Nature of Meritocracy in Indian Judiciary

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***Abstract*: Meritocracy has been embedded in our minds since we were children. We have been raised to believe that merit and merit alone will help us advance. We attempt to find out if there is any truth to that, assuming that merit should be proportionately spread through the population if the higher judiciary reflects that proportion of the demographic and if we should consider in the future regarding the topic of the higher judiciary India and meritocracy in India.**

***Keywords*: Equity, Indian judiciary, Meritocracy, Nature of meritocracy, Reflective judiciary.**

1. Introduction

Meritocracy in a contemporary sense is defined as follows: "Whatever your social position at birth, society ought to offer enough opportunity and mobility for 'talent' to combine with 'effort' to 'rise to the top'." The Indian Judiciary system is a system of courts that interprets and applies the law in the Republic of India. The reflective judiciary is a concept where it is suggested that the judiciary should be the reflection of society. In this social research project, I'd study the nature of meritocracy in the Indian judiciary and the need for a reflective judiciary.

We learn about diversity in India not just in textbooks or syllabi but in real life, and we most probably have experienced it. We have heard since our birth that hard work and talent/intelligence are enough for success. In short, from our childhood, we usually believe in meritocracy. We believe that if someone is ready to work hard, they will be successful, no matter their socioeconomic background, psychological problems, or other hurdles that average children don't have. We especially love to see the inspiring tale of a young man or a woman achieving success despite the terrible circumstances they had to suffer.

It is safe to wave off these stories as inspiring and proof of our faith in meritocracy. It's safe to believe that those who deserve success because of talent and hard work achieve it sooner or later. We experience a diverse India. Yet not many see the need for its presence in the bureaucracy, the government, 'quotas', reservation system, or many mundane but crucial facets of our daily life. We somehow begin to see the plea for diversity as being against merit. As the Indian judiciary is one of the pillars of our democracy and state, it is bound to consider in this narrative. As law students, our mentors, teachers and classmates have given advice and reassurance that generally conforms with the ideology of meritocracy. It shapes the way we think and how sensitive we are to the plight of those who fail. It decides people's and the system's views on the rat race that their lives have become and if they think it is fair and just or not.

That is what inspired me to explore the relationship between meritocracy, the need for the reflection of the society and the Indian higher judiciary. As the core part of my career, the judicial system is vital for me. The views of meritocracy have been embedded into the Indian middle-class mind the minute that child enters this world. I have most points in my life, believed in a meritocracy. This social research is an attempt to see the true nature of my field and its relationship with meritocracy and diversity.

Today, most of the discussions surrounding meritocracy are from two viewpoints. Come from an American background (as the United States had it embedded in their State policy) about their minority and left-leaning people re-evaluating their social position at birth and the treatment. Especially after the Black Lives Matter movement as it is proven that those of Non-white dissent, especially those who are coloured, are more likely to be wrongfully convicted and often suspected by the law enforcement and are often treated as a threat than those who are white, and thus are at the lower tier of socio-economic position. Recent examples of George Floyd (footnote) and Breonna Taylor (footnote.) The other viewpoint is the one that concerns meritocracy in the education system and how that results in a rat race for children and a false belief that those who score higher academically are the ones who are intelligent while others aren't and give rise to things such as insecurity, anxiety, superiority and inferiority complex etcetera. The recent discussions about the reflective judiciary are also from a mainly U.S. centric narrative after President Joe Biden declared Judge Ketanji Brown Jackson as a nominee for Supreme Court. In India, the debate over meritocracy and diversity and inclusion usually arises after the appointments of the higher judiciary, who are predominantly upper class/caste straight men from a second-generation law background.

When you search meritocracy in Google, it shows 1,40,00,000 results, while meritocracy in the Indian judiciary shows 4,30,000 results. This research article will do the empirical study of 10 years of Supreme Court justices, their demographics and analysis and estimation of how long it will take for India to be a reflective judiciary if that fits into the narrative of meritocracy and what the meritocracy is to the Indian higher judiciary.

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Thus, we will now see an analysis of data based on the following assumption:

The composition of supreme court judges over the past 10 years shows that chances of anyone being a supreme court judge are in line with the demographic proportion of the country, thus, it is a meritocratic system.

