A time to introspect

More Centre-State deliberations needed with GST regime at a critical turning point

At its first physical meeting during the pandemic, the GST Tax Council approved a flurry of changes. Concessional tax rates on vital COVID-19 equipment such as oxygen concentrators will lapse on September 30, while the lower rates on medicines were extended till December. Whatever the pace of vaccination, there are no signs the virus and its variants would be extinct on New Year's Day, so the Council could have taken a more considerate view on pandemic essentials. Tax rate tweaks were okayed for an eclectic range of sectors with long-pending course correction on inverted duty structures plaguing several items, including footwear and textiles. The semblance of clarity brought in on a much-disputed issue – the definition of an intermediary – is welcome, for it was hurting several sectors, including IT services exports. Double taxation on the import of leased aircraft goes. Food delivery services players shall be made liable to collect and remit taxes instead of the restaurants. One awaits the fine print to assess the impact on consumers and smaller outlets. The plan to tax coconut oil as a personal care item at 18% for pack sizes below one litre and retain the 5% rate on edible oils for larger packs, has been held back for study, and will hopefully be shelved for good.

These pluses and minuses aside, two things stand out for Indian consumers – the Council's firm dismissal of any shift of petroleum products to GST to lower the tax burden and the fact that GST cess on automobiles, tobacco and aerated drinks will now be levied till April 2026, not June 2022 as originally envisaged. While the Council may have discussed petro products only briefly to comply with a Kerala High Court order, consumers who need some relief on fuel prices – irrespective of who cuts taxes – may have held misplaced hopes. If the Government really wants a consumption rebound that may reignite private investments, the Centre and States must begin talks on rationalising fuel taxes. The Finance Minister has often expressed the worry: 'What if we cut taxes and States do not'. Perhaps, a compact could be arrived at, so both give up a little revenue to spur spending. A similar dialogue is needed for an honest review of the GST regime's progress and the way ahead. With just nine more months of assured compensation for States, they are worried about revenue streams falling off the cliff thereafter. Their pleas for an extension in the compensation period have met with stern diffidence and the argument that GST revenues are below expectations. Two ministerial groups have been tasked to augment revenues using technology and rate rationalisations. The Centre need not wait for their reports to hold a special Council meeting to discuss States' compensation concerns, as had been promised. At this juncture, the Council should be a forum for empathetic contemplation, not fractious friction.

Status quo ante

Voters backed Trudeau, but took a dim view of his decision to call the snap election

Prime Minister Justin Trudeau had framed the September 20 Parliamentary election as Canada's "pivotal moment". Two years into the four-year term of his minority government, he dissolved Parliament and called the snap election hoping that Canadians would give him an absolute majority. However, Mr. Trudeau must be both relieved and disappointed with the preliminary results. His Liberal Party got the most seats in Parliament, at 158, just one more than what they won in the 2019 vote, but well short of a majority of 170 seats. To continue to stay in power, the Liberals will have to depend on smaller parties. The Conservatives, who under the leadership of Erin O'Toole took a moderate position on contentious issues from carbon tax to a ban on assault rifles, failed to make any gain. His plan was to reach out to the voters beyond the Conservative base and take on the liberals on policy specifics rather than on ideology. They secured 119 seats, down from 121 in 2019. While the centre-left New Democrats, led by Jagmeet Singh, won 25 seats, one more than in the last vote, the Bloc Québécois, which backs Quebec independence, took 34 seats, a gain of two. Mr. Singh, whose party backed Mr. Trudeau's minority government after the 2019 election, has hinted that he would continue to support the Liberals.

Mr. Trudeau, son of the former Liberal Prime Minister Pierre Elliott Trudeau, took over the party's reins in 2013 at a time when the liberal prospects were dim. But a young Mr. Trudeau not only revived the Liberal Party but also led it to a surprise election victory in 2015. He has remained the most influential voice in Canada's political landscape. In 2019, he secured victory but without an absolute majority, which forced him to seek the support of the New Democrats. Poll numbers for the Liberals soared after the government's handling of the COVID-19 pandemic. By calling the snap election, Mr. Trudeau's plan was to turn those numbers into actual votes and win a fresh four-year term with a clear majority. But the decision to call a mid-term election was controversial. His rivals called him a political opportunist who had pushed the country into an expensive election – at C$600 million, it is the most expensive in its history – in the midst of the COVID scare. Voter turnout, at 58.44%, was the lowest ever. In the end, the voters backed Mr. Trudeau's government but stopped short of endorsing his political gamble. Having led the party to three back-to-back victories, he is the undisputed leader of the Liberals. He should focus on the art of coalition politics, finding common ground with the New Democrats for his progressive legislative agenda and providing stable governance to tackle Canada's myriad problems, from the COVID challenge to the climate crisis.

