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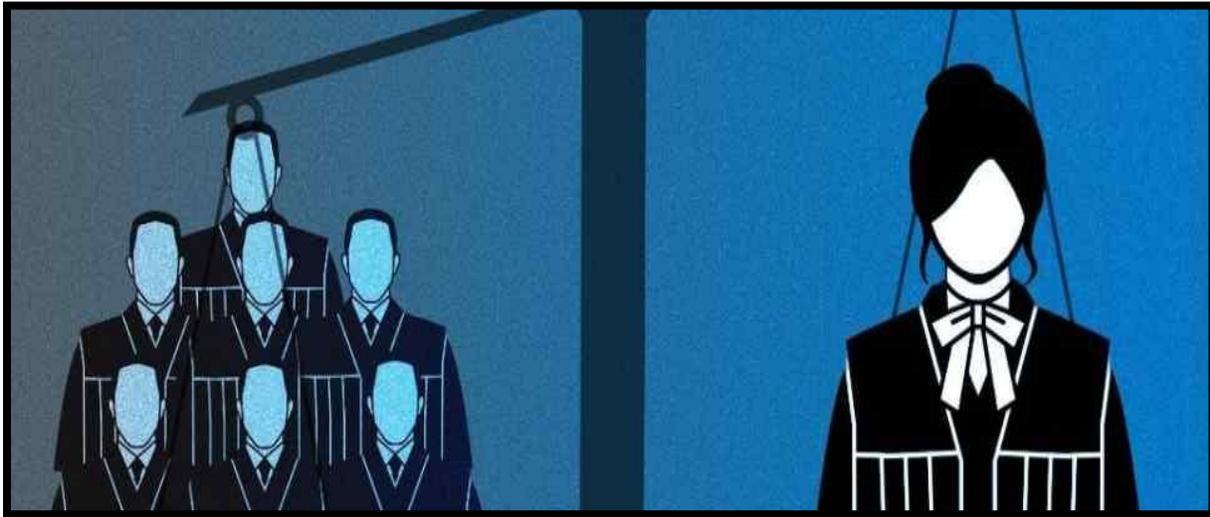
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COVER STORY

Missing Gender Diversity in the Indian Judiciary



While women participation is on the rise in almost all sectors including the IT, defence, banking and finance in India, the same is not with courts, lower or higher. The Indian judiciary still seems to be a male bastion with women constituting only 28% of the current strength of 17,160 judges across all subordinate courts, high courts and the Supreme Court. Is it because India lacks meritorious female judges? If not, what are the reasons?

Introduction

As India attained freedom, the framers of the Constitution sought to unite the vast country with its great diversity of languages and creeds within a common bond of constitutional justice based on the great ideals of liberty, equality, fraternity and justice.¹ Following this,

Article 50 of the Constitution contained in Part IV, directs that it is the duty of the State to separate the judiciary from the executive in the public services of the State. So while the purpose of legislative is to supervise and principally control the policy and the expenditure of the executive branch, the judiciary is responsible for ensuring their legality and thus protects citizens against unlawful trespass on their constitutional or other rights

Given the fact that the very same Constitution demands gender justice by granting every citizen right to equality and dignity, it is unfortunate that there is such gross under-representation in the judiciary and this insufficiency of diversity is accompanied with lack of concern to plug that gap,

¹ <http://www.thehansindia.com/posts/index/Hans/2016-08-08/Strive-for-social-justice-Chief-Justice-of-India/247396>

despite recommendations². In fact, there have been no systematic efforts to regularly compile and publish even basic data on the proportion of women judges in different levels of Indian courts, until the Ministry of Law and Justice released information about gender diversity in the Supreme Court and the High Courts in 2016. The data highlighted the gender disparity in the Indian judiciary and makes the case for a more representative Indian judiciary. Recently, while the nation rejoiced with the five-judge verdict that said Triple Talaq³ was unconstitutional and un-Islamic ensuring Muslim women's right, equality; what went unnoticed was the fact that the five judges who represented five different faiths but not a single one was a woman- leave alone a Muslim woman.. In the same week, nine judges in a separate judgement had declared that Privacy is a fundamental right. Not one of the nine was a woman. So, at a time when the

This article therefore, speaks of the fact that while in theory, the law is supposed to be *devoid of any bias towards gender*, for many women, life in *India's courts* is a constant reminder that the judiciary is patriarchal. With the help of the government statistics, the following data represents the lack of representation of women in the higher judiciary in the past, and to highlight the present scenario as well (from low to high level of court. The article also tries to highlight the concern regarding equity between genders in appointments and promotions, and the potential factors behind the gender imbalance in the judiciary and concludes by highlighting the need to reform to accommodate concerns over gender discrimination.

