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Diversity and
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Lawyers, Judiciary, Bar Councils and Law Schools: What Can We Do to Promote Diversity and Inclusion?

This article is an attempt at analysing diversity and inclusion in the legal profession. The article examines the progress made for the cause of diversity and inclusion in the Judiciary and for lawyers. Towards the latter part, the article attempts to suggest ways to best address the issues of lack of diversity and inclusion including the roles that law schools and bar councils could play to champion the cause of diversity and inclusion.



Introduction

'Justice may be blind, but we all know that diversity in the courts, as in all aspects of society, sharpens our vision and makes us a stronger nation'.
– **William J Clinton**

As rightly pointed out by William J Clinton, diversity is the backbone of development and growth of any society, in all aspects. For any organisation, for any profession or for any country, diversity must be more than policies on paper. Diversity must be such that it adds value and strength to the nation.

A diverse and inclusive ecosystem in any profession earns the greater respect of society for respecting the unique needs, perspectives and potential of all the members of the society who are different as well as those that are alike.

In *Grutter v Bollinger* (2003), the Honourable Supreme Court of the United States of America had famously observed that 'access to legal education (and thus, the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide training and education necessary to succeed in America'.

This line of thought fits more aptly with Indian society. India boasts of its diversity, a diversity that can be seen in the wide spectrum of culture, religion, race, ethnicity and several other components across its wide expanse. Especially in a country like India, the lack of diversity and representation of the under-privileged and minorities is that much more critical in the legal profession because more often than not it is the legal profession that functions as the guardians of the fundamental and legal rights of the citizens of any country.

The legal profession is very peculiarly placed at the helm of social change. If a law brings change in society, it is the lawyer that plays the role of an architect and shapes the said cultural shift brought in by the Legislature. By way of an example, it is most interesting to note that the reason why most professions have today embraced a culture of diversity and the reason why most organisations are encouraging inclusiveness and championing the cause of diversity is a direct result of

the advocacy on equal opportunity in the workplace, it is a result of the advocacy on greater safety for women in the workplace. The landmark judgment of the Honourable Supreme Court of India in *Vishakha v State of Rajasthan* reported in (1997) 6 SCC 241 was the reason behind the renewed vigour in the cause for greater equality and safety for women in the workplace and holds greater representation of women across workplaces, deservedly, to its credit.

Decoding Diversity and Inclusion

Diversity and Inclusion are inseparable components of constructing a just and adequately represented ecosystem in any profession, more so in the legal profession. However, the concepts of Diversity and Inclusion are slightly different from each other. Diversity is the degree of representation of different classes/categories in an ecosystem or, in other words, diversity is a measure of the heterogeneity of any ecosystem. Inclusion, on the other hand, is a measure of how seamless and amiable that homogeneity is. In other words, inclusion is a representation of how well the different constituents of a heterogenous ecosystem are valued and integrated in the said ecosystem.

Thus, by way of an example, in the Indian legal system where there is ample presence of lawyers practising in different courts of the country belonging to different religions, different castes, etc., the most important aspect is whether the perspectives of certain groups only are valued in the Indian legal system or whether all opinions and perspectives regardless of the religion, caste, colour of the said lawyer carry equal authority and influence. If the answer to the latter is in the affirmative, then the legal system is ideal and is as diverse and inclusive as can be. However, if the answer to the latter is in the negative, then the Indian legal system, though amply diverse, is not inclusive.

Diversity in the Judiciary: First Step to Diversity in the Legal Profession

To address the question of greater diversity and greater inclusivity, it is imperative we first address the lack of diversity in the machinery that is entrusted with the function of delivering justice, that is, the Judiciary. The question of a diverse judiciary is one that has troubled the Indian legal system for far too long. The profession from across the spectrum, at different levels, seems to be sharing one coherent view on the lack of equal representation in the Judiciary, be it on the basis

of gender, race, ethnicity, religion, socio-economic background, etc. The fundamental reasoning behind seeking greater diversity is that it would ensure that justice is impartial, it would help prioritise decision making for the benefit of the previously disenfranchised sections of society. Even on paper, the degree of diversity of judiciary serves as a benchmark for its fairness and impartiality. This fairness and impartiality could in turn confer greater legitimacy to a vibrant democracy like ours.

