**[An inclusive judiciary](https://www.dawn.com/news/1832831/an-inclusive-judiciary)**

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ACCORDING to media reports, a recent meeting of the Judicial Commission of Pakistan (JCP) was adjourned without finalising changes in its rules. This was because the law minister informed the members that the federal government was considering amending the Constitution to [revise the appointment process](https://www.dawn.com/news/1830848) of high court and Supreme Court (SC) judges.

The government has thus far not revealed details of its proposed amendments. Some indication of possible reform can be found in the [PML-N’s manifesto](https://www.dawn.com/news/1809059), which provides for an “inclusive procedure for appointment of Superior Court Judges on merit”. The [PPP’s manifesto](https://v) recognises the importance of diversity, and promises to increase representation for women, minorities, and underrepresented segments of society in the judiciary. The [PTI’s manifesto](https://www.dawn.com/news/1809422) makes similar commitments regarding making the judiciary more inclusive and the process of appointments more transparent.

Importantly, the committee constituted in December 2023 to review the Judicial Commis­sion Rules, 2010, also listed “diversity” as one of the key areas that required consideration.

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It appears, therefore, that the major political parties and the courts agree there is need for reform in the appointments process to make it more inclusive and the judiciary more diverse.

Specifically, a number of reforms will be required to achieve this objective.

The first issue that needs to be addressed is that of framing. Often, inclusion and diversity are considered contrary to the idea of “merit”, and are reduced merely to tokenism and tick-box exercises. This perception must be strongly challenged. The inclusion of women as well as other marginalised groups in the administration of justice is a cross-cutting issue, with implications for the credibility and legitimacy of the justice system in larger society. It should be seen as an objective in itself as well as an essential pre-condition for the effective protection of human rights and substantive equality.

It is now recognised that diversity is not an optional ‘extra’ but a basic component of the judiciary’s ability to do its job. And that diversity and inclusion should be considered a part of ‘merit’ and not in opposition to it. This is why a number of constitutions recognise the importance of diversity in the judiciary — specifically, greater inclusion of women — but also consideration for religious, racial and other factors, depending on the context. Any amendments to the process of judicial appointments, therefore, should expressly provide for the equal representation of women, inclusion and diversity as objectives of the judicial appointments process.

Second, the composition of the JCP needs amendment. Currently, it comprises the chief justice of Pakistan, four most senior judges of the SC, one former judge of the SC, the federal law and justice minister, the attorney general of Pakistan, and a senior SC advocate. When the JCP is considering appointments for the high courts, it includes four additional members.

At present, all members of the JCP are men. This is not accidental, but a consequence of the larger exclusion of women from the top echelons of the legal profession in the country. Its composition also suffers from lack of diversity and inclusion of members who are not from the judiciary or the bar. This absence has an adverse impact on the JCP’s credibility and is not sustainable. Article 175A of the Constitution should, therefore, be amended to make the JCP more diverse, and also aim to ensure that its composition broadly reflects that of larger society in terms of gender, ethnicity, religious groups, and regional balance.

Third, there is currently an absence of any criteria for appointments to the SC and high courts. The Constitution only stipulates the requirement of age, citizenship, and minimum professional experience. The Judicial Commission Rules are also completely silent on the criteria on which the JCP nominates or assesses candidates. The lack of transparent and public criteria on which judicial appointments are made is incompatible with international standards and best practices on judicial appointments.

Changes in the judicial appointments process should, therefore, include criteria on which candidates are considered for recommendation, and give due consideration to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination and marginalisation.

The fourth issue that also has an impact on inclusion and diversity is how nominations are initiated. At present, chief justices have the sole power of ‘initiation’; ie, it is only the chief justice of the relevant court who can recommend names of candidates, who are then considered by the JCP for nominations to the parliamentary committee. This power has dubious roots, creates an unnecessary hierarchy within the JCP, and has led to the perception of misuse.

In a number of jurisdictions, including the UK and South Africa, the bodies empowered to make judicial appointments invite interested candidates to apply to be considered for appointment to the Supreme Court. This model opens up the judicial appointments process, allows a more diverse range of eligible candidates to apply, and eliminates any bias, real or perceived, in the ‘initiation’ stage. The government should, therefore, consider making provision for the JCP inviting applications for vacancies in the high courts and SC.

The fifth area that needs reform is lack of transparency. At present, the deliberations and proceedings of the JCP are secret and opaque. The public has no information about why certain candidates are chosen for consideration and on what basis candidates are selected for nomination. In the larger context of discriminatory practices and attitudes against women and other marginalised groups, such secrecy often works to their detriment and leads to the perception of bias in the appointments process.

While the detailed deliberations of the JCP need not be made public, the reasons for selecting certain candidates for nomination must be disclosed.

Most importantly, perhaps, the government’s reform package must take into consideration input from a broad range of stakeholders. Opaque and hasty attempts at such far-reaching legislation that are not consultative would defeat the very objectives of transparency, merit, and inclusion such reform claims to achieve.

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