

Study on the Appointment of Female Judges in India with Reference to the Transfer Policy

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Abstract: *In India, the subordinate judiciary lacks central control. According to Article 234 of the Constitution, the High Court (HC) and the State Public Service Commission of each state have the joint power to establish the criteria for selecting and appointing judges. Although there is often a lack of consistency in the selection process, it is widely known that states generally agree on the policy regarding the transfer of judges.*

Initially, it is mandated that lower judicial officers undergo transfers at intervals of two to three years. Furthermore, in order to prevent Nemo judex in causa sua, which means that no one can be a judge in their own case, states impose limitations on the appointment of judges based on their place of residency or that of their spouse. The likelihood of a disagreement involving an individual known to a judge is significantly increased when the judge is assigned to their place of living or that of their spouse. Although it may appear gender-neutral, this transfer regulation does not adhere to a standard application among all judges.

This paper scrutinises the transfer policy applied to the female judges and the factors influence their transfer related dilemma and decisions

Keywords: transfer policy, female judges, appointment, structural bias, family, female judicial officers

I. INTRODUCTION

The job's transferable character and the possibility of judges not being assigned to their own or their spouse's place of residency give rise to gendered concerns. They mostly exist because to the unequal expectations and burdens associated with parenting and marriage, which are not equitably shared by males. Additionally, these issues develop due to the husband's career being given higher priority than the wife's, irrespective of her job position. One inadvertent outcome of the transfer policy has been the emergence of a growing inclination among female judicial officers to choose to remain unmarried. Female judges, by placing their careers as a higher priority, forgo the pleasures of family, marriage, and motherhood, a decision that their male colleagues are not required to make. If the gender prejudice is not immediately evident in the transfer policy, it is actually a hidden structural bias.

Following are the factors influence the transfer related dilemma and decisions:-

1. The Imbalanced Responsibilities of Women in the Context of Marriage and Motherhood

One female judge had provided an account of the prevailing Indian practice wherein women typically reside at their matrimonial residence after marriage, a societal norm that is widely embraced within our patriarchal framework. Women who are employed depend on their mothers-in-law as a "second-best alternative to a mother" for their children, instead of depending on their husbands. In contrast, male individuals typically have their spouses present at home to address the responsibilities associated with childcare. Nevertheless, the transfer policy imposes limitations on the placement of a female judicial officer within her marriage family, so preventing her mother-in-law from providing assistance in the care of her children. Consequently, the policy has a negative impact on the representation and support of women in the courts. One of the female interviewees made an observation that if she had been faced with the decision between her children and work, she would have struggled to achieve a balance between the two. Similar to several other women, she would have chosen to abandon her career. The individual's career advancement can be attributed to the support provided by her spouse and children. Their male colleagues in the field are not required to make comparable

decisions. The transferability provision is inherently gender-biased, as it has a differential effect on female judges, a consequence that the policy's creators were unaware of.

An administrative lapse may be the underlying cause of the gender-biased transfer policy, as it excludes female policymakers and judicial officers from the appointment process. The existence of this gender disparity is evident in the remarks made by one of the interviewees, who emphasized the lack of consideration from her male colleagues and policymakers: "All of these male judges never considered it."

She additionally notified me that she had corresponded with the pertinent authorities regarding this matter, although no action was taken. It is noteworthy that during the construction of this narrative, she also recognized the cultural imperative for limitations stemming from the obligations associated with parenthood. The author argued that these limitations are crucial as they guarantee the allocation of resources towards the welfare of youngsters who will assume leadership roles in the future, thereby contributing to the establishment of a prosperous society. Therefore, it is imperative that these obligations are not just acknowledged but also supported and promoted. One issue occurs when these expectations are exclusively directed towards women, and the consequences of these expectations are not acknowledged within our policy framework.

In addition to disparities in parenting and marital demands, women face the additional challenge of being perceived as having poorer career prospects compared to their husbands. When making decisions about the family, the husband's profession typically takes precedence. This implies that in cases where the position of a female judicial official is subject to transfer, her spouse may exhibit reluctance in accompanying her. This can occur irrespective of the husband's occupation.

In India, it is widely known that women do not exhibit the same level of unwillingness. Female attorneys have a greater inclination to relocate when their spouses are reassigned for employment, even if the relocation will have a negative impact on their professional advancement. This illustrates not only the prevailing assumption that women are primarily responsible for caregiving, but also the implicit subordination of women's professional pursuits, irrespective of their occupational status. The complex network of social obligations and oppression hinders women's participation and long-term presence in the profession, while simultaneously dissuading the appointing authority from favoring them, resulting in a structurally biased transfer policy. The distinct roles and obligations of males and females, which contribute to their varying advancement in the legal field, will be thoroughly examined in a separate paper.

Several respondents raised concerns with the interpretation of Article 14 of the Indian Constitution, which encompasses the fundamental "Right to Equality" granted to everyone. They raised doubts about the rationale behind applying the transfer policy equally to both men and women, considering their distinct social circumstances, particularly the expectation for women to take care of children of significant ages. The aforementioned expectation is seen in the resolution of numerous child custody disputes, wherein the mother is regarded as the primary custodian of the kid. Regarding this matter, one of the aforementioned interviewees regarded women as "unequal individuals" in terms of transfer, not due to the duties associated with the judicial position, but rather due to the burdens of marriage and motherhood that impose a heavier burden on female judicial officers compared to their male colleagues. Therefore, although the transfer policy may initially appear to be gender-neutral, the aforementioned implications reveal a distinct gender-biased narrative.

