Supreme Court Collegium and Transparency
An Empirical Inquiry

RANGIN PALLAV TRIPATHY

The Supreme Court collegium in India, which is the determinative authority for appointment of judges to the higher judiciary, began publishing its resolutions on the Supreme Court website in October 2017, purportedly to foster transparency. A study of all the published resolutions over a period of two years—from 2017 to 2019—reveals that the collegium systematically failed to disclose critical information essential to an enhanced understanding of its functioning and thus failed in its declared objective of promoting transparency.

Rangin Pallav Tripathy (*rangin.tripathy@gmail.com*) teaches law at the National Law University, Odisha, and was a Fulbright-Nehru postdoctoral research scholar at Harvard Law School (2019–20).

When the Supreme Court decided to strike down the constitutional amendments establishing the National Judicial Appointments Commission in *Supreme Court Advocates on Record Association v Union of India* (2016), it quite clearly admitted the severe flaws in the functioning of the collegium. It also admitted the need for meaningful reform in how the collegium functioned. This led to another judicial order in *Supreme Court Advocates on Record Association v Union of India* (2015) wherein the Court sanctioned a process of public consultation to seek suggestions on the trajectory of reform. Seemingly inspired by this spirit of reform, the Supreme Court collegium presided over by Dipak Misra decided on 3 October 2017 to publish the resolutions of the collegium concerning appointment of judges in the high courts and Supreme Court, appointment of chief justices in the high courts and transfer of high court judges. The declared objective was to ensure transparency in the collegium system while also maintaining confidentiality. The term "confidentiality" did not feature in the agenda of the meeting but is mentioned in the decision taken at the meeting. It may be seen as an attempt to temper the expectations about how transparent the collegium was actually going to be. The collegium explicitly stated that the decisions of the collegium would be published along with reasons.

This practice of publishing resolutions continued from 3 October 2017 to 3 October 2019 with minor variation in terms of content and format. However, since 15 October 2019, while one can still locate the heading of "collegium resolutions" on the Supreme Court of India website, the files themselves have been retitled as "statements" and the published statements only contain the list of nominated judges. There is no disclosure about the candidates who are recommended by the different high court collegiums and the decision taken by the Supreme Court collegium in relation to all such candidates. There is no information about the views of judicial colleagues consulted by the collegium or that of the chief ministers and the governors. There is also no detail about any objections received from the Department of Justice (DoJ). The statements merely list out the judges who have been recommended by the collegium without any other detail whatsoever.

This article presents the findings of an empirical verification of the collegium's admitted commitment towards transparency, during the period when the resolutions were published. It reveals that the collegium used the practice of publishing resolutions mostly as a formality without exhibiting any tangible measures of transparency. The information shared in the resolutions did not lead to an improved understanding of the collegium's functioning. The collegium particularly failed in indicating reasons behind its decisions. Instead, generic platitudes were used to sidestep the requirement of dealing with specifics. On certain other occasions, the linguistic expression underwent a seemingly deliberate change, which served the cause of obfuscation and not transparency.

A Commitment to Transparency?

Transparency is deemed to be an important element of good governance and supposed to elicit trust in people. Some have argued that transparency is an essential component of any democratic structure and that a commitment to transparency can be equated with a commitment to democracy (Hollyer et al 2011). In the context of the Supreme Court collegium, adoption of this practice of supposed transparency was clearly motivated by the stringent and valid criticism the collegium had been receiving due to its opaque functioning. Adopting a moral and constitutional high ground in relation to the power of judicial appointments

also meant that there had been sharper scrutiny on the functioning of the collegium. While there are continuing concerns about the governmental agenda in trying to hijack the process of judicial appointments, there is also lingering discontent about the questionable practices of the collegium. Initiation of this practice was seen as an attempt by the collegium to manage its battered reputation and tilt public opinion in its favour.

