

Gender Equality as a Social Process: Opportunities and Dilemmas of Female Judges in Chinese Courts

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This Article presents the full picture of Chinese women’s career path from law school to the courts, from junior judge to court leader. Using up-to-date data and interviews, it provides an informative account of why and how women are currently entering the court system in China, and the obstacles encountered in their rise in the court system. Most courts in China face greater difficulty recruiting men than women, which leads to mechanisms that especially advantage men. This Article aims to explain the current gap between the increasing number of female judges in courts and their lack of representation in leadership positions. In addition to factors such as childbirth and work-life balance which make career development more difficult for women in some other professions, many female judges also find the prospect of having to make personal sacrifices in the pursuit of leadership positions—such as relocation to distant places—unappealing and inconsistent with their initial career motivation for entering the judiciary in search of a professional job that offers stability and reasonable work-life balance. There are also deep-lying social and cultural factors which make it more challenging for female judges to be strong leaders and good judges while conforming to the traditional conception of successful women in Chinese society. This Article provides critical analysis on women pursuing careers in Chinese courts, and predicts that the increasing number of female judges in courts will lead to more women in court leadership roles in the future.

Introduction	150
I. Methodology	154
II. Women’s Career Path: from Law School to Career as a Judge . .	155
A. Woman in Legal Education	155
B. Woman in Courts’ Recruitment Process.	157
C. Career Progression and the Quota Reform.	158
D. Women “Leaders” in Chinese Courts.	161
III. Analysis	163
A. Division of Labor and Gender Balance in the Court	163
B. Glass-ceiling Effect and Female Leadership	165
1. “One is not Born, but Rather Becomes, Woman”	165
2. Difficulties and Obstacles Faced by Female Judges.	166
3. Women’s Unwillingness to be Court Leaders	168
Conclusion	170

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Introduction

In Greek mythology, the goddess of justice appears as a female figure. However, in reality, men dominate the judiciary in most parts of the world. The typical reading of the situation often argues that women have traditionally been discriminated against and often denied equal opportunity as compared to their male colleagues in the legal professions.¹ It is happening not only in law schools² and law firms,³ but also in courts.⁴

In China, however, women have never been disadvantaged or excluded from law schools since the re-establishment of legal education, practice, and the judiciary in the early days of the Reform and Opening-Up in the late 1970s. Since the 1990s, the number of women in law schools and on the bench, as well as in law firms, have been increasing steadily.⁵

China has always adopted laws and policies to strengthen the status of women. The “China National Program for Women’s Development (2011-2020),” issued by the National Working Committee on Children and Women of the State Council,⁶ establishes that the proportion of women among senior professionals and technicians ought to reach thirty-five percent by the year 2020.⁷ In 2015, the proportion of women judges and prosecutors were 28.8 percent and 29.3 percent, respectively, representing an increase of 12.1 percent and 12.3 percent compared to 1995.⁸ By 2019, women made up 34.7 percent

1. See, e.g., Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. SOC. SCI. 299, 304 (2008); Daniel Idibia Obida, *Masculinity in Gender Equality: Implications for Development and Rights of Women in Legal Advocacy*, 4 AFR. J. OF L. AND HUM. RTS. 149, 152 (2020).

2. See, e.g., Carrie Yang Costello, *Changing Clothes: Gender Inequality and Professional Socialization*, 16 NAT’L. WOMEN’S STUD. ASS’N. J. 138, 147 (2004); Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 101 (2009).

3. See, e.g., Monique R. Payne-Pikus, John Hagan & Robert L. Nelson, *Experiencing Discrimination: Race and Retention in America’s Largest Law Firms*, 44 L. & SOC’Y. REV. 553, 554 (2010); Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245, 2246 (2010); Katrina Lee, *Discrimination as Anti-Ethical: Achieving Systemic Change in Large Law Firms*, 98 DENV. L. REV. 581, 583 (2021).

4. See, e.g., Eli Wald, *Judicial Under-representation, Over-representation and “Catch up”: Insights from a Study of US District Court Judges in the 10th Circuit*, 26 INT’L. J. LEG. PROF. 33, 34 (2019); Ulrike Schultz & Tabeth Masengu, *Women and Judicial Appointments*, 27 INT’L. J. LEG. PROF. 113, 114 (2020); Achmad Kholiq & Lim Halimatusa’diyah, *Does Gender Blindness Improve Gender Equality? Female Judges and the Glass Ceiling Effect in the Islamic Judicial System in Indonesia*, 32 SOC. & LEGAL STUD. 139, 141 (2023).

5. Chunyan Zheng, Jiahui Ai & Sida Liu, *The Elastic Ceiling: Gender and Professional Career in Chinese Courts*, 51 L. AND SOC’Y. REV. 168, 169 (2017).

6. The National Working Committee on Children and Women is a State Council department responsible for coordinating and promoting the implementation of laws, regulations and policy measures for women and children by relevant government departments. The outlines it issues are implemented from the top down. See *National Working Committee on Children and Women under State Council*, CHINA DAILY, (Dec. 18, 2018), <https://govt.chinadaily.com.cn/s/201812/18/WS5c18a577498ee2f0291e3fc3/national-working-committee-on-children-and-women-under-state-council.html> [<https://perma.cc/FX8P-YPNM>].

7. See *National Program for Women’s Development, 2011-2020*, FAOLEX DATABASE, (Jun. 15, 2022), <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC207740/> [<https://perma.cc/Z7X5-9V72>].

8. See State Council Information Office of the People’s Republic of China, *Gender Equality and Women’s Development in China*, THE STATE COUNCIL OF THE PEOPLE’S REPUBLIC

of all Chinese judges, and women accounted for thirty-seven percent of all senior judges.⁹ The goals set out in the above documents seem to be in line with reality. More importantly, in recent years, it has been a trend for courts to recruit women in greater proportions than men. Many courts have already seen a majority of female judges among their rank. Despite these gains, female judges are still often underrepresented in leading positions at many levels of the judiciary.¹⁰ China's courts show a "pyramid structure," with the share of female judges decreasing as they move up the judicial hierarchy.¹¹ Even when they take on leadership roles, women judges are more likely to be deputies rather than the chief.¹² A number of intriguing questions arise in this context: do women have equal chances in the Chinese judiciary? Do they have equal representation in higher positions, and do they hit the so-called "glass ceiling"? What explains the current gap between the increasing number of female judges in courts and their lack of representation in leadership positions?

Reasons often mentioned in the existing literature to explain gender inequity of female judges are family-career balance,¹³ childbirth,¹⁴ weaker career aspiration of high-level promotion¹⁵ etc. However, what these studies actually reveal are, to a large extent, those barriers faced by professional women in general from many countries. There is a notable gap in terms of in-depth examination of the status quo and specific concerns of women in the court system of China.

OF CHINA (Sep. 22, 2015), https://english.www.gov.cn/archive/white_paper/2015/09/22/content_281475195668448.htm [<https://perma.cc/5HPJ-JBZM>].

9. The hierarchy of judges in China is divided into four tiers, from highest to lowest: Chief Justice, Associate Justice, Senior Judge, and Judge, with a total of twelve levels. GUOJIA TONGJITU SHEHUI KEJI HE WENHUA CHANYE TONGJISI (国家统计局社会科技和文化产业统计司) [DEPARTMENT OF SOCIAL, SCIENCE AND TECHNOLOGY, AND CULTURAL STATISTICS, NATIONAL BUREAU OF STATISTICS OF CHINA], ZHONGGUO FUNV ERTONG ZHUANGKUANG TONGJI ZILIAO—2020 (中国妇女儿童状况统计资料—2020) [STATISTICS ON WOMEN AND CHILDREN IN CHINA 2020] 90 (2020).

10. There are four levels of courts in the judicial hierarchy: the Supreme People's Court (SPC) at the top the apex; the High People's Court at the second tier (HPC); the Intermediate People's Court (IPC) in cities at the third tier; and the Basic People's Court (BPC) at the bottom.

11. Liu Xiaonan (刘小楠), *Falü Jiaoyu, Falü Zhiye zhong Nüxing Lingdaoli de Tisheng* (法律教育、法律职业中女性领导力的提升) [Promoting Female Leadership in Legal Education and Legal Profession], 4 ZHONGGUO FAXUE JIAOYU YANJIU (中国法学教育研究) [CHINA LEGAL EDUCATION RESEARCH] 102, 107 (2010).

