

Date: 10-10-17

Open court

In judicial appointments and transfers, justice will now be seen to be done.

Editorials

In a welcome move towards transparency in the elevation, confirmation and transfer of judges, the Supreme Court has begun to upload the decisions of the collegium, and the reasoning behind them, at the time that its recommendations are forwarded to the government. This initiates transparency in a contested process, when the judiciary and the executive have been at loggerheads over the Memorandum of Procedure. A proactive move by the judiciary is preferable to a powerful executive imposing its will, and it will help to dispel the miasma of rumour which has sometimes surrounded judicial appointments.

A case in point is that of Justice Jayant M. Patel, the senior-most judge of the Karnataka High Court, who resigned following his transfer to Allahabad. Justice Patel, who had ordered a CBI inquiry into the 2004 Ishrat Jahan encounter case in Gujarat, was due to be elevated to acting chief justice in Karnataka High Court following the retirement on Monday of the incumbent, S.N. Mukherjee. A 1993 judgment makes it clear that consent for transfer should be taken “unless there exist pressing circumstances making it unavoidable”. In addition, the circumstances must be in “public interest”. Yet, given the collegium’s opacity, there are no answers to this question: What were the “pressing circumstances” and “public interest” that necessitated Justice Patel’s move to the Allahabad High Court?

In a 2015 judgement rejecting the proposed National Judicial Appointments Commission, the Supreme Court recommended improving the transparency of the collegium system. Now, details of recommendations concerning initial elevation to the higher judiciary, confirmation as permanent judges of high courts, appointments of chief justices, elevation to the Supreme Court and transfers of judges and chief justices are to be uploaded. The resolution ushering in this change seeks to “ensure transparency and yet maintain confidentiality in the collegium system”.

The collegium’s recommendations for appointments to the Kerala and Madras High Courts are already on record, and detail the process by which candidates were vetted. The documents cannot be faulted on detail, though they are procedural and do not provide blow by blow accounts. The criticism has been made that the details were uploaded after the collegium took the decision, and the recommendations were on their way to the government. But if the collegium were to publish prior to the decision, it would impugn the objective of confidentiality, which its resolution specifies. It may not be practical to seek more details, such as transcripts of conversations, because that would condition the conversations themselves with the observer effect. The transparency delivered by the system is enough to prevent appointments that are clearly ill-advised. The apex court deserves to be congratulated for taking this important step towards more openness.

Date:10-10-17

First in Kerala

State body that manages temples introduces caste reservation in the recruitment of Hindu priests. It will be watched

Editorials

The recent decision of the Travancore Devaswom (Temple) Recruitment Board (TDRB) to shortlist 36 non-Brahmins, including six Dalits, for appointment as priests is a first of its kind, even for Kerala, which has a long history of fighting caste prejudice in religious places. Non-Brahmins do serve as priests in Kerala, but most of them are attached to smaller temples or private shrines. The TDRB recruitment institutionalises a process where candidates are chosen following an examination open to people of all castes and reservation norms are enforced. The devaswom boards in Kerala, which manage government-controlled temples, have in the past recruited non-Brahmins as priests, but never have they implemented caste-based reservation. This was an anomaly since a component of the salaries of priests in devaswom temples is covered by public funds. Hence, it has been argued, the recruitment norms followed in other sectors should be maintained in temple appointments as well. The next battle is to ensure that these recruits get to serve in major temples, including the Sabarimala, many of which invoke shrine-specific traditions and scriptures to exclude non-Brahmins from priestly duties. Moreover, government diktats or judicial pronouncements are not always sufficient to break down caste barriers in worship practices. Kerala's own history of fighting discrimination in Hindu society points to the importance of inclusive public action in defeating claims made on behalf of tradition and treatises like Manusmriti. Seminal mobilisations like the Vaikom Satyagraha (1924) and Guruvayur Satyagraha (1931-32) prepared the ground for the landmark temple entry proclamation (1936) of the Travancore king and made it impossible for Hindu conservatives to enforce discriminatory caste practices in public spaces.

The success of the TDRB initiative will also depend on the support it can draw from the community of believers. Conservative views have weighed in against arguments that religious practices must conform with the rights enshrined in the Constitution, including gender equality in worship rights and priesthood. They have challenged court orders which ruled that merit, not caste or hereditary rights, must be the overriding principle in the appointment of priests. The TDRB has now included another critical category — proportional representation — in the mix. The rest of India will be watching the outcome.



