

Response to the Special Rapporteur on the Independence of Judges and Lawyers on Principles of Judicial Appointments

This submission on behalf of the Centre for Law & Policy Research to the Special Rapporteur on the independence of judges and lawyers focuses on principles, standards, and practices governing the selection and appointments of judges in India, with particular attention to the higher judiciary and the gender gap in the appointment of women to the High Courts and the Supreme Court.

In 2026 in India, there is a glaring gender gap in the higher judiciary. Only 110 of 765 (14.38%) High Court judges and 1 of 33 of the Supreme Court judges are women. There are currently only two women Chief Justices of a High Court. There has never been a woman Chief Justice of India. Historically, we have only had 11 women judges in the Supreme Court out of a total of 279 judges (3.94%) appointed, out of which only one was a Muslim woman. No Dalit or Adivasi woman justice has ever been appointed to the Supreme Court.

In this regard, our submissions are as follows:

I. Legal and Normative Framework

Appointment of Subordinate judiciary: Judicial appointments to the subordinate courts are governed by Articles 233-237 of the Constitution. Civil Judges and Judicial Magistrates (of subordinate courts) are recruited through State Judicial Service examinations conducted with the involvement of the State Public Service Commission and effective consultation with the respective High Court.

Appointment to the higher judiciary:

The legal and normative framework governing the judicial appointments to higher judiciary in India is under Articles 124 and 217 of the constitution of India. India has a collegium system for the appointment of judges to higher judiciary.

- (i) **Appointments to the Supreme Court:** Judges to the Supreme Court may be appointed from among judges of the High Courts served at least 5 years, or an advocate from the High Court with 10 years' practice or an eminent jurist. The Chief Justice of India (CJI) along with the Collegium consisting of 4 seniormost judges, make the recommendation and thereafter it is forwarded to the Union Minister for Law, Justice and Company Affairs, who places it before the Prime Minister for advice to the President.
- (ii) **Appointment to the High Courts:** High Court judges may be appointed from among lawyers with 10 or more years of practice in a High Court, or from among judicial officers, i.e. judges from the subordinate court with at least 10 years of service. The process of appointing is initiated by the Chief Justice of the concerned High Court, who, in consultation with two senior-most judges (High Court Collegium), forwards a recommendation to the CJI. These recommendations are sent to the Union Minister for Law, Justice and Company Affairs. The complete file is thereafter forwarded to the

CJI and Supreme Court Collegium. Upon finalisation, the recommendation is sent back to the Union Minister for Law, Justice and Company Affairs, who places it before the Prime Minister for advice to the President, who formally makes the appointment.

II. Institutions and Roles

The institution which plays a key role in the appointment of judges, especially to the higher judiciary is the Collegium of the senior most judges of the High Courts and the Supreme Court. The collegium system has been criticised for its opacity and the absence of clearly articulated and publicly available selection criteria. The process disproportionately favours candidates with familiar or professional proximity to existing judges, a phenomenon often described as the ‘uncle judges’ syndrome’.¹ The higher judiciary has also been characterised as an ‘old boys’ club’² with collegiums historically dominated by male judges from the elite caste, educational and economic backgrounds. This has contributed to the persistent under-representation of women and candidates from historically marginalised communities.³

The Executive is the next institution that plays a key role in the appointment of judges. The Executive passes appointment orders of names that they confirm and return the other names for reconsideration by the Supreme Court. The Supreme Court may re-iterate the rejected names and thereafter the Government is under an obligation to confirm the said names. When the Executive does not want to appoint judges, it can often keep names sent by the Collegium pending for long, often leading to candidates seeking withdrawal. Women candidates, especially women from the Bar face an additional hurdle of their names not being confirmed by the government, even after being recommended by the Collegium.

III. Merit, Integrity, and Transparency

There is opacity and lack of transparency in appointment of judges in higher judiciary despite steps being taken to this effect. Associations and networks of family ties, caste, continue to dominate appointments of judges to higher judiciary. This makes the current composition of the higher judiciary lacking in diversity and inclusion across caste, class, gender, religion and region lines.

