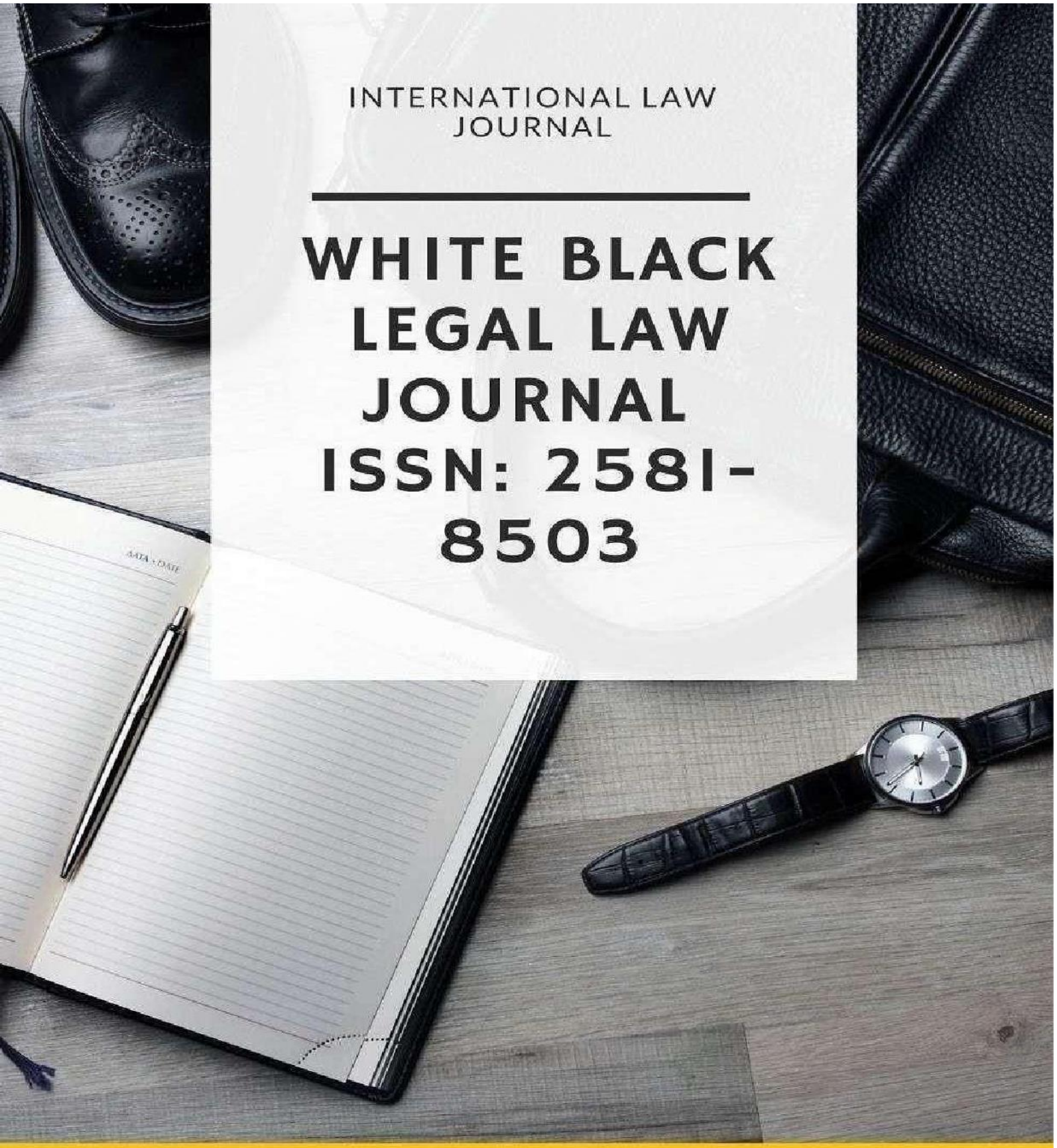


INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

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A CRITICAL STUDY ON THE REPRESENTATION OF WOMEN IN THE JUDICIARY

AUTHORED BY - P. DEENATHAYALAN

ABSTRACT

The representation of women in the judiciary is central to the legitimacy, inclusiveness and credibility of a constitutional democracy. Although women constitute nearly half of India's population, they remain markedly under-represented on the bench, particularly in the higher judiciary. Women account for roughly 38 per cent of judges in the district judiciary but only about 14 per cent of High Court judges, and the Supreme Court, which has had only twelve women judges since 1950, has two women among its sitting judges as of mid-2026. This pattern, often described as a glass ceiling, raises questions of equality, merit, institutional design and access to justice.

This study critically examines the representation of women in the Indian judiciary through the perspective of feminist jurisprudence. It analyses Articles 14, 15, 16, 124, 217 and 233–235 of the Constitution, the Collegium system of appointments, state judicial service rules including horizontal reservation in the subordinate judiciary, relevant judicial decisions and international instruments including CEDAW. It distinguishes descriptive from substantive representation, evaluates the evidence on whether women judges alter judicial outcomes, and examines structural barriers such as the narrow Bar-to-Bench pipeline, opacity in selection, seniority norms, care responsibilities and intersectional exclusion.

The study finds that the growing number of women in the subordinate judiciary has not translated into proportionate representation in constitutional courts, and that the absence of transparent, diversity-sensitive criteria for higher judicial appointments is a principal reason. It argues that women's representation should be understood as a question of institutional legitimacy and equal citizenship, not as a claim that women judges decide differently. It recommends published selection criteria and data, publicly reported diversity targets for Collegium recommendations, stronger pipelines from the Bar and the subordinate judiciary, gender-responsive workplace policies and continued judicial education on gender, while safeguarding judicial independence and merit.

KEYWORDS
Women in Judiciary, Judicial Diversity, Feminist Jurisprudence, Gender Justice, Collegium System, Glass Ceiling, Substantive Equality, Representation, Judicial Appointments, Affirmative Action.

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2	**Special Reference No. 1 of 1998**	(1998) 7 SCC 739	Composition and procedure of the Collegium
3	**Supreme Court Advocates-on-Record Association v. Union of India**	(2016) 5 SCC 1	NJAC struck down; judicial independence in appointments
4	**Government of Andhra Pradesh v. P.B. Vijayakumar**	(1995) 4 SCC 520	Article 15(3); reservation for women in public services
5	**Indra Sawhney v. Union of India**	1992 Supp (3) SCC 217	Horizontal and vertical reservations
6	**Anuj Garg v. Hotel Association of India**	(2008) 3 SCC 1	Gender stereotypes and protective discrimination
7	**Charu Khurana v. Union of India**	(2015) 1 SCC 192	Arbitrary gender discrimination in professional access
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11	**Aparna Bhat v. State of Madhya Pradesh**	2021 SCC OnLine SC 230	Gender-sensitive judicial reasoning
12	**Indian Young Lawyers Association v. State of Kerala**	(2019) 11 SCC 1	Women judges and divergent views on the bench
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CHAPTER – I INTRODUCTION

1. INTRODUCTION

"A JUDICIARY THAT DOES NOT REFLECT THE PEOPLE IT SERVES CANNOT FULLY EARN THEIR TRUST."

A court draws its authority not only from the correctness of its decisions but from public confidence that it belongs to everyone it serves. When the bench is drawn overwhelmingly from one section of society, the justice it delivers may be fair in form yet remain distant from the lived experience of those who are absent from it. Women constitute nearly half of India's population, yet they remain a small minority among those who decide the country's most consequential disputes.

The pattern across the Indian judiciary is sharply uneven. Women now account for nearly 38 per cent of judges in district and subordinate courts, but only about 14 per cent of High Court judges. The Supreme Court has had only twelve women judges since 1950, has never had more than four sitting at one time, and has two women among its sitting judges as of mid-2026. [1] Justice B.V. Nagarathna is expected to become India's first woman Chief Justice in September 2027 if the seniority convention is followed, although her tenure in that office would last only about five weeks.[2]

The Constitution of India guarantees equality and permits special provisions for women, yet no constitutional or statutory rule reserves seats for women in the High Courts or the Supreme Court. Appointments to these courts are made through the Collegium system, whose deliberations are not public and whose criteria do not expressly address gender diversity. The representation of women in the judiciary is therefore a question about institutional design as much as about individual merit.