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Knitting a safety net

Responsive social and care systems for mental health issues must be pursued relentlessly

Vandana Gopikumar, S. Parasuraman, Sanjeev Jain

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Durga spent more than half her adult life battling mental illness. Driven by allegiance towards her children, she seemed committed to recovery, following her first breakdown. Her daughters, now married, remained unwavering in their support. She, however, felt like a burden, and experienced a sense of alienation. Disheartened by seemingly inadequate standards of responsiveness on emotional and pragmatic needs, she felt let down by her family. Determined to die, rather than live a life bereft of the joy of mutually valued relationships or dignity of self-reliance, she set herself alight, undaunted by

the finality of her decision.

One wonders if longer periods of institutional care or financial recourse could have saved her; though irreconcilable experience of social distance seemed her primary disadvantage. Earlier, even when confronted by grave adversity, she had doggedly pursued the goal of securing her children's safety and future, and fought social systems that ostracised her on multiple counts: economic class, gender, status of a widow, and indeed her mental illness. Her focus on achieving valued gains for her children gave her hope, purpose and meaning. Today, 800,000 persons die by suicide globally and over 1,33,000 in India every year. Among 15-29 year olds, it's the second leading cause of death. Reasons attributed range from family problems and ill health to mental illness, debt, unemployment, failure in exams and relationships.

Those who have studied the nature and manifestation of such profound distress attribute it to factors ranging from neural networks to unfulfilled expression of autonomy, affiliation, dominance, etc. We align our views to three theories. The first by psychologist Thomas Joiner, who posits that those who experience a 'thwarted sense of belongingness' and 'perceived burdensomeness' when coupled with a 'sense of fearlessness' are at highest risk. The second, by Emile Durkheim, who links diminished and extensive social connections or low and high integration with society, and suicide. The third, Marsha Linehan's attributions, which include one's biological predisposition, trauma and deficits in emotional self-regulation.

Why the distress?

We argue that multiplicity of seemingly intractable material and existential problems results in turmoil, followed by confusion and apathy that invokes feelings of distance, unquietness and feeling trapped. Inability to grapple with the complexity of economic and social pressures of survival and conformity seem to result in an all-pervasive sense of hopelessness. While this hypothesis needs testing, it is evident that a breakdown in safety nets augments social vulnerabilities and builds insurmountable distress.

History shares with us the essentiality of social policies that support those in distress through periods of economic lows. As accentuated levels of social suffering prevailed through the Great Depression in the U.S., at the intersections of health and social domains, it was death by suicide that showed significant increase in incidence, in comparison to most other ill health conditions. States that maintained social equilibrium safeguarded essential interests of the disadvantaged through uninterrupted investments in health, education and social sectors. In this context, it may be important to note that 70% of persons who died by suicide in India lived on an annual income of ₹1 lakh.

The way forward

As we better understand predictors of suicide, key harm reduction theories emerge. Responsive health systems have to be pursued, unequivocally with a sense of commitment and urgency. While debt and ill health-related issues feature as disparate pieces that exacerbate distress, they come together in a vicious nexus to build despair. The injustice of relative poverty or the anguish of perpetual and intergenerational distress resulting from intractable structural barriers pose a form of uncategorised violence that result in passive resignation, and worse still, a lack of optimism and a chronic and irrefutable state of hopelessness.

The Bhole Committee had stated that every Indian should be able to access health care “without the humiliation of proving their financial status, or the bitterness of accepting charity”. Unfortunately, this doesn’t stand true even today. In the case of the ultra-poor living with mental health issues, targeted social interventions such as the disability allowance, an entitlement, that helps mediate struggles of deprivation, and by extension, exclusion, mandated by the Mental Health Care Act and the Rights of Persons with Disability Act, must be better streamlined, adopting an integrated single window health and social care system that will minimise cumbersome bureaucracy.

At a societal level, widening gaps linked to power and control may have defeated values of empathy and engaged compassion. Within families and across social groups, a mutual sense of responsibility and affiliation towards each other must be reinforced, through rituals and culture, social training or self-learning. Being kinder helps save lives and even as we celebrate diversity and agency, values of interdependence have to be strengthened. Finally, focus on personal meaning that motivates and goads one forward must be ardently pursued. Caught in the quagmire of everyday struggle and social forces, personal aspirations built on the foundation of dominant social norms may stealthily appropriate our authentic core, as we realign our values and positions and conform. Maybe the liberty of expression, that is considerate of heterogeneous social circumstances and yet free, will give us a fillip to discover our truth and a vital strain of hope.

