

## The Judiciary

A judge is a public official appointed to make life-changing decisions regarding the futures of members of the general public. So is it not reasonable for one to assume that a vital criterion for this responsibility is the need to be familiar with the lives of ordinary people and the situations they face? In the evidence it is submitted that in reality there is a coherent argument to suggest that Judiciary is in fact totally unrepresentative and out of touch with society. However, there have been recent attempts to resolve and improve the situation, but the principal point that remains is whether or not these endeavors have proven successful.

There is a considerable difference in the number of male judges compared to female judges; this becomes increasingly evident the higher up the court structure. For example there are only eight female Lord Justices of Appeal compared with thirty-five males and no women at all in the High Court as Lord of Appeal in the Ordinary; this is quite obviously a disproportionate number in relation to society. There is a good deal of evidence demonstrating unsympathetic attitudes of male judges particularly in rape cases, a popular opinion is that women are 'asking for it' through provocative dress or behaviour. The book 'Eve was Framed', written by Helena Kennedy, expresses its author's claims that the views of male judges regarding women are 'outdated, and sometimes prejudiced,' for example in a rape case in 1982 a judge was recorded to have said 'women who say no do not always mean no'.

Judges are predominantly fairly old, the average age of a judicial member is approximately fifty-three but the average age is even higher in the higher courts where in the High Court, for example, in 1995 the average age was sixty-six and a half. Older judges may mean more experience and therefore more skill at deciding suitable jurisdictions. However, being older can also denote traditional and conservative views and a reluctance to accept and understand modern opinions and concepts. David Pannick, in his book 'Judges' agrees that there are significant negative points of having elderly judges, 'a judiciary composed predominantly of senior citizens cannot hope to apply contemporary standards or to understand contemporary concerns'.

Until fairly recently only the best barristers were specifically chosen to be appointed as judges, as in order to become one you must have had rights of audience in the higher courts. This is a disadvantage because even though a person may make a good barrister we can only assume that they will also make a good judge, even though the skills needed for each are quite different; for example a judge must look at things impartially. Information about potential professionals is collated in files over a period of time by the Lord Chancellors Department. Judicial appointments are largely down to the opinions of other judges and legal personnel, and these are known as 'secret soundings'.

As judges are high profile and in the public eye any secret personal information that may jeopardize a person's eligibility is also collected, this is important to the legal profession so as not to cause any compromise. As judges' behaviour must be seen as impeccable, on appointment they often have to discard their previous friends and lifestyle; this is strong evidence to imply that they are out of touch, as they are quite clearly not leading the life of an ordinary person.

Since 1995, instead of being invited to be appointed, adverts are placed for judicial positions in the High Court and below. However, in higher courts the system of appointments still operates. In addition, also in 1995 the Lord Chancellor stated that judicial appointments could now be made regardless of sex, marital status, wealth, sexuality, ethnic origin, religious beliefs and political affiliations. The Courts and Legal Services Act 1990 (CLSA '90) now means that solicitors are able to get rights of audience in the higher courts through getting a Solicitors Advocate Qualification, thus enabling them to go on to be judges. Eventually it is hoped that this will change the long-established background of judges as it will give rise to opportunities for more women, people from ethnic minorities and those from less privileged backgrounds to join the judiciary.

The background of judges is overwhelmingly unrepresentative of society, as virtually all are from the same backgrounds and upbringings it is likely that they will also share similar opinions and points of view. In 1994 Labour Research carried out a survey into the background of judges and discovered that 80% had been educated at public school. In 1995 80% of judges in the High Court and above went to Oxford or Cambridge Universities, which primarily recruit from public schools. This is beneficial as we want the best people to become judges and the best people attend the best universities. However, it also means that judges are made up of a small social spectrum, predominantly comprised of upper-middle class individuals. Consequently judges can be worryingly unfamiliar with the lives of ordinary people, for example Mr. Justice Harman recently had to have explained to him who Gazza, Oasis and Bruce Springsteen are. There is evidence to show that judges treat crimes such as fraud, which are seen as typically 'middle-class crimes', more leniently than they treat others.

Only 1% of the judiciary is from ethnic minorities and in the higher courts all the judges are white, this is severely unrepresentative as in Britain we have a diverse range of cultures and ethnic origins. There is evidence to show that black defendants are more likely to receive custodial sentences for the same offences as white defendants.

Unlike some other countries, such as France and Germany, we do not have what is known as a 'Career Judiciary'; so there are no exams to pass and relatively little training. This means that judges can enter the judicial hierarchy at any point and find themselves trying serious cases and passing life-changing sentences with little or no experience whatsoever. Recently there have been reforms to require judges to receive training in race awareness (i.e. ethnic and cultural differences), dealing with children, the recent Access To Justice Act 1999 reforms and the Human Rights Act 1998.

In the Lord Chancellor's Department's Annual Report for 1999-2000 it states that judges will, "respect and have understanding of people (including children) of different backgrounds. They will be sensitive to the influence of different ethnic and cultural backgrounds on the attitudes and behaviours of people whom they encounter in the course of their work. They will convey understanding of and sympathy for the needs and concerns of the court users and be sensitive and humane".

After suggestions about the need to have training regularly throughout judicial careers as well as more at the start, judges are now required to attend refresher courses every five years in order to brush up on existing skills and

knowledge and learn about any new legislations or precedent. However, some still argue that this is not adequate and there should be more training provided and required. For example Judge Pickles has recommended that judges should receive more training regarding sociology, psychology, penology, and criminology.

In conclusion the evidence provides a sound argument to show that the judiciary is currently vastly unrepresentative and therefore out of touch with society. Recently there have been several reforms to address this significant issue and move in the right direction to creating a well-balanced and representative judiciary. Only time will tell if they have succeeded.