12. Li Juan (李娟), *Zhongguo Dangdai Nüxing Faguan Zhiye Qunti Yanjiu* (中国当代女性法官职业群体研究) [Study on Chinese Contemporary Female Judge Occupation Groups] (Nov. 30, 2013) (unpublished Ph.D. dissertation, Nankai University) (on file with Nankai University Library) (China).

13. See, e.g., Xia Yan (夏燕) & Sun Shuang (孙爽), *Falü Jingying 'Ta Shijie' de Kunjing yu Fansi – Yi Meiguo Nüxing Faguan Xianzhuang Kaocha wei Zhongxin* (法律精英“她世界”的困境与反思——以美国女性法官职业现状考察为中心) [Dilemma and Reflection upon "She World" among Legal Elites – On the Basis of Study of American Female Judges' Occupation], 29 ZHONGHUA NÜZIZI XUEYUAN XUEBAO (中华女子学院学报) [J. OF CHINA WOMEN'S UNIVERSITY] 93, 93-96 (2017) (China).

14. See, e.g., ANQI SHEN, *WOMEN JUDGES IN CONTEMPORARY CHINA: GENDER, JUDGING AND LIVING*, 177-203 (PALGRAVE MACMILLAN, 2017); Anqi Shen, *Women Judges Who Judge Women Offenders: A Chinese Case Study on Gender and Judging*, 27 INT'L. J. LEGAL PROF. 63, 73 (2020) [Hereinafter "Women Judges Who"].

15. See, e.g., Li, *supra* note 12, at 211-212; Zheng et al., *supra* note 5, at 171.

In Chinese scholarship, with the increase in the number of women in the courts, there is a growing amount of literature mentioning that the proportion of female judges in leadership positions in the courts has increased.¹⁶ There is also the expectation for the gradual increase of the number of female leaders with more women being recruited across all courts.¹⁷ However, there is a scarcity of empirical research explaining reasons behind the seemingly positive trajectory as well as the factors that could be holding women back from further development.

In the English literature on female judges in China, some studies emphasize the importance of developing feminist consciousness within the judicial profession, especially among women officeholders. It was found that the Chinese judiciary has been said to have little knowledge of Western and other feminist theories.¹⁸ As a result, they do not use it as a guide for action.¹⁹

It is also argued that the masculine judicial culture on the political track prevents women from obtaining high-level promotion, but still allows them to rise to mid-level leadership positions based on their expertise. Women can also take vacant mid-level positions left by men who exit the judiciary to pursue other careers. This vertical and horizontal mobility of judges in their career development presents a processual logic to gender inequality in the Chinese judiciary.²⁰

Different from existing studies, this Article will first take a holistic view of the entire process of career development of Chinese women judges, by presenting the opportunities and challenges faced by women judges in their career paths from law school to the court, and from judge assistants to court leaders. The existing studies usually focus on one stage of the career development of female judges, such as legal education²¹ or promotion within the courts,²²

16. Liu Wenfeng (刘文锋) & Huang Jianhong (黄建红), *Qianyi Woguo Jiceng Fayuan Nü Faguan de Chengzhang Zhuangkuang* (浅议我国基层法院女法官的成长状况) [On the Career Development of Female Judges in China's Basic Courts], 7 FAZHI YU SHEHUI (法制与社会) [LEGAL SYS. ANG SOC.] 191, 191-92 (2011)(China).

17. Liu Chang (刘昶) & Hu Tu (胡图), *Gengduo Nǚxing Faguan: Sifa Guocheng Naru Shehui Xingbie Shijiao de Zhongyao Cuoshi* (更多女性法官：司法过程纳入社会性别视角的重要措施) [More Female Judges: An Important Way to Adopt Gender Perspective in Judicial Process], 128 ZHEJIANG GONGSHANG DAXUE XUEBAO (浙江工商大学学报) [ZHEJIANG GONGSHANG UNIV. J.] 56, 61 (2014) (China).

18. Women Judges Who, *supra* note 14, at 73.

19. *Id.* at 75.

20. Zheng et al., *supra* note 5, at 168, 191-196.

21. See, e.g., Liu Xiaonan (刘小楠), *Zou chu Siren Lingyu: Faxue Jiaoyu, Falü Zhiye zhong de Nǚxing* (走出私人领域：法学教育、法律职业中的女性) [Getting Away from Private Sphere: Women in Legal Education and Profession], 26 ZHENGFA LUNTAN (政法论坛) [TRIBUNE OF POL. SCI. AND L.] 138, 138-139 (2008) (China); Jiehui Yang & Fangli Yin, *Exploration of Gender Equality Consciousness in Law Education*, 196 ADVANCES IN SOC. SCI., EDUC. AND HUMANITIES RSCH. 261, 261-62 (2019).

22. See, e.g., Zhou Anping (周安平), *Falü Zhiye zhong de Xingbie Wenti Yanjiu* (法律职业中的性别问题研究) [Law Construction and Critique of the Separation in Law Career], 138 GUIZHOU SHIFAN DAXUE XUEBAO (SHEHUI KEXUE BAN) (贵州师范大学学报 (社会科学版)) [GUIZHOU NORMAL UNIV. J. (SOC. SCI.)] 7, 13 (2006) (China); Zheng et al., *supra* note 5, at 168-199; Zeng Hairuo (曾海若) & Li Jinping (李新萍), *Woguo Faguan Xingbie Bili Shiheng Xianxiang Shizheng Fenxi – Yi Shanghai, Hangzhouwei Yangben* (我国法官性别比例失衡现象实证分析——以上海市、杭州市为样本) [An Empirical Study of the Imbalance of the Gender Ratio of Judges in China — Taking Shanghai City and Hangzhou City as Samples], 36 ZHENGFA XUEKAN (政法学刊) [J. OF POL. SCI. AND L.] 87, 87-97 (2019) (China).

whereas a holistic view of the whole process would help to identify the stages at which women's opportunities rise and to diagnose the problems that hinder their development.

It is also important to note that it is impossible to understand the development of the Chinese judiciary without a closer look at the specific social and cultural context and background of China and the legal system. Judges in most Anglo-American countries, men or women, are appointed to the bench only after substantive experience of legal practice. While in China, as well as in many other civil law jurisdictions ranging from Continental Europe to East Asia, judges and lawyers follow separate career paths, and the judicial system is a highly sophisticated bureaucracy.²³ In China, women can enter the court at a younger age,²⁴ but they face a more complicated environment with many structural barriers in their long path of judge careers. Moreover, there are a number of policies with notable Chinese characteristics, such as the "one-child policy," support for underdeveloped regions and the selection criteria for executive posts, that significantly influence the career development of the current generation of judges. These policies, together with those initiatives more commonly associated with women's issues, shape women's status and structural positions in Chinese courts. In other words, gender inequality among judges in China is a complex and multifaceted issue that requires further investigation. To fill the gap, this Article seeks to identify the factors that inform and influence the reaching of some sort of equilibrium point in the career path and aspirations of most female judges.

The remainder of the Article is arranged as follows. It first outlines methodological issues in the study in Part I. Then, to present women's progression in courts, this Article provides a description of their career path from law school to the court in Part II. In Part III, this Article goes on to examine the glass-ceiling effect for female judges and other contributing factors. The final section concludes with a summary of the findings and some policy suggestions.

23. See TOM GINSBURG & TAMIR MOUSTAFA, *RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES*, 23–24 (CAMBRIDGE UNIV. PRESS, 2008).

24. See, e.g., the average age of the first group of appointed quota judges of the High People's Court of Shanghai Municipality in 2017 after the quota reform was 32.7. See SUP. PEOPLE'S CT., SHANGHAI GAORYUAN ZUZHOU CHUREN FAGUAN JITI XUANSHI – 157 MING FAGUAN ZHULI TONGGUO LINXUAN CHENGWEI FAGUAN (上海高院组织首批初任法官集体宣誓 157名法官助理通过遴选成为法官) [The First Batch of Quota Judges Took Collective Oath in the High People's Court of Shanghai Municipality, 157 Judge Assistants Became Quota Judges] (Dec. 26, 2017) (China). For further analysis, see Liu Zhong (刘忠), *Gaigekai fang Yilai Faguan Renmian Nianling Guiding Kao* (改革开放以来法官任免年龄规定考) [A Study of the Provisions on the Ages of Appointment and Retirement of Judges in China since the Reform and Opening-up], 43 *Huanqiu Falü Pinglun* (环球法律评论) [GLOBAL LAW REVIEW] 107, 116–122 (2021) (China). In contrast, the average age at the time appointment to the bench of active U.S. circuit court judges was 50.6, and the average age at time of appointment is 50 for U.S. district court judges. See Barry J. McMillion, *U.S. Circuit and District Court Judges: Profile of Select Characteristics*, CRS REPORT 11, 23, (Aug. 1, 2017), <https://crsreports.congress.gov/product/pdf/R/R43426/6> [<https://perma.cc/8PPW-2F94>].

