

AS INTRODUCED IN THE RAJYA SABHA
ON THE 7TH FEBRUARY, 2025

Bill No. LXXXV of 2024

THE CONSTITUTION (AMENDMENT) BILL, 2024

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further to amend the Constitution of India.

BE it enacted by Parliament in the Seventy-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2024.
(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.
2. In article 124 of the Constitution, after clause (2A), the following new clauses shall be inserted, *namely* :—
“(2B) Notwithstanding anything in this Constitution, the appointment of Judges to the Supreme Court shall be made by giving due representation to members of the Scheduled Castes,

Short title and
commencement.

Amendment
of article 124.

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Scheduled Tribes, Other Backward Classes, religious minorities and women, in proportion to their population in the country:

Provided that the provisions of this clause shall not apply to such categories which are already represented in the total strength of Judges of the Supreme Court in proportion to their population in the country. 5

(2C) Subject to the provisions of clause (2B), the Central Government shall frame a Memorandum of Procedure for appointment of Judges of the Supreme Court in consultation with the Chief Justice of India, setting out the timelines and procedure including identifying, assessing, recommending, and appointing suitable candidates as Judges of the Supreme Court. 10

(2D) If the Chief Justice or Judge of any High Court is being considered for appointment as a Judge of the Supreme Court, the Central Government shall consult the Government of that State before making such appointment. 15

(2E) The Central Government shall either return or notify any recommendation of the collegium of the Supreme Court for appointment of Judges of the Supreme Court within sixty days of receipt of the recommendation. 20

Provided that if any recommendation is returned by the Central Government and the same is re-iterated by the collegium of the Supreme Court, the Central Government shall notify the same within a period of thirty days of receipt of the reiteration. 25

Explanation— For the purpose of this clause, ‘collegium of the Supreme Court’ shall mean a Committee comprising of five senior-most Judges of the Supreme Court including the Chief Justice of India.”

Amendment
of article 217.

3. In article 217 of the Constitution, after clause (2), the following new clauses shall be inserted, *namely* :— 30

“(2A) Notwithstanding anything contained in this Constitution, the appointment of Judges to the High Court of a State shall be made by giving due representation to members of the Scheduled Castes, Scheduled Tribes, Other Backward Classes, religious minorities and women, in proportion to their population within that State: 35

Provided that the provisions of this clause shall not apply to such categories which are already represented in the total strength of Judges of a High Court in proportion to their population within that State.

(2B) In all cases of appointments to a High Court of a State, the Central Government, the collegium of the Supreme Court and the collegium of that High Court shall take into consideration the opinion of the Government of that State before making the appointment. 40

Explanation— For the purpose of this clause, ‘State’ includes all States and Union Territories that share a common High Court. 45

(2C) Subject to the provisions of clause (2A), the Central Government shall frame a Memorandum of Procedure for appointment of Judges of High Courts in consultation with all the State Governments, Governments of Union Territories, the Chief Justice of India and Chief Justices of all High Courts, setting out 50

the timelines and procedure including identifying, assessing, recommending, and appointing suitable candidates as Judges of High Courts.

5 (2D) The Central Government shall either return or notify any recommendation of the collegium of the Supreme Court for appointment of Judges of the High Court within sixty days of receipt of the recommendation.

10 Provided that if any recommendation is returned by the Central Government and the same is reiterated by the Supreme Court, the Central Government shall notify the same within a period of thirty days of receipt of the reiteration.

15 *Explanation—* For the purpose of article 217, ‘collegium of Supreme Court’ shall mean a Committee comprising the five senior most Judges of the Supreme Court including the Chief Justice of India and ‘collegium of High Court’ shall mean a Committee comprising the three senior most Judges of that High Court including the Chief Justice of that High Court.”

4. In article 224, after clause (1), the following new clause shall be inserted, namely :—

Amendment
of article
224.

20 “(1A) Notwithstanding anything contained in this Constitution, the appointment of additional Judges to the High Court of a State shall be made, by giving due representation to members of the Scheduled Castes, Scheduled Tribes, Other Backward
25 Classes, religious minorities and women, in proportion to their population within that State:

Provided that the provisions of this clause shall not apply to such categories which are already represented in the total strength of Judges and additional Judges of a High Court in proportion to their population within that State.”