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Fixing the steel frame

It is not as difficult as it sounds

Ashok Parthasarathi, (Ashok Parthasarathi was S&T Adviser to Prime Minister Indira Gandhi)

When we attained Independence in 1947, like British dominions such as Canada and Australia and colonies such as Malaya and Kenya, we continued to adopt the civil service system inherited from the British. The first Prime Minister, Jawaharlal Nehru, was aware that the colonial civil service system was unsuitable for a politically free, socially feudal and economically poor country such as ours. Lord Mountbatten, the “last Viceroy of India”, did little about it. Yes, we renamed our civil services, calling them the Indian Administrative Service (IAS) and the Indian Audit and Accounts Service (IAAS), etc, but there has been only little change in practice. The IAS has continued to be deeply hierarchical and rule-bound rather than being driven by domain knowledge. Seniority is the basic criterion. We set up a brand new National Academy of Administration at Mussoorie, later to be called the Lal Bahadur Shastri National Academy of Administration. It was meant to train young recruits for the administrative services. The goal of the training imparted was still that of creating the all knowing “intelligent generalist”.

Over the last 70 years, many incremental changes were made. Meanwhile, our erstwhile “mother country”, the U.K., went ahead even as early as the 1950s to radically restructure its civil service. The famous Fulton Commission shifted the focus from a system based only on seniority and “experience” to one which gave pride of place to domain knowledge. This would avoid such ‘atrocities’ such as the secretary, water resources becoming the defence secretary, and the joint secretary, health being promoted as additional secretary, home ministry, which are commonplace today. When a non-commissioned officer or a soldier joined the Indian Army as an infantry man, he remained one throughout his career. He never became an artilleryman, a member of the armoured corps, or even a member of the signals (communications), corps. Moreover, when an officer in one of these disciplines reached the level of a brigadier, he was required to go to the Defence Services Staff College (DSSC) to undergo a stiff examination. There were many objectives to those examinations, key among them being inculcating leadership qualities and a degree/level of domain knowledge. If he passed the examinations he became a major general and joined the elite of higher defence managers.

I am strongly of the view that we need to adopt such a system for the IAS, at the director level. The equivalent of the DSSC would be the academy at Mussoorie. However, faculty from the Indian Institutes of Management and the Indian Institutes of Technology should also be brought in to deal with their areas of expertise.

Deeper changes

But changing the character of the personnel system would not by itself be enough. Organisational changes in the area of government ministries departments are also needed.

The core of those changes lies in the creation of “clusters/sectors” which are:

Security cluster: home, defence, security and intelligence and maybe even the foreign service, atomic energy, space and information technology.

Economic cluster: finance, commerce and industry.

Engineering cluster: public enterprises, heavy industries, electronics, telecommunications, and micro, small and medium enterprises.

Energy cluster: petroleum, coal, power and new and renewable energy.

Chemical cluster: chemicals and petrochemicals and pharmaceuticals

Transport sector: roads, ports, shipping and civil aviation, railways.

Social sector: health including the Indian Council of Medical Research, education, social welfare and social justice and empowerment, women and child development.

Rural sector: rural development, agriculture, agricultural research and education, Khadi and Village Industries Commission, water resources.

Science and technology sector: science and technology, scientific and industrial research, biotechnology, Council of Scientific and Industrial Research, earth sciences, and environment and forests. A key component of the new training programme would be to assess and develop domain knowledge, and the director being trained for the sector. Once “streamed”, the civil servants can then spend the rest of their careers “rotating” within the sectors concerned. Questions may be raised about the feasibility of such an idea. My answer is this. If the defence forces have shown that it can work, and with positive results, why not apply it to the civil service?

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Bay of Bengal diplomacy

India should foster regional cooperation on environment and disaster management

Aparna Roy, (Aparna Roy is associate fellow, Observer Research Foundation)

India will seek to reaffirm its regional leadership in environmental and climate diplomacy as it hosts the first Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation Disaster Management Exercise (BIMSTEC DMEEx 2017) starting October 10. Despite a decade of meaningful efforts in the sector, political and security tensions between members have hindered progress on regional cooperation and action. The renewed focus and enthusiasm of the regional leaders to rejuvenate BIMSTEC, after two decades of its existence, is therefore a welcome opportunity to boost effective cooperation in the sub-region.