I. Methodology

Studying gender and professional careers in Chinese courts presents several methodological challenges. Researchers face barriers in accessing information when conducting empirical studies regarding Chinese courts in general. Publicized information from the courts is often incomplete, and official data and statistics are often considerably out-of-date. Moreover, many judges have legitimate concerns about participating in in-depth interviews, given the level of pressure and accountability expected of them in the current Chinese system. In an era where court judgments and court-related news routinely make media headlines and social media focus, judges are understandably cautious about voicing any views outside of their professional responsibilities.

Some of these challenges can be overcome through the long-term development of working relationships with interviewees, especially by a female researcher with integral professional and personal connections built during the time spent at three leading Chinese universities in Wuhan, Beijing, and Shanghai. Such experiences enable access to former students, colleagues and other associates who have extensive involvement with the Chinese judiciary. Moreover, the author has also been working as a research scholar at the Supreme People's Court (SPC) between 2021 and 2022, which adds further credibility when developing an approach to interview members of the judiciary.

Bearing in mind the challenges discussed above, most of the previous studies on this topic mainly focused on courts of a specific province or region, where the researchers have the most available access to empirical data. This study aims to provide a broader and more comprehensive view of the general situation across China and an in-depth understanding of women's position in the court system, by drawing on both quantitative and qualitative data. The quantitative data mainly derive from statistical records of judges in the Chinese judicial system. The research was conducted on a nation-wide basis, focusing on the high people's courts (HPC) in each province, municipality and autonomous region, and intermediate people's courts (IPC) in provincial capitals. The twenty-two provinces, five autonomous regions and four municipalities of mainland China each has only one HPC. The four municipalities have more than one IPC in their respective jurisdictions (four for Beijing, three for Shanghai, three for Tianjin, and five for Chongqing). Provincial capitals of other provinces and autonomous regions each has only one IPC. The survey thus covers data from thirty-one HPCs and forty-two IPCs.

The analysis of legal education is informed by data from universities and law schools as well as personal teaching experiences.

A total of twenty-one Chinese judges and nine judge assistants were interviewed between October 2022 and February 2023 by the author. The selection of interview candidates was made with the intention to facilitate the diversity of the sample base, in terms of their geographic base, levels of court and career stages. There are judge assistants, quota judges, division heads and presidents of the courts from all four levels of the Chinese court from the SPC to the county-level basic courts. Those thirty interviewees come from nineteen courts across eleven provinces, autonomous regions and municipalities, namely Beijing Municipality, Zhejiang Province, Jiangxi Province,

Hubei Province, Hebei Province, Shandong Province, Guangdong Province, Gansu Province, Hainan Province, Heilongjiang Province, and Inner Mongolia Autonomous Region. The geographic span of the study encapsulates both the more economically prosperous coastal regions and major cities as well as the underdeveloped inland regions which traditionally lag behind in terms of economic, social and legal development. Twenty-five of the interviewees are female. Due to the last remaining restrictions from the pandemic and the geographic dispersion of the interviewees, most interviews were carried out online or over the phone.

The study uses the following method of coding to protect the identity of the interviewees: the first group of letters represent the province, autonomous region or municipality where the court is located; the second group of letters represent the level of the court; the third group of numbers represent the numerical order of the interviewee. For example, “BJ-IPC-01” represents the first judge or judge assistant interviewed in an IPC in Beijing.

The semi-structured interview questions were designed to facilitate deeper discussion on the basis of generic overview. Main parts of the set interview questions covered background questions, the court-entering process, court-working experience, and promotion. Background questions obtain information about the court that the judge or judge assistant had experience at, their age, education level, marital status, current position, and department in the court. The second part focused on the differences between genders in career motivation, as well as whether females are being discriminated against or face prejudice in the recruitment process for the court. The third part raises the most valuable questions in reflecting the gender inequality situation in courts, which contains questions of gender differences in professional competence, possibility of promotion and the ratio of leadership positions, their views on the composition of court leadership and the prospect, and the need for specific policy to improve female judges’ positions. Most interviews lasted between forty-five and ninety minutes and all interviews were personally conducted by the author and research assistants to ensure consistency across the board.

II. Women’s Career Path: from Law School to Career as a Judge

A. Woman in Legal Education

Chinese legal education was restarted in the late 1970s alongside the re-establishment of the court and the procuratorate, following the destruction of all these institutions in the Cultural Revolution. The early entrants to higher education were selected exclusively by their academic performance in national entrance examinations, with no consideration of gender.

It is also worth mentioning that with the implementation of the “one-child policy” in China from the early 1980s, educational resources within the family are no longer skewed in favor of boys. The impact of the policy became particularly notable with the significant rise in the percentage of female students from the mid-1990s, when the first of those who were born under the

“one-child policy” started university.²⁵ Moreover, there is widespread perception among the Chinese population that boys are more likely to be interested in natural science subjects (*li ke*) while girls tend to favor social science subjects (*wen ke*). Regardless of whether such perception is supported by concrete evidence, since the 1990s, there has been a gradual but sustained increase in the number of female students across the growing number of law schools all over China. Peking University reported sixty-one percent of law students to be female as early as in 2000 to 2005.²⁶ Since the 2010s, it is the norm and expectation for women to be in the majority among Chinese law students.²⁷ There have been reports of over seventy percent of female students at some law schools.²⁸ Upon completion of their undergraduate studies, female students (across all disciplines) are also more likely to enter postgraduate studies, with the latest figure suggesting that 63.5 percent of the entrants in the national postgraduate admission examinations (*kao yan*) are female in 2022.²⁹

Unsurprisingly, the combination of these simple facts dictates that a lot more women now graduate with law degrees and often more postgraduate degrees than men, often at a ratio of two to one or higher.³⁰ This is one of the most important foundational facts of any analysis of the topic in the China context, which some studies nevertheless opt not to mention.

On top of such broad statistics, there is notable preference by female graduates to look for options to work in the court, even if the financial reward of the judiciary is often lower than some other popular career choices such as private lawyers or in-house counsel in commercial companies.

Among the three law schools surveyed, in one law school in Guangdong Province, there were 349 undergraduate and master's students in the class of 2022, of whom seven went to work in the courts, five of which were female;³¹ in a law school in Shanghai, out of all the students who graduated from the class of 2018 to 2022, a total of thirty-two masters' students went to work in courts (accounting for four percent of the total number of graduates), with no undergraduate students, and the ratio of male to female was nine to twenty-three.³²

25. Liu Yunshan (刘云杉) & Wang Zhiming (王志明), *Nüxing Jinru Jingying Jiti: Youxian de Jinbu* (女性进入精英集体：有限的进步) [*Women Enter the Elite Group: Limited Progress*], 29 GAODENG JIAOYU YANJIU (高等教育研究) [J. OF HIGHER EDUC.] 49, 60 (2008) (China).

26. *Id.* at 58.

27. See Zheng et al., *supra* note 5, at 176.

28. Southwest University of Political Science & Law enrolled twice more women than men in 2015. See Zeng et al., *supra* note 22, at 93.

29. *Kaoyan Nannü Bili 1:2, shi Xialuxiangfeng Nüsheng Ying le ma?* (考研男女比例1:2 · 是狭路相逢女生赢了吗?) [*The Ratio of Male to Female Participants in the Postgraduate Admission Examination is 1:2. Does this Mean that Female Students have the Upper Hand in a Narrow Path of Fierce Competition?*], SINA (Mar. 20, 2022), https://k.sina.com.cn/article_2491522363_94819d3b027013wis.html [<https://perma.cc/N6PM-8ST8>] (China).

30. See Zhu Fei (朱非), *Quanguo Zhengfa Gaoxiao Benke Xinsheng Renshu chao Liangwan* (全国政法高校本科新生人数超两万) [*Undergraduate Freshmen Exceeded 20,000 in Universities of Politics and Law Nationwide*], Shanghai Fazhi Bao (上海法治报) [SHANGHAI L. J.] (Sep. 22, 2021) at B07 (China).

31. Interview with staff of certain Law School Academic Affairs Office, Guangdong Province (Nov. 12, 2022).

32. Interview with staff of certain Law School Academic Affairs Office, Shanghai (Dec. 21, 2022).

Of the fifty-six masters' graduates the author has supervised in past six years, only two have gone on to work in the courts, both are women.