When the collegium began the practice of publishing its resolutions, one hoped that it would be the beginning of an institutional norm. The continuation of the practice for two years strengthened this hope. However, the backsliding by the collegium in October 2019 has been an unfortunate setback. Nevertheless, it is important to note that instead of a complete communication blackout as used to be before 2017, the collegium has continued to communicate its decision to the public on its own platform. This indicates that the collegium has not completely abandoned the idea of institutionalising disclosure practices. While the current practice of publishing "statements" has invited scathing criticism (Kumar 2019), an analysis of the earlier practice of publishing resolutions is useful for any discussion on future reforms. This is particularly important in assessing if there is any value in reverting to the earlier practice. The inadequacy of the current practice should not lead to a tinted appreciation of the disclosure practices from 2017 to 2019.

Heimstädt and Dobusch (2017: 727) define organisational transparency as "systematic programs for information disclosure that meet information needs external to the organisation." As this empirical study reveals, even before its discontinuation, the Supreme Court collegium's practice fell short of this standard by various measures. There was no effort on the part of the collegium to solicit feedback of various stakeholders. The disclosure also lacked much of a system, as there does not seem to have been a great deal of deliberation about the purpose and methodology of information disclosure. Further, it also could not be accurately characterised as a practice of individual transparency wherein individuals with their personal motivations were adopting practices without there being any institutional tradition. Thus, any discourse on reforming the current practice of publishing "statements" ought to take into account the shortcomings of the resolutions published between 2017 and 2019.

Source of Data

All resolutions of the collegium are published on the official website of the Supreme Court. The resolutions are uploaded as separate pdf documents. For the purpose of this study, all such documents—from 3 October 2017 to 3 October 2019—were downloaded and scrutinised individually. The subject matter of the resolutions can be categorised into the following categories: Appointment of judicial officers or lawyers as additional judges in the high courts; confirmation of additional judges in high courts as permanent judges; appointment of Supreme Court judges; transfer of high court judges; and appointment of high court chief justices.

The analysis in this article covers 101 resolutions involving the candidature of 361 candidates for appointment as additional judges in high courts. This category of decisions is taken by the Supreme Court collegium in the form of considering the recommendations, which originate from the concerned high court collegium. For other kinds of decisions, apart from the appointment of permanent judges in high courts, the Supreme Court collegium acts on its own.

Assessing Transparency

At the outset, it is important to distinguish transparency from mere disclosure of information. A practice of disclosing information must fulfil certain qualitative attributes to be recognised as a practice of transparency. In fact, it is quite common for information disclosure to be used as a tool to avoid transparency. One way to do so is to hide pertinent information within an avalanche of data (Rawlins 2009). Another way is to share irrelevant information that is not sought by any of the stakeholders. Disclosure of information can be attributed the characteristic of transparency only when the information shared is relevant from the perspective of the observer. The information must be needed by the observer for it to have any utility (Heimstädt and Dobusch 2017). Transparency must facilitate an enhanced understanding amongst the stakeholders of the matters considered relevant by such stakeholders. One of the fundamental purposes of transparency is to generate trust and credibility amongst the stakeholders. Thus one has to ascertain the utility of the shared information from the perspective of the concerned stakeholders. Unless the quantity, structure and content of the information shared are oriented towards enhancing the understanding of the stakeholders, transparency cannot be attributed to such disclosure. The additional information must lead to a more informed comprehension amongst the stakeholders than what existed earlier. Rawlins (2009: 79) identifies as many as 13 qualities that organisations must incorporate in the information they share in order to maintain transparency.[1]

Public as a Stakeholder

As the attribute of transparency is to be assessed from the perspective of the stakeholders, we first need to identify the relevant stakeholders in this context. There is marginal informational deficit between the government and the collegium. The recommendations of the concerned high court collegium—consisting of the chief justice and two senior-most judges of the concerned high court—are routed to the Supreme Court collegium through the DoJ hereafter and it has access to all materials on record. The contest between the executive and collegium has centred on authority and not on access to information. The government is not dependent on the published resolutions to access details about the selection process. Those in the legal profession (lawyers, judges in the district judiciary), though not always adequately informed, have greater awareness about the working of the system than outsiders. It is the general public that is often in the dark about the entire process. For example, if the Supreme Court is considering a candidate from the Bombay High Court, those in the legal profession will be

invariably aware about the serving judge in the Supreme Court from the Bombay High Court who will be consulted in the matter. On the other hand, a member of the general public who is not an insider will be clueless. They will have to put in extra effort to unearth that information either from publicly available sources or by speaking to those in the legal profession.

