

The Glass Ceiling in the High Courts

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While the Constitution makes no distinction between judges appointed from the Bar or from the subordinate judiciary, the data shows that there is an implicit difference that results in fewer members from the subordinate judiciary serving in the high courts for shorter periods of time, and less likely to be the chief justices.

In an earlier article, I looked at a data set of 601 serving judges of high courts in India (in 2016) to identify the link between the manner of appointment and the lack of diversity in the higher judiciary in India (Kumar 2016). The data showed that judges from the subordinate courts were appointed later, had shorter terms, and therefore were unlikely to become chief justices or have sufficient seniority to serve on the collegium of high court judges, which make nominations for appointment to the high court. The data then showed that, on average, there was a seven-year gap in the ages at which an appointee from the Bar and a judge of the subordinate courts became a judge of the high court (Kumar 2016). This had major implications on the appointment of judges as only three out of the hundred senior-most judges were the ones elevated from the subordinate judiciary. This, I argued, results in the lack of diversity in the high courts as the most diverse pool of applicants—from the subordinate judiciary—are less represented and have little opportunity to influence future appointments.

Since the publication of the article, know your high court judges database (KHoj Database) has been made public. It contains details of more than 1,700 high court judges appointed from 1993 to 2021. The database captures 43 separate data points about each judge and includes the source of appointment as well.¹ This is a much larger data set and covers the entire set of high court judges appointed under the collegium system of appointments. In this article, I propose to use

this data set to look at the prospects of judges appointed from the subordinate judiciary (called “service judges” in the KHoj Database) when they were elevated to the high court. Given the time period over which the appointments in this database were made, it gives us a good sense of how the collegium system has worked in the context of appointments to the high courts. It will tell us whether the collegium system by itself reduces the opportunities for judges from the subordinate judiciary.

Data Set

The KHoj Database contains details of 1,709 judges. However, all details are not complete for all judges. For the purpose of this article, only 1,619 judges are considered as the cadre details of 90 judges are unavailable.²

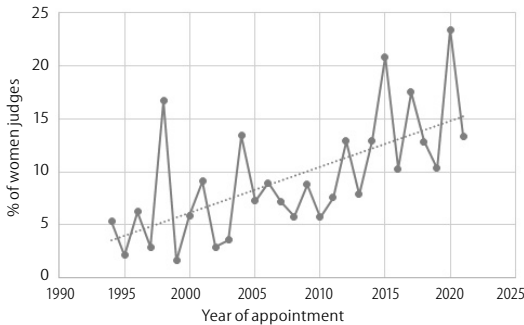
Of the 1,619 judges, 744 are from the service cadre, while 874 are from the Bar. A gender break-up of the judges is given in Table 1.

Table 1: Judges in the Final Data Set Sorted by High Court, Gender, and Cadre

High Court	Bar		Bar Total	Service		Service Total	Grand Total
	Female	Male		Female	Male		
Allahabad	5	139	144	9	157	166	310
Andhra Pradesh	3	47	50	3	29	32	82
Mumbai	6	65	71	7	46	53	124
Kolkata	5	46	51	4	30	34	85
Chhattisgarh		12	12	2	13	15	27
Delhi	7	46	53	12	39	51	104
Gauhati	1	37	38	2	23	25	63
Gujarat	4	35	39	4	39	43	82
Himachal Pradesh	2	11	13		12	12	25
Jammu and Kashmir and Ladakh	1	13	14		11	11	25
Jharkhand	2	15	17		16	16	33
Karnataka	3	64	67	6	47	53	120
Kerala	2	50	52	7	34	41	93
Madhya Pradesh	3	43	46	4	42	46	92
Chennai	6	62	68	13	34	47	115
Manipur		2	2		1	1	3
Meghalaya		1	1		1	1	2
Odisha	2	24	26		23	23	49
Patna	5	34	39		26	26	65
Punjab and Haryana	1	20	21	1	11	12	33
Rajasthan		18	18		7	7	25
Sikkim		3	3	1	1	2	5
Telangana		4	4				4
Tripura		1	1		1	1	2
Uttarakhand		10	10		9	9	19
Grand total	58	802	860	75	652	727	1,587

Source: KHoj Database.

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Figure 1: Percentage of Women Judges Appointed to High Courts Year-by-year

From this data set, certain judges were excluded for the purpose of this article as details of their date of birth or date of appointment were not available in the data set or in the public domain. The final number of judges selected for analysis is 1,587.

Analysis

From the numbers, we see that only 132 out of the 1,587 high court judges appointed between 1993 and 2021 were women—an abysmal 8.3%. However, this number must be contextualised by the fact that the proportion of women among appointees has steadily increased over the years (Figure 1).