B. Woman in Courts' Recruitment Process

Against such background of having far more female applicants for entry level jobs to the judiciary, many Chinese courts, in order to maintain reasonable gender balance, have actually taken the conscious approach to openly favor male candidates. The rationale behind such aims will be examined in the next section alongside the different factors influencing the career progression of male and female judges. It suffices to simply document the starkly different situation and approach in China, as compared to many other jurisdictions, again often overlooked in other studies, where mechanisms are in place to help male applicants rather than female applicants.

A judge from Hainan spoke of the practice when she entered the court as court clerk, the then standard entry-level judiciary job before the "quota reform." The explicit quota for new court clerks was three women to seven men. They were ranked separately as female candidates often performed far better than their male competitors in terms of academic qualifications and entry tests on legal knowledge. When this obviously discriminatory quota was dropped a few years later due to various criticisms, the intake became overwhelmingly dominated by female, leading to a large rise in the percentage of female judges later on in the court.³³

Similar stories come from other parts of the country. A judge assistant from Zhejiang recalled her admission to the court in 2021 when one of three positions was reserved for male candidates while the other two were for open competition. Those two positions had six candidates in the final round of selection, five females and one male. The male candidate was ranked sixth out of six in both the written legal skills test and the interview, while the top two ranking females got their job.³⁴ In 2022, the same court advertised eight positions with a specific gender allocation of four male-only and four open competition. The final recruitment had four males and four females.

There is a general sentiment that if all positions are left gender-neutral in recruitment, this will likely result in an overwhelming majority of female intake. Consequently, such seemingly discriminatory practices are still widely used in court recruitment, simply to maintain reasonable gender balance among the intakes.

The job advertisement for judge assistants (now the standard entry-level job following the quota reform) in Jiangsu Province in 2023 is a good example that illustrates its ongoing nature.³⁵ Among 157 posts advertised, each

33. Interview with Judge, HN-IPC-01, Hainan Province (Feb. 3, 2023).

34. Interview with Judge Assistant, ZJ-BPC-01, Zhejiang Province (Mar. 27, 2023).

35. JIANGSUSHENG RENLI ZIYUAN HE SHEHUIBAOZHANG TING (江苏省人力资源和社会保障厅) [DEPARTMENT OF HUMAN RESOURCES AND SOCIAL SECURITY OF JIANGSU PROVINCE], JIANGSUSHENG 2023 NIANDU GONGWUYUAN ZHAOLU ZHIWEI JIANJIEBIAO (江苏省2023年度公务员招录职位简介表) [CIV. SERVANTS RECRUITMENT-SUMMARY OF POSITIONS (JIANGSU PROVINCE, 2023)] (Nov. 4, 2022), http://jshrss.jiangsu.gov.cn/art/2022/11/4/art_87129_10651696.html [https://perma.cc/KH72-UTKG] (China).

recruiting multiple candidates for different courts in the province, forty-two of them (twenty-seven percent) were open to male applicants only, compared to only four exclusively for female applicants (three percent). Thirty-two of those forty-two male-only posts were in the enforcement division (*zhixing ting*) of the various courts—a point to be examined later on. The other ten posts were intended for adjudication divisions, most of which specified additional requirements on “frequent official trips,” “frequent extra hours and night shifts,” “working at criminal division,” etc.³⁶ The remaining posts, mostly trial positions, either specified a gender ratio of one to one or set no rule on gender at all.

Experts argue that the practice of deliberately reserving certain positions for men in the recruitment of judges, such as enforcement posts, should not be seen as occupational gender discrimination. Instead, it is a part of the functionalism and division of labor in the Chinese court, to be examined in Part III.³⁷

Female ascendancy in recruitment has not completely translated into the gender composition of the existing judiciary. Of the nineteen courts that these thirty judges and judge assistants who participated in the interviews come from, ten currently have more male judges, eight have more female judges, and one has an equal number of male and female judges. But the trajectory is obvious. A recent study on basic courts in Shanghai and Hangzhou concludes that, assuming the current selection system for judges remains unchanged, the near one to one ratio of male to female judges, combined with the fact that women significantly outnumber men in the pool of judge assistants, will likely shift the gender ratio of judges in China. This shift is expected to lead to a substantial increase in the number of female judges, ultimately resulting in more women than men in the judiciary in the foreseeable future.³⁸

C. Career Progression and the Quota Reform

The quota reform, implemented between 2014 and 2017, was the most fundamental change to the judiciary and judges careers in the last decade. The reform aimed to downsize the Chinese judiciary by as much as forty percent according to a quota determined by the Chinese Communist Party. The reform required all judges in China, regardless of seniority and rank, to re-apply for judgeship; only a percentage of them would requalify after a series of assessments and be re-appointed as judges.³⁹

The high percentage of judges not on the frontline and not performing any adjudicative function was a key problem that the quota reform attempted to address. The types of judges who did little or no adjudication, include judges in managerial positions, in research or administrative departments within the courts, and judges whose sole responsibility was to enforce judgments.⁴⁰

36. The Judge Assistant post (adjudication division) of the Primary People's Court of Qinhuai District of Nanjing City, Jiangsu Province intended to recruit six applicants, without any requirement on gender.

37. See Zeng et al., *supra* note 23, at 97.

38. See *id.* at 97.

39. See Ying Sun & Hualing Fu, *Of Judge Quota and Judicial Autonomy: An Enduring Professionalization Project in China*, 251 CHINA Q. 866, 866-867 (2022).

40. See *id.* at 872.

The Central Political and Legal Committee (CPLC) promulgated its Document No. 53 (2014), entitled “Opinions on related issues of judicial system pilot reform,” which set the well-known quota of thirty-nine percent, meaning only a maximum of thirty-nine percent of the personnel among the ranks of those working in political-legal sector in a province would be re-appointed as judges after quota reform. Within the unit of a province, the respective provincial HPC was given the discretion to adjust the percentage of judges in different courts according to estimated case numbers, population within its jurisdiction, and other social and economic factors.⁴¹ Following the reform, 120,138 judges of the previously 211,990-strong judiciary were reconfirmed, effectively disqualifying about 90,000 judges in a short space of time.⁴²

Quota judges saw some increase in the level of remuneration, while those who failed to qualify would lose the title and status of judge who could independently adjudicate. In many regards the reform was a tough challenge for male and female judges alike.

Figure 1: Gender Statistics of Quota Judges (Sample Courts), 2023

Courts	Quota Judges			Percentage of Female Judges
	Total	Female	Male	
The High People’s Court of Beijing Municipality	134	65	69	48.51%
The High People’s Court of Zhejiang Province	166	47	119	28.30%
The High People’s Court of Fujian Province	90	31	59	34.40%
The High People’s Court of Guangdong Province	184	75	109	40.76%
The High People’s Court of Guangxi Zhuang Autonomous Region	58	11	47	19%
The High People’s Court of Shaanxi Province	93	33	60	35.40%
The First Intermediate People’s Court of Beijing Municipality	143	69	74	48.25%
The Second Intermediate People’s Court of Beijing Municipality	158	81	77	51.27%
The Third Intermediate People’s Court of Beijing Municipality	123	58	65	47.15%
The Fourth Intermediate People’s Court of Beijing Municipality	34	19	15	55.88%
The Third Intermediate People’s Court of Tianjin Municipality	90	33	57	36.67%
The Third Intermediate People’s Court of Shanghai Municipality	47	28	19	59.57%
The Intermediate People’s Court of Changchun City of Jilin Province	98	52	46	53.06%
TOTAL	1418	602	816	42.45%

Note: Among the 31 HPCs and 42 IPCs surveyed, only the 6 HPCs and 7 IPCs listed above disclosed the complete lists of quota judges with gender information on their official websites.

Empirical studies on quota reform of all courts in one province of Southwest China revealed that there are generally “more men than women” among the quota judges. The ratio of male to female judges is approximately 1.8:1.⁴³

41. See *id.* at 872.

42. See Zhou Qiang (周强), *Zuigao Renmin Fayuan Gongzuobaogao – 2018 Nian 3 Yue 9 Ri zai Di Shisan Jie Quanguo Renmindai biao Dahui Di Yi Ci Huiyi shang* (最高人民法院工作报告——2018年3月9日在第十三届全国人民代表大会第一次会议上) [Supreme People’s Court Work Report on the 1st session of 13th National People’s Congress of PRC], ZUIGAO RENMINFAYUAN (最高人民法院) [SUP. PEOPLE’S CT.] (Mar. 25, 2018) (China).