The data is obtained from various news articles, supreme court websites, and even farewell speeches. Thus, it is secondary data and not necessarily reliable. The number of Supreme court judges whose information is used for this research is 76 and pans from 2012 to 2022. Therefore, even though new trends might enter, the research article is based on the available information. Following is the data collected based on five criteria: Gender, Religion, Caste, Parent's occupation and State. The Supreme Court Justices of the past ten years are distributed on these criteria. Following is the information collected by the aforementioned criteria.

2. Analysis

A. Data Analysis

The data is obtained from various news articles, supreme court websites and sometimes, even farewell speeches. Thus, it is secondary data, and not necessarily reliable. The number of Supreme court judges whose information is used for this research is 76 and pan from 2012 to 2022. Therefore, even though new trends might enter, the research is based on the available information. Following is the data collected based on five criteria: Gender, Religion, Caste, Parent's occupation and State. The Supreme Court Justices of the past 10 years are distributed on these criteria. Following is the information collected by the aforementioned criteria.

1) Gender

Gender is, unlike biological sex, a social construct, or gender is a social expression. Historically, Indian scholars have acknowledged that other genders exist than the two genders considered a norm. Unfortunately, during this research, I couldn't find any judges that identified themselves with any other gender. Thus, I have not included non-binary and transgender as a subcategory of the gender.

Even in the genders that are traditionally recognized (or are considered the norm), the female gender has suffered a lot. Not just for being perceived as an inferior gender, but the implication that their 'role' in the family has. There is nothing wrong if women want to do those things, as many things come down to the issue of consent and propaganda. It took 1988 for Fatima Bibi to become the first female judge in the Supreme Court of India. Out of 76 judges from 2012-2022, only 8 were women, i.e. 10.5% of the judges are women, while 89.5% of judges, 68 out of 76 judges are male, and none of the judges identifies beyond these genders. Although, it also indicates that the trend is slowly increasing, as, from 11 women that have been supreme court justices, 8 of them gained that position in the last ten years. Still, considering half of the population consists of women, it is hard to believe that only 8 of them were meritorious. Thus, it contradicts the hypothesis.

2) Religion

Religion plays an important role in a child's upbringing, and in India, even when that child turns adult, religion always peeks into their life, even when it is not wanted or expected. While the debate about persons of certain faith not feeling safe in India, recently as well, the religion is a charged topic with the threat of communal violence floating above like a slaughtering sword. While the judges have been, as we would presume, impartial and not bringing their faith into the judgements they deliver, it also affects the likelihood of a person becoming a supreme court justice in the first place.

The statistics tell a different story than the country's demographic does. Out of all 76 judges 65, they are Hindu, that is, 85.5% of judges are Hindu. While 5 out of 76 judges, that is, 6.6% of judges identify themselves as Christians, 4 out of 76 judges, that is, 5.3% judges are Muslim. The remaining are 1.3% of Zoroastrian judges, that is one judge out of 76 and 1 judge is unidentified. That does not dwell well with the hypothesis that was presented: That the merit was in proportion with the country's demographic. In the 2011 census, the Hindu population was counted as 79.80% of the country's population, Christians as 2.30% while the Muslim population is 14.23%. The Zoroastrian population was 0.006% and 0.007% of people did not state their religion. Hinduism being a major religion is a slightly comprehensible reason for the overwhelming presence of the judges who follow that religion. That does not answer how the Muslim judges are represented underwhelmingly, more so than any other religious minority. It is not to say that the judges sitting on the bench keep any religious prejudice in mind while delivering the judgement, but the unnerving feeling that those who aspire to achieve that position would get is not something we can or should ignore.

3) Caste

The caste has been a reason for the struggle. Even the creamiest layer of this social hierarchy asserts its presence in these debates. The merit and caste debate is already heated. While it is proven that the reservation system, even if it's born of good intention, the system creates more casteism than the intention of the visionaries who started it. With the current news about several underprivileged castes being attacked, humiliated and discriminated against, it is clear that they do need the protection that the reservation system offers them. Along with such policies, they need representation in every sphere. It is not in the hand of the government bodies to dictate the private organisations, but the judiciary, as the pillar of democracy, must have representation for these groups to feel inspired.

