in Article 233 of the Constitution, and reflected in corresponding state judicial service rules,² a person must be an advocate or a pleader with a minimum of seven years of practice experience. The Supreme Court has interpreted this to mean seven years of continuous practice (*Sushma Suri v Government of National Capital Territory of Delhi* 1999; *Deepak Aggarwal v Keshav Kaushik* 2013), which disqualifies many women candidates. Social and professional constraints prevent women

from enrolling in the bar (one estimate suggests that the bar comprises only 10%–15% women), let alone remaining in the profession for a continuous period of seven years (Mishra 2016). Social expectations of marriage, family and motherhood imposed on women also affect career choices of women to practise.

Most judicial service rules have a minimum age of entry of 35 years to the district judge cadre through direct recruitment, by which age most women in India tend to be married and have significant familial and household responsibilities. A study of lawyers enrolled in Allahabad found that an overwhelming majority of women practising in courts were unmarried (Mishra 2015). Long and inflexible working hours, and lack of adequate familial and structural support are responsible for many women dropping out of the practice. As a result, it is difficult for women to maintain continuous legal practice for seven years. This renders them ineligible as per the criteria set by the Supreme Court to appear for the exam for direct recruitment for the post of district judge. This possibly explains why only 63 women against 473 men (that is 11.75% of the total numbers) were recruited across 13 states in a 10-year period. The only well-performing states we see are Delhi and Meghalaya, with approximately 40% of the selected candidates being women. However, even this gives little reason to celebrate considering that the numbers for Meghalaya represent the sole recruitment cycle that took place during the entire period of study. The factors impeding women's entry to the judiciary are explored in detail below.

Factors Influencing Women's Entry

Method of recruitment: Recruitment for civil judges (junior division) by open competition examination allows a larger pool of fresh law graduates to enter the system. This was not the case before 2002, when some states required eligible candidates to have three years' practice experience as an advocate. The open competition system is similar to that followed by civil law countries such as France and Portugal, where too because of a career judiciary system, qualifying judges are mostly young graduates with little or no practice experience. Interestingly, these two countries are experiencing a "feminisation of the judiciary" with many entrants into the judiciary being women (Gibson-Morgan 2015). In France, fewer men apply for judicial training reportedly, and those who do, tend to perform less well in entrance examinations than women; it is speculated that this is because men prefer to practise as it is more lucrative (Gibson-Morgan 2015).

Some researchers argue that it is easier for women to enter the judiciary in civil law countries, since formal qualifications and examination results are more rational and transparent than common law countries, where judicial appointments rely on subjective factors such as professional viability, favourable evaluations and professional achievement and networks (Schultz and Shaw 2013). Although India is a common law country, the selection and appointment of the lower judiciary is similar to the system followed in civil law countries. This recruitment system could be one reason why there are more women in the lower judiciary than in the higher courts. Judges in the higher judiciary are appointed through the collegium system, where a group of the highest-ranked sitting judges in the country select names of judges, which are then sent to the President for appointment (*Supreme Court Advocate on Record Association v Union of India* 1994).

This system has been criticised for its opacity and its failure to appoint candidates from diverse backgrounds (Chandrachud 2013; Singh 2016; Dev 2017; Sedhuraman 2015). A 2018 study found that the collegium has given inadequate attention to ensuring gender diversity (Chandra et al 2018). Wherever discretion is involved, women tend to fall by the wayside. This trend is also observed in France (Gibson-Morgan 2015) and Portugal (Duarte et al 2014), where, despite the feminisation of the judiciary, there are fewer women at the top of the pyramid. It follows then that greater gender representation at the entry level does not, by itself, guarantee a more diverse judiciary.

Nonetheless, feminisation of the lower judiciary in India seems apparent, but its impact is yet to be analysed. Internationally, the impact of gender on judging has been extensively studied (Anleu and Mack 2013). In Germany, for instance, female judges claimed that their style of working was unlike that of their male counterparts, and that women judges improved the emotional climate by strengthening communication and cooperation (Schultz 2003b). Since India is still at the early stages of feminisation, the effects and impact of women judges in making women-friendly court spaces, or in making the judiciary more flexible and accommodative of the needs of women judges need to be studied.