The BIMSTEC region, comprising 22% of the global population, is exposed to an ever-increasing threat from natural disasters. Whether it is the recurrent floods affecting Assam, West Bengal and downstream in Bangladesh or Himalayan landslides in India and Nepal, regular disasters in the sub-region continue to cause transboundary impacts, damaging lives, livelihoods and assets, often leading to mass displacement and migration across borders. In the absence of a joint integrated mechanism to address the spurt in the scale, frequency and impacts of disasters, the response has largely been reactive and limited to post-incident crisis management. BIMSTEC, therefore, has the opportunity to enable a paradigm policy shift from a traditional relief centric, reactive approach towards a

joint, proactive, holistic one that encompasses disaster preparedness, prevention, mitigation and risk reduction among member states. In order to strengthen inter-governmental coordination, among BIMSTEC members, the first step would be to devise a comprehensive Disaster Risk Reduction (DRR) regional action plan. The road map should reflect a clear strategy to integrate DRR in all development programmes of member nations, adopt a multi-hazard and multi-sectoral approach to DRR and work towards common outcomes through institutionalising partnerships across all levels of governance.

Building capacity

Given the regional nature of the threats, there is an urgent need for setting up of regional institutional capacity for threat assessment and designing response strategies. An important challenge for disaster preparedness is addressing the knowledge gaps among the member countries. Setting up of research taskforces on various climate change and environment risks in the BIMSTEC sub-region can develop a common understanding of the threats, create standards for emergency management and come up with cost-effective solutions. India has volunteered to lead the Environment and Natural Disaster Agenda under BIMSTEC, and must make the best of this opportunity by translating the learnings from the disaster management experiences of SAARC and ASEAN. This is also an opportunity for India to take a measured approach and add value to its own regional agenda.

Like other regional blocs, this initiative is set to take place amidst a long-standing climate of political discord amongst some of the member nations — Bangladesh, India and Myanmar. India's tensions over transboundary Teesta river water sharing with Bangladesh, and the Rohingya refugee crisis between Myanmar and Bangladesh are cases in point. However, member nations must recognise that considering their regional setting and geographical proximity, the security of states in the sub-region is contingent upon each other and therefore, 'Environment and Natural Disaster' management would need to be prioritised as their common security agenda.

Date: 10-10-17

Towards transparency — on judicial appointments

Disclosures on judicial appointments are welcome, but the reasons must be spelt out

EDITORIALS

The Supreme Court collegium's decision to disclose the reasons for its recommendations marks a historic and welcome departure from the entrenched culture of secrecy surrounding judicial appointments. The collegium, comprising the Chief Justice of India and four senior judges, has said it would indicate the reasons behind decisions on the initial appointment of candidates to High Court benches, their confirmation as permanent judges and elevation as High Court Chief Justices and to the Supreme Court, and transfer of judges and Chief Justices from one High Court to another. This means there will now be some material available in the public domain to indicate why additional judges are confirmed and why judges are transferred or elevated. A certain degree of discreetness is necessary and inevitable as in many cases the reasons will pertain to sitting judges. At the same time, it would become meaningless if these disclosures fail to provide a window of understanding into the mind of the collegium. It is important to strike the right balance between full disclosure and opaqueness. The collegium has suggested as much, albeit obliquely, when it says the resolution was intended "to ensure transparency, yet maintain confidentiality in the Collegium system". It is to be hoped that this balancing of transparency and confidentiality will augur well for the judiciary. The introduction of transparency acquires salience in the light of the resignation of Justice Jayant M. Patel of the Karnataka High Court after he was transferred to the Allahabad High Court as a puisne judge, despite his being senior enough to be a High Court Chief Justice.

Going by the decisions disclosed so far with regard to the elevation of district judges, it is clear that quality of judgments, the opinion of Supreme Court judges conversant with the affairs of the high court concerned, and reports of the Intelligence Bureau together form the basis of an initial appointment being recommended. While district judges of sufficient seniority and in the relevant age group are readily available for consideration, there may be some unease about how certain advocates and not others come to be considered. Given the perception that family members and former colleagues of judges are more likely to be appointed high court judges, it is essential that a system to widen the zone of consideration is put in place. There are 387 vacancies in the various High Courts as on October 1. The mammoth task of filling these vacancies would be better served if a revised Memorandum of Procedure for appointments is agreed upon soon. A screening system, along with a permanent secretariat for the collegium, would be ideal for the task. The introduction of transparency should be backed by a continuous process of addressing perceived shortcomings. The present disclosure norm is a commendable beginning.

