

Study on the Appointment of Female Judges in India with Reference to Structural and Discretionary Bias

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Abstract: *The presence of gender bias in the recruitment process at various levels of the judiciary, whether it is explicitly stated or implied, has significantly contributed to the imbalanced female representation in the upper Indian judiciary. Drawing upon empirically gathered qualitative data, the bias manifests itself in two distinct forms: Structural bias and discretionary bias. The concept of structural bias pertains to the biases that are inherent in judicial selection policies. Firstly, there is the unspoken "seniority norm" within the Supreme Court, which exhibits a preference for appointing the most senior High Court judges to the highest court. Secondly, there is the "transfer policy" at the lower judicial level, which implicitly promotes gender bias by prohibiting the appointment of judges at their own place of residence or that of their spouse. Discretionary bias encompasses the gender-biased biases that are implicitly exhibited by judicial decision-makers, which are influenced by their conscious or unconscious preferences. It may be inferred that the primary factor contributing to gender-biased appointments is the failure of policymakers and decision-makers to adequately acknowledge the distinct roles and duties that women assume in terms of parenting and marriage, as well as the absence of equitable distribution of tasks among their spouses*

Keywords: Women judges, India, prejudice, appointments, Structural bias, Discretionary bias