

SPEECH OF P. WILSON, MP, ON SOCIAL DIVERSITY IN THE APPOINTMENT OF JUDGES TO THE HIGH COURT AND SUPREME COURT, ORGANIZED BY THE SUPREME COURT ADVOCATES FORUM, HELD AT THE INDIAN SOCIETY OF INTERNATIONAL LAW AUDITORIUM (OPPOSITE) THE SUPREME COURT ON 27.02.2025.

Good evening friends,

I thank Mr Balraj Singh Malik for organising this seminar. I thank Justice Virender singh for having come all along and participating in this seminar. I thank the Senior Advocates Mr DR KS Chauhan, Mr DineshKr Goswami, Mr BP Ashok former IPS officer, Mr Suraj Mandal for speaking on this issue.

1. As we are stepping into the 75th year of our Constitution certain disturbing trends are noticed in the composition of the High Courts and Supreme Court Judges. For the past few years, we have been witnessing declining representation from all the sections of the society in the High Court and Apex Court. There is a diversity deficit in High Courts and Supreme Court which is not indicative of the wonderfully diverse and pluralistic society of India. Judicial diversity is fundamental to the quality of judging. Many social groups are poorly represented in the Higher Judiciary (High Courts and Supreme Court).

2. This may mean their rights are not being properly safeguarded, and may eventually lead to the infringement and violation of such rights. People of this country are afraid that a very narrow, homogeneous group of Judges belonging to certain classes are not necessarily going to reflect the views and values of society as a whole, particularly on issues involving diverse, cultural and generational matters because they would require more perspectives, as the Judges would interpret and enforce law based on their own background. A more diverse judiciary is desirable because without one, the chances are greatly increased for a violation of the rights on these under represented and could indirectly imply discrimination. How else can one explain the lack of more number of women and judges from historically oppressed sections of society? It is not that they are not qualified enough.

3. The present trend shows representation of socially-marginalised groups remains dismal. The percentage of women judges fall more drastically. Significant over-representation of certain sections calls into question the objectivity of the current system and its inability to recruit from different social groups. There is much to gain from having a judiciary that reflects society in all its diversity.

4. It is extremely important to support and protect diversity because by valuing individuals and groups in a manner free from prejudice, and by fostering a climate where equity and mutual respect are intrinsic, we create a fair society, which is needed for a country to run smoothly.

5. This crisis of a lack of diversity in the appointment of judges to High Court and Supreme Court has caused a lot of fear and agony in the minds of the people of this country, who feel that they have not been adequately represented in the highest Judiciary. Public faith and confidence is the well that the legitimacy of the Judiciary draws from. To maintain this public faith and especially amongst litigants, we must maintain diversity in the Judiciary. The absence of judges from all sections of society threatens to erode the public confidence in the judiciary and also morale.

6. Diversity on the Benches enhances judicial impartiality as well as increase public confidence in the administration of justice. Further, diversity is needed in the judiciary to address the growing diversity in society itself as our Indian society consists of a mix of people hailing from different religions, communities, castes, languages and cultures. It is a truism that impartiality is essential to a well-functioning judiciary.

7. The preamble of our Constitution expresses one of the grand and noble visions of securing social justice for all. Thus, these constitutional Courts in the country that has more broad representation is the need of the hour.

8. Increasing the diversity in High Courts and Supreme Court is also about improving the quality of judgments. It means that there will be more varied experiences and perspectives from which to draw on in interpreting and applying the law. A diverse Bench's collective decision would include complimentary perspectives while laying down a law, as compared to a homogenous one. After all, Judges are also human beings who are shaped and moulded by the strength of their experiences. On a close scrutiny of composition of Judges which laid down certain laws relating to rights of any community affecting them across the country, it would be apparent that the views drastically change when they lack diversity in the bench. This problem can be analysed like this. A Judge who was born into privilege, and raised wealthy and in upper echelons of society might not appreciate the law pertaining to reservations as much as a Judge who was born into abject poverty, but has risen to success through reservations and who is not part of the bench which delivered the judgment. Empathy is an important tool in shaping judicial decisions.