Despite limited participation in the legal profession and within the student community³ the increased entry of women in the lower judiciary in India is significant. Research from some countries suggests that relative financial and professional stability, along with flexibility in work timings that a judge's career offers, are key reasons why, despite heavy workloads, many women prefer the judicial services to setting up independent professional practice (Junqueira 2003). Sustaining a successful practice as a lawyer, in contrast, entails not only managing the "dual burden of profession and family," but also access to "social capital" in the form of influential professional networks that tend to be dominated by men (Schultz 2003a).

Socio-economic indicators: Arguably, the emerging trends of women's participation in the lower judiciary can also be situated in the larger economic and social transformations occurring in the realm of education and the job market. The All-India Survey of Higher Education for 2016–17 shows that the Gender Parity Index for higher education (the ratio of the number of women enrolled in higher education to the number of men) is 0.97, a significant jump from the 2010–11 figure of 0.86 (Department of Higher Education 2017). In most states, women constitute nearly half the number of total students graduating across various streams.

India's female labour force participation rate is the lowest amongst comparable developing economies. Women's share in the service sector is lower than men, and women's share in public services is one of the lowest, stagnating between 2011 and 2015 (Centre for Sustainable Employment 2018). One factor that pushes women out of the workforce is marriage, as household work and social expectations that arise with marriage and childcare tend to drive women out of the job market. Further, where household income is high, women are not expected to work, as working women are perceived negatively in society (Fletcher et al 2017).

The present data set points to this as well. At the civil judge level, most entrants are fresh out of law school and unmarried. In contrast, the candidates appearing for the district judge examination are generally 35 years of age by when presumably marital responsibilities and motherhood become

significant considerations for the female candidates.⁴ This could be one reason why fewer women enter the judiciary at the district judge level, since at this age, many would already be married and possibly have child-rearing and other imposed domestic responsibilities.

Reservation

Women's reservation in the State Judicial Service Rules: Several states provide for reservation for women in the civil judge (junior division) or district judge (direct recruitment from bar) cadres, and in some cases, both. Table 3 (p 37) provides details about the percentage of reservation in certain states, and relevant state judicial service rules/government notifications. From amongst the states that do provide for reservation, RTI responses were received from Chhattisgarh, Jharkhand, Karnataka, Rajasthan and Uttar Pradesh. In these states, reservation is horizontal in nature and is applicable only to women domiciled in their home state. In addition, Odisha and Rajasthan provide for age relaxation for women, besides reservation.⁵

Table 3: Women's Reservation in the Lower Judiciary among States That Responded to RTI Requests

State	Provision on Women's Reservation	Year of Introduction	Comment
Rajasthan	30% reservation as per Rule 10(3), Rajasthan Judicial Service Rules, 2010	2001	Based on the information available in the case <i>Rajesh Kumar Daria v Rajasthan Public Service Commission</i> (2007)
Uttar Pradesh	Not mentioned in the Uttar Pradesh Judicial Service Rules, 2001	Not available	Recruitment advertisements (UPPSC 2018) show that women's quota in the lower judiciary is up to 20%
Chhattisgarh	30% reservation as per Rule 6(2), Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006	2006	Since the mention of women's reservation was made in the state judicial service rules (recruitment and conditions of service), in 2006, we can conclude that such a provision has been in operation since at least 2006
Jharkhand	Not mentioned in the Jharkhand Judicial Service (Recruitment) Rules, 2004	Not available	Recruitment advertisements available here (Sonwal 2018) show that women's quota in the lower judiciary is up to 5%
Karnataka	33% as per government order dated 8 January 2016	2008	Government order dated 4 January 2008 was the first time women's reservation to the tune of 30% was introduced in direct recruitment to the government services

Source: Compiled by the authors through online sources as well as RTI requests.

Reservation for women in judicial services is in line with the growing trend of reserving seats for women in government jobs, such as state police and paramilitary forces.⁶ At the state level, Assam, Bihar, Chhattisgarh, Gujarat, Karnataka, MP, Rajasthan and UP have instituted reservation for women in state government jobs ranging between 30% and 33%.⁷ In the case of the lower judiciary, it is the high courts that have the final authority on deciding the quantum and categories of reservation. Although Article 309 of the Constitution empowers the state legislature to regulate recruitment and service conditions for public services, Articles 233 and 234 vest the power to appoint judges in the lower judiciary with the high courts.

