



TIME TO DISCUSS THE PLACE OF WOMEN IN THE HIGHER JUDICIARY

- By **Nirmalkumar Mohandoss, Advocate**

With the appointment of six new Additional Judges, the Madras High Court has set a new record of having the second most number of sitting Women Judges. This appointment of Four Women Judges among the six, has brought the strength of Women Judges to 11. This is the highest among the High Courts, after the High Court of Bombay which also has 11 Women Judges. Immediately after the new appointments to the Madras High Court, several Newspapers and Journals carried articles celebrating this 'achievement' of the High Court. But 'is this something to celebrate or is it time to introspect the role of Women in judiciary?' is the questions that

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keeps lingering, particularly, because out of 73 working Judges at Bombay and 60 at Madras only 11 are Women in each of these High Courts.

Having reduced into writing, certain statistics in the Supreme Court and High Courts in India are really shocking. As I write this *article*, out of 619 sitting Judges of 22 High Courts (except the High Court at Hyderabad), only 71 are Women. This is only 11.47% of the total strength. It is startling to see that out of 22 High Courts (including benches) for which information is available, 7 High Courts don't have even one Woman sitting Judge. There is only one woman Judge in the Supreme Court among the 25 sitting Judges. Out of 2196 'past Judges' in 19 High Courts, only 77 are Women. This accounts to only 3.5% of the total numbers. The Supreme Court of India has had 160 former Judges of whom only 6 were Women. This accounts to only 3.75% of the total former Judges of the Supreme Court.

It is equally poignant to note that the Supreme Court has never seen a Woman Chief Justice. Thirteen High Courts share the distinction of not having had a Woman Chief Justice in their history. (Barring High Courts at Sikkim, Delhi and Hyderabad of which information is not available in this regard.) High Court of Kerala has had the highest number of Women Chief Justices with three out of forty two Chief Justices it has had. High Court of Jharkhand which is only 17 years old stands next with 2 former Women Chief Justices. Out of 483 former Chief Justices of High Courts only 10 were Women. This is only 2% of the total numbers. At present, High Courts of Madras, Delhi and Bombay are headed by Women Chief Justices. If seniority is the only criteria (as it is now) for appointment of the Chief Justice of India then the only sitting Woman Judge of the Supreme Court, namely Justice Banumathi, has very remote chances of becoming the CJI. Because by the time she retires (on 19.7.2020), she will be 5th in the line of seniority of Judges.

What factor is attributable to these poor numbers with respect to Women Judges in the High Courts and Supreme Court? This is not directly attributable to the process only of appointment because such appointment knows no gender. Merit is above everything else in the matter of such appointments of Constitutional importance. Personally, I would therefore, rather dismiss the argument that 'inequality' or 'bias' at the time of appointment of Judges is the reason behind having very few Women Judges in the High Courts and the Supreme Court.

These numbers should be equated with the numbers at various stages of legal career a person crosses before being appointed as a Judge of the High Court or Supreme Court. This begins with enrolment in the law School, enrolment with the Bar Council after law graduation, entry into Court practice and the sustenance of practicing Advocates in the long run. Several social aspects contribute to this poor numbers

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with respect to Women in the Higher Judiciary. Conversation with several Senior Advocates shows that legal education was never a preference for girl children in the past. Some Senior Women Advocates even recollect how they were few in numbers

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during their College days and how some of them enrolled in Law Schools only because they had their parents in the legal profession.

To some extent, the 'family structure' of the Indian society is also a contributing factor even as several Women are either forced to give up their profession 'to take care of the family' or are voluntarily making up minds considering the larger community burden they have to carry after their marriage. Some of them even pointed out that their female colleagues could not have the advantage of 'sacrificing' certain aspects of family life to continue Court practice. This is a direct reflection of gender roles the society has for long given men and Women. This also brings to our attention that mere encouragement of enrolment of Women in Law Schools or reservation for Women in legal education is not of much use unless 'gender roles' stop pushing Women into other avenues for law graduates, including well paid 'desk jobs' at the corporate sector as against 'Court practice'.

