

# Breaking the logjam, handing over the baton

With the Supreme Court Collegium showing the way in judicial appointments, the executive needs to match its pace



P.D.T. ACHARY

For the first time ever, the Supreme Court Collegium led by the Chief Justice of India (CJI) recommended/selected as many as nine persons at one go to be appointed to the apex court. With the appointment later of the nine judges by the President of India, barring one vacancy which arose after the Collegium met, all the nine vacancies in the Supreme Court will be filled up. The highest court in the country having its near full strength will ease the pressure on it considerably.

## Much-awaited move

Every CJI during his tenure has taken up the filling up of vacancies as a matter of highest priority, but many could not succeed. CJI T.S. Thakur, in fact, broke down, in 2016, at a function attended by the Prime Minister in a rare expression of extreme anguish because of his inability or helplessness in filling the vacancies which was seriously affecting the functioning of the supreme judicial forum of the country. It is indeed a happy augury that the present CJI, Justice N.V. Ramana, could, along with his colleagues in the Collegium, select the judges within a short period of his assumption of office.

It is almost a truism that the selection of judges for appointment to the higher courts, particularly the top court is a complex exercise. After the Collegium came into existence, much to the consternation of political class, the selection of suitable judges has become most arduous in as much as the members of the Collegium have to take extra care to ensure that the process of selection remains transparent and the suitability of the persons selected at-

tracts the highest level of approbation.

## Difficult task

This is by no means an easy task. The members of the Collegium are all the senior most judges who have in their own way helped shape the ethos of the highest judiciary. With their keen intellect, long years of experience at the Bench and an admirable ability to discern merit in individuals, it is a tough task to build a consensus around one person or a few persons. **The CJI being the head of the Collegium, has an unenviable task in building that consensus. Therefore, it can be said without any fear of contradiction that the job of selecting as many as nine judges for appointment to the Supreme Court was done admirably well.** Going by news reports, it appears that the selection process was concluded in the first ever formal meeting of the Collegium. It is a remarkable feat in itself.

As the Secretary General of Lok Sabha, I had the privilege of assisting the Presiding Officers and I witnessed close quarters the struggles the Speaker had to endure in evolving consensus even on absolutely non-partisan proposals. Justice Ramana deserves full credit for taking along his colleagues in the true spirit of being the first among equals. The latest resolution of the Collegium gave effect to the multiple judicial pronouncements of the top court on the subject, particularly in recommending three women, a feat which may not be possible to be repeated in the foreseeable future.

**Article 142 (1) contains the concept of 'complete justice' in any cause or matter which the Supreme Court is enjoined to deliver upon. The citizens of the country look up to the Supreme Court for complete justice.** So, while selecting a judge to adorn the Bench, the fundamental consideration should be his/her ability to do complete justice. The Supreme Court has gone into this fundamental nor-



R.V. MOORTHY

mative matrix in which the whole exercise of selection of judges is performed. In the *Supreme Court Advocates-on-Record Association and Another vs Union of India* (1993), the Court spelt out the parameters within which to accomplish the task of selecting candidates for appointment to the higher judiciary. **The most crucial consideration is the merit of the candidates. But consideration of merit should be done "... without giving room for any criticism that the selection was whimsical, fanciful or arbitrary or tainted with any prejudice or bias"** (paragraph 330). **The merit is the ability of the judge to deliver complete justice.**

## India's compelling realities

India is a country of bewildering diversity. In this cacophonous democracy, language, region, religion, community, caste, are all realities which the state cannot ignore while identifying people to man its various organs. The nine judges who decided the above case were quite aware of these compelling realities. So, they said, "In the context of the plurastic [pluralistic] society of India where there are several distinct and differing interests of the people with multiplicity of religions, race, caste and community and with the plurality of culture ... 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 people in

every sphere including judiciary". **The overriding concern of the Supreme judiciary is to ensure equal opportunities to all classes of people ... be they backward classes or scheduled castes or scheduled tribes or minorities or women, ... 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"** (paragraph 315).

## Need for transparency

**India is perhaps the only country where the judges select judges to the higher judiciary. It is, therefore, necessary to make the norms of selection transparent.** The Supreme Court has emphasised the need for maintaining transparency and an openness with regard to the norms of selection. In 2019, a five judge Bench of the Supreme Court, of which the present CJI was also a member, laid emphasis on this point. The Bench observed: "There can be no denial that there is a vital element of public interest in knowing about the norms which are taken into consideration in selecting candidates for higher judicial office and making judicial appointments".

Thus, the essence of the norms to be followed in judicial appointments is a judicious blend of merit, seniority, interests of the marginalised and deprived sections of society, women, religions, regions and communities. A closer look would reveal that these norms are followed in their essentiality in selecting the nine for the Bench. The selection of three women judges, with one of them having a chance to head the top court, a judge belonging to the Scheduled Caste and one from a backward community and the nine selected persons belonging to nine different States (Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Maharashtra, Madhya Pradesh, Uttar Pradesh, Delhi and Gujarat; <https://bit.ly/385WJbP>), all point

towards an enlightened and unbiased approach of the members of the Collegium. It is also a matter of public knowledge that many of those selected have zealously upheld citizens' freedoms and public interest. The contributions of a few of them in waking up governments from their slumber in the wake of the COVID-19 pandemic is well documented. A high level of social consciousness possessed by a Judge enhances the quality of justice. The present CJI can be credited with recognising this crucial factor in the selection of judges.

## Unwarranted

A needless controversy is sought to be raised by a section of the media about this round of selection citing the non-existing 'Rule of Seniority'. It is this insistence, on one single criterion, which led to the piling up of vacancies in the Supreme Court for nearly two years. The logjam of 22 months has been finally broken by the Collegium led by the CJI through a pragmatic approach. It is also significant to note that those who are complaining of omission have not alleged that the selected nine cannot do complete justice as the Constitution mandates.

There is no doubt that there are meritorious people outside this group too. But in a population of 1.3 billion, to select just nine suitable persons to man the highest judiciary is not without difficulty. Considering the merit of the selected persons, one can undoubtedly say that the Collegium has done a good job. With seven names (district judges) cleared by the Collegium for the Telangana High Court in one go, we can safely trust Team Ramana to speedily fill up all judicial vacancies. The Collegium has started doing its job. Now, it is time for the Government to match the pace and take the process of appointments to its logical conclusion at the earliest.

P.D.T. Achary is Former Secretary General, Lok Sabha