

Rising judicial vacancies pose challenge

The SC has said that the government's 'recalcitrant attitude' has affected resolution of important cases

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Justice Rohinton Nariman's retirement and the entry of Justice L. Nageswara Rao into the five-judge Supreme Court Collegium, headed by Chief Justice of India N.V. Ramana, come at a crucial time when judicial vacancies in the Supreme Court are set to climb to 10 with the retirement of Justice Navin Sinha in three days.

The present Collegium of Chief Justice Ramana and Justices U.U. Lalit, A.M. Khanwilkar, D.Y. Chandrachud and Rao will remain intact for about 10 months and could even script history by appointing a woman judge who could one day be India's first woman Chief Justice of India.

Justice Rao, a direct appointee from the Bar, may evince interest to have more direct appointments from the Supreme Court Bar to the Bench of the highest court, given the exhortations from the Bar. Justice Rao will also be the first to exit the Collegium with his retirement in June 2022, followed by Justice Khanwilkar in July and Chief Justice Ramana himself in August the same year.

**The recommendations take months and years to reach the Collegium and thereafter months and years no decisions are taken post the Collegium... the judicial institution of the High Courts is manned by a number of judges where it will become almost impossible to have an early adjudication even on important issues**

JUSTICES SANJAY KISHAN KAUL AND HRISHIKESH ROY

Justice Lalit will then take over as the top judge as per seniority. His tenure as the Chief Justice of India will, however, be of just a little over two months till November 2022. Justice Chandrachud, again as per seniority, will succeed Justice Lalit as CJI till November 2024.

Frozen since 2019

Judicial appointments to the Supreme Court have remained frozen since September 2019. That year saw 10 appointments to the Supreme Court in three batches. Justices Dinesh Maheshwari and Sanjeev Khanna were appointed in January 2019. Justices B.R. Gavai, Surya Kant, Aniruddha Bose and A.S. Bopanna were appointed in May 2019. The last batch of Supreme Court appointments in September

2019 were of Justices Krishna Murari, S. Ravindra Bhat, V. Ramasubramanian and Hrishikesh Roy. The oldest vacancy is that of Chief Justice Ranjan Gogoi, who retired in November 2019.

The tenure of Chief Justice S.A. Bobde did not see a single judicial appointment to the Supreme Court, though frequent discussions were held by the Collegium.

The present Collegium can remedy the drop in judicial strength in the Supreme Court. Proportionate representation from the High Courts and seniority, though only conventions and not constitutional or legal mandates, carry weight during the appointment process. Merit is a dominant criterion.

According to the Law Ministry records of August 1,

the senior-most Chief Justices of High Courts, as per their initial appointments in 2003, 2004 and 2005, are Karnataka Chief Justice A.S. Oka in 2003, followed by Delhi Chief Justice D.N. Patel and Tripura Chief Justice A.A. Kureshi. Both Chief Justices Patel and Kureshi share the same date of initial appointment – March 7, 2004. Gujarat Chief Justice Vikram Nath was initially appointed in September 2004 while Uttarakhanda Chief Justice R.S. Chauhan, Punjab and Haryana Chief Justice Ravi Shanker Jha and Sikkim Chief Justice J.K. Maheshwari were all initially appointed in 2005. The parent High Courts of these judges, except in the cases of Chief Justices Jha and Maheshwari, are already represented in the Supreme Court. The parent High court of the two judges is Madhya Pradesh.

On the criterion of proportionate representation, according to the Ministry records, Patna Chief Justice Sanjay Karol's parent High Court of Himachal Pradesh is not represented in the Supreme Court. Similarly, Rajasthan Chief Justice Indrajit Mahanty's parent High Court of Orissa is not represented

in the top court. There will be no representation from the Patna High Court in the Supreme Court after the exit of Justice Navin Sinha on August 18. Jharkhand Chief Justice Ravi Ranjan's parent High Court is Patna.

Women judges

Telangana Chief Justice Hima Kohli is the sole woman High Court Chief Justice now. The name of Justice B.V. Nagarathna from the Karnataka High Court was reported some months ago to be under consideration to replace Justice Indu Malhotra's vacancy in the Supreme Court.

An equally serious issue is the fading judicial strength in the 25 High Courts. Ministry figures of August reveal 455 judicial vacancies in the High Courts where the total sanctioned strength is 1,098.

A few days ago, a Supreme Court Bench led by Justice S.K. Kaul lashed out at the Centre's delay, for years on end, to act on the recommendations of the Collegium and appoint judges to High Courts. The Bench said that the government's "recalcitrant attitude" has affected the adjudication of important cases, especially high-stake commercial issues.