43. Zuo Weimin (左卫民), *Yuan’e Faguan Linxuan Jizhi Gaige Shizheng Yanjiu: Yi A Sheng*

As noted by the study, judges in the sample province after the quota reform were predominantly male (64.7%), middle-aged (51.1%), having held some leadership role (68.1%), with many of them appointed to be judges before 2002 (46.4%). The preponderance of men in the existing pool of judges expectedly resulted in more men being appointed to quota judge.⁴⁴ In other words, what Figure 1 and the study mentioned above present is the personnel structure within the Chinese courts that had developed over the previous decades. When asked specifically about the gender issue surrounding the quota reform in this study, no female judge or judge assistant interviewed considered that there was gender discrimination in the process of requalification for quota judges.

The more significant impact of the quota reform is the alteration of the career progression for all those who aspire to become a quota judge. One aspect of the reform that cannot be overlooked is the creation of a prototype judicial path and a new hierarchy. Quota reform introduced a significant change to the predominant practice of promoting clerks to a judgeship within the same court. The change is more impactful in higher courts. Before the reform, higher courts routinely, if not exclusively, appointed judges from within their own pool of judicial assistants and clerks. A court clerk at a HPC would become a judge of the HPC after many years of work. Quota reform put an end to that practice—article seventeen of the Judges Law of the PRC provides that judges in higher courts must be selected from judges in lower-level courts and all new judges must start their judicial career at a basic people's court (BPC) as a general rule.

On the other hand, after the quota reform, the number of judgeships in each court is basically fixed, and vacancies generally only occur when people leave or retire. The number of positions that can be applied for is disproportionate to the number of young people who need a position. In one BPC in Zhejiang, there are currently eighty-six judges out of a total of ninety positions in the court after the reform; this means that there are currently four vacant judgeships. According to the Judges Law, any judge assistant can then compete for the vacancy through a public examination after five years of work. There are candidates from IPCs who have gone to BPCs in search for opportunities to join the quota, while more of those already working at IPCs are probably still on the fence.⁴⁵

It was pointed out that the quota reform triggers an uncertain environment among young judges. Able judges had already been leaving the judiciary for other careers and the quota reform was intended to halt that exodus. Ironically, worried about their future prospects, many young judges have abandoned the courts.⁴⁶ In an IPC in Beijing, if female judges leave, they are more likely to consider going to another court, whereas men leave the court system completely; thus, more men are leaving the court system. Among the male judges who left were also judges who were qualified after the reform, as gaining the status of judge was worth more when looking for a new job.⁴⁷

wei Yangban (员额法官遴选机制改革实证研究：以A省为样板) [Empirical Study on the Reform of Quota Judge Selection Mechanism: Taking A Province as a Model], 216 ZHONGGUO FAXUE (中国法学) [CHINA L. SCI.] 261, 263 (2020) (China).

44. *Id.* at 268.

45. Interview with Judge Assistant, ZJ-BPC-01, Zhejiang Province (Mar. 27, 2023).

46. Sun et al., *supra* note 39, at 873.

47. Interview with Judge Assistant, Beijing (Feb. 4, 2023), BJ-IPC-05.

Overall, the problems caused by the quota reform have largely affected the entire group of judges and the reform is only one of the reasons why more male judges have left. Therefore, the quota reform is only one of the factors affecting the gender structure of the Chinese courts. Gender issues are not prominent in this immensely competitive process for all. Again, no female judge or judge assistant interviewed for this study saw gender as a major or material concern of who qualify as quota judges.

D. Women “Leaders” in Chinese Courts

One conspicuous indicator of the gender imbalance in the Chinese court system is the scarcity of female judges in leadership positions. This is particularly concerning given that there are more female applications, more female judge assistants, and nearly equal numbers of female and male judges in many courts. One study recently pointed out that while women account for forty-five percent to 51.6 percent of the judges at the city and provincial level of the subject region,⁴⁸ the percentage of female court presidents and vice presidents in the whole province was as low as 7.6 percent.⁴⁹

To develop a more comprehensive understanding of the situation than that in the current literature, this study undertakes a count of all court presidents and vice presidents from thirty-one provincial HPCs and forty-two IPCs of municipalities and provincial capitals, presented in Figure 2.

Figure 2: Gender of Presidents and Vice Presidents — HPCs and IPCs of Provincial Capitals, 2023

Courts	Presidents		Vice Presidents						
	Male	Female	Courts with All Male	Courts with More Male	Courts with Gender Parity	Courts with More Female	Courts with All Female	Male	Female
HPCs (31)	28 (90.32%)	3 (9.68%)	10	14	2	4	1	107 (76.43%)	33 (23.57%)
IPCs (42)	38 (90.48%)	4 (9.52%)	16	14	5	4	1	96 (75.00%)	32 (25.00%)

Note: Among the courts we surveyed, 2 IPCs did not disclose their vice presidents and have not been accounted for.

As Figure 2 shows, in Category of Vice Presidents, the percentages of female vice-presidents in HPCs and IPCs have reached a national average of 23.57 percent and twenty-five percent respectively. At the HPC level, among fourteen “Courts with more male,” in four courts, the number of male vice-presidents is only one more than the number of female vice-presidents. In other words, of the thirty-one HPCs, there are four “Courts with More Female,” one “Courts with All Female,” four courts with a similar ratio of male and female, two “Courts with Gender Parity.” The total number of eleven accounts for

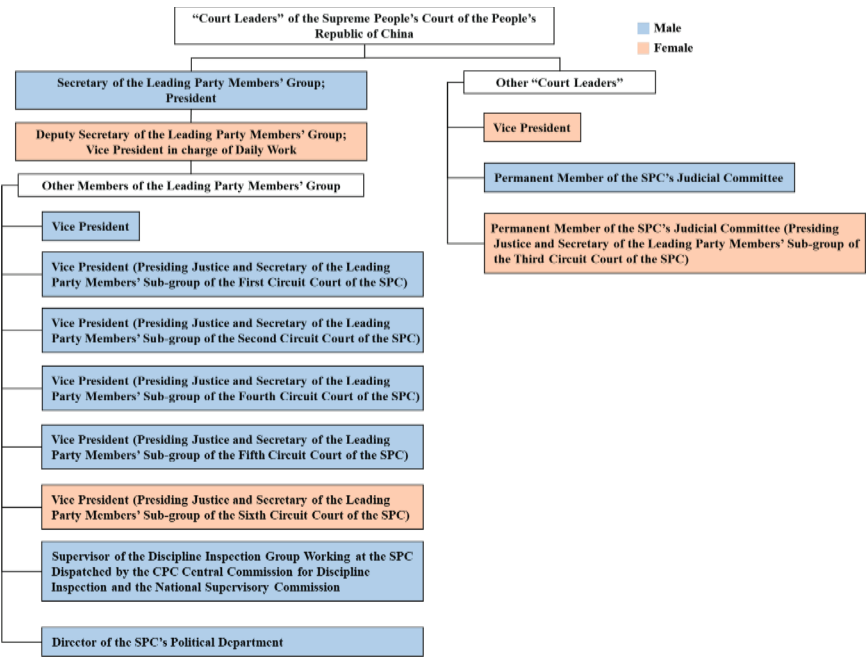
48. Zheng et al., *supra* note 5, at 181.
49. *Id.* at 180.

thirty-five percent of all thirty-one investigated HPCs. At the level of IPC, among fourteen “Courts with more male,” in six courts, the number of male vice-presidents is only one more than the number of female vice-presidents. Consequently, at the level of IPC, there are four “Courts with More Female,” one “Courts with All Female,” six courts with a similar proportion of men and women, and five “Courts with Gender Parity.” The total number of sixteen accounts for forty percent of forty investigated IPCs.

In the meantime, the percentages of women in the President’s column are still significantly lower in both HPC and IPC.

Bearing in mind the considerable differences that exist across the geographic span of the Chinese court system depicted in Figure 2, a further step was taken in the present study to examine the leadership situation of courts in Beijing. Among the twenty-four courts (seventeen BPCs, six IPCs, and one HPC) in Beijing, there are eight female presidents, accounting for 33.3 percent. The percentage of female presidents in Beijing was notably higher than national data shown in Figure 2. Beijing represents the developed city with prosperous economy in China, which may contribute to a more gender equal environment. However, it is noteworthy that seven of the eight female presidents are at the basic courts, showing that the difficulty for women in leadership positions increases with the level of the court, i.e., the higher the court, the smaller the percentage of female presidents.⁵⁰

Figure 3: Composition of “Court Leaders” of the SPC, 2023



50. Ten interviewees mentioned that female judges acting as chief leaders were currently rather uncommon.

Compared with court’s president and vice-presidents, the court “leaders” (*lingdao*) is a relatively complex concept, and the composition of the leadership team may vary from court to court. Figure 3 shows the current composition of the SPC as an example. Figure 4 shows that there are notably fewer women in leadership positions, although the proportion of women has reached around twenty percent, echoing the situation of court presidents.