This judicial selection needs more than a tweak

The collegium system and the mysteries underlining its decision-making dilute the importance of the High Courts

SUHRITH PARTHASARATHY

In recent weeks, the Supreme Court of India's collegium has been busy. New judges have been appointed to the Court on its advice and long overdue vacancies have been filled up. Now, after a meeting held on September 16, the body has made proposals to alter the existing composition of various High Courts. When these recommendations are notified, new Chief Justices will be appointed to as many as eight different courts, five existing Chief Justices will swap positions with others, and a slew of puisne judges will be moved to new courts.

A need for transparency

These recommendations are seen as reflective of a new and proactive collegium. A resolve for swiftness is fine as far as it goes; clearing up vacancies is a minimal requirement of a functioning system. What ought to concern us, though, is that long-standing apprehensions about the collegium's operation remain unaddressed: specifically, its opacity and a lack of independent scrutiny of its decisions. These misgivings are usually seen in the context of a battle between the executive and the judiciary. Less evident is the effect that the failings have on the status of the High Courts. Today, even without express constitutional sanction, the collegium effectively exercises a power of supervision over each of the High Courts.

For nearly two years, despite vacancies on the Bench, the collegium made no recommendations for appointments to the Supreme Court. The conjecture in the press was that this logjam owed to a reluctance amongst some of its members to elevate Justice Akil Kureshi to the Court. Indeed, it was only after a change in its composition that the panel recommended on August 17 a list of names for elevation. This list did not contain Justice Kureshi's name.

The perfunctory nature of the collegium's resolutions means that we do not know the reasons for his exclusion. We also do not know why five Chief Justices, including Justice Kureshi, and several other puisne judges are now being transferred to different courts. This is not to suggest that these decisions are unfounded. It is possible that each of the choices made is predicated on administrative needs. But whatever the rationale, surely the public has a right to know.

The middle course

Separation of powers is a bedrock principle of Indian constitutionalism. Inherent in that idea is the guarantee of an autonomous judiciary. To that end, the process of appointing and transferring judges assumes salience. But the question of how to strike a balance between the sovereign function of making appointments and the need to ensure an independent judiciary has long plagued the republic.

The Constitution's framers wrestled over the question for many days. Ultimately, they adopted what Dr. B.R. Ambedkar described as a "middle course". That path stipulates the following: Judges to the Supreme Court are to be appointed by the President of India in consultation with the Chief Justice of India (CJI) and such other judges that he deems fit. Judges to the High Courts are to be appointed by the President in consultation with the CJI, the Governor of the

V.V. KRISHNAN

State and the Chief Justice of that court. In the case of transfers, the President may move a judge from one High Court to another, after consulting the CJI.

Where primacy rests

In this design, there is no mention of a "collegium". But since 1993, when the Supreme Court rendered a ruling in the Second Judges Case, the word consultation has been interpreted to mean "concurrence". What is more, that concurrence, the Court held there, ought to be secured not from the CJI alone, but from a body of judges that the judgment described as a "collegium". Thus, the Court wound up creating a whole new process for making appointments and transfers and carved out a system where notional primacy came to rest in the top echelons of the judiciary.

This procedure has since been clarified. The collegium for appointments to the Supreme Court and for transfers between High Courts now comprises the CJI and his four senior-most colleagues, and for appointments to the High Courts comprises the CJI and his two senior-most colleagues. When appointing judges to the High Courts, the collegium must also consult other senior judges on the Supreme Court who had previously served as judges of the High Court under consideration. All of this is contained in a "Memorandum of Procedure" (MoP). But there is, in fact, no actual guidance on how judges are to be selected.

The NJAC and after

In 2015, Parliament sought to undo the labyrinthine procedures put in place by the Court through the 99th Constitutional Amendment. The National Judicial Appointments Commission (NJAC), that the law created, comprised members from the judiciary, the executive, and the lay-public. But the Court scuppered the efforts to replace the collegium and it held in the Fourth Judges Case that judicial primacy in making appointments and transfers was an essential feature of the Constitution. In other words, the Court held that a body that found no mention in the actual text of the Constitution had assumed a position so sacrosanct that it could not be touched even by a constitutional amendment.

To be sure, the NJAC was far from perfect. There were legitimate fears that the commission might have resulted in the appointment of malleable judges. Therefore, it is plausible to argue that until a proper alternative is framed, the collegium represents the best solution; that allowing senior judges of the Supreme Court primacy in matters of appointments and transfers is the only practical way to guarantee the independence of the judiciary.

But when the Court struck down the NJAC, it also promised to reform the existing system. Six years down the line those promises have been all but forgotten. A new MoP, for instance, is nowhere in sight. The considerations that must go into the procedure for selecting judges is left unexplained. The words "merit" and "diversity" are thrown around without any corresponding debates on what they, in fact, mean. Somehow, amidst all of this, we have arrived at a consensus that enveloping a veil over the process of selection is essential to judicial autonomy, and that there is no legitimate reason why the public ought to know how judges are chosen and transferred.