It is important to note that the published resolutions are the only publicly available records concerning the process of judicial appointments. The collegium is quite aware that the public does not have access to any other documentation on the appointment of judges. Thus, one would have to place a greater informational burden on the resolutions than one would otherwise. The resolutions ought to serve as a self-sufficient explanatory account of the decisions taken by the collegium. It is not adequate if one has to search for information from other fragmented sources to get a comprehensive picture. As the resolutions were meant for the public at large, the sufficiency of the information ought to be tested from the yardstick of a layperson and not a legal professional conversant with the institutional dynamics in the judiciary.

As admitted earlier, the purpose of this article is to test the collegium's commitment towards transparency. For an effective analysis, there needs to be tangible indicators through which the claim of transparency can be measured. This requires identification of information that is relevant in the context of judicial appointments and which the public can reasonably have a legitimate expectation to be informed about. This article identifies some minimum denominators in the context of judicial appointments in India and then verifies if the resolutions published by the collegium incorporated these denominators. These denominators are indispensable factual details to have any meaningful understanding of the decisions taken by the collegium. The checklist of relevant information is specific to the constitutional context in India.

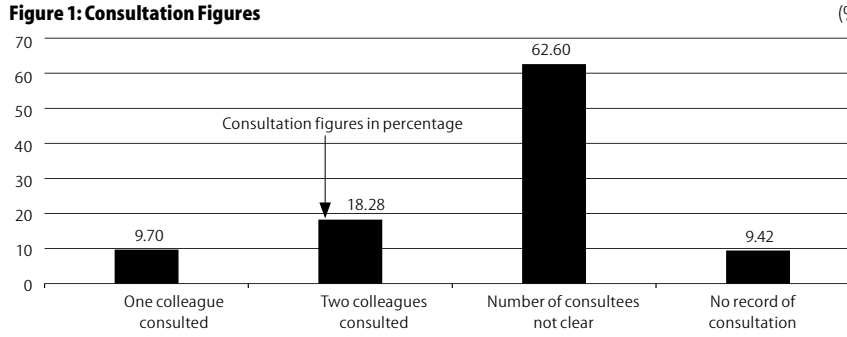
Consultative Process

In order to appoint judges in the high courts, the Supreme Court collegium follows a consultative procedure wherein it is obligated to consult such colleagues in the Court who might be conversant with the affairs in the concerned high court. The Supreme Court is also free to consult such other persons who it feels may provide useful assistance. Such persons may include serving judges in the Supreme Court/high courts, retired judges from the Supreme Court/high courts, members of the Bar, etc.

In this context, one would expect at the least the following two details: (i) identities of the consultees; and (ii) the views of the consultees. The identities of functionaries such as the governor and chief minister are relatively easy to ascertain. It is not an effective barrier if they are mentioned merely by designation even though it would be preferable to mention them by name.

It gets more complicated when it comes to the identity of "judges conversant with the affairs of the High Court." For example, let us consider that the Supreme Court collegium is looking into appointments in XYZ high court. Colleagues conversant with the affairs of XYZ high court may include judges who served in XYZ high court, even though it was not their parent high court. It may include judges for whom XYZ was the parent high court.[2] It may also include judges who served as chief justices in XYZ high court. Unless such colleagues are clearly identified by name, it becomes arduous for a layperson to ascertain the identity of such colleagues. Also, if and when the collegium consults other stakeholders, it would be obviously necessary to refer to them by name. Thus a reasonable practice would have been to mention the names of all the consultees for the sake of efficiency and ease.