This study critically examines the representation of women in the Indian judiciary through the perspective of feminist jurisprudence. It analyses the constitutional and institutional framework, the available data across the three tiers of courts, the barriers women face, and the debate on whether a more representative bench changes judicial outcomes. It concludes with recommendations aimed at strengthening women's representation while preserving judicial independence and merit.

1.1 Background of the Study

Women entered the Indian legal profession late and in small numbers. The Legal Practitioners (Women) Act, 1923 removed the bar on women enrolling as legal practitioners, and the first women judges appeared in the judicial services over the following decades. Justice Anna Chandy became India's first woman judge in 1937 in the erstwhile Travancore State and, in 1959, the country's first woman High Court judge when she joined the Kerala High Court.[3]

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[1]Bhavini Mishra, 'In historic first, 4 women now head high courts, but gender gap persists' *Business Standard* (5 June 2026). Advay Vora, '14 percent of sitting judges in High Courts are women' *Supreme Court Observer* (17 July 2026). Earlier counts of eleven women judges pre-date the appointment of Justice V. Mohana in June 2026.

[2]'India to get first woman CJI in Justice Nagarathna' *Deccan Chronicle*, reporting that she is due to assume office on or about 23 September 2027, with her tenure as a Supreme Court judge ending on 29 October 2027.

Justice M. Fathima Beevi became the first woman judge of the Supreme Court in 1989, and Justice Leila Seth became the first woman Chief Justice of a High Court in 1991.

Numbers have grown since then, but slowly and unevenly. According to data placed before Parliament, 116 of 781 working High Court judges were women in February 2026 (14.85 per cent), while the Supreme Court Observer counted 111 of 781 as of 1 July 2026, about 14 per cent, a share it found unchanged since its August 2024 study.[4] Several High Courts, five according to one July 2026 count, have no woman judge at all. In contrast, women hold roughly
38 per cent of posts in the district judiciary, where recruitment is through competitive examinations and several states apply horizontal reservation.

Recent years have also produced symbolic milestones. On 5 June 2026, four women served simultaneously as Chief Justices of High Courts for the first time, and in the same week Justice V. Mohana, a senior advocate, became the second woman currently sitting on the Supreme Court.[5] Justice Nagarathna joined the Supreme Court Collegium in May 2025. Yet the high-water mark of women's presence on the apex court remains 2021, when four women judges sat together. The gap between symbolic milestones and sustained numerical representation is a central concern of this study.

The Constitution is silent on the gender composition of the higher judiciary, and the Collegium system of appointment has no published diversity criteria. The background therefore presents a paradox: a legal order committed to equality, in which the institution charged with enforcing equality is itself markedly unequal in composition. Understanding this paradox requires attention to law, institutional practice and the social conditions that shape who enters and who rises within the judiciary.

1.2 Significance of the Study

The study is significant first because judicial legitimacy depends in part on inclusiveness. Courts exercise public power over everyone, and a bench that reflects the society it serves is more likely to command trust. For women litigants, complainants and witnesses, the presence of women on the bench can reduce the sense of exclusion that discourages recourse to courts. An analysis of the National Judicial Data Grid by DAKSH in 2018 found that only about 10 per cent of cases pending before subordinate courts had been filed by women, a figure that invites inquiry into barriers to access.[6]

Secondly, the study is timely. The sanctioned strength of the Supreme Court has been raised from 34 to 38 judges by ordinance, creating vacancies that make the demand for women's appointments immediate. Justice Nagarathna's anticipated elevation as Chief Justice in 2027 and her membership of the Collegium have drawn fresh attention to how appointments are

[3]Bhavini Mishra, 'In historic first, 4 women now head high courts, but gender gap persists' *Business Standard* (5 June 2026).

[4]Advay Vora, '14 percent of sitting judges in High Courts are women' *Supreme Court Observer* (17 July 2026); 'Women Judges In High Courts' *LiveLaw* (February 2026), reporting data released by the Ministry of Law and Justice on 6 February 2026.

[5]Bhavini Mishra, 'In historic first, 4 women now head high courts, but gender gap persists' *Business Standard* (5 June 2026).

[6]DAKSH, 'Women and the Subordinate Courts' (analysis of National Judicial Data Grid data as on 11 May 2018).

made. Policy debate on reservation, transparency and Collegium reform makes a careful doctrinal and feminist analysis necessary.

Thirdly, the study is significant for feminist jurisprudence. Feminist legal analysis has often examined what courts decide about women; it has less often examined who decides. By asking whether the Indian judiciary offers women substantive equality as members of the institution, and not merely as litigants, the study extends the feminist critique of law to the institution that applies it.

Finally, the study seeks to contribute balanced recommendations. It does not assume that women judges decide differently, nor that numerical targets can substitute for competence. It argues instead that fair, transparent and diversity-conscious processes are consistent with merit and strengthen the legitimacy of the judiciary.

1.3 Review of Literature

The review of literature examines books, research articles, empirical reports and judicial decisions relevant to representation, gender and the judiciary. It identifies the issues already examined and the areas requiring further analysis in the Indian context.

Books and Legal Literature

1. Hanna F. Pitkin – The Concept of Representation

Pitkin's classic work distinguishes formal, descriptive, symbolic and substantive representation.[7] Although it concerns legislatures, its distinctions are widely used to analyse courts. Descriptive representation asks whether the bench resembles the population, while substantive representation asks whether the interests and perspectives of the represented are served. The present study applies these categories while recognising that judges do not act as delegates of any group.

2. Carol Gilligan – In a Different Voice

Gilligan argued that women may approach moral questions through an ethic of care and relationship rather than abstract rights.[8] The work has influenced arguments that women judges bring a distinct perspective, but it has also been criticised for essentialism. The study treats it as a contested theoretical resource and not as a premise.

3. Catharine A. MacKinnon – Toward a Feminist Theory of the State

MacKinnon argues that the law's claim to neutrality often embodies a male standpoint.[9] This critique is relevant to the language of merit and objectivity in judicial appointments, which may appear neutral while reflecting the career patterns of men.

4. Ratna Kapur and Brenda Cossman – Subversive Sites

This work examines feminist engagements with Indian law and shows that law can be both an instrument of subordination and a resource for challenging it.[10] It provides the Indian context within which questions of judicial representation must be placed.

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[7]Hanna F. Pitkin, *The Concept of Representation* (University of California Press 1967).

[8]Carol Gilligan, *In a Different Voice* (Harvard University Press 1982).

[9]Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

[10]Ratna Kapur and Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (Sage 1996).

5. Erika Rackley – Women, Judging and the Judiciary

Rackley moves the debate from the idea of difference to the idea of diversity, arguing that the case for gender diversity on the bench does not depend on proving that women judge differently.[11] This approach strongly informs the argument of this study.

Journal and Research Literature

1. Research on Women Judges and Judicial Outcomes

Empirical research in the United States has produced mixed findings. Peresie found that the presence of a woman judge on an appellate panel was associated with different outcomes in sex discrimination and harassment cases, including an effect on male colleagues.[12] Boyd, Epstein and Martin, studying many areas of law, found that the effect of a judge's sex was largely confined to sex discrimination cases and to panel effects.[13] Hunter has argued that judicial diversity matters for legitimacy and for the range of perspectives available, even where differences in outcomes are contingent.[14]

2. Research on Critical Mass and Institutional Culture

Kanter's work on numerical minorities in organisations suggests that when a group is very small its members are treated as tokens and subjected to heightened visibility and pressure to conform.[15] This literature is relevant to the Supreme Court and to High Courts with only one or two women on the bench.

3. Indian Empirical Reports

The India Justice Report, the Centre for Law and Policy Research initiative on the gender gap in the higher judiciary, the Supreme Court's State of the Judiciary Report 2023 and the Supreme Court Observer's court data provide the principal empirical basis for the Indian discussion. [16] They consistently report a steep decline in women's share from the subordinate courts to the High Courts.

