Representative Judiciary in India

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This article is based on **In the Supreme Court, representation matters** which was published in the Hindustan Times. It talks about the issues of lack of women representation in Indian judiciary and suggests a way forward.

The nation may soon have its first **woman Chief Justice of India (CJI- Justice BV Nagarathna)**. This is a welcome step.

However it has raised the larger issue of low representation of women in the judiciary.

State of Women Representation in Judiciary

- **Women Representation in Supreme Court:** The first-ever woman judge (Justice Fatheema Beevi) in the Supreme Court (SC) was appointed in 1989, 39 years after the apex court came into existence.
  Since then, only 10 women have become judges in the apex court.
- **Women Representation in High Courts:** The share of women judges in High Courts (HCs) was no better. Overall, women judges account for only 11% of HC judges.
  - In five HCs (Patna, Meghalaya, Manipur, Tripura and Uttarakhand high courts), no woman served as a judge, while in six others, their share was less than 10%.
  - The percentage of women judges at the Madras and Delhi High Courts was relatively high.
- **Women Representation in District Courts:** Women's representation in the judiciary is slightly better in the lower courts where 28% of the judges were women as of 2017. However, it was lower than 20% in Bihar, Jharkhand and Gujarat.

Reasons For Low Women Representatives

- **Opaque Collegium System Functioning:** More women tend to enter the lower judiciary at the entry level because of the method of recruitment through an entrance examination.
  However, the higher judiciary has a collegium system, which has tended to be more opaque and, therefore, more likely to reflect bias.

- **No Women Reservation:** Many states have a reservation policy for women in the lower judiciary, which is missing in the high courts and Supreme Court.
    - Reservation quota for women is perhaps just one among many factors that encourages and facilitates more women to enter the system.
    - In states where other supporting factors are present in sufficient measure, women's quotas perhaps help bridge the gap in gender representation.
    - However, the Bill for giving 33% reservation to women in Parliament and state legislatures has not been passed till date, despite all major political parties publicly supporting it.
- **Familial Responsibilities:** Factors of age and family responsibilities also affect the elevation of women judges from the subordinate judicial services to the higher courts.
    - A lot of female judges join the service very late, which makes their chance of making it to the high courts or Supreme Court bleak.
    - Then there are some who are not able to focus on their growth as a judge because their focus shifts towards their families after joining service.
- **Not Enough Women in Litigation:** Since lawyers elevated from the bar to the bench form a significant proportion of judges in the high courts and Supreme Court, it is worth noting that the number of women advocates is still low, reducing the pool from which women judges can be selected.

    While official data on the number of women in the legal profession as a whole is not available, a 2020 news report estimates that women make up only 15% of all enrolled advocates in the country.
- **No serious attempt** has been made during the past 70 years to give adequate representation to women either in the high courts or in the Supreme Court.

    In India, women constitute about 50% of the total population and a large number of women are available in the Bar and in the judicial services for elevation but, in spite of that, the number of women judges is small.

Significance of High Women representation

- **Motivates More Women to Seek Justice:** Higher numbers, and greater visibility, of women judges can increase the willingness of women to seek justice and enforce their rights through the courts.
    - Though not true in all cases, having a judge who is the same gender as litigant, can play a role in setting the litigant's mind at ease.
    - For instance, think of a transgender woman as a judge listening to the case of other trans women. That would inspire confidence in the litigant, as well.
- **Different Point of Views:** It is definitely valuable to have representation of various marginalities in the judiciary because of their different lived experiences.

    Diversity on the bench would definitely bring in alternative and inclusive perspectives to statutory interpretations.

- **Increase Judicial Reasoning:** Increased judicial diversity enriches and strengthens the ability of judicial reasoning to encompass and respond to varied social contexts and experiences.
    - This can improve justice sector responses to the needs of women and marginalized groups

Way Forward

- **Changing Patriarchal Mindset:** The need of the hour is to correct the patriarchal mindset in recommending and approving the names of those who are to be elevated as high court judges and come out with more representation to worthy women lawyers and district judges for elevation.
    - Unless women are empowered, justice cannot be done to them.
- **Provision of Reservation:** It is high time that all those who matter in the appointment of judges to the high court and the Supreme Court, realise the need of giving adequate representation to women in the judiciary.
    - In fact, the superior judiciary should also have horizontal reservation for women such as subordinate judiciary without diluting merit.
- **Vacancies as an Opportunity:** There are more than 40% of the vacancies in high courts. But it gives an opportunity to make up for the deficiency in the matter of representation to women in higher judiciary.
- **Removing Gender Discrimination:** It will be a step in the right direction and ultimately may lead to more social and gender harmony in the judiciary.
    - Any step in this direction will be a benchmark for society with many more young women students coming forward and opting for law as a profession.

Conclusion

To be truly diverse, the Indian judiciary would need representation of judges from not only different gender identities, including trans and non-binary but also different caste, socioeconomic, religious, and regional backgrounds.

It would also mean appointment of judges from doubly marginalised sections to allow for the representation of intersectional voices.

Drishti Mains Question

‘Higher numbers, and greater visibility, of women judges can increase the willingness of women to seek justice.’ In the light of the given statement discuss the issue of lack of women representation in judiciary.