It is also equally true that 'Court practice' as such is not monetarily conducive during the initial days given the nature of hard Labour one has to put. Recently, the Madras High Court made scathing observations about the rising hooliganism in the legal profession due to access to 'buying' Law Degrees from several letter pad Law Colleges. The Court had asked several questions to the BCI which had given permissions to several such Institutions. The Court also observed that 800 Colleges were given permissions as against the required 175 Colleges attributing it to the number of brief-less Lawyers. Poor working conditions might also therefore, be one of the causes for a bad sex ratio in the judiciary.

However, I am of the firm conviction that the sex ratio in the Higher Judiciary is likely to increase in the future. This is based on certain positive indicators. Firstly, the enrolment of girl students in law courses does not seem to be a problem in recent times. Girls have outnumbered boys in terms of applications and admissions in Common Law Admission Test from 2008. This is irrespective of the reservation for Women in CLAT. Premier Law Schools in Tamil Nadu including the School Of Excellence in Law, TNNLS, School of Law - SASTRA have all shown similar trends in the recent years. It is now only a question of the number of female law graduates preferring 'practice in Courts' over corporate sector and other service exams.

Secondly, the numbers at Lower Judiciary is quite positive with respect to female Judges. The statistics collected from 18 Districts under the jurisdiction of the Principal Bench of the Madras High Court confirms such positivity. Impressively, in Chennai, out of 30 District/Senior Civil Judges from the City Civil Court 13 are Women Judges. Out of 11 Senior Civil judges from the Small Causes Court 6 are Women. Similarly, out of 30 sitting Magistrates 15 are Women. Since one-third of High Court Judges (by practice) are promoted from judicial service, these numbers from lower Judiciary is a positive sign of the number of Women likely to be elevated as High Court Judges. Partly thanks to Supreme Court which in 2002, enabled fresh Law Graduates to take up judicial service at junior level. This has

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enabled fresh Law Graduates of both genders to prefer 'judicial services' over other Civil services and corporate jobs. Handsome salary and allowances recently have also made junior judicial service 'preferable'.

Similarly, the State Governments should also amend their State Judicial Service Recruitment Rules so as to enable direct recruitment of young Advocates as Senior Civil Judges upon completing 7 years of practice. Though advocates with not less than 7 years of law practice are eligible for recruitment as District Judge under Article 233 the Constitution of India, several States have fixed a much higher 'minimum age' criteria for such recruitment. For instance, the Tamil Nadu State Judicial Service (cadre and Recruitment) Rules has fixed a minimum age of 35 as eligibility for recruitment as a Senior Civil Judge. However, on an average an Advocate completes 7 years of practice at the Bar at the age of 29. Reducing the minimum age for recruitment as senior Civil Judge can help young female Advocates from opting out of practice in favour of other services or corporate jobs. Governments should also rationalize Salary and Allowances of Lower Judiciary on terms similar to recommendations of the 7th Pay Commission.

Governments also have to formulate broad policies in order to make legal profession conducive monetarily and socially. Closing down the 'letter pad law institutions' can be a good initiative to reduce instances of 'hooliganism' in the profession, as observed by the Madras High Court recently. This will in turn create a favourable environment for Women to take up Court practice as a career choice. Recently, the Government of Puducherry has announced incentives for Junior Advocates for a period of 2 years as stipend. Such measures can also be of some help.

Infrastructure of Courts should also be improved considerably in order to reduce the 'trying conditions' in which young advocates are forcing themselves to work. By increasing the Judge: population ratio, construction of larger Court halls, setting up adequate seating places, drinking water, preparation and publication of cause lists, digitalization of Court records, among other things will certainly improve the work environment for young Women Advocates.

Above all, the society has to give up its 'strict gender roles' and stereotyping in order to enable more Women to take up or to continue Court practice even after marriage. Men have to be taught to share the 'sacrifices for family' and the 'burden of the family' with Women instead of using them as a shield to prevent young married Women Advocates from continuing their Court practice.

Therefore, it is high time that we truncate our celebration about the recent appointment of Women Judges and start discussing the place this society has given Women in the Judiciary. By certain measures discussed above, I am quite sure Women will be able to play an equal or at least a much bigger role as members of the Higher Judiciary in the near future.

(Statistics mentioned in this *article* are as of December, 2017)