Need For Diversity in the Judiciary

Mains: *GS-II – Polity & Governance | Judiciary*

Why in News?

Recently, a private member's Bill was introduced in the Rajya Sabha to amend the Constitution in order to bring diversity in judicial appointments and set up regional benches of the Supreme Court.

What is a Private Member's Bill?

- **Definition** – It is a bill introduced in Parliament by *any Member* of Parliament (MP) who is *not a Minister (elected/nominated)* is referred to as a private member's bill.
- **Purpose –** To draw attention to specific issues, suggest reforms, or highlight matters that may not be part of the government's immediate agenda.
- **Drafting responsibility** – It lies entirely with the MP who introduced the bill.
- **Notice period** – A 1-month notice must be given before introduction, with the Speaker (Lok Sabha) or Chairman (Rajya Sabha) granting permission.
- **Procedure in Parliament**
- **Lok Sabha** – Last two-and-a-half hours of business every Friday are reserved for discussion of PMBs.
- **Rajya Sabha** – Two-and-a-half hours (2:30 p.m. to 5:00 p.m.) on every alternate Friday are allotted.
- **Stages** – It follows the same stages as government bills—first reading, discussion, voting, and if passed by both Houses, they require Presidential assent to become law.

So far, ***only 14 Private Member's Bills*** *have become law in India since Independence, with the last one becoming law in 1970.*

What about the newly introduced private member's Bill?

- **Social Diversity in Appointments** – The bill mandates that due representation should be given to SC, ST, OBC, religious minorities and women in proportion to their population while appointing judges to the Supreme Court and High Courts.
    - **For instance**, out of the judges appointed to higher judiciary between 2018 and 2024, only around 20% belonged to the Scheduled Castes (SC), the Scheduled Tribes (ST) and the Other Backwards Classes (OBC).
- The proportion of women and religious minorities is less than 15% and 5%, respectively.

- **Timeline for Collegium Recommendations** – It also sets a maximum timeline of 90 days for the Central government to notify the recommendations of the collegium, with an aim to reduce delays and uncertainty in appointments.
- **Regional Benches of the Supreme Court (SC)** – It requires setting up of regional benches of the Supreme Court in New Delhi, Kolkata, Mumbai and Chennai, with a goal to improve access for citizens and reduce case backlog.
- These regional benches shall exercise full jurisdiction of the Supreme Court except over cases of constitutional importance to be heard by the main Constitution bench in Delhi.
- **Current Challenges**
    - **Accessibility issue** – Considering that the Supreme Court only sits in Delhi, access to the highest court for common citizens remains a challenge.
    - **Case Backlog** – There are also more than 90,000 cases pending in the Supreme Court as of January 2026.

What does the Constitution provide?

- **Article 124** – Provides that judges of the Supreme Court shall be appointed by the President after consulting the Chief Justice of India (CJI).
- **Article 217** – Provides that judges of a High Court shall be appointed by the President after consulting the CJI, the Chief Justice of the High Court and the Governor of the State.
- **Article 130** – Provides that the seat of the Supreme Court shall be in Delhi or such other place(s) as appointed by the CJI with the approval of the President (central government).

What is the collegium system?

- **Pre-1980s Constitutional Process** – As per the process laid down in the Constitution, judges were *appointed by the government* after consultation with the judiciary till the 1980s; the executive had primacy since it was accountable to the people.
- **First Judges case (1981)** – The Supreme Court upheld the primacy of the executive in judicial appointments since it is accountable to the people.
- **Second Judges Case (1993)** – The Collegium system was created, considering the need to maintain the independence of the judiciary and insulate it from political favouritism.
- **Collegium composition**
    - **SC appointments** – CJI with four senior-most judges of the SC.
    - **HC appointments** – CJI with two senior-most SC judges.
- **Third Judges case (1998)** – The SC reaffirmed the collegium system, expanded the consultation process, and made collegium recommendations binding if reiterated.
- **Collegium Mechanism** –
    - The collegium proposes names for appointment to the Supreme Court or High Courts.
    - The proposal is sent to the Central government.
    - The Centre may return a recommendation in case of any objection.

    - If the collegium reiterates the recommendation, the government is bound to make the appointment.
- The collegium system has ensured the independence of the judiciary from the executive in matters of appointments.
- **Criticisms of Collegium** – Lack of transparency and accountability, alleged nepotism in this process whereby kith and kin of sitting judges are favoured for appointments to higher judiciary and no formal criteria for diversity or representation.
- **National Judicial Appointments Commission (NJAC)** – Parliament, through the *99th constitutional amendment, 2014,* had set up the NJAC to provide recommendations to the executive for the appointment of judges.
- **NJAC composition** – The NJAC was to consist of the CJI, two senior judges, the Union law minister and two eminent persons.
- **SC Advocates-on-Record Association v. Union of India, 2015** – The NJAC was, however, struck down, as it violated the basic structure of the independence of the judiciary (4th Judges Case).
- Hence, the collegium process *continues to date* for appointments.

What can be the way forward?

- **Current Onus** – The onus for ensuring social diversity in the appointment of judges primarily falls on the judiciary through the collegium process.
- **New Private Member's Bill** – The immediate reform it would mandate suitable representation for SC, ST, OBC, minorities, and women & it would create a constitutional directive to achieve the desired objective.
- **Set up regional benches** – The Court can consider setting up a bench in one region initially and extend to other regions in a time-bound manner.
- As recommended by Parliamentary committees & Law Commission in the past, regional benches of the SC can be set up under existing provisions of the Constitution itself.
- **Reforms to revive NJAC** – By broadening its composition beyond the judiciary & executive can include representatives from the legislature, bar council and academia, like in South Africa and the U.K.
- This would make the consultation broad-based and inclusive.

Reference

The Hindu | The need for diversity in the judiciary

SHANKAR IAS PARLIAMENT
Information is Empowering