जनसत्ता

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बराबरी का सफर

संपादकीय

विलंब से ही सही, रेलवे मंत्रालय ने अगर वीआइपी संस्कृति को समाप्त करने की दिशा में कुछ पहल की है, तो इसका स्वागत किया जाना चाहिए। रेलमंत्री पीयूष गोयल ने कहा है कि नए आदेश के मुताबिक रेलवे बोर्ड के सदस्यों से लेकर विभिन्न जोन के महाप्रबंधक और सभी पचास मंडलों के प्रबंधक भी अब अपनी सरकारी यात्राएं स्लीपर और एसी-थर्ड श्रेणियों में करेंगे। इसके अलावा रेलवे के बड़े अधिकारियों के बंगलों पर घरेलू नौकरों की तरह काम करने वाले ट्रैकमैन जैसे रेलवेकर्मियों को तुरंत वहां से मुक्त कर उनकी वास्तविक ड्यूटी पर भेजा जाएगा। सचमुच यह आंकड़ा चौंकाने वाला है कि तीस हजार ट्रैकमैन बरसों से अधिकारियों के घरों पर घरेलू नौकरों की तरह काम रहे हैं, जबकि उनका वेतन विभाग से दिया जा रहा। मंत्रालय ने अपूर्व कदम उठाते हुए छत्तीस साल पुराने एक प्रोटोकॉल नियम को भी समाप्त कर दिया है, जिसमें महाप्रबंधकों के लिए अनिवार्य था कि वे रेलवे बोर्ड के अध्यक्ष और सदस्यों की क्षेत्रीय यात्राओं के दौरान उनके आगमन और प्रस्थान के समय मौजूद रहेंगे। यह फैसला रेलवे बोर्ड ने खुद किया है। 1981 में बनाए गए इस प्रोटोकॉल को रेलवे बोर्ड के अध्यक्ष अश्विनी महाजन ने समाप्त करने का एलान किया। उन्होंने यह निर्देश भी दिया है कि किसी भी अधिकारी को कोई गुलदस्ता या उपहार नहीं भेंट किया जाएगा। वीआइपी संस्कृति को खत्म करने की दिशा में सबसे पहले रास्ता दिखाया आम आदमी पार्टी ने, जब पहली बार उसे दिसंबर 2013 में दिल्ली में अपनी सरकार बनाने का मौका मिला था। इसके बाद पूरे देश में इस पर बहस तेज हुई। हालांकि सिर्फ गाड़ियों से लालबत्ती उतारने तक इस मुद्दे को सीमित नहीं किया जा सकता। इस साल अप्रैल में प्रधानमंत्री नरेंद्र मोदी ने भी अपने 'मन की बात' संबोधन में कहा था कि सारे देश में वीआइपी संस्कृति के प्रति रोष है; कि वीआइपी (वेरी इंपोर्टेंट पर्सन) संस्कृति को इपीआइ (एवरी पर्सन इंपोर्टेंट) संस्कृति से बेदखल करना होगा। हर व्यक्ति का मूल्य और महत्त्व है। रेलवे मंत्रालय का ताजा आदेश प्रधानमंत्री के उस संदेश को ही आगे बढ़ाने की कोशिश है। जाहिर है, मकसद नेक है। लेकिन असल मुश्किल पेश आती है इसे लागू करने में। लोग अपने अनुभव से जानते हैं कि ऐसी भली-भली योजनाओं का क्या हश्र होता रहा है? हर मंत्रालय और विभाग में लिखा रहता है कि रिश्तत लेना और देना गैरकानूनी है, या कोई सरकारी या निजी व्यक्ति किसी के तबादले को लेकर बातचीत नहीं करेगा। लेकिन स्वयं मंत्रीगण इस पर कितना अमल करते हैं, यह किसी से छिपा नहीं है। स्लीपर या एसी-थर्ड में रेलवे के कितने आला अफसर यात्रा करेंगे, कहना बड़ा कठिन है। वे यात्रा कर रहे हैं या नहीं, इसकी निगरानी कौन करेगा? जहां सौ-दो सौ रुपए लेकर टीटीइ बर्थ बेचते हों, वहां वे अपने अधिकारियों के लिए क्या-क्या व्यवस्था नहीं कर देंगे। इसलिए रेलवे के इन आदेशों को लेकर तभी कोई आश्चस्ति हो सकती है, जब इसे कार्यरूप में परिणत होते देखा जा सकेगा। वरना यह कोरे कागज की कहानी ही रहेगी। एक विसंगति यह भी देखी जा रही है कि वर्तमान सरकार का ज्यादातर कार्यकाल खत्म हो गया है, तब वीआइपी संस्कृति मिटाने की जरूरत महसूस हुई है! देर से उठाया गया यह कदम क्या टिकाऊ साबित होगा!