² The under-representation of women in the judiciary came to light last in 2015 when Justice J.S. Khehar, while looking at ways to improve the collegium system, wondered aloud: "The ratio of female judges to male judges must be in the same ratio." Read More at <http://www.thehindu.com/opinion/op-ed/judiciary-an-old-boys-club/article8410065.ece> . It was earlier recommended in the 2011 report submitted by the National Commission for Scheduled Castes (NCSC) available at <http://ncsc.nic.in/files/Reservation%20in%20Judiciary.pdf>

³ Read the whole judgment at <http://www.livelaw.in/supreme-court-said-triple-talaq-judgment-read-judgment/>

	Working Strength	Number of Female Judges	Number of Male Judges	% of Female Judges
Supreme Court	24	1	23	4.2
Allahabad High Court	85	7	78	8.2
High Court of Judicature at Hyderabad	23	1	22	4.3
Bombay High Court	62	12	50	19.4
Calcutta High Court	38	3	35	7.9
Chhattisgarh High Court	11	–	11	0
Delhi High Court	39	11	28	28.2
Guwahati High Court	17	1	16	5.9
Gujarat High Court	31	4	27	12.9
Himachal Pradesh	10	–	10	0
Jammu & Kashmir High Court	10	–	10	0
Jharkhand High Court	13	–	13	0
Karnataka High Court	30	4	26	13.3
Kerala High Court	38	4	34	10.5
Madhya Pradesh High Court	39	3	36	7.7
Madras High Court	57	6	51	10.5
Manipur High Court	3	–	3	0
Meghalaya High Court	3	–	3	0
Odisha High Court	18	1	17	5.6
Patna High Court	32	2	30	6.3
Punjab & Haryana High Court	47	7	40	14.9
Rajasthan High Court	34	2	32	5.9
Sikkim High Court	2	1	1	50
Tripura High Court	3	–	3	0
Uttarakhand High Court	7	–	7	0
Total	676	70	606	10.4

Source: <https://factly.in/diversity-indian-judiciary/>

Women as Supreme Court Judges

The Supreme Court of India is the highest judicial forum and final court of appeal under the Constitution of India, the highest constitutional court, with the power of constitutional review. Ever since India declared itself a republic on 26 January 1950, 45 people have served as the Chief Justice of India (starting from CJI H J Kania appointed on the 26th of January 1950 by then President Dr. Rajendra Prasad to the present CJI Dipak Mishra appointed in 2017 by President Ram Nath Kovind). It is surprising that; only six women out of the total 229 judges have been elevated to the post of the Judge of the Supreme Court of India in 67 years of the Court's existence, and currently there is only one woman judge out of 25. Even though, the overall percentage of women practising law starting improving from 3.12% (1960) to 5.08% till 2005, a brief look at the statistics show, only 12 women have been designated senior counsels by the Supreme Court so far while only 10-15% of the 17 lakh advocates enrolled in the bar councils are women. This implies that in a country where our Constitution mandates equality for all, and prohibits, inter alia, discrimination on the basis of gender which implies that for almost half of a 1.25 billion population only six women, were found suitable, over 67 years to be their Chief Justice so far. The fact that there is only one woman judge in the SC—Justice R Banumathi (she was one of the members of the judicial bench that confirmed death sentence for the accused in the 2012 “Nirbhaya” gang rape case, even after the accused men appealed to re-consider their death sentences) and no woman judge has been appointed in the apex court in the last three and a half years since August 2014 is ironic.

