

Constitutional Debate on Judicial Appointments - Explained

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Judicial Appointments Latest News

- A private member's Bill has been introduced in Parliament seeking constitutional amendments to promote diversity in judicial appointments and establish regional benches of the Supreme Court.

Constitutional Provisions on Judicial Appointments

- The Constitution of India lays down the framework for appointing judges to the higher judiciary.
 - **Article 124** provides that judges of the Supreme Court are appointed by the President after consultation with the Chief Justice of India (CJI).
 - **Article 217** governs the appointment of High Court judges, requiring consultation with the CJI, the Governor of the State, and the Chief Justice of the concerned High Court.
 - **Article 130** states that the seat of the Supreme Court shall be in Delhi or any other place decided by the CJI with the approval of the President.

- Initially, judicial appointments were made by the executive after consultation with the judiciary.
- However, over time, concerns regarding judicial independence led to a shift in the balance of power.

Evolution of the Collegium System

- The collegium system emerged through judicial interpretation rather than constitutional amendment.
 - In the **First Judges Case (1981)**, the Supreme Court upheld executive primacy in judicial appointments.
 - In the **Second Judges Case (1993)**, the Court reversed this position, establishing the collegium system and giving primacy to the judiciary.
 - The **Third Judges Case (1998)** clarified the composition and functioning of the collegium.
- The collegium for Supreme Court appointments consists of the CJI and four senior-most judges.
- For High Courts, it includes the CJI and two senior-most judges. The recommendations are sent to the Central government, which may return them once for reconsideration. If reiterated, the government is bound to appoint.
- While the collegium system strengthened judicial independence, it has faced criticism for a lack of transparency, accountability, and allegations of nepotism.

The NJAC and Judicial Independence

- In 2014, Parliament enacted the **99th Constitutional Amendment** to establish the **National Judicial Appointments Commission (NJAC)**.
- The NJAC included the CJI, two senior judges, the Union Law Minister, and two eminent persons.
- However, in 2015, the Supreme Court struck down the NJAC as unconstitutional, holding that it violated the basic structure doctrine by compromising judicial independence. As a result, the collegium system continues to operate.

Diversity in the Judiciary

- The current debate centres on the limited representation of marginalised groups in higher judicial appointments.
- Data cited in the discussion shows that between 2018 and 2024, only about 20% of appointees to the higher judiciary belonged to the Scheduled Castes (SC), the Scheduled Tribes (ST), and Other Backwards Classes (OBC).
- Representation of women remains below 15%, and religious minorities below 5%.
- The private member Bill seeks to constitutionally mandate due representation for SCs, STs, OBCs, women, and religious minorities in proportion to their population.
- This marks a significant shift from the purely merit-based framework toward a more socially representative model.
- The issue touches upon two constitutional values:
 - **Judicial Independence**
 - **Substantive Equality and Social Justice**

- A more diverse judiciary is often argued to enhance public confidence, improve sensitivity in adjudication, and reflect India's pluralistic society.

Proposal for Regional Benches of the Supreme Court

- Another key proposal in the Bill is the establishment of **regional benches of the Supreme Court in New Delhi, Kolkata, Mumbai, and Chennai**.
- Currently, the Supreme Court sits only in Delhi. This creates accessibility challenges for litigants from distant States. Additionally, more than 90,000 cases are pending before the Court as of January 2026.
- The proposed regional benches would exercise full jurisdiction except for constitutional matters, which would remain with the Constitution Bench in Delhi.
- The idea of regional benches has been recommended in the past by the **Law Commission** and Parliamentary committees.
- It **can be implemented under Article 130 without requiring a constitutional amendment**, as the Chief Justice can designate alternative seats with executive approval.

Way Forward

- The responsibility for ensuring diversity primarily lies with the judiciary through reforms in the collegium process.
- Greater transparency, objective criteria, and data-based selection can strengthen legitimacy.
- A long-term reform could involve revisiting a broad-based judicial appointments commission that balances independence with accountability.
- International examples such as the U.K. and South Africa show that inclusion of members from the executive, legislature, and civil society can coexist with judicial independence.
- On regional benches, a phased approach may be considered, starting with one bench and expanding based on experience. This would improve access to justice and reduce pendency.

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