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- Member, Parliamentary Committee on Privileges
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14th August, 2021

To,

Thiru. Kiren Rijiju avargal

Hon'ble Union Minister for Law and Justice,

Government of India,

4th Floor, 'A' Wing Shastri Bhawan,

Rajendra Prasad Road, New Delhi, 110004

Dear *Thiru Kiren Rijiju Avargal,*

Vanakkam!

Sub: Representative Judiciary - ensuring Social Justice and Social Diversity in the appointment of Judges to the Hon'ble Supreme Court of India and Hon'ble High Courts.

1. As you are aware, a free, robust and impartial Judiciary is essential to deliver good governance, and to keep our democracy healthy and vibrant. When the citizens' rights are protected by Constitutional Courts, the natural corollary is that good governance is delivered.
2. The Supreme Court, being a Court of record, not only interprets and enforces the Constitution and laws in the country, but also issues writs, exercises original and final appellate jurisdiction and advises references made by the Hon'ble President of India. It is the final arbiter of all disputes, including disputes involving interpretation of Constitutional rights and is therefore a '*sentinel on the qui vive*'.
3. At this juncture, certain disturbing trends are noticed in the composition of the Union Judiciary - The Supreme Court of India and the High Courts. For the past few years, we have been witnessing declining representation from all the sections of the society in the Apex Court. Thus, no social justice is ensured in the

appointment of Judges to the Supreme Court. There is a 'diversity deficit' in our Supreme Court and the Court is not reflective 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 Judiciary. 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 class alone cannot necessarily reflect the views and values of society as a whole, particularly on issues involving diverse, linguistic, cultural and generational matters because they would require more perspectives, as Judges would interpret and enforce law based on their own backgrounds. A more diverse judiciary is desirable because without one, the chances are greatly increased for a violation of the rights on those under represented classes and could indirectly imply discrimination. How else can one explain the lack of numbers of women and judges from historically oppressed sections of society and from minority communities on the Bench of the Court? It is not that they are not qualified enough. The present trend shows representation of socially-marginalised groups remains dismal on the seats of the higher Constitutional Courts. In my State of Tamil Nadu for example we have a population of more than 80% belonging to Backward Classes. The percentage of women judges in these Courts are unconscionably low. 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 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 in the Last Constitutional Court threatens to erode the public confidence in the judiciary.
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 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, broad representation in the final Court in the country is the need of the hour.
8. Lack of diversity in the 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.

9. 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. 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. The Union Judiciary finally determines the fate of individual lives, property and much more. They finally implement and sometimes now even create the law.
10. Diversity in judiciary can be achieved while still maintaining the requirements of merit like knowledge in law, wisdom, qualitative personality, impeccable integrity etc. for determining eligibility and suitability in judicial appointments in the Supreme Court.
11. A truly representative judiciary with diversity can be achieved only when there is an immediate introspection and correctional steps are undertaken in the hallowed Union Judiciary.
12. At this juncture, I wish to highlight that the Memorandum of Procedure for appointment of Judges to Supreme Court and High Courts is still not settled between the Union Government and the Supreme Court. This Memorandum of Procedure is going to ultimately govern appointment of judges of Supreme Court and High Courts. The Law Ministry particularly the Justice Department plays an important role in the process of appointment of Judges of Supreme Court and High Courts including advising the Union and especially the Hon'ble President of India. Under these circumstances, the Union should impress upon the Hon'ble Chief Justice of the Supreme Court and all the Hon'ble Chief Justices of various High Courts in this country to ensure social diversity for a representative judiciary.

13. Therefore, I request your goodself to delve on to this most pressing issue, and to take steps to incorporate the same in the Memorandum of Procedure and make it mandatory for diversity in the appointments to Union judiciary while keeping intact the other requirements. Otherwise, an inclusive judiciary would remain a distant dream and an empty slogan relegated to speeches and text books, thereby creating the trust deficit between the people and the Constitutional Courts.

Thanking you,

P.WILSON

MEMBER OF PARLIAMENT (RAJYA SABHA)