In 1989, Justice M Fatima Beevi was the first woman to be appointed as a judge in the Supreme Court of India. Six years after Justice Fatima Beevi, Justice Sujata V Manohar was appointed to the Supreme Court in 1994. Justice Sujata was the first woman Chief Justice of the Bombay High Court. She was on the 3-member bench that was instrumental in passing the landmark judgement in Vishaka & others Vs the State of Rajasthan & others in 1997⁴. Post 2014, there have been several crucial cases that came up in regard to women rights (Hadiya case, criminalising marital rape, right to privacy etc) without even a single women judge in the panel, highlight the need for greater judicial diversity; in particular, the *need* to appoint more *women judges*. In February 2017, when five judges were appointed to the Supreme Court in February, 2017 not one was a woman, even though there were two women chief justices, G. Rohini in Delhi (who has since retired) and Manjula Chellur in Bombay. This decision comes at a time when there is a vacancy of 5 more judges required to fulfil the sanctioned strength of 31⁵. However, the current decision of appointing senior advocate Indu Malhotra the first woman lawyer to be directly appointed as a judge of the apex court is a welcoming step. She will be India's seventh Supreme Court women judge.⁶

"The question is not whether Justice Banumathi should have been on either of the benches, the problem is far more deeply ingrained. It is the fact that there is just one woman judge and that this does not seem to matter to anyone." - says Justice Prabha Sridevan, a former judge of the Madras high court.



NAME	AVG TENURE (Yrs)
Justice M Fathima Beevi	2.89
Justice Sujata V Manohar	5.04
Justice Ruma Pal	6.03
Justice Gyan Sudha Misra	3.99
Justice Ranjana Prakash Desai	3.13
Justice R Banumathi	5.93

Source: <https://www.thequint.com/voices/opinion/dont-need-quota-but-ensure-fair-number-of-women-in-collegium>

Is The Situation In High Courts Any Different?

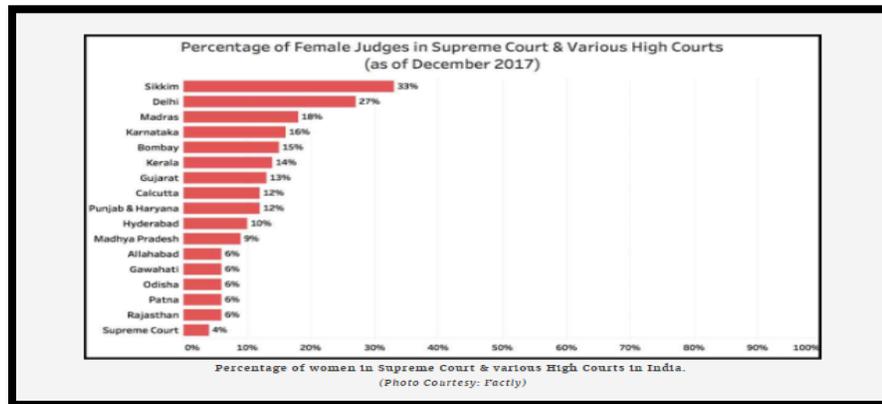
In 1959, Anna Chandy became the first woman to be appointed as a high court judge in Kerala, India. Since then women have occupied the post of a high court judge only 86 times. In proportion to 611 male judges in the High Court's there are only 62 women judges, as of 2016, which is roughly 9.2%. Presently India's 24 High Courts have only a little over 10% of women judges. While the

⁴ The Vishaka guidelines paved way for the Sexual Harassment of Women at Workplace Act, 2013.

⁵ The Supreme Court has a sanctioned strength of 31 judges; it currently only 25.

⁶ <https://thewire.in/gender/70th-year-independence-indias-supreme-court-get-seventh-woman-judge>

Sikkim and Delhi High Court can claim to have the highest number of woman judges with 12 followed by Kerala, Punjab & Haryana with 10 each, the High Courts of Chhattisgarh, Uttrakhand, Jharkhand, Jammu & Kashmir, Himachal Pradesh, Manipur, and Tripura are yet to appoint a woman judge in their history.



Source: <https://www.thequint.com/voices/women/how-many-women-judges-in-supreme-court-and-high-court>

However having women in the leadership position will pave the way for greater representation of women in these courts. For instance, the Bombay High Court, which is headed by chief justice Manjula Chellur, has the highest number of women judges in the country which is 11 out of 73 judges are women followed by Delhi High Court headed by acting chief justice Gita Mittal which has 10 women judges out of a total strength of 38. The Madras HC headed by Chief Justice Indira Banerjee with seven women judges is the third HC after Bombay and Delhi to have highest number of women judges. Unlike some of the States providing quota for women judges in lower courts⁷, none of the high courts have any reservation for appointment of women judges. In fact, the country's largest high court of Allahabad has 110 judges, out of which women judges account only for just six, or about 5% of its current strength⁸.