Based on the age/date of birth of judges, it is possible to calculate their date of appointment and expected tenure. Here, we find that there is little difference between male and female judges—both can be expected to be appointed at roughly the same age on average (Table 2).

Table 2: Average Age of Judges at the Time of Appointment to High Court by Gender

Cadre/Gender	Average Expected Tenure (Years)	Average Age at Appointment (Years)
Female	8.65	53.35
Male	8.81	53.19
Grand total	8.79	53.21

Source: The author's estimation based on KHOJ Database.

However, the differences start to emerge once we break up on the basis of cadre. As seen in the earlier article, there is a gap of 6.25 years between the average tenure of a judge from the Bar

Table 3: Average Age of Judges at the Time of Appointment to High Court and Expected Tenure by Cadre

Cadre/Gender	Average Expected Tenure (Years)	Average Age at Appointment (Years)
Bar	11.66	50.34
Service	5.41	56.59
Grand total	8.79	53.21

Source: Same as Table 2.

and a judge from the service cadre (Table 3).

Interestingly enough, the pattern is almost the same irrespective of gender. Women judges appointed from the Bar are likely to be 5.71 years younger on average when compared to women judges from the service cadre, whereas the comparable figure for male judges from the Bar is 6.31 years (Table 4).

Table 4: Average Age at the Time of Appointment and Expected Tenure of High Court Judges by Gender and Cadre

Cadre/Gender	Average Expected Tenure (Years)	Average Age at Appointment (Years)
Bar	11.66	50.34
Female	11.87	50.13
Male	11.64	50.36
Service	5.41	56.59
Female	6.16	55.84
Male	5.33	56.67
Grand total	8.79	53.21

Source: Same as Table 2.

While the number of women judges are, of course, significantly lower, the pattern of differential treatment between judges from the service cadre and judges from the Bar persists.

In terms of percentages though, between 1993 and 2011, far more judges were appointed from the service cadre when compared to the data given by Kumar (2016). Whereas only 31% of judges from the previous data set came from the service cadre; in the present case, it is 45.84%. However, this can be explained by the fact that since judges from the service cadre have a shorter tenure, there is greater turnover and therefore more judges from the service cadre are appointed to fill the vacancies.

In Kumar (2016), we saw that only three out of the hundred senior-most judges were from the service cadre. While seniority is calculated on a given date, the KHOJ Database also contains details regarding whether a judge was appointed as a chief justice at some point in their career or whether they made it to the Supreme Court of India. This is usually an indication of the seniority of such a judge as the chief justice of a high court is its senior-most judge³ and seniority is an important factor in the appointment of judges to the Supreme Court.⁴

As Table 5 indicates, the difference is stark.

Table 5: Number of Chief Justices of High Courts and Judges of the Supreme Court of India by Cadre*

Cadre	Supreme Court of India	Chief Justice
Bar	62	153
Service	2	7
Total	64	160

* This table does not include five judges who were directly elevated from the Bar to the Supreme Court during this time period.

Source: KHOJ Database.

These numbers illustrate why the collegium has become a self-selecting clique—judges appointed from the Bar, by and large, choose fellow judges from the Bar. While a significant number of judges do get appointed from the service cadre, this larger KHOJ data set confirms the earlier findings that they are appointed too late in their careers, and for too short a period of time to be able to influence future appointments to the judiciary.

Conclusions

While the KHOJ Database provides us valuable insights into understanding the lack of diversity in high courts in India, there is still much more work to be done to fully understand the larger picture as far as the rest of the judiciary is concerned. Nonetheless, it highlights the clear pattern of appointments to the high courts, which results in appointees from the Bar enjoying longer tenures and more influence than those from the service cadre.

NOTES

- 1 For methodology, see <https://justicehub-in.github.io/know-your-high-court-judges/docs/KHOJ%20Final%20Booklet.pdf>, viewed on 11 October 2021.
- 2 More than half the judges for whom cadre details were missing were from the Punjab and Haryana High Court and the Patna High Court. There were minor transcription errors in some of the data and which have been corrected for the purposes of this article.
- 3 See Memorandum of Procedure of Appointment of High Court Judges, viewed on 11 October 2022, <https://doj.gov.in/memorandum-of-procedure-of-appointment-of-high-court-judges/>.
- 4 See Note 3.

REFERENCES

- KHOJ Database: <https://justicehub.in/initiatives/khoj-india>, viewed on 11 October 2021.
- Kumar, Alok Prasanna (2016): "Absence of Diversity in the Higher Judiciary," *Economic & Political Weekly*, Vol 51, No 8, pp 10–11.