

15 July 2021

To,
Shri Kiren Rijju
Honourable Minister,
Ministry of Law and Justice
4th Floor, 'A' Wing, Shastri Bhawan,
New Delhi. 110001

Sub: Representation seeking reservation of seats for woman advocates in the Bar Council of India and the State Bar Councils.

Sir,

1. We extend our heartiest congratulations to you on your appointment as Minister of Law and Justice. We wish you all the best in the new assignment.
2. We are a group of women advocates practising in the Honourable High Court, Bombay and in other courts and Tribunals in and around Mumbai having organised our activities under the name of Interactive Session of Women Advocates. We take up issues pertaining to women in general and women advocates specifically. We have from time to time made representations concerning women and/or women advocates to various authorities. Around 300 women are part of the group at present.
3. We have been organising talks on various legal topics followed by an interactive session, exclusively for women advocates and women interns, by a sitting judge of Bombay High Court or a Senior Advocate/Advocate for some time now.
4. Shri Justice B. R. Gavai [Judge, Supreme Court of India], Ms. Indu Malhotra [Former Judge, Supreme Court of India] and Shri Justice Abhay S. Oka [Chief Justice, Karnataka High Court] are some of the judges who have addressed our group. Smt. Sujata Manohar and Shri S. N. Variava, former Judges, Supreme

Court of India have also addressed us. Shri Iqbal Chagla and Ms. Madhavi Divan [Additional Solicitor General, Government of India] are two of the several Senior Advocates who have delivered lectures which have been enthusiastically received by women advocates.

5. These lectures are usually held on a Friday evening and are aimed at providing continuous legal education and improvement opportunities to more number of women advocates and particularly new entrants in the profession and law students. We had organised a panel discussion on “Gender Bias in Courts and Bar Rooms: A Need for Gender Sensitization” in 2019. A discussion on gender sensitization took place in the Bombay High Court perhaps for the first time in its history.
6. In view of the non-representation/ under-representation of women in the various State Bar Councils across India as well as in the Bar Council of India, we address this representation to bring to the notice of your goodself the great need for empowerment of women advocates by providing them proper representation in the State Bar Councils and the Bar Council of India.
7. There is not a single woman member in the Bar Council of India at present. A brief analysis of members of various State Bar Councils (based on the data compiled from their websites) makes its crystal clear that atleast in 10 State Bar Councils [Bar Councils of Maharashtra and Goa, Uttarakhand, Uttar Pradesh, West Bengal, Rajasthan, Punjab and Haryana, Kerala, Karnataka, Gujarat and Delhi] there is not a single woman member. 7 State Bar Councils have only 1 woman member [Bar Councils of Andhra Pradesh, Himachal Pradesh, Jharkhand, Madhya Pradesh, Tamil Nadu and Puduchery, Telengana and Bar Council of Assam, Nagaland, Mizoram, Arunachal Pradesh and Sikkim] while 1 State Bar Council [Bar Council of Bihar] has two women members. Thus, even in the State Bar Councils which have woman member/s, the representation as a percentage of the total members is negligible.

8. Under Section 7 (1) (d) of the Advocates Act, 1961, the functions of the Bar Council of India include to safeguard the rights, privileges and interests of the advocates. Similarly, as per Section 6(1)(d) of the Advocates Act, 1961, the functions of a State Bar Council include to safeguard the rights, privileges and interests of advocates on its roll. In our considered view, to safeguard rights, privileges and interests of advocates, it is necessary to have an in-depth understanding of the issues faced by the advocates including women advocates who face certain issues distinct from their male colleagues. In the absence of any woman representation in the Bar Council of India and a State Bar Council, there is a severe impediment in addressing concerns pertaining to women advocates; thereby there being no avenue for woman advocates to raise issues with regard to their welfare.
9. In the Constitution of India the principle of gender equality has been enshrined in its preamble, fundamental rights, fundamental duties and the directive principles of state policy. However, despite such unequivocal equal rights given to both men and women, Th While the Bar Council of India and the State Bar Councils have various functions such as promotion and supporting law reform, conducting seminars and organising talks on legal topics by eminent jurists and publishing journals and papers of legal interest, in absence of women advocates not being members of the Bar Council of India and the State Bar Councils, women advocates continue to be deprived of opportunities to contribute to the legal profession in a meaningful way.
10. Under Section 7 (1) (h) of the Advocates Act, 1961, the Bar Council of India is mandated to promote legal education and to lay down standard of such education in consultation with the Universities in India imparting such education and the State Bar Councils. The Honourable Supreme Court in its recent judgment in *Aparna Bhat and others vs. State of Madhya Pradesh and another* [2021 SCC

Online SC 230] has while issuing directions on gender sensitization of the bar and the bench, issued the following direction to the Bar Council of India:

“Likewise, the Bar Council of India (BCI) should also consult subject experts and circulate a paper for discussion with law faculties and colleges/universities in regard to courses that should be taught at the undergraduate level, in the LL.B program. The BCI shall also require topics on sexual offences and gender sensitization to be mandatorily included in the syllabus for the All India Bar Examination.”