District Courts: Gender Representation

As per a recent research by Vidhi legal policy on the proportion of women judges to men in the lower judiciary; women comprise an abysmally low 28% lower court judges in India. At least seven States have lower representation of women in the subordinate judiciary than the national average, Bihar, Jharkhand, Gujarat, J&K, Uttar Pradesh, Madhya Pradesh and Himachal Pradesh have one of the lowest representation ranging from 10% to 25%. Whereas in the south, apart from Telangana and Puducherry, no other state has over 40% judges in the lower judiciary. In only three of the smallest

⁷ A number of states like Andhra Pradesh, Assam, Bihar, Chhattisgarh, Jharkhand, Karnataka, Odisha, Rajasthan, Tamil Nadu, Telangana and Uttarakhand provide for 30%-35% reservation.

⁸ <https://timesofindia.indiatimes.com/india/women-account-for-less-than-28-of-total-judges-in-country/articleshow/61329003.cms>

states that is, Goa, Meghalaya, and Sikkim the percentage of women judges does rise above the halfway mark with the collective total of only 103 women judges.⁹

States	Total Judges	Women Judges	% of women judges	Reservation for women
Bihar	1,002	99	9.88	35
Jharkhand	448	62	13.83	05
Gujarat	1,111	177	16	Nil
J&K	219	43	19.65	Nil
UP	1,728	376	21.75	20
MP	1,240	319	25.72	Nil
Himachal	147	39	26.55	Nil
Maharashtra	2,025	596	29.43	Nil
Delhi	489	170	34.76	Nil
All India	16,443	4,704	28.60	—

Note: The percentage of women judges are of the total strength of judges in subordinate courts. Reservation for women judges range from 5% to 35%; not all states have provided quota in the subordinate courts. No quota in HCs and SC.

Source: <https://timesofindia.indiatimes.com/india/women-account-for-less-than-28-of-total-judges-in-country/articleshow/61329003.cms>

Why are there so few women in the judiciary?

It is evident from the above discussion that the representation of women in the court is abysmally low and one of the reasons for this is the potential bias in promotional processes. Several women judges and lawyers have reported discrimination in appointment and promotions.”Given the fact that almost same number of men and women appear for the law exam (48%), one could assume, that it is not lack of education or availability preventing women from being appointed judges in the higher judiciary, but rather the journey involved in law students becoming lawyers and then lawyers to the lower judiciary and finally making it to the higher judiciary is the real challenge. Data suggests as women tend to move higher in this profession the high *positions tend to become more elusive for them* for them. For instance, in the 2016 Common Law Admission Test, 21,520 of 45,041 applicants were women; 23,517 of the applicants were men and four were transgenders. Of the 1,974 candidates who cleared the exam, 810 (41 per cent) were women. But while the women in law may have changed, but will the men in law also now change is the real question.¹⁰

Also, a number of lawyers – from Meenakshi Arora to Avani Bansal have spoken in the past about discrimination meted out to women litigators. They have also spoken about the pervasive ‘old boys’ club mentality, which makes it harder for women to attain judicial positions. Avani Bansal, a Supreme Court lawyer recently shared in an interview that how the male lawyers in the trial court used every possible tactic to unnerve her—from commenting on her attire to making snide remarks about her Oxford degree to getting outright hostile by yelling at her, ‘Zyada hoshiyari na dikhao [Don’t try to

⁹ <https://www.thenewsminute.com/article/less-28-pc-judges-lower-judiciary-are-women-why-bad-india-76628>

¹⁰ <https://www.theweek.in/theweek/cover/gender-discrimination-in-judiciary.html>

act smart]. “I was one of two or three women in a court where hundreds of lawyers practised,” she says. “I was an oddity who was stared at, humiliated, who was either an irritant for the male lawyers or a source of amusement. The lawyers were hostile, and the judges never reprimanded them.” Senior Supreme Court advocate Meenakshi Arora said some years ago when she was arguing a matter, the judges were extremely hostile and almost threw the file. However, the same argument when made a few years later by a male senior was allowed. “Your mind has to be open. Don’t look at my gender, don’t look at my face, only look at the point that I am making,” says Arora.