The Supreme Court has interpreted this to mean that any change to the procedure of the appointment of judges cannot be made without consultation with the high court, and therefore, states cannot institute reservation in the lower judiciary without consultation with high courts. Previous attempts to do so by Bihar were struck down by the Supreme Court (in 2001 and 2016) (*State of Bihar v Bal Mukund Sah* 2000; *Government of Bihar and Others v Dayanand Singh* 2015). In the past, some judges have raised questions regarding why high courts should have a reservation policy separate from that applicable to other state public services (Mahapatra 2009). The lack of transparency on this matter makes it difficult to discern the motivations of the higher judiciary in allowing reservation for women in some states and not in others. Recently, there has been growing focus on women's representation in legal institutions where the 99th Report on the Department-

Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (2019) recommended that state governments should introduce quota for women in law universities and the subordinate judiciary as well.

Impact of reservation: Here, only the impact of reservation in the case of civil judge (junior division) cadre is considered, as the data set is larger. Unfortunately, no clear statement regarding the success of reservation policies can be conclusively made. In the data set, five states had women's quota (Chhattisgarh, Jharkhand, Karnataka, Rajasthan and UP). If Rajasthan is compared to states without reservation (for example, Gujarat and mP), Rajasthan performs relatively better in bridging the gender gap. Fifteen percent women were selected in Rajasthan in 2008, but this figure had gone up in 2016 to nearly 60%. In comparison, Gujarat saw the rate of women's entry shift from 12% in 2008 to 32% in 2017, while in mP, it increased from 29% to 50% over the same period.

Besides Rajasthan, another state with women's reservation in the judiciary—Jharkhand—has seen a significant upward trend in the entry of women. In 2008, only 20% women were selected, but, by 2015, 45% women were selected. However, Chhattisgarh and UP, despite having women's quota, performed at par with states without reservation like mP. Karnataka, despite having a women's quota since 2008, has had a relatively flat rate of growth in the entry of women in the judiciary. Thirty-eight percent of the candidates selected in 2008 were women, whereas 42% women were selected in 2017. On the other hand, even without a reservation policy, Kerala showed a much higher rate of change in the entry of women, as did the north-eastern states of Manipur, Meghalaya and Mizoram.

Clearly, there is no consistent pattern of appointment of women in the judiciary in the light of reservation policies, and no clear conclusions about the policies themselves can be made. Reservation quota for women is perhaps just one among many factors that encourages and facilitates more women to enter the system. In states where other supporting factors are present in sufficient measure, women's quotas perhaps help bridge the gap in gender representation. Arguably, many factors can determine the entry of women into a state's judicial services. Kerala, Meghalaya, Mizoram and Sikkim record a high average rate of entry, even without reservation. This is consistent with the higher level of socio-economic development indices (tertiary education and labour-force participation) of women in these states.

Another observable trend is language and recruitment. In recent times, Chhattisgarh, mP and Rajasthan have been more successful in bridging the 50% mark of women's entry, whereas Gujarat and Karnataka have not witnessed a similar average rate of entry. One reason could be that Hindi-speaking states naturally receive a larger pool of candidates for every recruitment cycle, compared with non-Hindi speaking ones. This is because a candidate fluent in Hindi can appear for the examination of all Hindi-speaking states. In Gujarat and Karnataka, only those proficient in local languages can appear for such examinations, since language and translation skills are part of the testing process. This automatically shrinks the pool of eligible candidates. Kerala and the north-eastern states, however, stand out as exceptions—even with local language requirements, the number of women entering the judiciary has crossed the 50% mark in recent years.

Some interesting points for further study would be a comparison of the number of women entering a cadre before and after the institution of reservation in a state and the pool of candidates from which civil judges are chosen. Information about the number of law graduates who appear for each state's recruitment as well as their educational qualifications and work experience would help better in tracking changes in the demographics of candidates writing these examinations.

Conclusions

This article presents, for the first time, information on the evolution of the representation of women in India's lower judiciary in recent years. It also adds to the limited, but emerging, literature on the impact of diversity on judicial institutions. Between 2007 and 2017, while the number of women entering as judges in the civil judge (junior division) cadre in most states has definitely increased, the number of women entering the cadre of district judges via direct recruitment from the bar has remained low and relatively stagnant. Law is a discipline where the gender gap in enrolment between men and women remains high.

Despite this, the increase in the entry of women into the civil judge (junior division) cadre signifies that more women are seeing careers as judges as viable options over other legal services. This increase may be somewhat attributable to the recruitment method, which attracts fresh law graduates to write the examination. This increasing entry should also be seen in the larger context of the improvement of socio-economic indicators for women's empowerment.