Legal Literature and Judicial Decisions

1. Supreme Court Advocates-on-Record Association v. Union of India (1993) and (2016) In the Second Judges Case the Supreme Court gave primacy to the judiciary in appointments to the higher courts, and in the 2016 decision it struck down the National Judicial Appointments Commission.[17] These decisions are relevant because they define who controls the pathway to the higher judiciary and therefore who can address its composition.

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[11]Erika Rackley, *Women, Judging and the Judiciary: From Difference to Diversity* (Routledge 2013).

[12]Jennifer L. Peresie, 'Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts' (2005) 114 *Yale Law Journal* 1759.

[13]Christina L. Boyd, Lee Epstein and Andrew D. Martin, 'Untangling the Causal Effects of Sex on Judging' (2010) 54(2) *American Journal of Political Science* 389.

[14]Rosemary Hunter, 'More than Just a Different Face? Judicial Diversity and Decision-making' (2015) 68 *Current Legal Problems* 119.

[15]Rosabeth Moss Kanter, *Men and Women of the Corporation* (Basic Books 1977).

[16]*India Justice Report 2025: Ranking States on Police, Judiciary, Prisons and Legal Aid*; Centre for Law and Policy Research, 'Equal Justice: Addressing the Gender Gap in the Higher Judiciary in India'; Supreme Court of India, Centre for Research and Planning, *State of the Judiciary Report 2023*.

[17]*Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441; *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

2. Anuj Garg v. Hotel Association of India (2008)
The Supreme Court held that protective discrimination resting on gender stereotypes violates the equality guarantee.[18] The decision supports the argument that assumptions about women's roles cannot justify their exclusion from public institutions.

3. Aparna Bhat v. State of Madhya Pradesh (2021)
The Court set out guidelines directing judges to avoid stereotyped reasoning in gender-based violence cases and to use gender-sensitive language.[19] It is significant because it shows how gender sensitivity can be institutionalised without depending on the sex of the individual judge.

The literature reviewed shows consensus that women are under-represented in the higher judiciary and disagreement about what follows from that fact. What remains less examined in the Indian context is an integrated analysis of the constitutional framework, the appointment process, the data and the feminist critique.

1.4 Research Gap
Existing literature addresses women's representation from several angles. Empirical reports document numbers; comparative scholarship debates whether women judges decide differently; constitutional scholarship debates the Collegium and the NJAC; and feminist writing critiques judicial reasoning in cases concerning women. These strands are not always brought together in a single analysis of the Indian judiciary.

There is also a tendency in public debate to justify women's representation only by claiming that women judges will deliver more sensitive decisions. This claim is empirically contested and may, if relied on exclusively, weaken the case for representation. A more robust argument grounded in equality, legitimacy and access to justice requires fuller development.

Further, much of the discussion treats women as a single category. Questions of caste, class, religion, region and disability, and the almost complete absence of women from marginalised communities in the higher judiciary, require an intersectional examination.

Therefore, the present study seeks to address the gap by examining the representation of women in the judiciary through a combined constitutional, institutional and feminist perspective. It focuses on the relationship between the appointment process, available data, structural barriers, the debate on affirmative action and the substantive meaning of representation.

1.5 Research Objectives
The main objectives of the study are:

1. To examine the meaning and forms of representation of women in the judiciary and its historical development in India.

2. To analyse the relevance of feminist jurisprudence to the question of women's representation on the bench.

3. To examine the constitutional provisions, appointment mechanisms, service rules and international norms relevant to the representation of women in the judiciary.

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[18] *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.
[19] *Aparna Bhat v. State of Madhya Pradesh*, 2021 SCC OnLine SC 230.

4. To assess the current position of women in the Supreme Court, the High Courts and the subordinate judiciary, and to identify the structural barriers to their advancement.

5. To suggest legal, institutional and policy measures for improving the representation of women in the judiciary while safeguarding judicial independence and merit.

1.6 Research Questions

The study seeks to answer the following questions:

1. What does representation of women in the judiciary mean, and why does it matter for a constitutional democracy?

2. How can feminist jurisprudence help explain and evaluate the under-representation of women in the higher judiciary?

3. What constitutional, statutory and institutional provisions govern the appointment of women judges in India?

4. What does the available data show about the position of women across the tiers of the judiciary, and what barriers explain the pattern?

5. What reforms may improve women's representation without compromising judicial independence or merit?

1.7 Research Methodology

The present study follows the doctrinal method of legal research. Doctrinal research involves the systematic study of constitutional provisions, statutes, judicial decisions and other legal materials to determine the legal position on a subject. The method suits this study because it examines how constitutional guarantees and appointment processes apply to the composition of the judiciary.

The primary sources include the Constitution of India, relevant judicial decisions, state judicial service rules as reported in secondary sources and international instruments. The secondary sources include books and articles on feminist jurisprudence and judicial diversity, empirical reports such as the India Justice Report, research by the Centre for Law and Policy Research, court data compiled by the Supreme Court Observer, government data reported in Parliament and credible news reports.

Statistical figures are reported with the date and source to which they relate, because the composition of courts changes with appointments and retirements. The research is analytical and does not claim to be based on an empirical survey or interviews conducted by the author.

1.8 Limitations of the Study

The study has certain limitations:

1. The study focuses on the representation of women in the Indian judiciary and does not examine the position of other under-represented groups except where they intersect with gender.

2. It relies on published data. Figures differ between sources and dates, and the numbers cited reflect the position reported at the time of each source, mainly between February and July 2026.

3. The study is primarily doctrinal and does not claim to represent the personal experiences of all women judges or aspiring judges.

4. Collegium deliberations are not public, so the reasons for particular selections and non-selections cannot be assessed directly.

5. State judicial service rules vary and change frequently; the discussion of reservation is illustrative and not an exhaustive survey of every state.

6. Comparative references to other jurisdictions are limited to what is necessary to place the Indian position in context.

7. The study does not claim that women judges decide cases differently from men; the evidence on this question is discussed critically, not assumed.

1.9 Scheme of the Study

The present study is organised into seven chapters. Each chapter examines a specific aspect of the representation of women in the judiciary.

Chapter I – Introduction explains the background and significance of the study. It includes the review of literature, research gap, research objectives, research questions, research methodology, limitations and scheme of the study.

Chapter II – Representation of Women in the Judiciary: Concept and Historical Evolution explains the meaning of judicial representation, distinguishes descriptive from substantive representation, traces the history of women in the Indian judiciary and explains why representation matters.

Chapter III – Feminist Jurisprudence and Judicial Representation discusses the meaning and development of feminist jurisprudence, its major theories, its critique of judging and its relationship with gender justice and women's representation.

Chapter IV – Legal and Institutional Framework examines the constitutional provisions, the Collegium and NJAC, service rules and reservation, judicial pronouncements on gender equality and the international legal framework.

Chapter V – Women in the Indian Judiciary: Status and Barriers presents the data for the Supreme Court, High Courts and subordinate judiciary, examines the Bar as a pipeline and analyses the structural barriers women face.

Chapter VI – Critical Analysis critically examines whether women judges change outcomes, the opacity of appointments, the merit and reservation debates, tokenism and intersectional exclusion, and identifies legal and institutional gaps.

Chapter VII – Findings, Suggestions and Conclusion presents the major findings and offers recommendations for strengthening the representation of women in the judiciary.

CHAPTER – II

REPRESENTATION OF WOMEN IN THE JUDICIARY: CONCEPT AND HISTORICAL EVOLUTION

2.1 Meaning of Representation in the Judiciary

Representation in the judiciary has several dimensions. The first is numerical presence: the proportion of judges who are women at each level of the court system. The second is presence in leadership, including Chief Justices of High Courts, the Chief Justice of India and membership of the Collegium. The third is the range of backgrounds that women judges bring, which includes region, caste, class, religion and professional route.