Thus, the first step to ensuring greater representation and better inclusiveness of the Indian legal system is to make systemic efforts to make the Judiciary more diverse. It would be valuable to have representations of various marginalised sections of the society on the Judiciary because of their different lived experiences. Such greater representation would help the Judiciary in being more inclusive and in bringing alternative perspectives to interpretations of legislations, the most fundamental objective of which is the welfare of the society at large.

While addressing the cause of diversity in the Judiciary, the first and most prominent issue is that of gender diversity. Women form an important and considerable section of society and the issues they face on a daily basis with legal consequences are many. When the quantum of legal issues arising from the causes of women is immense, the Judiciary should also adapt to accommodate judges from all genders to adequately address them.

At present, the data regarding the representation of women in the Judiciary is disappointing to say the least. In the Supreme Court of India, only four of the 33 judges are women. In all the years of its independence, India has not seen even one female chief justice of the Supreme Court. The condition is no better in the High Courts and the District Courts. There are approximately only 11.5 per cent women judges in High Courts and only about 30 per cent of women judges in Lower Courts despite the comparatively large number of lower courts and advocates practising therein.

This concern has also been underscored by the International Commission of Jurists and Organisation of

Economic Cooperation and Development who believe in the role of gender balance in preserving courts' legitimacy as representative of the societies they serve, enabling courts to understand the real-world implications of their rulings and reducing the barriers to women's access to justice, such as the social stigma associated with reporting cases of sexual violence and abuse. In the said example of cases reported by women, although there may not be a great impact of a larger number of women judges on the bench insofar as the woman litigant's experience is concerned, it does ensure equality of opportunity for women in mammoth institutions like the Indian courts which are the guardians of democracy and the rights enshrined in its setup.

Apart from women's representation, greater representation of the under privileged, the backward castes and classes, of lawyers with different sexual orientations and of lawyers with disabilities, are all important causes

The problem of lack of representation of other marginalised sections of society in the Judiciary is further compounded by the lack of data and figures available to understand the abysmally low representation and the underlying issues for the same. For caste-based or religion-based minorities, as well as for judges suffering with disabilities, such data is hard to find, further highlighting how little attention has been paid to a problem that is so fundamental in ensuring greater representation and in turn better delivery of justice.

Concerns of Diversity and Inclusion for Lawyers

First, insofar as the representation of female practising lawyers in the legal profession is considered, despite the severe underrepresentation revealed by several reports such as the Tata Trust India Justice Report of 2020 or the Tata Trust National Fact Sheet for 2020, there are no systematic efforts to address the most basic issues such as a dearth of washrooms for women and this most basic problem exists for disabled lawyers as well as lawyers that do not identify with the binary norms of gender. This is besides the fact that other facilities, such as sanitary-napkin vending machines or nursing spaces, etc., are far from reality. Hence, the problem of lack of representation extends to every aspect of the legal system and is most evident in everyday examples.

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The body entrusted with addressing the causes of lawyers are the Bar Councils of different states and the Bar Council of India. However, shocking statistics came to the fore by a study conducted by *Bar and Bench*, wherein it was revealed that only 2.04 per cent of State Bar Council representatives across India are women. To put the numbers into better perspective, out of 441 representatives of 18 State Bar Councils, only 9 are women. In fact, the Bar Council of India has no female lawyer representative at all. It is therefore most pertinent that the issue of greater representation of all underrepresented sections of society is taken up at both the policy and administrative levels.