9. Sometimes, in order to deny diversity at the Bench, 'merit' is used as a proxy to justify the retention of a particular class or community of persons as Judges. A judiciary that markedly fails to reflect the social composition of the nation poses a serious constitutional challenge. A bench that reflects society is pivotal to fostering public confidence in the ability of the Courts to make sound, responsive decisions. For the public to perceive our Court system as impartial and accessible, the judiciary must reflect the diverse population affected by its decisions. On some level, we have been aware all along that there are hidden biases surrounding the society. It explains why people like to see a Bench that includes people more like them, who can appreciate their lived realities and listen with connection.

10. Judicial independence pre-supposes that judges are non-biased and make impartial decisions, while greater accountability is expected from popular and greater representation. Hence, if there is no diversity within a

judiciary the chances of gaining either judicial independence or judicial accountability are farfetched, almost impossible. A judge's ability to hear a case, interpret it and pass judgment is based on his coherent diverse experience and views. This then means that any judgments without considerable ideological and narrative judicial diversity or experiences without the relative advantage of an accountable or fairly independent judiciary would be biased and partial.

11. Democratic institutions must have the consent and respect of the citizens. This applies to the Union judiciary as well, and would be lost if judicial decisions are not regarded as "in touch" with mainstream views and development.

12. A more diverse Higher Judiciary would increase public confidence and gain greater support from its citizen. If the citizens know they are being properly represented in the Courts and that there are people there who share the same background as them they would be more comfortable and willing to comply with the judicial pronouncements without any demur. It would also be beneficial to the judges because if they have a diverse pool of people from different backgrounds, gender and cultures in the judiciary then there would be more skills and experiences to gain from when passing judgment as it would equip the judges with the experience, views and values they would need to make good and fair judgments.

13. Diversity reflects the rainbow of cultures, community, genders, and religions etc that make up the India as a whole. It is a key factor required for the smooth running in a democratic state. Diversity will assist the judiciary of the country to be both accountable and independent from any criticism.

14. Few reasons why the quality, fairness and legitimacy of judgments are negatively affected by a lack of diversity and why this undermines justice are captured hereunder. A homogeneous set of judges will likely have a narrower set of life experiences and less variety of thought. As a human, a judge's thought processes are bound to be reflected by his or her experiences.

Appointing a more diverse judiciary would increase the breadth of thought and understanding in the justice system.

15. Lack of diversity in the High Courts and Supreme Court may also contribute to problems on a social and constitutional level. People who are unable to relate to figureheads in the justice system are less likely to feel heard and represented. They may be less willing to engage or participate in society or in the democratic process. A limited pool of judges must mean that we simply aren't making use of the available pool of talent.

16. Another danger perceived due to lack of diversity is that there is likelihood of Affinity bias (preferring people similar to ourselves). It is a deep-rooted human response well recognised by behavioural sciences. Good judges will pride themselves on objectivity, but they are only human. Bias will creep into judgments - obviously reducing their fairness and therefore their quality. A more diverse judiciary would therefore self-correct unconscious or conscious bias.

17. The Higher Judiciary finally determines the fate of individual lives, property and much more. They finally implement and sometimes now even create the law.

19. For last 75 years Higher Judiciary remained the only institution where constitutional reservations have not been implemented, despite Article 14 guaranteeing equality before the law. Today, I present compelling reasons why this lack of representation in the higher judiciary is needs to be immediately addressed.

20. The Stark Disparity in Judicial Representation

Through my Parliament Question dated 25th July 2024, the government revealed shocking statistics:

- Out of 684 High Court judges appointed since 2018 till 2023, only:
 - 3% belong to SC
 - 2% belong to ST
 - 11.9% belong to OBC
 - A staggering 82.53% belong to the forward castes

After the Supreme Court judgment, the entire selection of judges to High Court and Supreme Court has been taken over by the collegium of the High Court and Supreme Court who are selecting the judges.

After seeing the data furnished to me in parliament by the Law and Justice Ministry, my question is whether the collegium has not identified talents from other communities and saw talents only in upper caste? Or does the Collegium wants to say there are no talented persons from other communities ?

- From 1950 till now only 6 judges were appointed from the Schedule caste in Supreme Court.
- Only one judge i.e. Justice H.K. Sema in history has come from an ST background, despite STs constituting 8.6% of India's population.
- The women judges are comparatively low in numbers to the Supreme Court.

This demonstrates a structural and historical exclusion of marginalized communities from the higher judiciary, perpetuating systemic bias.