STATEMENT OF OBJECTS AND REASONS

India is a diverse nation with a rich tapestry of cultures, communities, genders, and religions. The preamble of our Constitution envisions securing social justice for all. However, the current composition of the higher judiciary does not adequately reflect this diversity. The current trend in judicial appointments shows a dismal representation of socially marginalized groups and there is significant over-representation of certain sections. There is a diversity deficit in the appointment of Judges to Supreme Court and High Courts, leading to a situation of inequality.

A representative judiciary is pivotal for fostering public confidence in the judiciary's ability to make sound and responsive decisions. When the judiciary includes Judges from all sections of society, it instills greater confidence amongst the public, who feel that their lived realities and concerns are understood and addressed. This inclusivity is essential for the public to perceive the court system as impartial and accessible. Further, a diverse judiciary is imperative to enhance the quality of judicial decisions. Judges bring their personal experiences and perspectives to the bench, influencing how they interpret and apply the law.

Judges from varied backgrounds will draw from a wider range of experiences, resulting in more balanced and comprehensive judgments. A diverse judiciary is also less likely to violate the rights of underrepresented classes and more likely to prevent discrimination. The lack of Judges from historically oppressed and minority communities indicates systemic barriers that must be addressed. A judiciary that fails to reflect the social composition of the nation poses a serious constitutional challenge, undermining the public's confidence in the justice system.

Increasing diversity ensures that the judiciary protects the rights of all citizens and reflects the nation's pluralistic society. A constitutional mandate in this regard would ensure that the superior courts are never underrepresented. It is of utmost importance that equitable representation and fair play in the higher judiciary are secured through constitutional channels.

The Collegium of the Justice(s) of the Hon'ble Supreme Court and Hon'ble High Courts is an aspect of judicial appointments which is a closed-door phenomenon. Having a transparent procedure for judicial appointments would reflect a greater faith in the Constitution and the Judiciary. An established Memorandum of Procedure by the Central Government in consultation with the Chief Justice of India for appointment of Judges of the Supreme Court and in consultation with all the State Governments, Governments of Union Territories, the Chief Justice of India and Chief Justices of all State High Courts for appointment of Judges of High Courts, would ensure that there are no deviations in conventions and would also ensure that the judicial appointments are fair and transparent. Furthermore, to enhance transparency, the Collegium should also consider the opinion of their respective State Governments while recommending names for appointment as Judges of the High Courts to the Central Government. Despite judicial pronouncements on the appointment of Judges calling for a Memorandum of Procedure, no such memorandum has been finalized till date by the Central Government.

The opinions of the State Government and the Central Government have to be considered for which there is no mechanism in place at present. The Memorandum of Procedure is contemplated to have a timely action so that the appointment procedure shall not be delayed beyond a fixed time period.

Another important aspect is that the recommendations of the Supreme Court collegium for appointment of Judges to High Courts and Supreme Court are kept in cold storage without taking any decision. This has brought to a

grinding halt the process of appointment of Judges and the institutions suffer on account of unfilled vacancies and delay in filling up of vacancies.

Further, when the Judges of the Supreme Court and High Courts have the power of judicial review to test the policies and laws made or enacted by the lawfully and democratically elected State Governments, it is sequitur that the views and opinions of the concerned State Governments be heard before making such appointments. After all, the State and the Central Governments are equal and function in the spirit of co-operative federalism. A message should not be sent out to the Judges/ Chief Justices that only the views of the Central Government matter in the appointment of Judges, thereby cultivating a bias towards the Central Government, and proportionate disaffection towards the State Governments where an opposition party is in power. Therefore, the views of the Central Government alone are not sufficient in making judicial appointments.

Therefore, this Bill seeks to amend the Constitution of India to provide for social diversity in the appointment of Judges to the Supreme Court and High Courts, proportional to the population of Scheduled Castes, Scheduled Tribes, and Other Backward Classes and to bring transparency in judicial appointments in higher judiciary. Providing for reservation in judicial appointments, with an aim to promote social diversity, will definitely help in improving the quality of judicial decisions, enhancing public confidence, bringing transparency to judicial appointments and upholding the constitutional values of equality and inclusivity.

The Bill seeks to achieve the above objectives.

P. WILSON.

RAJYA SABHA

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further to amend the Constitution of India.

(Shri P. Wilson, M.P.)