Out of 76 judges, 22, i.e., 28.9% judges are Brahmin. 12 out of 76 judges, i.e., 15.8% of judges, are Bania or Vaishya. 3 out of 76, i.e., 3.9 %, are Khatri, 2 out of 76 that is 1.3%, and 1.3% of judges are Reddy and Rajput, respectively. 8 out of 76 judges are from the Backward class or other backward class (10.5%), while Scheduled Castes identify with 5.3% of judges, 6 out of 76, i.e., 7.9% judges are Kayastha.10 out of 76 judges are those whose identity wasn't found while 9 of them are non-Hindu and thus not part of the intersection. According to a 2007 report, Brahmins consist of approximately 4 to 5% of the population. As of 1983, 1.88% of the population was Baniya. Even if we

consider that the population has risen five times, that would be 9.4%. Khatris make up approximately 0.01% of the population 0.1% of the population belongs to the Rajput community, and Reddy forms up 0.001% of the country's population. Backward Classes and other backward classes make up 41% of the country's population, and scheduled castes make up 16.3%. Thus, the hypothesis is wrong in this criteria.

4) Parent's Occupation

Parent's occupation matters, not just in the sense of nepotism, but the exposure to the environment of that field and being able to have that passion for achieving this status at a young age often stem from it. It also shows what struggles they might have faced if the parents were not from a law background. A parent's occupation should not influence one's chances of achieving the honour and position of supreme court judges. Unfortunately, it does. I could not find this information about 27 of 76 judges, i.e., 41.5%. The other findings are shocking, yet we would not be surprised. While two judges out of 76, i.e., 3.1%, were businessmen, 2 out of 76 judges, that is, 3.1% of judges had parents that worked in the agricultural sector. One judge out of 76, 1.5%, was from a Zamindar family, and the statistics repeat for a judge whose parent was a governor and a judge whose father was a legal clerk. 26.2% of judges, i.e., 17 judges, had lawyers in their families. Fourteen judges had judges in their families (21.5%). Thus, (not considering the judges whose family occupation is not listed) judges whose parents were from a legal field (lawyer, judge or legal clerk) would be 42.1 times more likely than those who aren't from the legal sector.

5) States and region

The region matters in terms of the education system offered in that state, how literacy is promoted, how taking up a profession other than the highest in-demand profession is, etcetera. The states are divided based on language and shared culture. It might help many. Such as those who want to become supreme court judges, those who file a petition in the supreme court, or the common people becoming more trustworthy of the supreme court in general. Andhra Pradesh consists of 5 Supreme Court judges out of 76 (6.6%), Assam has 1 out of 76 (1.3%), West Bengal consists of 4 out of 76 (5.3%), Bihar 2 (2.6%),b Chhattisgarh (1.3%), Delhi 9 (11.8%), Gujrat 3 i.e. 3.9%, Himachal Pradesh 3 (3.9%), Jammu Kashmir 1 (1.3%), Jharkhand 1 (1.3%), Karnataka 6 (7.9%), Kerala 5 (6.6%), Madhya Pradesh 6 (7.9%), Maharashtra.

3. Findings and Conclusion

The data collected indicate that the Indian judiciary does not have a meritocracy. In 4 out of the five criteria, they have failed to achieve the hypothesis. The region criterium is the only criterium that supports our hypothesis. From non-proportionate gender composition, religious composition, and caste composition, it is indicative that we haven't reached the situation required for meritocracy in its contemporary sense to work. A parent's occupation is one criterium that can't be considered merit or representation either. The representation of women in Supreme court judges is scarily lacking and statements similar to that of Justice Bobade fuel that problem. The same thing goes with caste and religious representation.

Ultimately, it is proved that the socioeconomic situation at your birth does matter in the Higher Judiciary in India.