India lacks publicly available criteria for objective assessment of merit, judicial temperament independence, or integrity for higher judiciary candidates. Since 2017, the Supreme Court has begun publishing collegium resolutions, stating that the documents would indicate the reasons for its appointments.⁴ However, an analysis of published resolutions reveals that references to “merit” and “integrity” are largely generic and non-specific.⁵ Where the Collegium has addressed the

¹ 18th Law Commission of India, Reforms in the Judiciary - Some suggestions (Law Commission Report No. 230, 2009) [9]-[10].

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081063-2.pdf>

² Aparna Chandra, William Hubbard, and Sital Kalantry, ‘From Executive Appointment to the Collegium System: The Impact on Diversity in the Indian Supreme Court’ (2019) Cornell Legal Studies Research Paper No. 19-26.

³ Mittal and Jain (n 2); Rangin P Tripathy, ‘Fewer Indian Women in Higher Judiciary? Blame High Court Collegium, Suggests Data’ <https://theprint.in/opinion/fewer-indian-women-in-higher-judiciary-blame-high-court-collegiums-suggestsdata/265747/>

⁴<https://cdn.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/documents/collegium/2017.10.03-minutes-transparency.pdf>

⁵ <https://www.scobserver.in/journal/is-merit-the-primary-criteria-for-judicial-appointments/>

integrity of individual High Court candidates based on consultations with members of the Bar, this has generally been limited to noting the absence of adverse material.

In May 2025, the Chief Justice of India released documents outlining the procedure for Supreme Court and High Court appointments.⁶ These documents identify merit and integrity as the “prime criteria” for appointment.⁷ However, there is no articulated standard as to what constitutes merit. As a result, assessment of competence, experience, ethics, and integrity remain informal and subjective. Even factors taken into consideration for appointment of Chief Justice and Judges of the Supreme Court such as seniority, merit and integrity, fair representation and disposition rate are vague, with no clarity on how such criteria are evaluated and weighted.

There are vetting tools such as background checks done by the intelligence department of the government, but their reports are not made public.⁸ There is no publicly available data on the review of disciplinary or complaint histories. The procedures through which such information is gathered, assessed, or relied upon by the Collegium are not transparent, and there are no formal safeguards to ensure due process for candidates. Similarly, conflict-of-interest rules, incompatibility standards, and post-appointment restrictions are not clearly articulated or publicly documented in the context of judicial appointments.

This lack of objective criteria, transparent evaluation methods, and objective assessment standards is especially concerning in the context of Supreme Court and High Court appointments, where decisions have far-reaching constitutional consequences.

IV. Participation and Openness in Appointment Process

In India, there is no formal role for civil society, professional associations, universities, or the general public in appointments to the Supreme Court or High Courts. Judicial appointments are made through the collegium system, an internal consultative process involving senior judges, to be confirmed by the executive.

There are no public calls for applications, no invitations for comments, no public hearings, and no institutionalised mechanisms for observation or participation by the Bar, academia, or civil society in the selection process. Participation is largely informal and opaque, occurring through personal knowledge, networks, or consultations at the discretion of members of the collegium.

There is no obligation to publish detailed, reasoned decisions explaining why a candidate was selected or eliminated. The format of the published resolution changes according to the approach of the Chief Justice leading the Collegium. Often, detailed resolutions are replaced by one page statements when the CJI changes. Further, there are no clear or uniform rules governing how candidate information, intelligence inputs, or informal feedback is assessed, weighed, or preserved. Elimination from consideration in the appointments process does not attract any formal explanation and is not subject to appeal or review.

Collegium Resolutions were not historically published, and therefore the reasons for appointments were not known. In 2017, the Collegium headed by CJI Dipak Misra resolved to publish the

⁶<https://www.scobserver.in/wp-content/uploads/2025/05/Appointment-of-the-Chief-Justice-and-Judges-of-the-Supreme-Court.pdf>; <https://www.scobserver.in/wp-content/uploads/2025/05/Appointment-of-Judges-of-the-High-Courts.pdf>

⁷ <https://www.scobserver.in/wp-content/uploads/2025/05/Appointment-of-Judges-of-the-High-Courts.pdf>