11. In view of the aforesaid decision of the Honourable Supreme Court, it is imperative that women advocates find representation in the Bar Council of India. The Bar Council of India ought to take up the issue of gender sensitization not only in the law courses but also at the bar by itself and through the State Bar Councils.
12. Sir, you are aware that gender equality is a constitutional goal and that our constitution recognizes affirmative action as a tool to achieve the goal. Article 243D (3) and (4) of the Constitution of India ensures participation of women in Panchayati Raj Institutions by mandating not less than one-third reservation for women out of total number of seats to be filled by direct election and not less than one – third of the total number of offices of Chairpersons in the Panchayats at each level. Similar reservation has been provided to women in Municipalities and in the offices of Chairpersons of Municipalities under Article 243T (3) and (4) of the Constitution of India. Furthermore, as per proviso to Article 243ZJ (1) of the Constitution of India, the Legislature of a State shall, by law, provide for the reservation of two seats for women on board of every co-operative society consisting of individuals as members.

13. Apart from the Constitution of India, reservation for women is now also part of certain statutory enactments. To give two examples, as per the Companies Act, 2013 and the rules framed thereunder, every listed company or public company with paid-up share capital of Rs.100 crores or turnover of Rs. 300 crores or more, has to appoint at least one woman director. Further, under the Consumer Protection Act, 2019, the District Forum, the State Commission and the National Commission are mandated to consist of at least one member who shall be a woman.
14. However, given the negligible representation of women in the past and present in the Bar Council of India and the State Bar Councils across India, there is a need for reservation for woman advocates therein. The legal profession continues to suffer from gender inequalities. Women advocates are consistently denied a place in the decision making high table. The representation of women advocates in the higher judiciary, senior designation and amongst arguing counsels is still negligible and shows that claims of gender equality in the legal profession are far from the truth despite the increasing number of women law graduates. Women constitute only around 10% of the higher judiciary in the country. To give only one illustration, out of 63 judges in the Bombay High Court, one of the oldest and biggest High Courts in the country, only 8 are women. Out of 416 persons designated as senior advocates by the Supreme Court as on 1.10.2019, only 18 are women. Out of these 18 women, 5 are retired judges of various high courts. Out of 185 persons designated as senior advocates by the Bombay High Court till date, only 6 have been women.
15. Women's equal participation in the profession is critical to both ensuring the fairness of the legal system for all participants and to make available different perspectives for the development of law. There is a need to advance the interests of women members of the legal profession and to secure the full and equal participation of women in the legal profession in furtherance of a just society. It is necessary that an equal platform be provided to woman advocates through

their representation in the Bar Council of India and various State Bar Councils.

16. In view of the provisions of the Advocates Act, 1961, the number of members of a State Bar Council is determined by the number of enrolled advocates on the rolls of the particular State Bar Council. Section 3(2) (b) of the Advocates Act, 1961 reads as under:

“(2) A State Bar Council shall consist of the following members, namely:—

(a)

(b) in the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of a State Bar Council with an electorate exceeding ten thousand, twenty-five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council”.

17. We request that an amendment be made to the provisions of the Advocates Act, 1961 wherein reservation can be made for representation of woman advocates as members of the State Bar Council.

18. We propose that the said reservation be also based on the number of advocates enrolled in particular State Bar Council. We propose that a proviso be added to Section 3(2)(b) of the Advocates Act, 1961 as under:

“Provided that, in the case of a State Bar Council with an electorate not exceeding five thousand, there shall be atleast one woman member, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, there shall be atleast two woman members, and in the case of the

State Bar Council with an electorate exceeding ten thousand, there shall be atleast three woman members.”

19. As per Section 4 (1) (c) of the Advocates Act, 1961, the Bar Council of India consists of “one member elected by each State Bar Council from amongst its members”. We suggest that reservation for women be provided in the Bar Council of India by adding a proviso to Section 4 (1) (c) of the Advocates Act, 1961 as under:

“Provided that atleast three members of the Bar Council of India under sub clause (c) above shall be women to be elected by the State Bar Councils on a rotational basis.”

20. We hope that, to safeguard the rights, privileges and interest of women advocates across India, to ensure their meaningful contribution to the legal profession and to ensure equal opportunities to all women advocates, the proposal of the Interactive Session of Women Advocates for amendment of the Advocates Act, 1961 seeking reservation for woman in the Bar Council of India and the State Bar Councils be considered favourably by your esteemed goodself.

Thanking you,

Yours sincerely,

On behalf of Interactive Session of Women Advocates,

Ms. Rajani Iyer
[Senior Advocate]

Ms. Anita Shekhar-Castellino
[Advocate]

Ms. Sharmila Deshmukh
[Advocate]

Ms. Sonal
[Advocate]