Figure 4: Gender of “Court Leaders” — HPCs and IPCs of Provincial Capitals, 2023

Courts	“Court Leaders”	
	Male	Female
HPCs (28)	227 (80.21%)	56 (19.79%)
IPCs (35)	177 (77.97%)	50 (22.03%)

Note: “Court Leaders” are affirmed based on the “Court Leaders” column on each court’s official website. Only 28 HPCs and 35 IPCs in our survey have disclosed the full lists of their “Court Leaders” on their official websites.

III. Analysis

A. Division of Labor and Gender Balance in the Court

Based on the previous section, the current picture of gender amongst the Chinese courts could be succinctly summarized as a lot more female applicants aspiring to become judges, almost equal number of current judges, and far fewer female judges in leadership positions. The most significant reading of the interviews, meanwhile, is that interviewees are not critical of the situation. Female judges and judge assistants express understanding, even support, of the current policies, even if this means they have less of a chance to lead their courts in the future.⁵¹

The most fundamental reason behind such understanding, which is often overlooked in the English-language literature while taken for granted by most Chinese-language scholarship, is the division of labor in the practical workload of the Chinese court.

As noted above in relation to the Jiangsu court job advertisement, thirty-two out of the forty-two male-only posts are for the enforcement division of the various courts. The enforcement division of the Chinese court undertake work which in many other jurisdictions would have been done by people other than judges, such as bailiffs. However, the reality of Chinese law and practice is that these often have to be done by fully qualified judges, and they are some of the most challenging and confrontational part of the work of the court. The typical routine of a judge of the enforcement division includes the judicial seizure of assets, involving physical attendance at the scene of real

51. Interview with Judge, BJ-IPC-01, Beijing (Feb. 7, 2023); interview with Judge Assistant, BJ-IPC-05, Beijing (Feb. 4, 2023); interview with Judge, GD-IPC-04, Guangdong Province (Mar. 24, 2023); interview with Judge, GD-BPC-01, Guangdong Province (Feb. 7, 2023); interview with Judge, HN-IPC-01, Hainan Province, (Feb. 3, 2023).

estate transactions and the disposition of assets such as vehicles and other valuables that debtors loathe to lose. It is commonplace for the work to take place at night at remote locations following tip-off, due to the risks of assets being transferred. This is the least envied job in almost any Chinese court, but it has to be done. In practice, enforcement divisions in many courts are staffed by almost exclusively male judges. No female judge is ever likely to raise any complaint about not having an opportunity to work there.⁵²

Such division of labor has a wider presence than the enforcement divisions and often appear at different crucial stages in the career of the judiciary. Another important part of the practical work of the Chinese court is that senior judges are often required to work at a different court for a period of time. Such needs may arise out of both institutional reasons and personal development.

For example, for a judge who is currently the divisional head of a provincial HPC, there is an expectation that he or she shall move to an IPC or a BPC to become the president or vice-president for a number of years. Such court leadership experience is seen as essential before the candidate would be considered for presidency at HPC level.⁵³

Sometimes, courts in some parts of the country, mostly the more developed coastal cities, will be instructed to send experienced judges to aid the underdeveloped parts of China, mostly the western hinterland, including autonomous regions such as Xinjiang or Xizang, where there is a chronic lack of well-educated legal workforce. The SPC has formulated corresponding guidelines for supporting the development of Xinjiang and Xizang.⁵⁴ There is a correlation between the support work and the training of judges. For example, a model of cadre training set up by the SPC is that of a middle-ranking male judge from a BPC in Beijing who was selected to aid Xinjiang and then became the deputy president of the intermediate court in Hetian, Xinjiang.⁵⁵

52. The interviewee mentioned her initial surprise when one of her male colleagues earned his “quota” without having performed obviously better than other female colleagues. However, she felt that it was a reasonable choice as soon as she learnt that the quota was reserved for the enforcement division which the male colleague duly joined. See interview with Judge Assistant, BJ-IPC-05, Beijing (Feb. 4, 2023).

53. Interview with Judge Assistant, ZJ-HPC-01, Zhejiang Province (Feb. 1, 2023).

54. See Zuigao Renminfayuan ‘Guanyu Jinyibu Zuohao Xinxingshi xia Yuanzang Yuanjiang Gongzuo de Yijian’ ‘Guanyu Duikou Zhiyuan Xinjiang ji Bingtuan Geji Fayuan Gongzuo de Zhidaoyijian’ (最高人民法院《关于进一步做好新形势下援藏援疆工作的意见》《关于对口支援新疆及兵团各级法院工作的指导意见》)[Supreme People’s Court of China Opinions on Further Improving Counterpart Support Work for Xinjiang and Xizang under New Circumstances, and Guidelines on Counterpart Support Work for All Levels of Courts in Xinjiang], ZUIGAO RENMINFAYUAN (最高人民法院) [SUP. PEOPLE’S CT.] (Jul. 13, 2021), <https://www.court.gov.cn/zixun-xiangqing-313241.html> (China); Zhonggongzhongyang Bangongting Yinfa ‘Guanyu Guli Yindao Rencai xiang Jianku Bianyuan Diqu he Jiceng Yixian Liudong de Yijian’ (中共中央办公厅印发《关于鼓励引导人才向艰苦边远地区和基层一线流动的意见》)[General Office of the CPC Central Committee Opinions on Encouraging Talents Flow to Remote and Poverty-stricken Areas and Grass-roots Communities], YANGGUANGWANG (央广网) [CNR] (Jun. 20, 2019), http://china.cnr.cn/news/20190620/t20190620_524657143.shtml [https://perma.cc/QJ4C-WBCB] (China).

55. See Renminfayuan Sifagaige Anli Xuanbian Er (人民法院司法改革案例选编(二)) [2nd Batch of Selected Cases of Judicial Reform of People’s Courts], ZUIGAO RENMINFAYUAN (最高人民法院) [SUP. PEOPLE’S CT.] (Dec. 28, 2017), <https://www.court.gov.cn/zixun-xiangqing-75762.html> (China).

These are tasks that very few residents of the prosperous coastal cities would volunteer for, so they come with the understanding and implicit promise for career reward upon their return in three or five years for those who undertake them.

In most of these scenarios, judges who could be considered would be in their thirties or forties. Many of them have young children and aging parents (often with no sibling to share caretaking responsibilities due to the one-child policy). The much less appealing facilities and often harsher natural environment will also play hard on the mind of candidates. The opportunities, or burdens, almost invariably fall on the shoulders of male judges. In 2018, for example, all four aid judges sent from Beijing to Xinjiang, who received much publicity, were male.⁵⁶ Again, their female colleagues make no complaint, even when these men would return to take presidency and leadership roles ahead of them, given that this was the bargain for going on these arduous journeys in the first place.

B. Glass-ceiling Effect and Female Leadership

Much of the response from interviewees makes more sense when understood against the context of such division of labor in the current Chinese court system. The dominant sentiment is that judges and judge assistants fully appreciate the current gender balance and the historic and practical roots of it.⁵⁷ Most are also optimistic about the future in terms of the increase in the number of female judges, which will likely mean more female court leaders.⁵⁸ The judges currently in leadership positions are mostly born in the late 1960s and 1970s, who first entered the court when there was a majority of male judges.⁵⁹ Yet there are a lot more women among judges in the middle ranks of the court, typically born in the 1980s, which would mean many more women rising to leadership roles in another five or six years.⁶⁰

However, several interviewees expressed the view that given the practice and needs of the court as explained above, some factors that have led to the lower percentage of female leaders will likely persist. This will probably lead to the perpetuation of a situation where there will continue to be fewer female leaders than male leaders for a certain period of time in the future.

56. Zhao Yan (赵岩) & Zhao Yanyan (赵艳艳), *Xiang Shiliuzi Yiyang Jinjin Baozai Yiqi – Beijing Fayuan Kaizhan Duikou Zhiyuan Gongzuo Jishi* (“像石榴籽一样紧紧抱在一起”——北京法院开展对口支援工作纪实) [*Get United together like Pomegranate Seeds: Chronicle of Beijing Courts' Counterpart Support Work*], RENMINFAYUAN BAO (人民法院报) [PEOPLE'S CT. DAILY] (Dec. 13, 2018) at 4 (China).