2. The Dilemma of Balancing Professional and Personal Life: The phenomenon of female judges being single

When queried about the factors contributing to the diminished gender ratios within the upper Indian court, a female interviewee, in her account of the superior representation of women in the subordinate judiciary of Kerala, made the following observation:

This has been a longstanding practice in the legal profession. Upon examining the statistics, it becomes apparent that while there may be a number of women enrolled, the actual number of practicing women, their duration of practice, and the number of senior women attorneys above the age of 45 who were actively practicing at any given time are the ones who were taken into consideration for judgeships. Unless women assume the role of judicial officers, as is currently the case in Kerala where a significant number of women, including both married and unmarried women, are recruited as judicial officers at the lowest echelon. In several states, there is a notable presence of women in lower judicial positions.

The utilization of the term "single" to characterize female judicial authorities is a subject of interest in the aforementioned statement. The issue of transferability does not provide a significant challenge for unmarried women, in contrast to married women who have the responsibility of managing their marital household following marriage.

The disparate gender norms in our patriarchal society are intensified when men are unwilling to distribute the responsibility. Marriage and parenthood are considered sacred obligations for women, and the advancement of women's professional trajectories ultimately hinges on the desires and preferences of their spouses.

The concept of single-women professionals was already being considered by Justice Anna Chandy, the first female High Court judge in India, much before it became a well-recognized trend. During an interview with Velu Pillai, a prominent administrator, scholar, and author, Pillai posited that the employment of married women in government positions is seen inappropriate due to the potential for wealth concentration within a select few families and the potential negative impact on their husbands' sense of pride. Chandy responded by providing a rationale for the societal implications of Pillai's idea, asserting that adhering to his recommendation would result in women ceasing to enter into marriage in order to pursue their professional aspirations, thereby exacerbating the existing stigmatization. Although these repercussions primarily affect women in the short term, they pose a long-term threat to the social structure that enables individuals to prioritize the pleasures of family and parenthood.

3. Alternative Mechanism

As previously mentioned, the implementation of the transfer policy was intended to address the potential occurrence of *Nemo iudex in causa sua*, which may happen when a judge establishes a connection with the local populace. Although this concept may appear fair in theory, its actual implications pose challenges, particularly considering the non-transferable nature of judgeships at the higher judiciary, which are subject to rotation. Typically, higher court judges have an average tenure of several years and frequently have prior experience working at the same court prior to their promotion. Therefore, it is highly likely that they possess knowledge of both the senior counsels presenting arguments before them and the litigating parties.

Several interim policies can be implemented to mitigate the repercussions of the transfer policy until its revision.

1) The policy of co-location posting permits spouses employed by the central government to be assigned to the same area wherever feasible, so facilitating the maintenance of a conventional family lifestyle and the provision of care for their children. The primary objective of this strategy is to streamline the representation of women in central government positions who may choose not to participate owing to the job's transferable nature. Although this strategy may provide assistance, it is crucial to take into account the precise proportion of women with spouses working in the central government and the absence of remedies for women with spouses in various occupations.

2) The Preferential Transfer Policy, which is applicable to Public Sector Banks, takes into account the social positioning of female employees. It permits unmarried women to be sent to locations in close proximity to their residences, while married women are assigned to locations in close proximity to their husbands' residences. This provision has the potential to be integrated into the existing transfer strategy for the courts. According to Article 15(3) of the Indian Constitution, the state is granted the authority to enact specific measures for women, hence establishing a distinct framework for affirmative action programs that may not adhere to principles of gender neutrality.

Further actions that can be implemented to provide assistance to women under the current policy include:

3) The provision of a creche facility, namely a daycare facility catering to the children of judges, lawyers, or others employed at different levels of the courts, will enable parents to effectively manage their professional and parental obligations. This would particularly benefit women, as childcare is commonly associated with their gender, therefore enhancing their involvement in the legal field.

II. CONCLUSION

The Indian judiciary should eliminate or revamp the transfer policy due to its adverse effects on women, the consequent infringement upon the fundamental 'Right of Equality' as outlined in Article 14 of the Indian Constitution, and the disregard for this policy by the highest judicial bodies. Subsequently, it can establish regulatory systems to oversee the allocation of cases and guarantee that the judge does not have any personal stake in a certain case. This requirement becomes essential given the adverse consequences of the transfer policy on women specifically and society as a whole.

One of the participants in the interview highlighted the recent surge in the selection of female judges for judicial positions in the district courts of Delhi. The observed phenomenon can be attributed to the non-transferability of judgeships in Delhi, which distinguishes it from other states. This phenomenon leads to an increased influx of deserving women seeking judgeships, but it also signifies a reduction in competition from their male counterparts as the most skilled males migrate to lucrative, private-sector law firms.

The implementation of gender sensitivity measures for judges would assist female judges in effectively managing their gender-related obligations, such as parenthood and marriage, with their professional pursuits. Moreover, it would provide a chance to raise awareness among their male colleagues, who often fail to acknowledge the significant contributions made by their wives in their prosperous professional lives.

Revisions to the current transfer policy have the potential to enhance inclusion within the judicial system, so enabling a greater number of judges with diverse viewpoints to render verdicts that address gender-based expectations pertaining to women and men.

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