This is a clear indicator that higher judiciary is dominated by a single class at the cost of diversity, leading to systemic exclusion of marginalized communities from decision-making in our justice system.

21. Why a Diverse Judiciary is Essential

☐ Public Confidence in the Judiciary

- When judges come from diverse backgrounds, people trust the judiciary to be fair and impartial.
- A homogeneous judiciary alienates large sections of society from feeling represented in the legal system.

☐ Better Quality of Judicial Decisions

- Judges bring their lived experiences to the bench, shaping their perspectives on law and justice.
- A diverse bench ensures a wider range of perspectives, reducing unconscious bias and leading to more balanced rulings.

☐ Preventing Discrimination & Protecting Constitutional Rights

- A homogeneous judiciary often lacks sensitivity to the struggles of marginalized communities.
- A diverse judiciary is more likely to safeguard the rights of underrepresented sections.

□ A Judiciary That Reflects India's Pluralistic Society

- India is a diverse nation, and its judiciary must reflect its people.
- Just as Parliament has representation from all sections of society, the higher judiciary must also follow this democratic principle.

In 2013, the National Commission for Scheduled Castes had found that the higher judiciary seemed to have been drawn, in perpetuity and across history, from the very sections of society that were most “infected with the age-old social prejudices.” The report had pointed out that the inherent caste bias of the judges might have influenced their decisions. “In an environment of social struggles,” the report said, “the resultant bitterness is likely to influence their judgements if they happen to share the sentiments of their warring communities.”

22. My DMK leader and Chief minister of Tamilnadu Mr MK Stalin always is vocal for Social diversity in the appointment of judges for High Courts and Supreme Court. Therefore on 7th February 2024, I introduced the Constitution (Amendment) Bill, 2024 to amend Articles 124, 217, and 224 of the Indian Constitution.

This bill seeks to:

1. Provide due representation to SC, ST, OBC, Women, and religious minorities in judicial appointments to the Supreme Court and High Courts, in proportion to their population

23. I have also been part of 133rd and 144th Department-Related Parliamentary Standing Committee Report on Personnel, Public Grievances, Law, and Justice, which strongly recommended:

- Mandating social diversity in the appointment of judges.
- Implementing a clear and transparent appointment process.
- These recommendations were accepted by Parliament, yet no concrete steps have been taken for implementation.

I have written as many as 8 letters requesting law minister to ensure social diversity in appointment of judges in High court and Supreme Court. I have also written to the then President of India and then Chief Justice of India

24. Diversity in judiciary can be achieved while still maintaining the requirements of knowledge in law, wisdom, legally well trained mind, qualitative personality, impeccable integrity etc. for determining eligibility and suitability in judicial appointments in the Union Judiciary. A truly representative judiciary with diversity can be achieved only when there is an

immediate introspection and correctional steps are undertaken in the hallowed Higher Judiciary.

25. Therefore it should be made mandatory for diversity in the appointments of Judges to the High Court and Supreme Court while keeping intact the other requirements viz the Merit. Otherwise, an inclusive judiciary would remain a distant dream and an empty slogan relegated to speeches and text books, thereby widening the trust deficit over the Constitutional Courts. Dr. B.R. Ambedkar envisioned a judiciary that stands for social justice. The Preamble of our Constitution guarantees Justice – Social, Economic, and Political. Article 14 ensures equality before the law, and yet, this principle is not reflected in our judiciary. It is our constitutional duty to ensure that justice is delivered not just by a select elite, but by representatives of all communities. I hope that standing in front of the Supreme Court my voice will be heard to all, as we all have assembled here in this auditorium and are discussing on this hot topic.

When I introduced the Bill in the Parliament, I told the Parliament that in last 75 years higher judiciary is the only place where reservation is denied and I met no objections from any one while I introduced the Bill seeking for Social diversity in the appointment of judges to High Court and Supreme Court. I hope that my bill will be taken soon for discussion and will be debated. If the Bill as such is passed by both houses, it will be a compulsory social diversity which means reservation for SC/ST /OBC/women and minorities in appointment of Judges to High Court and Supreme Court. Hope my voice will not only be heard in Parliament but also in Supreme Court regarding this issue.

Thank you for giving me this opportunity to the organisers to speak on this issue.