Figure 1: Consultation Figures



Source: Data collected from the website of the Supreme Court (SCI nd); author's analysis.

Further, knowing merely the identity of the consultees without clarity on the content of their views would be futile. Thus, it would also have been a reasonable expectation that the views of the consultee were mentioned. One must get a clear sense of whether the views were positive or negative.

Keeping the above factors in mind, the following information regarding the consultative process can be considered as essential components of any resolution: (i) name of chief minister; (ii) name of the governor; (iii) names of colleagues conversant with the affairs in the concerned high court who were consulted regarding the appointment; (iv) views of the chief minister; (v) views of the governor; and (vi) views of colleagues conversant with the affairs of the concerned high court.

The range and clarity of information shared by the collegium regarding the consultative process is less than satisfactory. Not once have the stakeholders been clearly identified. The governor and the chief minister have never been identified by name. More critically, the resolutions never clearly identify the "judges conversant with the affairs of the high court" who have been consulted. In fact, quite often, there is not even adequate clarity on how many judges have been consulted while taking decisions (Figure 1).

The number of consultees was rarely mentioned expressly by the collegium. Instead, it has to be often inferred from the use of singular/plural nouns and from other linguistic indicators.[3] In the absence of any such indicators, it is not possible to deduce the number of consultees from the resolution. It is also not always clear if all consultees shared

their feedback. In only 8.03% of the decisions is it known for certain that all consultees shared their feedback.[4]

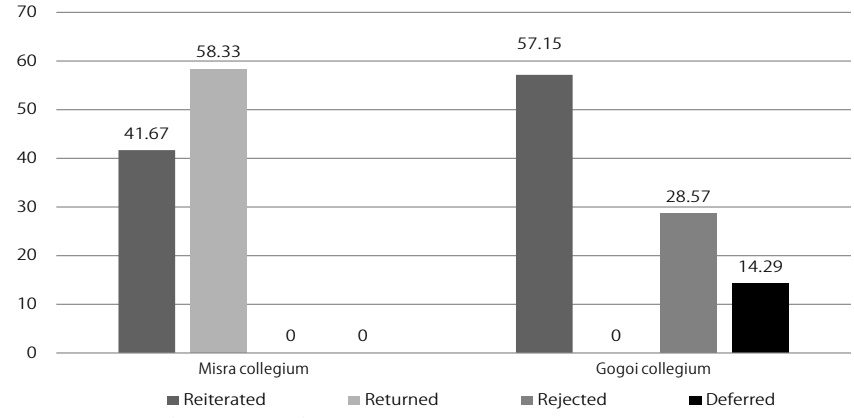
While it was not always stated clearly by the collegium, it seems in 9.42% of decisions, no judges were consulted due to the fact that there were no judges serving in the Supreme Court from the concerned high court (Figure 1). This raises questions on the design of consultative framework that has been established. At present, this framework is frustrated when there is no serving judge in the Supreme Court from a particular high court, which happens quite frequently for many states.

The substantive contents of the consultation were not shared by the collegium. Often, the collegium merely mentioned that some colleagues were consulted. While the reasons behind such views may involve sensitive personal information concerning the candidate, it is difficult to make the same argument when it comes to the very fact of whether the consulted functionaries were in favour of a candidate or not. On the few instances where a description of the views of the colleague judges was shared, it was through standardised and generic proforma statements.[5] The positive/negative substance of the views of the consultees was not recorded by the collegium.

The collegium's policy regarding recording views of the chief minister and governor was highly inconsistent. There were many resolutions where it was clearly stated that the chief minister and governor concurred with the recommendation of the high court collegium. However, in many other resolutions, the office of the chief minister and the governor were not identified separately and the collegium simply recorded the input of the state government.

Even more frustratingly, the collegium was inconsistent in recording the nature of the views. In many resolutions, the collegium clearly recorded the "concurrence" of the chief minister/governor/state government with the recommendation made by the high court collegium. In many other resolutions, the collegium merely acknowledged that the views of the chief minister/governor/state government were considered without stating clearly if the views were positive or negative in relation to the recommendation. The views of the chief minister/governor/state government were not clear in 48.20% of the recommendations.

