Rules for the court

Making public the Supreme Court's "roster", the allocation of case categories to different judges of the SC, is a welcome step, as any step promoting greater transparency should be. It is, however, by no means necessary or sufficient in any real way to address the ongoing crisis of credibility in the Supreme Court of India.

In making the roster public, the SC is a relatively late mover. At least four large high courts — those of Allahabad, Bombay, Delhi and Karnataka — also make their rosters available on their websites. A litigant in any of these courts, or a lawyer practising here, has already known for a while how cases are being allocated to various judges on the basis of subject matter. This level of transparency is only necessary. It is unfortunate that not all high courts have followed this lead and one hopes that the SC's move spurs them to do so.

It is worth recalling that the ongoing crisis in the higher judiciary, which came to light when four senior-most judges of the SC held an unprecedented press conference indicating their loss of faith in Chief Justice of India (CJI) 07, relates precisely to the manner of allocation of cases. The manner in which sensitive cases were being allocated by the CJI to certain judges suggested that it was totally arbitrary and designed to ensure a certain outcome, in some cases favouring the Union government.

That a roster existed (even prior to the one made public and taking effect February 5) and was largely being followed was not in issue. The crux lay, and continues to lie, in the absence of any norms or transparency in the manner in which the CJI exercised his discretionary power — to go beyond the roster and allocate specific cases to specific benches. This continues to be a bone of contention and won't be resolved unless clear and specific norms are laid down guiding the CJI's exercise of discretion. This is precisely the demand that is being made by the four senior-most judges who have asked for a panel, instead of the roster being determined by the CJI alone.

The fact that the CJI's court will be the only one to hear Public Interest Litigations is also problematic. To be fair, PILs constitute a very small number of the total cases in the SC. Even including appeals from judgements of high courts in PIL cases and PILs filed in the SC itself, no more than 1 per cent of cases in the SC are PILs. But PILs are also more likely than most other case types to raise important issues, and spark confrontation between the judiciary and executive. Per se, having only the CJI hear PILs is not in a bad move. But in the present context, where questions over his integrity and independence have been raised, this allocation is unlikely to inspire much confidence.

As much as it is important as to who decides the roster and what process is followed, it is also necessary to ensure that the outcome is one that furthers an independent and efficient judiciary.

The SC's roster allocation is far less detailed when compared to those of the four high courts mentioned above. In the Delhi High Court, cases are divided between benches on the basis of not just subject matter but also by date, with some types of cases being divided between different benches depending on when they were filed. In the Allahabad High Court, writ petitions are divided among the benches based on which local law they are concerned with. It is quite clear that the high courts have taken the task of roster management a bit more seriously thus far than the SC has, trying to fine-tune the way in which cases are heard.

The SC's roster on the other hand is just a list of case categories allocated to certain judges. Some categories are allocated across the benches. For instance, no fewer than 11 benches hear "criminal matters" — a classification that includes everything from bail cases to death penalty

appeals. No inter se classification or division has been made between the benches suggesting that not a lot of thought has gone into this exercise. Likewise, the wide residuary category of “ordinary civil matters” has been allocated to 11 benches.

A fine-tuned roster serves two very important purposes. One, it will prevent two different benches from hearing the same kind of case and taking divergent views at the same time. This happens far more often than it should, needlessly unsettles the law and forces the SC to set up larger benches to resolve the conflicting interpretations. This was seen a few years ago when different benches of the SC took different approaches to interpreting the Karnataka and the Gujarat Lokayukta laws as regards appointment of Lokayuktas within two weeks of each other. No third case has come up but high courts (outside Karnataka and Gujarat) will be left in a quandary should a similar question arrive before them.

Two, it will allow for effective case management within the SC. Though judges in India are not specialists in any specific areas of the law, they will be in a better position to dispose of cases the more they handle the same kind of case. This is borne out by the testimony of retired judges themselves, and the SC’s own experience with a dedicated tax bench constituted for about one year. Even with the constraints of a relatively shorter tenure for judges, there is no reason the SC cannot fine-tune causelists to allow for specific types of cases to be heard continuously by certain benches.

In putting in place the procedures and norms for the preparation of the roster, the SC has to ensure that the task is not left to each individual CJI but carried on through an internal mechanism that has some level of continuity and consistency. To that end, the release of the roster only highlights why a roster reform panel is much needed, and one hopes that the CJI heeds the request of his fellow judges.

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