Representation in a court differs from representation in a legislature. A legislator is elected to speak for constituents; a judge is bound to decide impartially under the law and does not act as the delegate of any group. The case for diversity on the bench therefore rests not on the idea that women judges speak for women, but on legitimacy, equal opportunity and the quality of deliberation.

It follows that representation should be assessed at three levels: whether women have fair access to judicial office, whether they can advance to senior positions on equal terms, and whether the institution's practices and culture treat them as full members.

2.2 Descriptive and Substantive Representation

Pitkin's distinction between descriptive and substantive representation is helpful. Descriptive representation exists when the composition of an institution resembles that of the population. Substantive representation exists when the institution acts in ways that advance the interests and perspectives of those it serves. Symbolic representation concerns the meaning that people attach to who sits on the bench.

A common error is to assume that descriptive representation produces substantive representation automatically. Women judges do not hold uniform views, and a male judge may deliver a strongly gender-sensitive judgment, as the guidelines in *Aparna Bhat* illustrate. Conversely, the absence of women from the bench is a deficiency in descriptive and symbolic representation irrespective of how any individual decides cases.

The concept of critical mass is relevant here. Organisational research suggests that members of a small minority are often treated as tokens and may feel pressure to conform, while larger proportions allow individuals to act without being seen as representatives of a group. A figure of about 30 per cent is commonly invoked, and in India advocates have proposed that High Courts should reach at least that proportion of women judges.[20]

2.3 Historical Evolution of Women in the Indian Judiciary

The entry of women into the Indian judiciary followed their entry into the legal profession. The Legal Practitioners (Women) Act, 1923 permitted women to be enrolled as legal practitioners.

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[20]Centre for Law and Policy Research, 'How Many Women Advocates are Practicing in our Higher Courts?' (blog, 2026), proposing a minimum of 30 per cent women judges in all High Courts.

The first women judges were appointed in the 1930s and 1950s, and Justice Anna Chandy's appointment to the Kerala High Court in 1959 was a landmark.

For decades afterwards, women remained very few on the higher benches. Justice M. Fathima Beevi joined the Supreme Court in 1989, followed by Justice Sujata V. Manohar in 1994, Justice Ruma Pal in 2000, Justice Gyan Sudha Misra in 2010, Justice Ranjana Desai in 2011 and Justice R. Banumathi in 2014. In 2018 Justice Indu Malhotra was elevated directly from the Bar and Justice Indira Banerjee from the High Court.

In August 2021 the Collegium recommended nine names including three women, namely Justices Hima Kohli, B.V. Nagarathna and Bela M. Trivedi, and for a time four women sat together on the Supreme Court. After retirements, Justice Nagarathna was for almost a year the only woman on the Court until Justice V. Mohana was appointed in June 2026. In all, the Supreme Court has had only twelve women judges since 1950.

The historical trajectory thus shows incremental progress without a sustained upward trend at the apex of the system. Gains have been concentrated in the subordinate judiciary, where recruitment is competitive and rule-based, and have been slower where appointment depends on discretionary recommendation.

2.4 Pioneering Women Judges

Several pioneers deserve mention. Justice Anna Chandy was the first woman judge in India and the first woman High Court judge. Justice M. Fathima Beevi was the first woman Supreme Court judge. Justice Leila Seth became the first woman Chief Justice of a High Court in 1991. Justice Indu Malhotra was the first woman elevated directly from the Bar to the Supreme Court, and Justice Mohana is the second.[21]

Women have since led a growing number of High Courts. As of 5 June 2026, Justices Sunita Agarwal (Gujarat), Revati Mohite Dere (Meghalaya), Lisa Gill (Andhra Pradesh) and Meenakshi Madan Rai (Patna) were Chief Justices at the same time, the first occasion on which four women led High Courts together. Justice Rai's tenure at Patna was short, lasting 36 days according to a published list of women Chief Justices.[22]

These achievements matter as symbols and as evidence that women can discharge the highest judicial responsibilities. They also show how slowly the numbers have moved: a first in a given court is often decades late.

2.5 Why Representation Matters

The case for women's representation rests on several grounds. The first is legitimacy: a public institution that excludes half the population on the basis of sex, even indirectly, risks losing public confidence. The second is equality of opportunity: if capable women are not reaching the higher judiciary in proportion to their numbers in the profession, then barriers rather than merit explain the disparity.

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[21]Bhavini Mishra, 'In historic first, 4 women now head high courts, but gender gap persists' *Business Standard* (5 June 2026).

[22]'List of female chief justices in India' (Wikipedia), noting 21 women Chief Justices across 15 High Courts up to 12 July 2026.

The third ground is access to justice. Women litigants and survivors of violence may be more willing to approach courts that include women, and women judges may reduce the sense of alienation in the courtroom, although this effect has to be studied rather than assumed. The fourth ground is institutional: women in leadership roles, including Chief Justices and Collegium members, influence administration, appointments and workplace culture.

The fifth ground is the quality of deliberation. Diverse benches bring a wider range of experience to the interpretation of law. This ground should be stated modestly, since the evidence of systematic differences in outcomes is mixed, as discussed in Chapter VI.

CHAPTER – III

FEMINIST JURISPRUDENCE AND JUDICIAL REPRESENTATION

3.1 Meaning of Feminist Jurisprudence

Feminist jurisprudence is an approach to law that examines whether legal systems protect women's rights and provide genuine equality. It questions whether laws and institutions that appear neutral may still reflect and perpetuate the disadvantages experienced by women. It focuses on power, discrimination, bodily autonomy and women's lived experiences.

It distinguishes formal equality, under which everyone receives the same treatment, from substantive equality, which asks whether people can in fact enjoy their rights equally. Applied to the judiciary, feminist jurisprudence asks not only whether courts decide cases involving women fairly, but whether women have equal access to judicial office and equal standing within the institution.

3.2 Development of Feminist Jurisprudence

Feminist jurisprudence developed through the struggle for women's equal rights in education, employment, property and political participation. It initially focused on removing laws that expressly discriminated against women. Scholars later recognised that equal treatment alone might not remove entrenched disadvantages, and attention shifted to patriarchy, social power, sexuality and women's actual experiences.

Different approaches emerged, including liberal, radical, cultural, postmodern and intersectional feminism. In India, decisions such as *Vishaka v. State of Rajasthan* and *Joseph Shine v. Union of India* drew on equality, dignity and autonomy.[23] The feminist critique has more recently extended to institutions, including questions of who sits in judgment.

3.3 Theories of Feminist Jurisprudence

Feminist jurisprudence includes several theories that explain gender inequality from different perspectives. Each offers a distinct way of understanding why women are under-represented on the bench and what should be done.

[23] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241; *Joseph Shine v. Union of India,* (2019) 3 SCC 39.

3.3.1 Liberal Feminism

Liberal feminism emphasises equal rights, individual freedom and equal opportunity. It opposes laws and practices that exclude women and supports fair, merit-based access to public office. Applied to the judiciary, it asks whether eligibility rules, selection practices and career structures give women a genuinely equal chance, and it supports removing barriers rather than guaranteeing outcomes.

3.3.2 Radical Feminism

Radical feminism examines patriarchy and unequal power relationships. It argues that the supposed neutrality of institutions can conceal male dominance. In relation to the judiciary, it invites scrutiny of how concepts such as merit, seniority and suitability may reflect male patterns of career and sociability, and how informal networks influence selection.

3.3.3 Cultural Feminism

Cultural feminism emphasises women's experiences and the values associated with care, relationship and context. Some scholars use it to argue that women judges bring a distinct voice. The study treats this view with caution, since generalisations about how women judge risk stereotyping, but it accepts the point that law should take account of experiences that have historically been excluded from judicial reasoning.

3.3.4 Postmodern Feminism

Postmodern feminism questions the idea that all women share a single identity or perspective. It cautions against essentialism and shows how gender categories are socially constructed. This approach warns against assuming that a woman judge will represent women, and against expecting the few women on a bench to speak for all women.

