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Shri Arjun Ram Meghwal
Hon'ble Minister of State,
Law and Justice (IC)
Room no. 402-A, 4th Floor, 'A' Wing,
Shastri Bhawan - New Delhi.

10th November 2023.

Hon'ble Sir.

Subject: Caste/religious imbalance in Higher Judiciary.

1. Thirty years ago, Justice S Ratnavel Pandian in his separate judgement delivered in Supreme Court Advocates on Record Association and others vs Union of India, (1993) 4 Supreme Court 441, while dealing with appointment of Judges to higher courts said;

“(i). In the context of the plurastic society of India where there are several distinct and differing interests of the people with multiplicity of religion, race, caste and community and with the plurality of culture brought together and harmonised by the Constitution makers by assuring each section, class and society 'equality of status and of opportunity, it is inevitable that all people should be given equal opportunity in all walks of life and brought into the mainstream so that there may be participation of all sections of the people in every sphere including the judiciary.

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2

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(ii) *The Government which is accountable to the people has its constitutional obligation to treat all alike and afford them equal opportunity in all spheres including the superior judiciary.*

(iii) *It is essential and vital for the establishment of real participatory democracy that all sections and classes of people, be they backward classes or Scheduled Castes or Scheduled Tribes or minorities or women, should be afforded equal opportunity so that the judicial administration is also participated in by the outstanding and meritorious candidates belonging to all sections of the society and not by any selective or insular group."*

2. The appointment of judges to higher judiciary is guided by Article 124 and Article 217, which outline the process of appointment of judges to the Supreme Court and High Courts, respectively. The appointment of judges based on merit ensures that individuals with the requisite legal knowledge, experience, and integrity are selected. However, diversity in the judiciary is crucial to reflect the pluralistic nature of Indian society. Representation from different castes and religions helps in ensuring a broader perspective in the interpretation and application of laws.

3. A diverse judiciary can contribute to a more inclusive and equitable justice delivery system. Judges from various backgrounds may bring unique insights that enhance the understanding of different social and cultural issues. A judiciary that is perceived as



3

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inclusive and unbiased helps in building public confidence in the legal system. It reinforces the idea that justice is accessible to all, irrespective of caste or religion.

4. Sir, it is a fact that avoiding discrimination in the appointment process is essential to uphold the constitutional principles of equality. The judiciary, as one of the pillars of democracy, should exemplify and uphold the values enshrined in the Constitution.

5. Just to give figures within my perception.

Despite having a sizable share of nearly 15% in the population of India, Muslim representation in judiciary is alarmingly low.

Karnataka High Court scenario.

(i) The file of a Judge from Muslim community with excellent background and whose name was cleared by High Court and Supreme Court collegium was withheld for almost two years only to be cleared after his juniors were appointed.

(ii) The latest recommendation of a Muslim candidate is deliberately withheld while his juniors in the Bar have been appointed many months ago.



4

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(iii) There is not a single judge from the Christian community in the High Court of Karnataka. This is despite the availability of many eligible, young and bright candidates.

(iv). Out of 51 Judges, 17 are belong to Brahmin Community.

6. In the Supreme Court of India, out of 34 Judges, 14 are from Brahmin Community. Few will retire as the Chief Justice of India.

7. Let me make it clear; I have absolutely no doubt about the ability, integrity and the judicial impartiality of the judges from the aforesaid community. Their performance has been excellent. But the inclusiveness is lacking to the extent of unconstitutionality.

8. It is undeniable that 79% of all High Court Judges appointed in the past five years (2019 to 2023) come from upper elite castes, while the proportion of SCs, STs, and other backward classes never exceeded 10%. In fact, the first appointment of a Dalit Judge in the Supreme Court occurred in 1980 and the second such appointment did not happen until 1989. The tribal community had no representation until 2002.

Sir, while merit remains a primary criterion for the appointment of judges, caste and religious equality are significant considerations.

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5
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Striking a balance between meritocracy and diversity ensures a judiciary that is both competent and representative of the diverse society it serves. The aim is to create a judiciary that reflects the ideals of equality, justice, and secularism as enshrined in the Indian Constitution.

Hence with this letter, I request you to communicate to the collegiums of the Supreme Court and High Courts to practice diversity both in letter and spirit by giving representation to all castes and religions in such manner that, no court gets packed with more than 20% from one caste.

This Sir, is the true manifestation of "Sab Ka Saath, Sab Ka Vikas.."

Regards

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