

Gender justice, literally in justice

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By **Pratibha Jain & C Raj Kumar**

The Supreme Court is preparing to have three women judges for the first time in its 68-year history. Gol has notified the appointment of Madras High Court chief justice Indira Banerjee to the Supreme Court. R Banumathi and Indu Malhotra are the two others appointed in the Supreme Court. But they will still constitute an abysmal 10% of the total sanctioned strength of the apex court: 31. As for the total strength of women judges in Indian high courts, it's less than 12%. The Supreme Court has had illustrious judges who have provided enlightened leadership for promoting progressive jurisprudence, access to justice and the protection of the rule of law. Even when there are moments that may challenge the competence of some individual judges, the institution itself has withstood the test of time.

So, one can hope the skewed gender representation to be fixed if the following proposals are considered for the existing collegium system. The Chief Justice of India (CJI), along with all the judges of the Supreme Court, should be in a position to discuss, candidly, ideas about the need for moving towards seeking a larger representation of women in the higher judiciary. This is not about women wanting to be in higher judiciary. It is about what kind of society we want to create and how we will be able to achieve it in all walks of life and empowered institutions.

The collegium system should be able to discuss as to what the institutional goals the Supreme Court and high courts of India ought to have in the next 1-2, 3-5 and 6-8 years and beyond the next decade, for seeking greater representation. While quotas in any institution, including in the judiciary, have their limitations, it is important that institutional goals towards representation are set so that one can work towards achieving them.



Her Honour

Clearly, the existing 10% of women judges in the Supreme Court is not acceptable. This is tragic, whether we keep the total sanctioned strength as the basis, or if we recognise that there is actually only 8.5% women in the Supreme Court — since the number of existing judges is actually 25, and not the sanctioned strength of 31.

Consensus must be built within the collegium to develop an institutional advisory mechanism that will involve all existing women Supreme Court judges and women chief justices of high courts when appointments are made for both courts. Such tweaking of the procedure does not require any legal or constitutional amendment. All it requires is a degree of progressive leadership on the part of the CJI and fellow senior members of the Supreme Court who serve as members of the collegium.

Institutional leadership is central for reforms to be implemented — not just of the CJI but of all Supreme Court judges. In any case, each one of them, being a distinguished judge of the apex court, has a larger social responsibility to be sensitive about the lack of women's representation in the higher judiciary. Steps need to be taken, both in the short term and in the long term, which will require reforms in the legal education and profession, and various rules relating to designation. Here, we have a long way to go, and need to begin by transforming the existing institutional culture that barely recognises the problem, let alone is involved in seeking solutions to addressing it.

India has a very poor record of representation of women in all areas of leadership, exercise of power and taking up responsibilities. While the public and private sectors have their own share of challenges, the judiciary is one such institution that everybody looks up to when seeking inspiration. This is an opportune moment when fundamental internal institutional reforms relating to the appointment of judges be initiated, not so much by the law, Constitution or, for that matter, by any judgment, but by a deeper sense of self-realisation about the state of affairs within the judiciary.

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