3.3.5 Intersectional Feminism

Intersectional feminism, associated with Kimberlé Crenshaw, explains how gender interacts with caste, class, religion, disability and region.[24] In the Indian judiciary this approach reveals that the category of women judges is itself unrepresentative. The India Justice Report 2025 notes that only about 3 per cent of High Court judges belong to Scheduled Castes and Scheduled Tribes, and women from these and other marginalised communities are rare at the higher levels.[25]

3.4 Feminist Critique of Judging and Judicial Institutions

Feminist jurisprudence examines whether laws, judicial decisions and legal institutions adequately recognise women's experiences. It questions the assumption that adjudication is a neutral exercise performed by interchangeable decision-makers. The identity and experience of judges may shape what they notice, which stories they find credible and which harms they treat as serious, even when they sincerely apply the same legal rules.

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[24]Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex' [1989] *University of Chicago Legal Forum* 139.

[25]'Only 3% of HC judges are from SC/STs: India Justice Report 2025 highlights widening gap in representation' *The Week* (21 April 2025).

The feminist critique has two strands in relation to the judiciary. The first concerns the content of judicial reasoning, including the persistence of stereotypes about women's conduct, credibility and character. The Supreme Court has itself acknowledged this problem through its guidelines in *Aparna Bhat* and its 2023 Handbook on Combating Gender Stereotypes.[26]

The second strand concerns the composition and culture of the institution. A court that is overwhelmingly male at the top may find it harder to recognise structural barriers facing women lawyers and judges. A feminist critique therefore examines selection processes, working conditions, mentoring and informal norms as part of the judicial system.

A feminist approach does not suggest that women should be appointed regardless of ability, or that women judges must decide in favour of women litigants. It calls for a legal system that is open to all qualified persons, transparent about how it selects, and attentive to the experiences that have historically been excluded.

3.5 Feminist Jurisprudence and Gender Justice

Gender justice requires more than the absence of formal discrimination. It requires women to enjoy substantive equality, dignity and effective participation in public institutions. The Indian Constitution provides a foundation through Article 14, which guarantees equality before the law, Article 15, which prohibits discrimination on grounds including sex and permits special provisions for women, and Article 16, which guarantees equality of opportunity in public employment.

The Supreme Court has developed this foundation in several decisions. In *Anuj Garg* it rejected protective measures resting on stereotypes of women's vulnerability, and in *Secretary, Ministry of Defence v. Babita Puniya* it held that denying women permanent commission in the Army rested on stereotypes and failed the test of substantive equality.[27] The reasoning of *Babita Puniya* is instructive for the judiciary itself: if the exclusion of women from a public service rests on assumptions about their roles, the equality guarantee requires that those assumptions be examined.

3.6 Feminist Jurisprudence and Women's Representation in the Judiciary

Feminist jurisprudence supports women's representation in the judiciary on three principal grounds. First, equal citizenship: the right to hold public office on equal terms is part of substantive equality. Second, institutional legitimacy: an institution that applies equality norms to others should be able to demonstrate them in its own composition. Third, epistemic breadth: diverse experience improves the range of considerations available to judges.

These grounds do not depend on the claim that women judges decide differently. They are consistent with the caution urged by postmodern and intersectional feminism against essentialism, and they supply the theoretical foundation for assessing the Indian legal and institutional framework in the next chapter.

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[26] *Aparna Bhat v. State of Madhya Pradesh*, 2021 SCC OnLine SC 230; Supreme Court of India, *Handbook on Combating Gender Stereotypes* (2023).

[27] *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1; *Secretary, Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469.

CHAPTER IV

LEGAL AND INSTITUTIONAL FRAMEWORK FOR WOMEN'S REPRESENTATION IN THE JUDICIARY

4.1 Constitution of India

The Constitution does not mention the gender composition of the judiciary, but its guarantees of equality and its provisions on appointment together define the legal space within which women's representation must be considered. The equality provisions apply to public employment, and judicial office is public office. The appointment provisions determine who selects judges and on what basis.

4.1.1 Article 14 – Right to Equality

Article 14 guarantees equality before the law and the equal protection of the laws. Equal protection requires that persons in similar circumstances be treated alike and that arbitrary distinctions be avoided. In the context of judicial appointments, the principle requires that qualified women be considered on the same footing as men and that selection practices not operate arbitrarily to their disadvantage.

However, Article 14 does not by itself create an entitlement to appointment, and a statistical disparity does not automatically establish a constitutional violation. Its significance is that it supplies a standard for assessing whether processes are fair and rational.

4.1.2 Article 15 – Prohibition of Discrimination

Article 15(1) prohibits discrimination by the State on grounds including sex, and Article 15(3) permits the State to make special provisions for women and children. The Supreme Court has upheld reservation for women in state services under Article 15(3).[28] This is the principal constitutional basis for horizontal reservation of women in the subordinate judiciary in several states.

Article 15(3) is an enabling provision. It permits, but does not compel, special provisions for women, and no such provision has been made for the Supreme Court or the High Courts.

4.1.3 Article 16 – Equality of Opportunity in Public Employment

Article 16(1) guarantees equality of opportunity in matters of public employment, and Article 16(2) prohibits discrimination on grounds including sex. These provisions apply to recruitment to the judicial services of the states. They also support challenges to rules or practices that exclude or disadvantage women. In *Indra Sawhney v. Union of India* the Court distinguished horizontal reservations, such as those for women, which cut across vertical categories, from vertical reservations for backward classes.[29]

4.1.4 Articles 124, 217 and 233–235 – Appointment of Judges

Supreme Court judges are appointed by the President under Article 124(2) after consultation with judges of the Supreme Court and High Courts. High Court judges are appointed under Article 217(1) after consultation with the Chief Justice of India, the Governor and the Chief

[28] *Government of Andhra Pradesh v. P.B. Vijayakumar*, (1995) 4 SCC 520.

[29] *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

Justice of the High Court. Eligibility is prescribed in Articles 124(3) and 217(2), which refer to prior judicial service, practice as an advocate for a stated period and, for the Supreme Court, distinction as a jurist.

Appointment of district judges is made by the Governor in consultation with the High Court under Article 233. Article 234 provides for recruitment to the judicial service other than district judges in accordance with rules made by the Governor in consultation with the State Public Service Commission and the High Court, and Article 235 vests control over subordinate courts in the High Court. These provisions explain why recruitment to the subordinate judiciary is governed by state rules that may contain reservations, while appointment to the higher courts is not.

4.2 Appointment Mechanisms: Collegium and NJAC

4.2.1 The Collegium System

Through a series of decisions, the Supreme Court interpreted the consultation requirements to give primacy to the opinion of the Chief Justice of India and the Collegium of senior judges.[30] The Collegium for the Supreme Court consists of the Chief Justice and the four senior-most judges, and the High Court Collegium of the Chief Justice and the two senior-most judges of that court. The Government's Memorandum of Procedure for High Court appointments contemplates that due consideration be given to suitable candidates from, among others, women, but the final recommendation rests with the Collegium.

As a matter of practice, High Court judges are appointed from the Bar and the Bench in a ratio of roughly two to one.[31] Supreme Court appointments are usually made from High Court judges, with only a small number of judges elevated directly from the Bar. The effect is that the composition of the High Courts largely determines the composition of the Supreme Court.

4.2.2 The National Judicial Appointments Commission

The Constitution (Ninety-ninth Amendment) Act and the National Judicial Appointments Commission Act, 2014 would have replaced the Collegium with a commission. Notably, the commission was to include two eminent persons, one of whom was to be from among Scheduled Castes, Scheduled Tribes, Other Backward Classes, minorities or women. The Supreme Court struck down the amendment and the Act in 2016 as violating the basic structure through its impact on judicial independence.[32]

The episode is relevant for two reasons. It shows that the legislature considered formal diversity safeguards in appointments, and it shows that, after the decision, the judiciary alone controls the process and bears responsibility for its diversity outcomes. Whatever the merits of the decision on independence, it increases the importance of internal transparency and self-imposed diversity commitments.

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[30] *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441; Special Reference No. 1 of 1998, (1998) 7 SCC 739.

[31] Centre for Law and Policy Research, 'Equal Justice: Addressing the Gender Gap in the Higher Judiciary in India'.