In the case of the latest set of recommendations, five Chief Justices of High Courts have been reshuffled. Our constitutional scheme envisages no power of administrative superintendence in the Supreme Court over the High Courts. But when transfers are made routine, when the process of appointing Chief Justices to High Courts is shrouded in secrecy, a *de facto* system of oversight is put in place.

Getting back the shine

It is clear that we have come a long way from a time when Chief Justices of High Courts declined invitations to the Supreme Court, because they valued the work that they were already entrusted with. Restoring High Courts to that position of prestige must be seen as essential to the process of building trust in our Constitution. Achieving this will no doubt require more than just a tweak in the process of appointments. But what is clear is that the present system and the mysteries underlining the decision-making only further dilute the High Courts' prominence.

When Chief Justices are moved around with alacrity, and when they are accorded tenures lasting a matter of months, at best, it is impossible for them to make any lasting changes. At some point we must take seriously the task of reforming the existing scheme, because the status quo is ultimately corrosive of the very institutions that it seeks to protect.

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Rulings that impact a State's medical infrastructure

The removal of domicile requirement and in-service quota is affecting super-specialty medical education in Tamil Nadu

P.M. YAZHINI & JEYANNATHANN KARUNANITHI

Tamil Nadu has been in the middle of a journey for some time to set up a medical college in every district. The aim is to ensure efficient delivery of advanced medical care to residents. This has required having specialist and super-specialist doctors to staff various departments in the medical colleges and the hospitals in the State.

Policies by the State

To ensure full value to its investment and maintain institutional continuity, the State brought in three policies. A quota was created wherein 50% of the seats in government medical colleges was earmarked for doctors working in government institutions (in-service candidates) with the stipulation that they needed to work in the Tamil Nadu Medical Services until superannuation. To absorb trained super-specialists who are not associated with Tamil Nadu Medical Services (non-service candidates), it created a bond for them to serve in government hospitals (after the completion of their training) for not less than two years; it also created a domicile requirement for them to appear for the super-specialty entrance examination.

Until 2015-16, admission to Tamil Nadu super-specialty medical seats was on the basis of a State entrance exam, with domicile requirement and in-service quota. The domicile requirement for the admissions to super-specialty courses required by the States of Tamil Nadu, Andhra Pradesh and Telangana was dismantled in 2016 following a judgment by a Supreme Court Bench comprising Justices Dipak Mishra and Prafulla C. Pant. They indirectly invoked the nine-judge Bench judgment in *Indra Sawhney etc. vs Union Of India* (1992) which requires super-specialty seats in medicine to be outside the ambit of reservation, with expression of no plausible reasons associated with domicile or reservation or 'efficiency of administration'.

With the introduction of the National Eligibility cum Entrance Test-Super Specialty (NEET-SS) conducted by the National Board of Examinations from 2017-18, State governments were robbed of their ability to conduct entrance examinations and counselling for super-specialty seats created in their medical colleges as the States were required to surrender 100% of their seats to the all-India quota. As an extension, the in-service quota stood null and void.

In-service quota, directive

A writ petition (Writ Petition (Civil) No. 196 of 2018; https://bit.ly/2XHFagc) was filed by the Tamilnadu Medical Officers Association (TNMOA) on behalf of in-service doctors in Tamil Nadu to contest the removal of 50% in-service quota for post-graduate medical courses. The Constitution Bench disposed of this case on in-service quota with an order on August 31, 2020, stating that except for the determination of minimum standards and coordination, the State's power in regulating medical education is preserved. They stated that the State authorities may provide quota for in-service doctors from within the State's own merit list, also adding that aspiring in-service doctors must clear the NEET examination with the minimum prescribed marks.

GETTY IMAGES

The Tamil Nadu G.O.

Extrapolating the directions of the Constitution Bench, the Health and Family Welfare Department of the Government of Tamil Nadu on November 7, 2020, issued G.O. (Ms) No. 462. Through this G.O., the Government of Tamil Nadu sought to implement a 50% quota in super-specialty seats in the State for in-service candidates. As the admission process was in the final stages, the Supreme Court Bench, on November 27, 2020, decided not to permit a quota for in-service doctors for the year 2020-21 alone.

With doubts around the line of the judgment in *TNMOA vs Union of India* and the validity of the G.O. (Ms) No. 462 by the Government of Tamil Nadu, it remains to be seen what trajectory the Supreme Court's decisions will take.