There is also a dire need to address the issues of lawyers that have special needs by virtue of their disabilities. Besides ensuring greater representation, a very important aspect is also ensuring access of the facets of the legal profession to those that are unable to access it by normal means. This could be lawyers with visual impairments, lawyers with hearing impairments, etc. The most common disappointment that is narrated by lawyers with disabilities is the barriers they face at the workplace. It is assumed that their competence would be a cause of concern and they are thus denied meaningful opportunities. In a very popular interview, a visually impaired lawyer working with the Honourable Dr Justice DY Chandrachud as a law clerk voiced the issues that were so basic yet so exclusionary for lawyers with disabilities on a daily basis. He explained how access to documents filed in courts of law is the biggest issue since most documents were not OCR scanned and thus, despite being in a soft copy format, remain inaccessible to lawyers with visual impairments. Thankfully this issue was addressed by Honourable Dr Justice DY Chandrachud who mandated that all filings in the Supreme Court of India be done with OCR scanned documents. It is grassroot structural changes, such as mandating OCR scanning of all the documents filed in courts, that will go a long way in ensuring access to the legal profession to everyone.

Similar issues arise for lawyers with locomotor disabilities as well. The concept of video-conference hearings was alien to Indian courts. It is only due to the COVID-19 pandemic that a video-conference setup was introduced providing remote connectivity to the courts ensuring lawyers from anywhere in the country could join in the proceedings of the Court. This was also a boost to lawyers with locomotor disabilities.

Are Law Schools the Right Place to Promote Diversity at the Fundamental Level?

For one to become a legal professional, it is unquestionable that one must possess a law degree. Therefore, the formative stage of greater diversity and inclusion is not the institutions where law is practised, it is instead the institutions where legal education is imparted. It is only natural that if there is greater diversity and inclusivity in the institutions imparting legal education in the country, that such diversity and inclusivity will have a rippling effect in the years to follow and would reflect thereafter in the institutions where the legal profession is practised. This diversity and inclusivity will reflect not just in the lawyers that practise law, but also in the judges that adjudicate the complex questions of law.

Another critical issue while considering law schools as the breeding ground for greater diversity and inclusivity is that, more often than not, the cost of quality legal education in our country is beyond the reach of the pockets of the marginalised and the underrepresented. This gap must be bridged by State Bar Associations and or other organisations that could reach out to the underrepresented groups and encourage them financially and morally to take up a career in the legal profession. Such mentoring would go a long way in ensuring financial and emotional stability to these groups of underrepresented sections of the society. This mentoring is also essential since a mere increase in enrolment in law schools will not solve the larger issue at hand; these students must constantly be encouraged to remain in the law programmes they enrol into.

The quantum and the seriousness of this problem is easily made evident if one were to see the fees structures of the top law schools in the country or the composition of a batch of students in any academic year that take up the CLAT or the LSAT. Thus, in the absence of any additional action in making quality legal education more accessible, it would be difficult to bridge this gap of representation of the sections of society that need it the most.

According to a report by Increasing Diversity by Increasing Access ('IDIA'), more than 85 per cent of students who made it to the prestigious National Law Universities ('NLUs') were Hindus and, of them, more than 30 per cent belonged to the Brahmin community—the dominant Hindu caste. On the other hand, less than 4 per cent of the students were Muslim, who constitute 14 per cent of India's population.



This problem was also highlighted by Honourable Dr Justice Dhananjay Y Chandrachud, judge of the Honourable Supreme Court of India, while addressing a conference of the Association of the Advocates on Record of the Supreme Court ('SCAORA'). Justice Dhananjay Chandrachud went to the extent of admitting that 'At the entry level, you have CLAT for admission to National Law Schools. We have a very flawed idea of meritocracy and the test is largely exclusionary in nature. It is attacked on two premises—argument of equality and argument of efficiency'. He went on to add that the test puts candidates from a rural orientation at a disadvantage and that justice is not confined only to the urban areas, it is predominantly rural. Another issue with the entry-level tests is also the process of application which is only online. This restriction of mode of application to only online itself excludes a large section of society that has none to very poor access to the Internet and thus, in the real sense of the word, these entry level tests are not a true test of meritocracy as they fail to bring all the worthy candidates within the ambit of the entry level exams itself.

