

TRANSFERS UNEXPLAINED: THE HINDU EDITORIAL ON THE TRANSFER OF HIGH COURT JUDGES

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The common criticism that the functioning of [the Collegium system of judicial appointments](#) is opaque, and sometimes arbitrary, seems to hold greater validity in the matter of [transfers of judges from one High Court to another](#). A recent round of transfers — among the dozens that have been effected in the last few years — has brought the controversial issue to the fore again. The list included three judges from the Telangana High Court, and two each from the Madras and Andhra Pradesh High Courts. [Conspicuously absent was the name of Justice Nikhil S. Kariel](#), a Gujarat High Court judge whose proposed transfer was strongly opposed by the bar in that State. Lawyers took up the issue in support of Justice Kariel, as well as Justice A. Abhishek Reddy of the Telangana High Court, and the Chief Justice of India met with representatives of the Bar from both States. Yet, the transfer of Justice Kariel alone did not materialise, while the transfers of other judges were notified. If reports that the Gujarat High Court Chief Justice was unaware of the impending transfer of Justice Kariel are correct, it bodes ill for the legitimacy of transfer proposals. No good message is being sent if it is perceived that the Collegium heeds the demand made by one set of lawyers, but ignores that of another group.

[Transfer of judges](#) may be needed for exchange of talent across the country and to prevent the emergence of local cliques in the judiciary. However, the power of transfer has always been seen as a possible threat to judicial independence. Even under [the Collegium system](#), it seems it is difficult to dispel the impression that the threat of transfer hangs over every judge's head. The Memorandum of Procedure is clear that a judge's consent is not necessary to effect a transfer. The current norm is that all transfers ought to be in public interest, that is, for better administration of justice throughout the country. It also says the personal factors of the judge, including his preference of places, should invariably be taken into account. No one knows if these requirements are fulfilled in each case. Why a puisne judge should be shifted to another State without being made a Chief Justice is seldom explained. Usually, it sets off speculation that the reasons are either allegations against the judge or the discomfiture that his judicial orders are causing to the government. Disclosure of the actual reason may not always be possible. However, it hardly needs to be stressed that transfer cannot be used as a punitive step. The time may have come for a complete review of the provisions for transfer of High Court judges.

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