57. See interview with Judge Assistant, IM-HPC-01, Inner Mongolia Autonomous Region, (Mar. 8, 2023); interview with Judge, GS-BPC-01, Gansu Province, (Feb. 4, 2023).

58. An interviewee was of the view that, although holding the deputy position is more common for female judges, but this may be the result of cohort effect. In a few years, there would be more female judges acting as chief. See interview with Judge, HN-IPC-01, Hainan Province (Feb. 3, 2023).

59. Interview with Judge, BJ-HPC-01, Beijing (Feb. 8, 2023).

60. Interview with Judge, GS-BPC-01, Gansu Province (Feb. 4, 2023).

1. “One is not Born, but Rather Becomes, Woman”

In China today, the social and cultural expectations for women are still relatively “harsh.” There is still a strong perception of the gender division of labor between men and women and the social norm of women being more family oriented. People would more readily applaud a woman who has given up her career and has a happy family than a woman who has a successful career without the family connections. And while career is, in effect, considered a personal matter for a woman, taking care of her family and children is often seen as the more important thing by those around her.

Chinese female lawyers and judges are praised when they are able to harmonize their roles as wives, mothers, and professionals. Also, they are praised when they bring traditional virtues such as diligence, compassion, and patience to their work. Thus, contemporary accounts recall ancient authors like Ban Zhao, and the newspaper reports of the 1930s. Women are portrayed in a positive light when they balance *li* (rituals) and *fa* (rules), *nei* (inward facing) and *wai* (outward facing), and see their roles as complementary to that of men.⁶¹

Such image is exacerbated by the stereotypical publicity, which usually overemphasize the image of female judges as women under the traditional gender perspectives and marginalize the professional image of women judges. For example, good female judges are often labelled as “judge mothers,” while very few male judges are ever depicted as “judge fathers.” Su Li asked why, over the past thirty years of reform and opening up, the judges who have received extensive publicity and recognition in the court system nationwide have always been dominated by women judges, while there are both more male than female judges, and more male judges who have been valued by the court’s leaders and promoted to positions for their excellent practice.⁶² He argues that the reform of the Chinese judge system over the years should have been dedicated to shaping an image of wisdom for judges and rule of law, rather than just emphasizing a moral image of the female judge as mother, without overburdening them with a moral burden.⁶³

Then, what qualities should leaders have in the eyes of female judges? Almost all of the judges interviewed answered that being a court leader requires excellent professional competence, organizational and coordination skills, communication skills, problem-solving skills, and a holistic view of the situation. As one judge assistant explained, all of these were important for being a leader, and “it’s the same for men and women.”⁶⁴ Nevertheless, strong-handed female leaders in courts are usually labeled “iron lady” or “queen” with a sense of criticism. One interviewee spoke about the case of a president of BPC who encountered difficulties when she was considered for the leadership position of the higher court. One routine step for the promotion to a leadership

61. Mary Szto, *Gender and the Chinese Legal Profession in Historical Perspective: From Heaven and Earth to Rule of Woman?*, 18 TEX. J. WOMEN & L. 195, 248-249 (2009).

62. Su Li (苏力), *Zhongguo Faguan de Xingxiang Suzao – Guanyu ‘Chen Yanping Gongzuo Fa’ de Sikao* (中国法官的形象塑造——关于“陈燕萍工作法”的思考) [Image-building of Chinese Judges—Considerations on Chen Yanping’s Work Method], 4 QINGHUA FAXUE (清华法学) [TSINGHUA L. J.] 75, 83 (2010).

63. *Id.* at 82.

64. Interview with Judge Assistant, ZJ-HPC-01, Zhejiang Province (Feb. 1, 2023).

position in China is the democratic evaluation at the previous unit. Ultimately, she failed to be selected to head a higher court because she had a tougher work style.⁶⁵ In some sense, women are expected to lead but also to conform to the traditional feminine virtues Chinese society expected of them. But often this seems to be a paradox with no obvious solution.

2. Difficulties and Obstacles Faced by Female Judges

In the interviews, when asked the question “What do you think is the biggest obstacle to the promotion of female judges to leadership positions in China today,” almost all interviewees spoke of women being more inclined to take care of their families and children. If they become leaders, they may worry that they will not be able to take care of their families. Taking care of the family and childbirth are considered some of the most important factors affecting women’s career advancement worldwide, not only in China.⁶⁶ Family and childbirth issues may not be a barrier to women when entering the court, but these would hinder their advancement afterwards more often than not.

For women, the period between the ages of twenty-five and thirty-five is the prime career period for most judges following graduation and their entering into the judiciary. But this is also the period of childbirth and breastfeeding for most Chinese women, during which they face dilemmas and difficulties that would have a considerable impact on their work. With childbirth and breastfeeding taking up a few years, plus a five-year difference in the state retirement age between men and women, women have nearly ten years less of a judicial career than men. During these ten years, women have to compete with men under the same conditions. Therefore, women’s success often requires them to overcome more difficulties than men in terms of family, career, and even special physiological conditions and physical health, in order to create extraordinary performance.⁶⁷

China’s long-standing claim that “women can hold up half the sky” should be interpreted to mean that women must work as much as men. This so-called gender equality is bound to create *de facto* inequality if women are still required to take on more family responsibilities. In other words, gender blindness in workplace reinforced gender inequality. It was pointed out that women in leadership positions are generally more career-minded and are either super women who are able to balance work and family or are single and childless.⁶⁸

In micro context, although the state has laws and policies in place for the protection of women’s rights and interests, these can sometime fail to be implemented in places due to practical reasons. For example, the “Special Provisions on Labor Protection for Female Workers” were promulgated and

65. Interview with Judge Assistant, BJ-IPC-05, Beijing (Feb. 4, 2023).

66. See e.g., Shelley J. Correll, Stephen Benard & In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOCIO. 1297, 1303-1307 (2007); Stephen J. Choi, Mitu Gulati, Mirya Holman & Eric A. Posner, *Judging Women*, 8 J. EMPIRICAL LEGAL STUD. 504, 513-514 (2011).

67. Liu et al., *supra* note 16, at 191.

68. Interview with Judge, GD-IPC-01, Guangdong Province (Feb. 7, 2023); interview with Judge, GD-BPC-01, Guangdong Province (Feb. 7, 2023).

implemented in April 2012, extending the statutory maternity leave period from ninety days to ninety-eight days. Article 48 of the “Law on the Protection of Women’s Rights and Interests,” as amended in 2022, adds that “the employing unit shall not restrict the promotion, ranking, or evaluation of professional and technical titles and positions of female workers on the grounds of marriage, pregnancy, maternity leave, breastfeeding,” etc. However, many women did not have enough maternity leave because of their work. It is uncommon for a female judge to stop working completely even when on maternity leave, because the work that is delayed would probably be a disadvantage in workplace. Female judges often have to work even when they are at home taking care of their children. During the Covid-19 pandemic, women who worked from home due to lock-down policies had to simultaneously take care of their children who were also at home taking online classes or because kindergartens were closed.

Most female judges, however, are less willing to undertake certain tasks, such as travel or posting to other courts for family reasons. For example, there are more men who take on roles in subsidiary tribunals in often more remote areas within the court’s jurisdiction.

In addition, studies have shown that the health of the entire group of Chinese judges is a cause for concern. Women judges, who have taken on more family responsibilities, are then under even greater pressure.⁶⁹ In publicity reports, outstanding female judges who have received awards, such as Song Yushui and Jin Guilan, have all been working with serious illness.⁷⁰

When it was asked whether special means (e.g. policies, relevant regulations) were needed to adjust the treatment of female judges and their promotions, many female judges interviewed answered in the negative. They were more of the opinion that the overall treatment of the group of judges should be improved.

3. Women’s Unwillingness to be Court Leaders

A notable number of the female interviewees expressed some unwillingness to work towards court leadership. Among their reasons for working as a judge, some female judges and judge assistants were seeking the attractiveness of the legal profession itself as well as job stability.⁷¹ Some were influenced by their families (e.g., mother or father is a judge⁷²), while others care about

69. See Li, *supra* note 12, at 52, 146, 157-163.

70. See *id.* at 205, 211.

71. Interview with Judge, BJ-SPC-01, Beijing (Feb. 8, 2023); interview with Judge, BJ-SPC-02, Beijing (Feb. 7, 2023); interview with Judge Assistant, BJ-SPC-04, Beijing (Mar. 27, 2023); interview with Judge, Beijing, BJ-IPC-01, (Feb. 7, 2023); interview with Judge Assistant, BJ-IPC-03, Beijing (Mar. 7, 2023); interview with Judge Assistant, BJ-IPC-05, Beijing (Feb. 4, 2023); interview with Judge, HUB-HPC-0, Hubei Province (Mar. 24, 2023); interview with Judge, SD-HPC-02, Shandong Province (Mar. 26, 2023); interview with Judge, HLJ-BPC-01, Heilongjiang Province (Feb. 7, 2023); interview with Judge Assistant, IM-HPC-01, Inner Mongolia Autonomous Region (Mar. 8, 2023).