⁸ <https://www.sci.gov.in/assets-of-judges/>

resolutions of the Collegium on the Supreme Court website, along with reasons, to “ensure transparency and yet maintain confidentiality in the Collegium system.”⁹ CJIs since have not maintained consistency in providing the reasons for its recommendations, although at various times, the caste¹⁰, religion¹¹ or region¹² of candidates have been invoked. Gender diversity is also a stated goal in the criteria for consideration. CJI Sanjiv Khanna, initiated further efforts to improve transparency, having directed the publication of the details of all names that have been recommended by the SC collegium from 09.11.2022 up to 05.05.2022 as High Court judges.¹³ The details also include the caste, gender, religious minority status of each person along with any familial relationship ties to judges, where applicable. Despite this effort, a lot of other information, including the names initially recommended by High Court Collegiums and ultimately rejected by the Supreme Court are not yet published publicly.

V. Risk of Improper Influence and Limitations of Institutional Safeguards

The collegium system has been consistently criticised for its opacity and the absence of clearly articulated and publicly available selection criteria. It disproportionately favours candidates with familiar or professional proximity to existing judges.¹⁴ There are also no institutional safeguards in place and the entire process is left to the Collegium, to be confirmed by the executive.

VI. Politicisation and Undue Influence in Judicial Appointments

In recent years, the executive has exercised influence over the judicial appointments process through the practice of non-consideration of recommended names. As the appointment process is not governed by strict timelines, the executive has often delayed decisions for months and, in some cases, for over a year, which has led candidates to withdraw their names from consideration.¹⁵ There is little or no clarity regarding the reasons for executive inaction or delay. Between October

⁹ Aditya AK, ‘Supreme Court website to reveal collegium resolutions’ (Bar and Bench, 6 October 2017) <<https://www.barandbench.com/news/supreme-court-collegium-resolutions>> accessed 17 May 2025.

¹⁰ Resolution of the Collegium (*Supreme Court of India*, 19 January 2024) <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/01/2024012921.pdf>> [to appoint Justice P.B. Varale (SC category) to the Supreme Court], accessed 17 May 2025.

¹¹ Resolution of the Collegium (*Supreme Court of India*, 6 November 2023) <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/documents/collegium/06112023_142822.pdf> [to appoint Justice A.G. Masih (Christian)], accessed 17 May 2025.

¹² See for example, Resolution of the Collegium (*Supreme Court of India*, 6 March 2025) <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2025/03/2025030654.pdf>> [to appoint Justice Joymalya Bagchi to the Supreme Court on account of ensuring adequate representation from the Calcutta High Court], accessed 17 May 2025.

¹³ Supreme Court of India, ‘Details of proposals approved by Supreme Court Collegium for appointments as High Court Judges from 09.11.2022 to 05.05.2025’ (*Supreme Court of India*, 6 May 2025) <<https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2025/05/2025050618.pdf>> accessed 17 May 2025.

¹⁴ 18th Law Commission of India, Reforms in the Judiciary - Some suggestions (Law Commission Report No. 230, 2009) [9]-[10].

<https://cdnbbsr.s3waas.gov.in/s3ca0daacc69b5adc880fb464895726dbdf/uploads/2022/08/2022081063-2.pdf>

¹⁵ <https://www.hindustantimes.com/india-news/lawyers-withdraw-consent-amid-delays-over-supreme-court-collegiumrecommendation-101751867628064.html>

<https://www.scobserver.in/journal/supreme-courtpulls-up-union-government-for-no-response-on-collegium-recommendations/>

2017-April 2025, the Collegium reiterated 51 names, of which 47 were men and 10 were women.¹⁶ The disproportionately higher rate of rejection or non-confirmation of women candidates suggests a higher level of bias against the appointment of women.¹⁷

VII. Tenure, Probation, and Temporary judges

Judges of the Supreme Court and High Court in India are not subject to any probation or re-election or reappointment. Once appointed, judges hold office until the constitutionally prescribed age or retirement—65 years for Supreme Court and 62 years for High Court judges. The median age of appointment for male judges directly from the Bar to the Supreme Court is 57.9, with a tenure of 7.1 years. It is seen however that for women judges, their tenure is considerably lower as they are appointed much later. Similarly, in High Courts, the median age of sitting male judges is 51.45 years, and women judges is 53.37 years, highlighting the fact that women judges are appointed 1.92 years later than men. Thereby, on average, a male judge gets 11.5 years, and women judges only get 9.63 years in the High Court.¹⁸

VIII. Diversity, equality, and inclusion in Judicial Appointments

There are no binding targets, quotas, or parity rules governing judicial appointments to promote the representation of women or other underrepresented groups, including caste and religious minorities, indigenous peoples, persons with disabilities, or LGBTQI+ persons.