At this stage, it would be worthwhile to refer to a judgement of the Honourable Supreme Court of India in the case of *Vikash Kumar v Union Public Services Commission*, reported in 2021 SCC OnLine SC 84, wherein the Honourable Supreme Court held that equality is not only limited to preventing discrimination,

but also embraces a wide ambit of positive rights including reasonable accommodation. The principle of reasonable accommodation, the Court observed, is a facet of substantive equality. Therefore, in order to be more inclusive and diverse, it is essential that greater and reasonable accommodation is made for underrepresented sections of the society.

The onus for making quality legal education more accessible also falls on the Government and its offices. There must be greater initiative on the part of the Government to build law schools, to recruit high quality faculties, to ensure a quality curriculum and to aid the underprivileged, underrepresented sections of society in entering the legal profession. This aid is not merely monetary or financial, this aid would also translate into ensuring greater accessibility to quality elementary education as well as greater accessibility to the forums to take up the entry level exams to join law schools.

Conclusion

The cause of diversity and inclusion is one that is of abundant importance to society as a whole. Thus, it is imperative that every constituent of the society works to further the cause of diversity and inclusion.

First, the most important associations to address the needs of any lawyer are the Bar Councils of respective states who are statutorily empowered to address the causes of lawyers. Bar Councils were created to bring together all lawyers into a single category, allowing lawyers to practise all over the country. However, these State Bar Councils operate with very limited accountability. The structures of these Bar Councils and thus their functioning needs an overhaul in so far as the enrolment process and the assistance rendered is concerned.

Second, the newer ways of accessing justice and ensuring reach to justice that came to the fore during the unfortunate time of the COVID-19 pandemic, such as video-conference hearings, must be continued. This would ensure greater access to lawyers with locomotor and other disabilities, to lawyers that are predominantly in a caregiver's role for the elderly and to women who cannot travel far and wide on account of familial roles. It is thus only fair that the system of video-conference hearings

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is continued in the future to ensure greater access to everyone alike in the legal profession. Additionally, even for hearings conducted physically, accessibility in terms of physical access to courts for lawyers with disabilities is a major concern. It is imperative that access to ramps and lifts in courts across the country are improved.

Third, structural changes are also required to be made for greater accessibility. For instance, legal databases such as SCC and Manupatra which are widely used in courts of law are not entirely readable for narrating software used by visually impaired lawyers. Hence, the legal databases must be improved accordingly to ensure that lawyers with accessibility issues can also access a wide range of databases.

Fourth, another possible way to ensure greater representation for the sections of society that are not adequately represented in the Judiciary could be reservations. However, a blanket provision for reservations always brings with it the looming question of quality and or the merit of the candidate. An easy answer to this could be that since the reservations being envisaged here are at the highest levels of the Judiciary in the country, these reservations could become operational once nominations have been sent to the collegium for judicial appointments. These reservations could operate much like the preferential treatment given on the basis of seniority for appointment as the Chief Justice of any court and would be limited to a fixed fraction of the total number of judges, thereby ensuring greater diversity without comprising on the quality or the merit.

That being said, reservations are inadequate unless they are accompanied with affirmative action and structural changes to encourage persons from all sections of society to take up the legal profession. Structural changes, such as those suggested in this article, must be enforced on a priority to encourage women, persons who do not conform to the gender binary, persons with disabilities, persons who are from backward castes or other marginalised sections of society to take up the legal profession.

Finally, it is most important that quality legal education in the country must be made available to students across the country without the enormous financial burden that it entails presently. To bridge this gap in financial capacity, it is important that the Government as well as the Bar Councils and senior members of the Bar step in to

help formulate policies and to render support wherever required financially and morally.

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