

A roster of questions

It would be absurd to construe the new roster for allocation of cases in the Supreme Court, with division of work among the judges according to various subject categories, as a move towards greater objectivity or fairness. This new roster comes on the heels of an important press conference by the four senior-most judges of the Supreme Court expressing dissatisfaction at the manner of allocation of cases and the high-handedness of the Chief Justice of India in asserting his supremacy as master of roster to the exclusion of the senior judges of the court. But even a cursory glance at this new roster raises more questions than puts to rest the issue of a fair and transparent roster for allocation of cases in our apex court.

Was this roster prepared in consultation with senior judges of the Supreme Court? Have the cases been allocated according to a particular judge's expertise in a subject matter? Has the allocation been done in keeping with principles and procedures that have been accepted globally as necessary for transparency, fairness and accountability? The roster raises these and many more questions.

The roster that was put out to be operationalised from February 5 has given impetus to more speculation and has become a stronger ground for criticism of the prevailing practice at the Supreme Court. The roster aggregates all important cases to the Chief Justice of India — politically sensitive cases, all fresh public interest litigations, social justice matters, contempt of court matters, matters dealing with appointment of constitutional functionaries, among others. Mundane cases with little political significance have been assigned to the other senior judges. Despite the judges going public with their discontent, the Chief Justice went on to exclude them from the range of important Constitution Bench hearings that have commenced this month and that will have a long-term bearing on the state of our democracy.

Such concentration of power in the hands of one person violates the foundations of what Justice P.B. Sawant has called "a court of equals". The Chief Justice of India is only one among equals, with the power to judiciously exercise an important role of constituting benches. This authority cannot be used in an autocratic manner defying all norms of equity and justice and in disregard for principles of neutrality, impartiality and transparency. Either way, case allotment is clearly rule-based, falls well within boundaries of objective criteria and with limited scope for unbridled discretion. Indisciplined exercise of this authority can lead to a complete subversion of democracy.

A just and fair roster must be one that is divided subject-wise among judges according to their experience and expertise in those subjects. Politically sensitive matters should be before the five senior judges of the Supreme Court. Among them, the allocation of individual cases must be by random computer allocation not by the individual decision of any human. For other cases as well, if there is more than one judge dealing with a particular subject then cases belonging to that subject should be randomly allocated among the various judges to whom that subject has been allocated.

Collective decision-making was the bedrock that ushered in the collegium system in 1993. It laid the foundation of consultative procedures for appointment of judges. When appointments are a collective function, the allocation of important cases must be done collectively or at least in consultation with senior judges of the Supreme Court. There is still scope to revisit this roster through the prism of objectivity and fairness. This must be done, for greater transparency and accountability will only yield more authority to our Supreme Court as the supreme custodian of people's rights.

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