The representation of women judges appointed to the High Courts is presently only 14.38%. The percentage of women judges varies widely among the 25 High Courts. The High Courts of Telangana, Gujarat, Punjab and Haryana and Delhi lead among the best performing courts for gender representation, with the total percentage being above 20% with Telangana being the highest with 32.26% of women judges. The High Court of Sikkim has 33% women judges but this is deceptive as it comprises of only 3 judges overall with one woman judge. 13 High Courts have under 10% women judges. Manipur, Meghalaya, Tripura and Uttarakhand High Courts do not have a single woman judge. Significantly, the largest High Court in the country, the Allahabad High Court with three benches and a total sanctioned strength of 160 judges, has only 3 women judges out of 79 sitting judges (3.80%) making it arguably one of the worst performing High Courts on gender representation in the country due to its large strength. The Madhya Pradesh High Court stands even lower at 3.03% with a single woman judge.

Where the gender representation is particularly worrying is in the long-established High Courts of Bombay (16.92%), Calcutta (17.78%), Karnataka (16%) and Kerala (6.82%), where relative progress in education would suggest an increase in the representation of women judges but all of which have less than 20% of women judges. This finding suggests that despite societal progress, patriarchal attitudes remain deeply embedded in legal and judicial institutions.

¹⁶ Jayna Kothari, Nithya R. Rajshekhhar and Naibedya Dash, 'What Stories do the Numbers Tell? A Data-Driven Narrative to Seek Women's Equal Opportunity in the Higher Judiciary in India' (2025) 21(1) Socio-Legal Review <https://repository.nls.ac.in/slr/vol21/iss1/2/>

¹⁷ Aparna Chandra, Sital Kalantry, and William Hubbard, *Court on Trial: A Data-Driven Account of the Supreme Court of* (Penguin Random House 2023) 99.

¹⁸ Jayna Kothari, Nithya R. Rajshekhhar and Naibedya Dash, 'What Stories do the Numbers Tell? A Data-Driven Narrative to Seek Women's Equal Opportunity in the Higher Judiciary in India' (2025) 21(1) Socio-Legal Review <https://repository.nls.ac.in/slr/vol21/iss1/2/>

Diversity is occasionally acknowledged in collegium resolutions as a discretionary consideration (such as gender, regional balance, or caste and minority representation), but these factors are neither institutionalised nor consistently applied. There is no obligation to ensure minimum representation across any category. There are also no formal reasonable accommodations within the appointment process to address structural barriers faced by underrepresented groups.

IX. Best Practices

Several appointment design practices both domestic and comparative demonstrate improved judicial independence and impartiality and reduce the risk of politicisation.

- (i) First, application-based appointment systems expand the pool of qualified candidates and reduce reliance on informal networks. Such systems enhance transparency, limit elite capture, and improve access for underrepresented groups. India's own experience with an application-based process for the designation of Senior Advocates demonstrates similar positive effects, particularly in increasing women's representation.
- (ii) Second, constitutional or statutory diversity mandates play a critical role in promoting equal opportunity without undermining merit. South Africa's constitution specifically requires racial and gender representation in judicial appointments and,¹⁹ while Canada incorporates statutory requirements to ensure regional representation.²⁰ These models demonstrate that formal diversity criteria embedded in the appointment process can co-exist with and strengthen judicial independence.
- (iii) A national judicial appointments commission is required which needs to be introduced through legislation for a fair and transparent mechanism of judicial appointments which also ensures diversity and representation.
- (iv) Till such time that we have any legal framework in place, the Collegium must mandate gender as a requirement to be taken into consideration in appointments, to ensure that at least all High Courts and the Supreme Court have not less than 30% of women judges, and at least 30% of our Chief Justices are women and that the 2:1 ratio of the Bar to bench is maintained for women.

¹⁹ Section 174(2)

²⁰ Supreme Court Act, R.S.C. 1985, s. 6.