Other reasons may include sexual harassment and the lack of supportive infrastructure, from toilets to maternity leave; also contribute to a high attrition rate amongst women lawyers, with many preferring to join the corporate sector instead. Indira Jaising, a SC lawyer had said expressed earlier that she was also subjected to sexual harassment in the Supreme Court two years ago. She calls the menace “the hidden dirty secret of the legal profession.” She is now fighting the case of a woman judge in Madhya Pradesh who had to resign after she made a complaint of sexual harassment against her senior. All these factors come together to result in disproportionately low women bar appointees to the bench. Apart from these issues, many find it difficult to balance family with the long work hours required in litigation.

Way Forward

Many leaders and members of judiciary have been voicing the need for equitable gender representation in the judiciary. Recently, President Ram Nath Kovind acknowledged the gender imbalance and in his speech on National Law Day urged political leaders to allocate quotas for women in the judiciary. With crimes against women increasing day by day, there is an urgent need for more female presence in the bench and bar. While these numbers reflect a deep problem, that of structural issues within the Indian legal system, it shows *Indian judiciary in a poor light* for being sensitive to the *needs of justice*. Therefore for a healthy democracy, it is essential for the judiciary to stand as a mirror of the whole society.

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- ii. Geetika Mantri, “Less than 28 pc judges in lower judiciary are women: Why this is bad for India” , *The News Minute* available at <https://www.thenewsminute.com/article/less-28-pc-judges-lower-judiciary-are-women-why-bad-india-76628>
- iii. Prabha Srivdevan, “Judiciary, an old boys’ club” *The Hindu* available at <http://www.thehindu.com/opinion/op-ed/judiciary-an-old-boys-club/article8410065.ece>
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- vi. Namita Bhandare, 67 years of Supreme Court, 6 women judges, *Livemint*, available at <http://www.livemint.com/Leisure/Ak3TNcLWpQuoFaD3gJUnmM/67-years-of-Supreme-Court-6-women-judges.html>

EQUALITY

Indian women earn 20% less than men; wage gap rises with experience: Report IANS, Business Standard

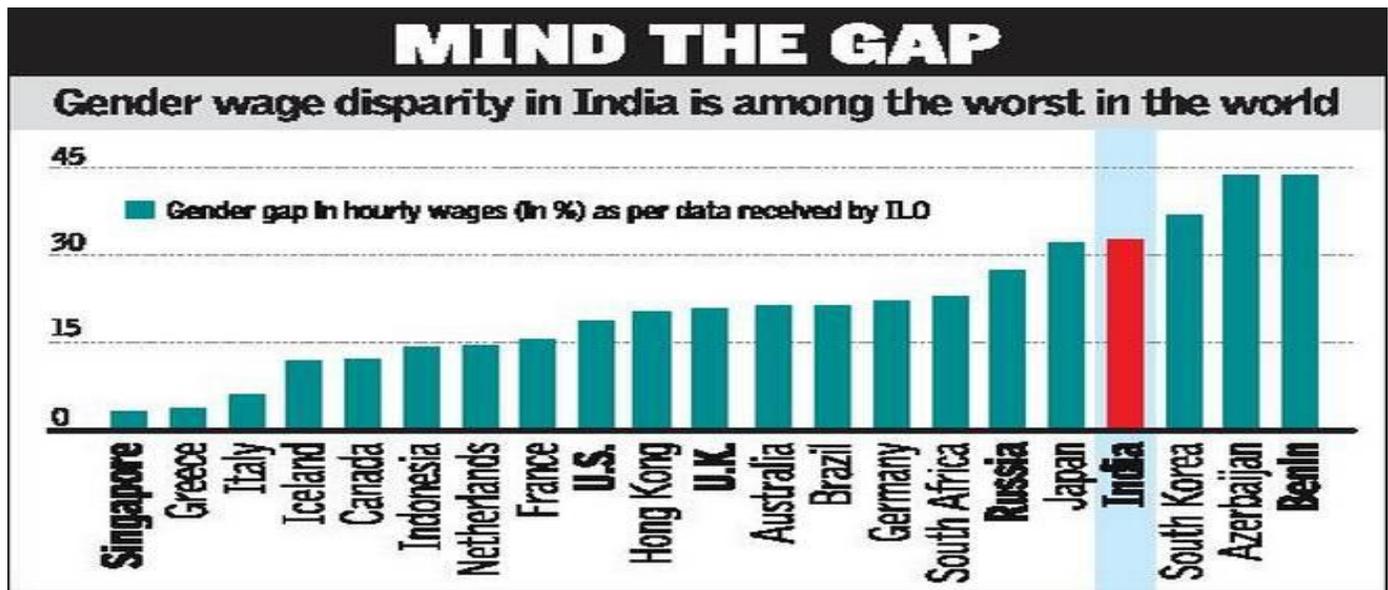
A Monster.com report has revealed that the current gender pay gap in India stands at 20 per cent where men have earned a median gross hourly salary of Rs 231, while women have earned Rs 184.8. This implies that women in India earn 20 per cent lesser than men, although the gap had narrowed down by around five percentage points in 2017. The index with the help of the findings from their second annual survey titled Women of India Inc also reveals that gender pay gap in India tends to increase with work experience.