[32] *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

4.2.3 Subordinate Judiciary and State Service Rules

Recruitment to the subordinate judiciary is through competitive examinations conducted by High Courts or Public Service Commissions under state judicial service rules. Several states provide horizontal reservation for women. The India Justice Report 2019 recorded states including Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Odisha, Rajasthan, Tamil Nadu, Telangana and Uttarakhand as having reservations for women in the subordinate judiciary, although counts vary between reports and rules change over time.[33]

4.3 Reservation and Affirmative Action

4.3.1 Horizontal Reservation in the Subordinate Judiciary

Horizontal reservation has coincided with a substantial rise of women in the subordinate judiciary. Women now account for about 38 per cent of judges in the district judiciary, with Goa near 70 per cent and several states above 50 per cent. Some states have achieved high proportions without reservation, which suggests that reservation is one among several factors, including the rising number of women law graduates and the attractiveness of fixed-hours judicial service.

4.3.2 Absence of Affirmative Action in the Higher Judiciary

No state or central rule provides for reservation or targets for women in the High Courts or the Supreme Court. The India Justice Report 2019 observed that, despite the drop in the share of women judges between the subordinate courts and the High Courts in every state, no state had adopted affirmative action for women judges in the High Court.[34] The Constitution does not mandate reservation in judicial appointments, and the Government has only urged High Courts to consider social diversity, including gender, in making recommendations.

4.4 Judicial Pronouncements on Gender Equality

Although the Supreme Court has not decided a case specifically on the gender composition of the judiciary, several decisions supply relevant principles. *Anuj Garg* and *Babita Puniya* reject stereotypes as justification for excluding women from public roles. *Charu Khurana v. Union of India* struck down a rule that discriminated against women in a professional association, emphasising that arbitrary exclusion offends the equality guarantee.[35] *Joseph Shine* characterised women as equal citizens whose dignity and autonomy must be respected, and *Justice K.S. Puttaswamy (Retd.) v. Union of India* recognised dignity as an integral constitutional value.[36]

On the content of judicial reasoning, *Aparna Bhat* and the 2023 Handbook on Combating Gender Stereotypes show the Court's acknowledgement that stereotypes affect adjudication. A consistent application of these principles would also examine the equal-access dimension of the judiciary's own composition and processes.

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[33] 'India Justice Report on the Judiciary: Average case pendency in subordinate courts is 5 years' *Bar & Bench*, reporting *India Justice Report 2019*.

[34] 'There Exist A Glass Ceiling For Women In Judiciary: India Justice Report' *LiveLaw* (7 November 2019).

[35] *Charu Khurana v. Union of India*, (2015) 1 SCC 192.

[36] *Joseph Shine v. Union of India*, (2019) 3 SCC 39; *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

4.5 International Legal Framework

4.5.1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW, which India ratified in 1993, requires states parties to eliminate discrimination against women in political and public life and to ensure women's equal opportunity to participate in public functions. The Committee's General Recommendation No. 23 on political and public life and General Recommendation No. 33 on women's access to justice address the participation of women in decision-making bodies, including judicial bodies, and call on states to take measures to ensure women's equal participation in the justice system.

4.5.2 Beijing Platform for Action and Sustainable Development Goals

The Beijing Declaration and Platform for Action (1995) called for equal participation of women in decision-making bodies. Sustainable Development Goal 5.5 aims at women's full and effective participation and equal opportunities for leadership at all levels of decision-making, and Goal 16.7 aims at responsive, inclusive, participatory and representative decision-making. The reports of the UN Special Rapporteur on the independence of judges and lawyers have also addressed gender and the judiciary.

4.5.3 Bangalore Principles and Comparative Practice

The Bangalore Principles of Judicial Conduct (2002) recognise equality as a core value of judicial conduct. Comparative practice shows a range of approaches. Section 174(2) of the Constitution of South Africa requires that the need for the judiciary to reflect broadly the racial and gender composition of the country be considered in appointments. The Rome Statute of the International Criminal Court requires states to take into account the need for a fair representation of female and male judges.[37] These examples show that diversity can be expressed as a consideration in appointments without displacing merit.

CHAPTER – V

WOMEN IN THE INDIAN JUDICIARY: STATUS AND BARRIERS

5.1 Women in the Supreme Court

The Supreme Court has had only twelve women judges since 1950, a small fraction of all those appointed. It has never had more than four women at one time, the high point being in 2021 when Justices Indira Banerjee, Hima Kohli, B.V. Nagarathna and Bela M. Trivedi sat together.[38] As of mid-2026, two women sit on the Court: Justice Nagarathna and Justice V. Mohana, the latter appointed directly from the Bar in June 2026 when the Court's strength was being expanded from 34 to 38 under an ordinance.[39]

The Court has elevated only a few judges directly from the Bar since 1950, and only two women, Justices Indu Malhotra and V. Mohana, have come by this route. Because the pool of

[37]Constitution of the Republic of South Africa 1996, s 174(2); Rome Statute of the International Criminal Court 1998, art 36(8)(a)(iii).

[38]Bhavini Mishra, 'In historic first, 4 women now head high courts, but gender gap persists' *Business Standard* (5 June 2026).

[39]Advay Vora, '14 percent of sitting judges in High Courts are women' *Supreme Court Observer* (17 July 2026).

High Court judges has few women, the Collegium's reliance on High Court elevation limits the supply of women candidates unless High Court appointments themselves become more diverse.

The anticipated elevation of Justice Nagarathna as Chief Justice of India in September 2027 would be a historic first, but her tenure would last only about five weeks. A single short tenure at the top does not substitute for sustained representation in the Court, and the absence of a woman Chief Justice for 75 years is itself a measure of the problem.

5.2 Women in the High Courts

As of 1 July 2026, women made up 111 of 781 sitting High Court judges, about 14 per cent, a proportion that the Supreme Court Observer found unchanged for two years.[40] Government data reported in February 2026 gave 116 women among 781 working judges, or 14.85 per cent. The difference reflects the date and method of counting, and both figures confirm that women are about one in seven High Court judges.

The distribution is highly uneven. The Punjab and Haryana High Court has the largest number of women judges, and women form about 29 per cent of its sitting strength. The Meghalaya High Court has about 25 per cent, and only seven High Courts have more than 20 per cent women. At the other end, seven High Courts have less than 10 per cent women and five, in the July 2026 count, have none. Large courts such as Allahabad, with seven women on a very large bench, show low proportions despite a significant absolute number.[41]

Since 2014, government data show that 170 women have been appointed as High Court judges, including 96 in the five years preceding June 2026.[42] The increase in appointments has not yet shifted the overall proportion much, which suggests that the rate of appointment of women must exceed the rate of exit to change the composition.

5.3 Women Chief Justices of High Courts

Until July 2026 there had been 21 women Chief Justices across 15 High Courts. On 5 June 2026, four women, Justices Sunita Agarwal, Revati Mohite Dere, Lisa Gill and Meenakshi Madan Rai, headed High Courts simultaneously for the first time. This marks real progress at the level of High Court leadership, but it should be read against the fact that a small number of women judges reach the seniority from which Chief Justices are selected.

Leadership matters beyond symbolism. Chief Justices and senior judges sit on High Court Collegia, which recommend names for elevation, and a Chief Justice may influence administration, roster allocation and workplace policy.