72. Interview with Judge, SD-HPC-01, Shandong Province (Mar. 25, 2023); interview with Judge, HN-IPC-01, Hainan Province (Feb. 3, 2023); interview with Judge, GS-BPC-01, Gansu Province (Feb. 4, 2023).

social status and professional honor.⁷³ Compared to other legal professions, the financial reward of judges in China is known to be low. One female judge assistant clearly stated that had she wanted to make sacrifice of family and children for her career, she would have joined a law firm instead.⁷⁴ Such thinking often determines that many judges say they are “satisfied” with their current status. The understanding also informs to some extent the attitude of many female judges towards the issue of holding leadership positions.

Many interviewees mentioned that most women are not enthusiastic about taking on leadership positions in the court, so that female judges are not very willing to compete for that.⁷⁵ Women will act more reserved and modest when it comes to promotion. In some extreme cases, two female public servants were subject to disciplinary actions for refusal to be promoted to leadership positions.⁷⁶

Female judges are more focused on professional competence and less interested in socializing. A senior judge from SPC said: “I hadn’t thought about being a leader and I just want to do my job; I’m not interested in a leadership role where I have to socialize.” She is also of the opinion that patriarchal society tends to favor men as leaders, so female leaders have been a minority from time immemorial. Moreover, male leaders tend to promote male cadres, while female leaders do not care so much when promoting cadres. A judge from a BPC in Gansu Province also mentioned that people in the North-West region of China are less open-minded and women are less willing to compete.⁷⁷

The questionnaire indicates that there were more male judges among those who left the court. A large number of interviewees shared their thoughts on the reasons behind such phenomenon. The typical reasons suggested by interviewees include the inability to get a quota after the quota reform,⁷⁸ the difficulty of promotion,⁷⁹ the availability of better options and development opportunities outside of the judiciary,⁸⁰ the availability of better income and treatment,⁸¹ choice of more flexible occupations,⁸² and seeing court work only as a transition to gain experience.⁸³ There is a general consensus that male candidates are far more likely to be motivated by one of these concerns than female colleagues, with much influence from the social and cultural context of the Chinese society that typically places a higher expectation on the male to

73. Interview with Judge, GD-IPC-02, Guangdong Province (Feb. 17, 2023); interview with Judge, GD-BPC-01, Guangdong Province (Feb. 7, 2023).

74. Interview with Judge Assistant, BJ-IPC-05, Beijing (Feb. 4, 2023).

75. Interview with Judge Assistant, BJ-IPC-05, Beijing (Feb. 4, 2023); interview with Judge, HEB-BPC-01, Hebei Province (Feb. 7, 2023); interview with Judge, GD-IPC-01, Guangdong Province (Feb. 7, 2023); interview with Judge, GD-BPC-01, Guangdong Province (Feb. 7, 2023).

76. See Zhu Peng (朱鹏) & Yu Xuan (钰轩), *Gongzuo Anpai burong Tiaofeijianshou* (工作安排不容挑肥拣瘦) [You Cannot Choose whichever Work is to Your Own Advantage], *ZHONGGUO JIJIANJIANCHA BAO* (中国纪检监察报) (Jul. 19, 2019) at 4 (China).

77. Interview with Judge, GS-BPC-01, Gansu Province (Feb. 4, 2023).

78. Sun et al., *supra* note 39, at 874. Two interviewees pointed out this problem.

79. Thirteen interviewees pointed out this problem.

80. Three interviewees pointed out this problem.

81. Twenty-three interviewees pointed out this problem.

82. Two interviewees pointed out this problem.

83. Four interviewees pointed out this problem.

achieve demonstrable career progression and income earning capacity. Among the reasons listed above, the “difficulty of promotion” and “the availability of better income and treatment” are the two most important reasons for males leaving the court. Moreover, the fact that a larger proportion of male judges will likely leave the judiciary reinforces the desire of the court system to recruit a reasonable number of male entrants.

A final point is that the current trend of an increasing proportion of female judges in general in China seems to predict a greater presence of women in leadership positions in the future. It cannot be overlooked that another process is taking place at the same time. Namely, women, under prolonged pressure, might develop negative emotions and negative attitudes towards promotion; they might abandon their earlier pursuits and aspirations and refocus their lives away from the workplace and towards their families. It is stated that some capable women have the desire not to work too hard.⁸⁴ This aligns with changes in the overall social environment. In the big cities, women’s attitudes towards life and their career pursuits are also changing, and there is a new development in which they become more concerned with the quality of life rather than sacrificing it for work. In Chinese social attitudes, the emphasis on collectivism, the struggle and sacrifice may once have been the dominant culture in society, but with socio-economic development, there is a greater concern for self-fulfillment, especially the pursuit of a comfortable life. This change would also affect women’s willingness to seek leadership positions in the court, which has never been among the most highly paid professions in China.

Conclusion

The purpose of this Article is first and foremost to provide a full picture for Chinese women’s career path from law school to the courts, from junior judge to court leader. Using up-to-date data and interviews with thirty judges and judge assistants, the Article provides an informative account on why and how women are currently entering the court system in China, and the obstacles encountered in their rise in court system. The study presents a new perspective for understanding professional career of female judges in China.

Female students have been in the majority for Chinese legal education for more than a decade. They are also more likely to have postgraduate qualification and are more inclined to enter the judiciary as a career choice than their male peers. Following the quota reform, all new entrants to the judicial career, as judge assistants, face a tough challenge to earn their quota status, which is under an overall number cap in each province. This process has been having a particularly deterring effect on male judge assistants for a number of reasons, and many more men leave the judicial career than women in the first few years as a result.

In response to such a reality that almost all courts find it much harder to recruit men than women, numerous gender-based, seemingly discriminatory mechanisms are in place to explicitly favor men over women. Such mechanisms

84. See Li, *supra* note 12, at 211.

can only be understood in the context of the division of labor in the Chinese court, which practically depends on having an adequate number of male judges for the performance of certain tasks and duties. Most notably these include work undertaken by the enforcement division of most courts, as well as tasks that involve reposting to a different city or underdeveloped regions of China for several years. Male judges often benefit from such opportunities for career development, while female judges see that as a fair quid-pro-quo which relieves them of the need of having to undertake these unpopular jobs.

As a result, while many more women are entering the judiciary and there are often equal or comparable numbers of male and female judges in most courts, women judges are clearly in the minority in terms of court leadership roles. Aside from factors common to many other professions such as childbirth and work-family balance, many female judges also find the prospect of having to make sacrifices in the pursuit of leadership positions unappealing and inconsistent with their career motivation for entering the judiciary in the first place. There are also deep-lying social and cultural factors which make it more challenging for female judges to be strong leaders and good judges while conforming to the typical conception of successful women in Chinese society.

Nevertheless, changes are taking place and there is a clear trajectory of more female judges and more women in court leadership. The “China National Program for Women’s Development (2021-2030)” clearly states in the section on “Women in Decision Making and Management” that a progressive increase of women leaders in the ministries and commissions under the State Council and government departments at the provincial and prefectural levels should be ensured. The Program also aims at progressively increasing the percentage of women among cadres holding principal posts in local government bodies above the county level.⁸⁵

Notably, no interviewee in this study regarded the gender issue as an important concern in the current system and career path of the Chinese judiciary. At the same time, most of them are highly optimistic about a future where women will play a more important part than men in the judiciary, even with all the existing obstacles in place without any desire for ground-breaking changes. Given the small sample size of this present study, there remains much to be examined for future projects. Nevertheless, this sense of understanding and optimism is a conspicuous, even defining, characteristic of the current perception by female judges that offer much insight into understanding the Chinese court and, to some extent, the modern Chinese society.

85. SCIO Briefing on the China National Program for Women’s Development (2021-2030) and the China National Program for Child Development (2021-2030), SCIO (Sep. 27, 2021), http://english.scio.gov.cn/pressroom/node_8026373.htm [<https://perma.cc/4A2L-5QCW>].