Read More: http://www.business-standard.com/article/current-affairs/indian-women-earn-20-less-than-men-wage-gap-rises-with-experience-report-118030701320_1.html
Date Accessed: 23.03.2018

Above All, Owning Property Gives Abused Women the Option to Leave Divita Shandilya, The Wire

Although culturally land ownership and inheritance has been predominantly a male domain, several research studies have stressed on the correlation between land ownership and socio-economic empowerment of women. The findings of a study conducted in Kerala showed that among the property-less, 49.1% experienced long-term physical violence and 84.2% experienced long-term psychological violence, but those who owned both land and house reported dramatically less physical as well as psychological violence. A survey in 2015 of 256 women in Karnataka, Telangana and Meghalaya found that a majority of the women interviewed felt that land ownership had improved their mobility and security even outside their homes. This obvious positive impact on the lives of women highlights the already emphasised need of having better policies to realise equal inheritance and ownership rights. This includes preparing a sex-disaggregated data of property ownership to identify lacunae and to incentivise financial institutions to provide loans to women for construction of houses.

Read more: <https://thewire.in/gender/women-property-rights-womens-day>
Date Accessed: 25.03.2018



DEMOCRATIC PARTICIPATION

Only 1 pc women judges in SC; Indian judiciary is still a male bastion

Sonakshi Awasthi, The Indian Express

The latest statistics published by Vidhi Centre for Legal Policy in February 2018 suggest there are about twenty-seven per cent female judges in the lower judiciary across India; 10 per cent in high courts; less than one per cent in the Supreme Court. In 2015, however members of the Supreme Court Women Lawyers' Association (SCWLA) had submitted their suggestions to a top court bench comprising Justice J S Khehar seeking inclusion of more female judges in the collegium and high courts. It is clear their suggestions were completely ignored. Another reason for the lop-sided proportion, according to Justice Pal, is the "unconventional quota" that focuses on all states being represented in the top court. She drew a similarity between the religious diversity and gender diversity terming it as "tokenism".

Read More: <http://indianexpress.com/article/india/only-1-pc-women-judges-in-sc-indian-judiciary-is-still-a-male-bastion-5090641/>

Date Accessed: 23.03.2018

A Step Forward to Address the Gender Gap in Indian Science

Nithyanand Rao, The Wire

The first meeting of Indian Physics Association revealed some startling facts about the position of women in Indian science. In Indian educational institutions, only 20% of the positions are occupied by women. This ratio is even more skewed in the department of sciences where only 3 professors out of 200 in Indian Academy of Sciences are women. Only two women candidates being enrolled for PhD at Tata Institute for Fundamental Research is indicative of a trend that despite that fact that women students make up about 45% of enrolments in undergraduate science programmes nationwide, their numbers rapidly decline in postgraduate levels. The reasons for this decline is most often cited as lack of confidence amongst women researchers especially the ones from disadvantaged communities who equate under-performance in entrances with inability to conduct research. The second barrier is sexual harassment coupled with inadequate redressal mechanism and non-operational legal helplines. Casual sexism and deliberate side stepping of women in decision making were also highlighted as reasons for low percentage of women rising up the ladder in this field.