5.4 Women in the Subordinate Judiciary

The subordinate judiciary is where women have made the greatest advance. The India Justice Report 2025 reports that women constitute about 38 per cent of district judiciary, compared with about 14 per cent in High Courts, and records 7,852 women judges in district and

[40]Advay Vora, '14 percent of sitting judges in High Courts are women' *Supreme Court Observer* (17 July 2026).
[41]Advay Vora, '14 percent of sitting judges in High Courts are women' *Supreme Court Observer* (17 July 2026).
[42]Bhavini Mishra, 'In historic first, 4 women now head high courts, but gender gap persists' *Business Standard* (5 June 2026).

subordinate courts as of March 2025.[43] The Supreme Court's State of the Judiciary Report 2023 had put the figure at 36.3 per cent, with Goa the highest at about 70 per cent.[44]

The contrast between the subordinate courts and the High Courts has been described as a persistent glass ceiling. The India Justice Report noted that in almost every state the share of women falls sharply between the subordinate courts and the High Court, and in some states the High Court has no woman judge although women form a large part of the district judiciary. Gujarat has been noted as an exception in having a higher share in the High Court than in its subordinate courts in recent years.[45]

5.5 The Bar as a Pipeline

Since most High Court judges are drawn from the Bar, the number of women practising in High Courts affects the pool of candidates. Data compiled by the Centre for Law and Policy Research show that, in 2026, women were about 17.7 per cent of the Supreme Court Bar Association voter list (601 of 3,392 advocates) and, on average, about 25.9 per cent of the Bars of five High Courts studied.

The same data show that the representation of women on the bench is substantially lower than their share of the Bar, especially in courts such as Orissa and Kerala. The common response that there are not enough women lawyers is therefore only a partial explanation. The disparity between women's presence at the Bar and on the Bench points to selection and retention factors that deserve examination.

The Bar itself has barriers: irregular income in early years, patronage networks, limited mentoring and inadequate facilities and childcare. Women who leave practice or who do not take up litigation never enter the pool from which judges are chosen.

5.6 Intersectional Representation

The women who reach the higher judiciary are drawn disproportionately from a narrow social base. The India Justice Report 2025 found that only about 3 per cent of High Court judges are from Scheduled Castes and Scheduled Tribes, and the share of women from those communities is smaller still. Women from Other Backward Classes, religious minorities and disadvantaged regions are likewise rare.

An analysis that counts women without regard to social background therefore overstates the extent to which the bench reflects the diversity of women in India. Intersectional data on caste, religion and region are not routinely published, which is itself an obstacle to policy.

5.7 Structural Barriers

Several structural barriers explain the narrowing of women's representation at higher levels of the judiciary:

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[43] *India Justice Report 2025*; 'Diversity remains elusive in India's justice system' *BizzBuzz* (reporting March 2025 data).

[44] Supreme Court of India, Centre for Research and Planning, *State of the Judiciary Report 2023*, as reported in scholarly commentary.

[45] 'Only 3% of HC judges are from SC/STs: India Justice Report 2025 highlights widening gap in representation' *The Week* (21 April 2025).

1. Opaque selection: the Collegium does not publish criteria, the pool of candidates considered or the reasons for non-selection, so the role of gender in decisions cannot be evaluated.

2. Seniority and age norms: appointment and elevation often depend on seniority and on narrow age windows. Women who enter the subordinate judiciary later, or who take career breaks, may reach eligibility with insufficient remaining service.

3. Narrow Bar pipeline: the proportion of women at the senior Bar is low, and the rule of recruiting High Court judges from the Bar in a two-to-one ratio reduces opportunities for elevation from the subordinate judiciary, where women are most numerous.

4. Care responsibilities and mobility: the burden of domestic and care work, transfers and posting policies, and the absence of adequate maternity and childcare support affect women's career progression.

5. Workplace culture and infrastructure: inadequate facilities, informal networks and a lack of mentoring and role models may deter women from seeking higher office.

6. Absence of data and targets: without regular, published gender-disaggregated data and targets, progress cannot be tracked or institutions held accountable.

These barriers interact. For example, opaque selection combined with a thin pipeline allows a self-reinforcing pattern in which the lack of women in senior positions is cited as a reason for the lack of women candidates.

5.8 Summary of the Statistical Position

The table below summarises the position across the three tiers, using the dates and sources indicated.

Court level	**Women judges**	**Total / strength**	**Share**	**Source and date**
Supreme Court	2 sitting (12 since 1950)	Effective strength 37 (sanctioned 38)	About 5%	Business Standard, 5 June 2026; Supreme Court Observer, 17 July 2026
High Courts	111	781 sitting judges	About 14%	Supreme Court Observer, as of 1 July 2026
High Courts (Government data)	116	781 working strength	14.85%	Ministry of Law and Justice data, February 2026
District and subordinate courts	7,852	Not stated here	About 38%	India Justice Report 2025 (data up to March 2025)

The figures show a clear pattern: representation declines as one moves up the hierarchy. The decline cannot be explained by the number of women in the profession alone, and it coincides with the shift from rule-based recruitment to discretionary recommendation.

CHAPTER – VI

CRITICAL ANALYSIS OF WOMEN'S REPRESENTATION IN THE JUDICIARY

6.1 Does the Presence of Women Judges Change Outcomes?

A frequent argument for women's representation is that women judges decide cases differently. The evidence, mostly from the United States, is mixed. Some studies find that women judges are more likely to favour claimants in sex discrimination and harassment cases and that their presence on a panel may influence male colleagues; others find that the effect of sex is limited outside such cases once other factors are controlled.[46]

Systematic Indian evidence on this question is lacking, partly because there are few women on each bench and benches are rotated, and partly because judgments rarely allow outcomes to be attributed to the judge's sex. The critical position taken in this study is that the case for women's representation should not be made to depend on proving that women decide differently. If the argument depends on that claim, then it fails if the claim is disproved and it unwittingly reinforces stereotypes.

A stronger argument is that fair access to judicial office is a matter of equal citizenship and institutional legitimacy. That argument stands whether or not outcomes differ.

6.2 Judicial Decisions: Evidence from the Indian Context

Indian experience shows both the potential and limits of individual judges. In *Indian Young Lawyers Association v. State of Kerala* (the Sabarimala case), the only woman on the five-judge bench, Justice Indu Malhotra, dissented from the majority that struck down the restriction on women's entry.[47] The case shows that a woman judge does not necessarily adopt a position associated with women's claims, and it illustrates why it would be wrong to expect women judges to function as representatives of women.

Conversely, *Aparna Bhat*, which set out guidelines to prevent stereotyped reasoning in cases of sexual violence, was delivered by a bench of two male judges.[48] Gender-sensitive adjudication is therefore achievable through institutional commitment, training and guidelines, and not only through the presence of women. This is an argument for combining representation with judicial education and not for treating one as a substitute for the other.

The relationship between women's presence and substantive gender justice is therefore contingent and mediated by institutional culture, doctrine and the broader legal community.

6.3 Collegium Opacity and Gender

The most significant structural obstacle is the opacity of the appointment process. The Collegium publishes its resolutions but not the pool from which names were chosen or detailed reasons for passing over eligible candidates. Without such information, it is impossible to

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[46]Jennifer L. Peresie (2005) 114 *Yale Law Journal* 1759; Boyd, Epstein and Martin (2010) 54(2) *American Journal of Political Science* 389.

[47]*Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

[48]*Aparna Bhat v. State of Madhya Pradesh*, 2021 SCC OnLine SC 230.

determine whether women candidates are being considered, how they are assessed or whether they are being passed over.

The Memorandum of Procedure and Government communications contemplate attention to diversity, but these are not binding on the Collegium. The result is that diversity depends on the discretion of those making recommendations. Moves to increase transparency, such as the publication of reasons for recommendations and criteria, would assist both gender and other diversity goals without compromising independence, because they relate to process rather than to the content of judicial decisions.

6.4 The Merit Argument

Opponents of diversity measures argue that appointments should be solely on merit. This argument assumes that merit can be objectively measured and that the existing selection process is free of bias. Feminist critique questions both assumptions. Where women are already about 38 per cent of the district judiciary and one-quarter or more of the Bar in some High Courts, but only about 14 per cent of High Court judges, it is difficult to explain the disparity by merit alone.

Properly understood, merit and diversity are not opposed. A transparent selection process that recognises the value of diverse experience, and that enlarges the pool of candidates considered, can improve the quality of appointments. The relevant question is not whether to prefer women over more qualified men, but whether the process identifies and evaluates all qualified candidates fairly.

6.5 The Reservation Debate

Reservation for women in the higher judiciary has been proposed by some commentators, who suggest that around 30 per cent of seats be reserved. Arguments in favour point to the success of horizontal reservation in the subordinate judiciary and to the absence of voluntary progress in the higher courts.