But there are a few things that should be made clear. One: This research does not focus on merit or qualitative analysis of those judges, nor does it question their ability and; or capability. Two, this research does not think that any steps should be taken that would hurt the hard-earned independence of the judiciary, especially in the appointment of the supreme court judges. That said, the situation is not quite as bleak. The number of women in the supreme court is indeed disappointing. But if we look at the graph of all women judges, most of them were appointed last decade. As seen with the regional representation, we can achieve the reflective system in due time. But we shouldn't forget that just because the situation doesn't seem bleak, the current situation should concern the collegium and general public. Otherwise, the change would most definitely take time.

A. Remedy to the Problem

The solution for remedying the problem is not one size fits all model, and certainly not for a country as historically and culturally diverse as India. Indian judiciary has played a long battle to achieve independence the judiciary, especially in the recruitment of higher judiciary. Thus, involving other government organs will fuel the debate, and once again, the judiciary will struggle. The same thing might happen if a direct reservation system is in place.

That leaves us with two concepts that one should consider to find the solution to this problem.

1. Reflective judiciary

In the first two Judges' cases that debated the merit, even though reflective judiciary or fair reflection of the society wasn't the concern of those cases, Justice Pandian noted that:

"It is essential and vital for the establishment of real participatory democracy that all sections and classes of people, be they backward classes or scheduled castes or scheduled tribes or minorities or women, should be afforded equal opportunity so that the judicial administration is also participated in by the outstanding and meritorious candidates belonging to all sections of the society and not by any selective or insular group."

He clarified that he wasn't asking for a quota or reservation but supported his claim by stating that UK and US follow the reflective principle by nominating judges from diverse backgrounds. Therefore he stated:

"Though the appointment of Judges to the superior judiciary should be made purely on merit, it must be ensured that all sections of the people are duly represented so that there may not be any grievance of neglect from any section or class of society."

He further stated that:

"The Government which is accountable to the people should have the right of suggesting candidates to the concerned Chief Justice for consideration, but the Government has no right to directly send the proposal for appointments by-passing the Chief Justice concerned."

Merit was debated and discussed through all three *Judges'* cases. Yet not a definitive answer to what the term 'merit' should

constitute is determined. There is no doubt that merit should play the significant role possible in the appointment of the higher judiciary, but as the organ of the government, whose legislative and executive are more diverse than its third organ, it must reflect the society.

2. Redefining the 'Merit'

Merit is the ability and capability of a person to achieve something. So, should we include the criteria like Gender, Religion, Caste, region, and economic background because they influence the obstacles one faces and how one person belonging to a specific demographic has to try a lot harder than the favoured demographic? This has been reiterated by Justice Chandrachud in his judgements. In his speech, he stated, "Narrow concept of 'merit' allows upper caste individuals to mask their obvious caste privilege."

Thus, we should redefine what merit means by considering the socio-economic context.

Table 1
Gender

Gender	Number
Male	68
Female	8

Table 2
Religion

Religion	Number of judges
Christian	5
Muslim	4
Zoroastrian	1
Hindu	65
Unknown	1

Table 3
Caste

Caste	Number of judges
Baniya/Vaishya	12
Brahmin	22
Kayastha	06
Khatri	01
Rajput	01
Reddy	01
OBC	08
Scheduled castes	04
Not known	10
Not Applicable	09

Table 4
Parent's occupation

Occupation	Number of judges
Business	02
Farmer	02
Governor	01
Judge	14
Law clerk	01
Lawyer	17
Not found	27
Zamindar	01

Table 5
States or region

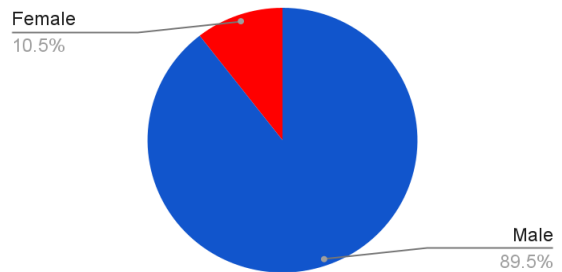| State/Region	Number of judges
Andhra Pradesh	05
Assam	01
West Bengal	04
Bihar	02
Chattisgarh	01
Delhi	09
Gujrat	03
Himachal Pradesh	03
Jammu and Kashmir	01
Jharkhand	01
Karnataka	06
Kerala	05
Madhya Pradesh	06
Maharashtra	09
Punjab	03
Rajasthan	05
Sikkim	01
Tamilnadu	05
Uttar Pradesh	05
Uttarakhand	01