Read more: <https://thewire.in/women/gender-in-physics-working-group-a-step-forward-to-address-the-gender-gap-in-indian-science>

Date Accessed: 25.03.2018

As Karnataka Gears Up For Elections, Bangalore's Transpeople are Missing from Voting List

Sharanya Gopinathan, The Ladiesfinger

A report on the percentage of registered voters in Karnataka revealed that only 15% of the transgenders find themselves on the voters list due to the elaborate and often impossible government rules and requirements for registration of transgenders. This is a tremendous decline from the previous years' numbers of 54% and 58.81%. The author highlights instances where transgenders, after repeated visits to the Revenue Officer to register themselves, could not manage to cross the hurdles of government machinery and get their names on the list. This inability to participate in elections effectively disenfranchises the community and perpetuates the social stigma. However the author also points out instances of grit and determination of this marginalised community in order to access their rights despite the machinery continually failing them.

Read more: <http://theladiesfinger.com/transgender-voting-list-bangalore/>

Date Accessed: 25.03.2018

HEALTH

16% Indian Women Don't Get Pregnancy Care—Nearly Half Because Husband/Family Did Not Think It Necessary

Gayathri Balagopal, Indiaspend

An analysis of the latest National Family Health Survey 2015-16 (NFHS-4) data reveals that more than one in seven Indian women did not receive antenatal care during their last pregnancy – nearly half of them because their husband or family did not think it was necessary or did not allow it. Only 16.7% women in rural India received full antenatal care—at least four ANC visits, at least one tetanus toxoid injection, and iron and folic acid tablets or syrup taken for 100 or more days—about half as many as in urban areas (31.1%), NFHS-4 data show. The World Health Organization recommends that all pregnant women receive at least four ANC visits, and that the first such visit should be in the first trimester of pregnancy.

Read more: <http://www.indiaspend.com/cover-story/16-indian-women-dont-get-pregnancy-care-nearly-half-becausehusbandfamily-did-not-think-it-necessary-93453>

Date Accessed: 23.03.2018



Representational Image: Flickr/Save the Children

LEGAL DEVELOPMENTS

SC adding obstacles to Indian justice system; court must avoid weakening laws safeguarding gender, caste rights

Aakar Patel, Firstpost

In the light of the Supreme Court decision to dilute the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to prevent alleged misuse, the author highlights two gender based laws whose provisions were also targeted to curb its abuse. Both the anti sexual harassment law and the anti dowry law were reviewed by the same bench of judiciary last year which issued directives that cases of dowry be referred to family welfare committee. The selective approach of looking at the implementation of these laws and highlighting false cases ignores the realities of gender inequalities that is prevalent in society where justice is difficult to come by for women especially in rural areas or of a lower caste. The author argues that instead of dilution of the penalties under this law, safeguards against false complaints should be strengthened since curbing the implementation of its provisions will only result in rising cases of violence against women.

Read more: <http://www.firstpost.com/india/sc-adding-obstacles-to-indian-justice-system-court-must-avoid-weakening-laws-safeguarding-gender-caste-rights-4404457.html>

Date Accessed: 25.03.2018

Muslim women protest against Triple Talaq bill in Nagpur

ANI, Business Standard

Large number of Muslim women hit the streets of Maharashtra's Nagpur demanding a withdrawal of Triple Talaq Bill. The rally was organised by the All India Muslim Personal Law Board women wing. "We are here to protest for the withdrawal of Triple Talaq Bill because it is not only anti-Muslim but also anti-human and anti-family," said board member Monisa Bushra Abida told ANI.

Read More: http://www.business-standard.com/article/news-ani/muslim-women-protest-against-triple-talaq-bill-in-nagpur-118032001399_1.html

Date Accessed: 23.03.2018

Transgenders cite identity issues to oppose Aadhaar Act in SC

Samanwaya Rautray, The Economic Times

Transgenders have recently appealed opposing the Aadhaar Act in the Supreme Court as they believe it would lead to identity crises. To prove their argument, they have cited conflicting identity documents such as birth documents arguing that it would list them only as male or female, and not as transgender as a major factor that would stand in the way of the community being able to prove their identities to get Aadhaar. The case of the transgenders was argued by Jayana Kothari on behalf of NGO Swantantra. Kothari argued that transgenders would be affected on many counts by Aadhaar. Their birth documents will not be able to prove their identities. Besides, they cannot under the right to privacy be asked to reveal their transgender status. If they do, they stand to be treated as criminals and be harassed under Section 377 of the IPC, she argued.

Read more:

[//economictimes.indiatimes.com/articleshow/63390738.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](http://economictimes.indiatimes.com/articleshow/63390738.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

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