Arguments against include concerns that reservation may conflict with judicial independence and selection on the basis of merit, that it may stigmatise women appointees, and that the constitutional framework for the higher judiciary does not contemplate it. A middle course is to adopt non-binding but publicly reported targets and diversity guidelines for the Collegium, combined with transparent reasons. This approach would respect the Collegium's discretion while creating accountability for outcomes.

It should also be noted that horizontal reservation in the subordinate judiciary has not by itself translated into representation in the higher courts, so a reform confined to entry-level recruitment is insufficient.

6.6 Critical Mass and Tokenism

In High Courts and the Supreme Court with very few women judges, individual women may be treated as tokens, expected to represent all women and subject to heightened scrutiny. Critical-mass theory suggests that representation of around 30 per cent is needed for women to act without being treated as representatives of their sex. By this standard, only a handful of High Courts approach adequate representation, and the Supreme Court is far from it.

The first woman Chief Justice of India with a tenure of only about five weeks risks being a symbolic achievement without lasting institutional effect. Tokenism may also operate through assignments: women judges may be disproportionately assigned to family or matrimonial benches, which constrains their jurisdictional range and visibility.

6.7 Workplace Culture and Institutional Support

Representation depends on retention and progression as well as appointment. Courts have been slow to adopt policies on childcare, flexible working, mentoring and facilities designed with women in mind. These matters are less visible than appointments but affect whether women choose to remain in practice and in judicial service and whether they seek elevation.

The existence of gender-sensitisation programmes for judges, including the Supreme Court's Handbook on Combating Gender Stereotypes, is a positive development. Its effectiveness depends on training, evaluation and the willingness of courts to examine their own practices.

6.8 Intersectional Gaps

The intersectional dimension remains largely unaddressed in policy debate. The focus on gender may leave unexamined the fact that women who reach the higher judiciary tend to come from privileged backgrounds. A representation strategy that does not address caste, class, religion, region and disability risks reproducing exclusion within the category of women. The collection and publication of intersectional data on judicial appointments is a necessary first step.

6.9 Identification of Legal and Institutional Gaps

The analysis identifies the following gaps. There is no constitutional or statutory duty to consider gender in appointments to the higher judiciary, and the Memorandum of Procedure is not binding on the Collegium. There are no published selection criteria or reasons that would permit assessment of diversity outcomes. There is no regular, gender- and caste-disaggregated data on appointments, eligibility pools and attrition. The relationship between the subordinate judiciary and the High Courts, including the limited route of elevation of district judges, restricts the pathway for the large cohort of women in the lower courts.

Closing these gaps does not require the abandonment of judicial independence. Most of them concern transparency, data and process, and can be addressed by the judiciary itself or by modest legislative or executive action.

CHAPTER – VII

FINDINGS, SUGGESTIONS AND CONCLUSION

7.1 Major Findings of the Study

The study finds that women are significantly under-represented in the higher judiciary relative to their share of the subordinate judiciary and the Bar. Women are about 38 per cent of the district judiciary, about 14 per cent of High Court judges and two of the sitting judges of the Supreme Court as of mid-2026, which has had twelve women judges since 1950.

The study also finds that the principal driver of the decline is the discretionary and opaque nature of appointments to the higher courts, rather than a shortage of qualified women alone. Horizontal reservation in the subordinate judiciary has been associated with substantial gains, but no equivalent mechanism or published target exists for the High Courts and the Supreme Court.

7.2 Findings Relating to Women's Representation and Dignity

The study finds that women's representation is a matter of equal citizenship and institutional legitimacy. Exclusion or marginalisation of qualified women from judicial office is inconsistent with the equal dignity that the Constitution guarantees, and it may reduce women's confidence in courts.

7.3 Findings Relating to Feminist Jurisprudence

Feminist jurisprudence supplies a framework for understanding the problem as structural, not individual. The study finds that the case for representation does not depend on essentialist claims that women judge differently and that intersectional analysis reveals deeper exclusion of women from marginalised communities.

7.4 Findings Relating to the Indian Legal Framework

The constitutional framework supports equality but does not require gender diversity in higher judicial appointments. Article 15(3) permits special provisions for women and has been used for subordinate judiciary recruitment, but not for the higher courts. The Collegium system lacks published diversity criteria, and the NJAC, which contained a diversity safeguard, was struck down. International norms, including CEDAW and the Sustainable Development Goals, encourage equal participation of women in decision-making bodies.

7.5 Suggestions and Recommendations

The following measures may improve the representation of women in the judiciary:

1. Transparent criteria and reasons: The Collegia should publish selection criteria, the pool considered and reasons for recommendations, with diversity indicators, consistent with confidentiality where necessary.

2. Published diversity targets: Adopt non-binding but publicly reported targets, for example progress towards at least 30 per cent women in each High Court, with annual reporting on performance.

3. Gender- and caste-disaggregated data: The Supreme Court and High Courts, together with the Department of Justice, should publish regular data on candidates, appointments, retirements and attrition by gender, caste, religion and region.

4. Widening the pipeline: Encourage more women to practise in High Courts through mentoring, fellowships, chambers support and fair briefing practices, and ensure that the subordinate judiciary is a recognised route for elevation.

5. Gender-responsive workplace policies: Provide childcare, flexible arrangements, facilities and transparent posting and transfer policies in courts.

6. Judicial education: Continue and evaluate training on gender stereotypes, including use of the Handbook on Combating Gender Stereotypes, for all judges and court staff.

7. Early identification of women candidates: Introduce succession planning so that capable women in the subordinate judiciary and at the Bar are identified early for elevation, taking account of age and seniority constraints.

8. Strengthen state rules: Encourage states to adopt or retain horizontal reservation in subordinate recruitment and to review barriers to retention and promotion.

7.6 Answers to the Research Questions

Representation of women in the judiciary means fair access to, advancement within and standing in the judicial institution, and it matters for legitimacy, equal opportunity and access to justice. Feminist jurisprudence explains the under-representation as a structural problem rooted in selection processes and social conditions, while cautioning against essentialism.

The Constitution guarantees equality and permits special provisions for women, but the appointment framework for the higher judiciary contains no gender-specific mechanism. The data show strong representation at district level and sharp decline at High Court and Supreme Court levels, explained by opaque selection, narrow pipelines, seniority norms and care responsibilities. Transparent criteria, published targets, data, pipeline measures and workplace reform can improve representation without compromising independence or merit.

7.7 Conclusion

The representation of women in the judiciary is a test of whether the constitutional promise of equality is realised in the institution that interprets it. Progress has been real: women now lead several High Courts, a woman is expected to become Chief Justice of India in 2027, and women are a substantial part of the district judiciary. Yet the numbers at the High Court and Supreme Court levels remain low, and have barely changed in recent years.

The study establishes that the under-representation is best understood as a structural and institutional problem, not as a question of individual merit. The decline in women's share between the subordinate and higher judiciary coincides with the move from rule-based recruitment to discretionary recommendation, and the absence of transparency and data makes it difficult to assess or correct.

The case for change does not rest on the claim that women judges decide differently. The evidence on that question is mixed, and the Indian experience shows that individual women judges hold a range of views and that gender-sensitive judgments can be delivered by men. The case rests on equal citizenship, institutional legitimacy and public confidence.

The study therefore recommends a balanced approach: transparent processes, published targets and data, a wider pipeline, supportive workplaces and continued judicial education, all within the framework of judicial independence and merit. Only when women are able to reach every level of the judiciary on equal terms, and women from all communities are included, can the courts claim to represent the people whose rights they protect.

7.8 Scope for Future Research

Future research may examine the reasons for non-recommendation of women candidates through confidential, structured studies; analyse the career paths of women judges from the subordinate judiciary; study the effect of horizontal reservation on retention and promotion; and compare India's experience with jurisdictions that have adopted diversity guidelines. Qualitative research on the experiences of women judges and lawyers, and intersectional data on caste, religion and region, would add valuable evidence.

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