1) Gender

Fig. 1. Pie Chart of Gender Distribution of SC judges
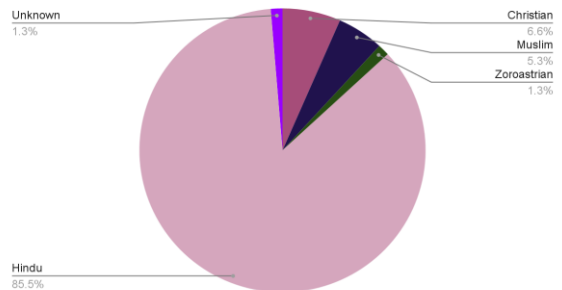
2) Religion

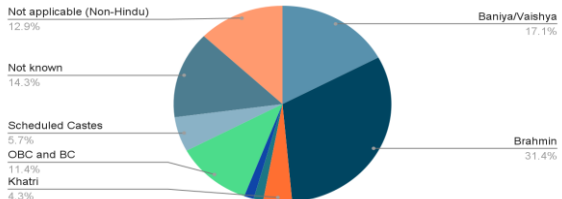Fig. 2. Pie chart of religious distribution of SC judges

3) Caste

Fig. 3. Pie chart of Caste-based distribution
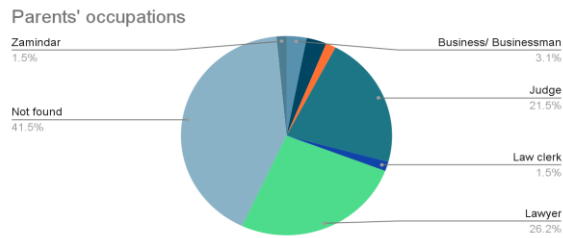
4) *Parent's Occupation*

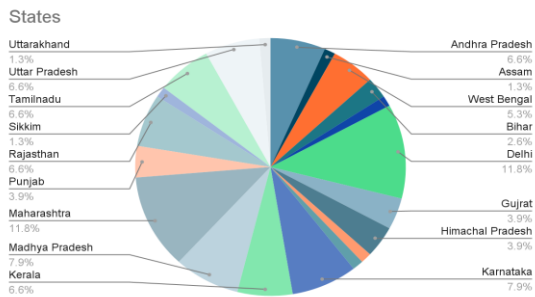Fig. 4. Distribution based on parental occupation

5) *Region/State*

Fig. 5. Distribution based on region/state

References

[1] Against Meritocracy: Culture, Power and Myths of Mobility, Page number 1, Paragraph 1, Line 1.

[2] Rupa Burman Borgohain, "The role of the Indian judiciary in achieving social justice."

[3] M. P. Singh, 'Merit' in the appointment of the judges.

[4] Terry Chapman, Social mobility in India: Determinants and recommendations for change.

[5] Surinder S. Jodhka, Katherine Newman, In the Name of Globalization Meritocracy, Productivity and the Hidden Language of Caste.

[6] Ajantha Subramanian, Making Merit: The Indian Institutes of Technology and Social Life of Caste.

[7] Aryna Dzmitrieva, Becoming a Judge in Russia. An Analysis of Judicial Biographies.

[8] Hilary Sommerland, "The Social Magic of Merit Diversity, Equity and Inclusion in English and Welsh Legal Profession."

[9] M. P. Singh, "Myths of meritocracy: Comment on M. Sandel's The Tyranny of Merit, by Deborah Rhode Securing the Independence of The Judiciary-The Indian Experience"

[10] Dominico Francavilla, Diversity and the Judiciary in India: Supreme Court judges in Indian society.

[11] Mario E. Comba, "Reflective Judiciary: more an illusion than a temptation."

[12] Namit Saxena, Bar and Bench, Disproportionate Representation.

[13] Know thy Judge segment, Bar and Bench.

[14] Supreme Court of India website, https://main.sci.gov.in/