Administration and inclusion

Maintenance of the efficiency of administration is an argument which is consistently invoked by the Supreme Court through Article 335 of the Constitution, to negate demands for reservations/quotas. It is here that one is motivated to question the working definition of "efficiency", "merit" and "efficiency of administration" in government that the courts abide by. A welcome move in this regard is the judgment by the two-judge Supreme Court Bench (Justices Uday Umesh Lalit and D.Y. Chandrachud) in *B.K. Pavitra vs Union of India* (2019) which nudges the courts to define the multidimensional term of "efficiency of administration" that is grounded in inclusion.

This definition should have a systems-view of the cascading impact that the removal of domicile requirement and in-service quota can have on the integrity of the State medical infrastructure. On August 25, 2021, the Director of Medical Education issued a letter to the deans of medical colleges requesting them to obtain an undertaking from the non-service super-specialty doctors of 2020-21 who have not opted or are not willing to take up posting even when vacancies are available in their specialty departments. It is understood that nearly 80% of the other State super-specialty candidates, who constitute more than 50% in government medical colleges in Tamil Nadu did not attend counselling held for posting. In Tamil Nadu, with domicile and in-service quota, the percentage of in-service candidates in super-specialty seats used to hover around 40%. But with removal of domicile and in-service quota, in the post-NEET-SS scenario, the percentage of in-service candidates has come down to as low as 6%.

It is here that the point raised by Advocate Wilson in *Dr. Prerit Sharma vs Dr. Bilu B.S.* (2020), invoking the Supreme Court judgments permitting in-service quota in super-specialty medical courses as seen in *K. Duraisamy and Ors. vs State of T.N.* (2001) 2 SCC 538 and *Modern Dental College and Research Centre and Ors. vs State of Madhya Pradesh and Ors.* (2016) 7 SCC353, assumes greater importance.

With the sustenance of the medical infrastructure intimately linked to the delivery of public health which the States are responsible for through the Constitution, one is left to wonder why the higher judiciary consistently rules against the interventions by the State to maximise the outcomes through domicile, quota for in-service candidates and bond requirements.

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LETTERS TO THE EDITOR

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New Delhi must ponder

Much may be made about Prime Minister Narendra Modi's visit to the United States, but what should be of concern to New Delhi is the series of developments on the global stage and whether India is being systematically excluded from playing an effective role in international affairs. India was not a part of the negotiating teams that deliberated peace talks with the Taliban prior to their 'takeover' of Afghanistan, though none can dispute the exemplary role played by India in the country's infrastructural development. It was again not viewed as a strategic ally in connection with AUKUS especially as China has been the catalyst for this. Can India be kept at a distance, especially by fellow Quad members on an issue involving peace and stability in the Indo-Pacific region? To add insult to injury, Britain invoked bizarre quarantine rules, undermining India's vaccination capability and its potential as a prime trade partner. The Prime Minister's outreach to France on the issue of the AUKUS row could only be deemed as a face-saving exercise. The formation of AUKUS may even make the existence of the Quad infructuous in course of time. With unfriendly neighbours and the West apparently not viewing India seriously, the Prime Minister has his task cut out.

V. SUBRAMANIAN,
Chennai

Crack the whip

There is no point in the judiciary issuing stricture after stricture if these are not matched by strict enforcement ("[Madras] HC upholds ban on use of crash guards, bull bars", September 22). In Chennai, for example, bikers riding without helmets is a common sight, although helmet wearing is mandatory. Car drivers not wearing seat belts, talking on cellphones while driving, the use of tinted glass or sun-control film, fancy number plates, and the use of prominent pictures of political leaders in cars are some other instances of violations. If a rule has to succeed, the enforcement agencies have to go for the kill without fear or favour. Road safety should come first.

P.G. MENON,
Chennai

Spin quartet

The column, "The man who kept in touch with his inner child" ('Sport' page, September 22), brought back nostalgic and evergreen memories of India's famous spin quartet that wove circles around the world's finest batsmen at a time when India was still considered as the underdog in world cricket. Although the column is linked to the 75th birthday of the 'Sardar of Spin' Bishen Singh Bedi, the references to Bedi's illustrious contemporaries, Erapalli Prasanna, B.S. Chandrasekhar and S. Venkataraghavan rekindled their magic. It would be no exaggeration to say that all four of them have served as beacon lights to a whole generation of spinners.

C.V. ARAVIND,
Bengaluru

Save the hills

Some of us residents in Aruvankadu in the Nilgiris face a peculiar problem. Between the Cordite factory and Kanikkai Raj Nagar, lies a dense forest. Unfortunately, tourists enter this jungle and are spoiling it. Of concern to us is how this jungle is becoming an open air lavatory and with it, an overpowering of our olfactory senses all day. A number of residents (of Periya Bickatty, Chinna Bickatty, Indira Nagar and Old Aravankadu) have to walk through the jungle to the main road. The authorities need to act as the Nilgiris needs to remain the 'Queen of Hill Stations'.

B.M. KRISHNAN,
Aravankadu, the Nilgiris