In contrast, the eligibility requirements for the direct recruitment examination for the district judge cadre (of seven years' continuous practice, and an age-band of 35–45 years), directly impacts women's participation. With litigation often seen as reserved for men, many women lawyers may find themselves disadvantaged in sustaining a practice for a period of seven years or more. Additionally, most adult women in India, facing social expectations of marriage and family, find litigation as a career more difficult to pursue in the long term. Many states provide for reservation of posts in the lower judiciary for women, but the working of reservation policies is impossible to evaluate in the absence of data prior to and after the institution of reservation. A preliminary assessment of entry rates for women in states that have reservation policies compared with states that do not, shows reservation to be only one among several factors influencing women's entry into the judiciary. Local languages and relative socio-economic positions of women in different states are also likely factors impacting the data.

Most discussion around judicial diversity has been anecdotal, and not studied using systematic, data-driven methods. This article points to the necessity of regularly monitoring and studying patterns of entry for minority groups within the judiciary. Doing so is the first step to enable researchers to ask more nuanced questions that evaluate the impact of a diverse judiciary.

Notes

¹ Assam, Delhi, Gujarat, Jharkhand, Karnataka, Kerala, MP, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand and UP provided information for both civil and district judge recruitment. Chhattisgarh and Rajasthan only provided selection lists for civil judge (junior division) recruitment. Andhra Pradesh and Telangana rejected the request on the ground that the information sought has no larger public interest.

2 Rule 5, Andhra Pradesh State Judicial Service Rules, 2007; Rule 7, Arunachal Pradesh Judicial Service Rules, 2006; Rule 27, West Bengal Judicial (Conditions of Service) Rules, 2004; Rule 5, Bombay Judicial Service Recruitment Rules, 1956; Rule 5, Uttar Pradesh Higher Judicial Service Rules, 1975; Rule 7, Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006; Rule 9, Delhi Judicial Service Rules, 1970; Rule 5, Telangana State Judicial Service, 2017; Rule 5, Himachal Pradesh Judicial Service Rules, 2004; Rule 9, Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules, 2001; Rule 4, Karnataka Judicial Service (Recruitment) Rules, 2004; Rule 7, Madhya Pradesh Higher Judicial Service (Recruitment and Conditions of Service) Rules 1994; Rule 9, Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007; Rule 10, Punjab Superior Judicial Service Rules, 2007; Rule 33, Rajasthan Judicial Service Rules, 2010; Rule 7, Tripura Judicial Service Rules, 2003; Rule 5, Uttarakhand Higher Judicial Service Rules, 2004.

3 As per the Department of Higher Education (2017), the number of female law students graduating vis-à-vis male law students is one of the lowest in comparison to other disciplines and streams. Moreover, as the recent data on the Common Law Admission Test shows, the number of women clearing the Common Law Admission Test has fallen (Ganz 2015).

4 As per the Nation Family Health Survey-4 (2015–16), urban women tend to marry later than rural women. Further, women having 12 years or more schooling or more tend to marry at a much later age. The median age of marriage among such women is 22.7 years, while the median age of a woman with 12 years of schooling or more, at her first birth is 24.7 years (IIPS 2017).

5 Rule 18 of Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 provide that the upper-age limit for women candidates can be relaxed by five years. Rule 17, Rajasthan Judicial Service Rules, 2010 provides that the upper-age limit in the case of widow/divorced women shall be up to 45 years.

6 See Ministry of Home Affairs, Government of India, Advisory (2009), F NO15011/48/2009-SC/ST-W; Ministry of Home Affairs (2013): Advisory No: DO No 15011/21/2013–SC/ST–W, 22 April 2013, New Delhi (<https://mha.gov.in/sites/default/files/AdvisoryWomenPolice-290513.pdf>) (<https://mha.gov.in/sites/default/files/AdvisoryWomenPolice-290513.pdf>) and *Times News Network* (2015).

7 For example, see Gujarat Civil Services (Reservation of Posts for Women) Rules, 1997 and Madhya Pradesh Civil Services (Special Provision for appointment of women) Rules, 1997 and the Rajasthan Public Service Commission (Ministerial and Subordinate Services) Rules and Regulations, 1999, which prescribe reservation for women.

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