Figure 2: Collegium Response to DoJ Objections (%)



Source: Data collected from the website of the Supreme Court (SCI nd); author's analysis.

In relation to 4.16% of the recommendations, the views of the chief minister/governor/state government were not received by the Supreme Court collegium in time. There was an objection by the chief minister/governor/state government in relation to 2.77% of the recommendations.[6] While objections by the state governments are not relevant in the same sense as that of the central government, it is still indicative of political opposition to prospective candidates or to overall pattern of appointments. In such cases, it is essential that the state government's grounds for objection be open to public scrutiny.

Feedback from Government

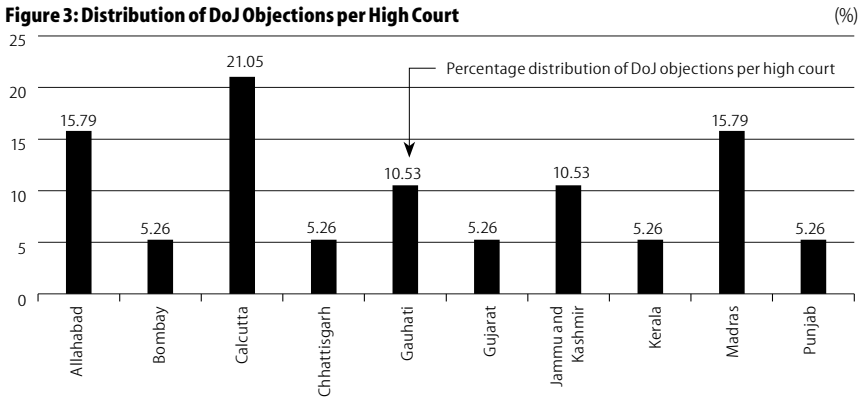
The DoJ in the central government is the focal agency for the executive in the matter of judicial appointments. Generally, it is seen that the DoJ gets to articulate its views in two phases. First, while considering a recommendation made by the high court collegium, the Supreme Court collegium generally noted the views of the DoJ along with that of the governor and the chief minister. Second, and more rarely, the DoJ at times returned certain recommendations to the collegium requesting reconsideration. Thus the following information is essential in this context: (i) views of DoJ at the time of initial consideration; and (ii) views of DoJ when requesting reconsideration of an appointment.

Objections raised by the government constitute perhaps the most contentious dimension in the process of judicial appointments. The collegium system was created to prevent the executive from having a determinant role in the appointment of judges. Limiting the influence of the executive in appointment of judges has been a non-negotiable assertion of the higher judiciary in India. The major ground for the decision in *Supreme Court Advocates on Record Association v Union of India* (2016) was that the proposed National Judicial Appointments Commission interfered with the supremacy of the judiciary in the selection of judges.

Supposed interference by the executive in the appointment of judges in the Supreme Court and in the appointment of chief justices in the high courts has often caused widespread controversy. Thus, it becomes important to analyse the manner in which collegium and the government have interacted in relation to appointment of judges in the high courts.

The Government of India, through the DoJ, concurred with 12.74% of the recommendations made by the high court collegium at the time of the matter being considered by the Supreme Court collegium. In relation to 86.98% of the recommendations, the stance of the DoJ was not clear from the language used by the Supreme Court collegium. The collegium in these cases merely noted that the views of the DoJ have been considered without specifying the tenor of the views. The DoJ objected to only 0.28% of recommendations from the high court collegiums.[7]

Figure 3: Distribution of DoJ Objections per High Court



Source: Data collected from the website of the Supreme Court (SCI nd); author's analysis.

The DoJ requested reconsideration in relation to 5.26% of the recommendations approved by the Supreme Court collegium. Most of the objections raised by the DoJ were in relation to lawyers. Only 10.53% of DoJ objections pertained to judicial officers (Figure 3). Male lawyers constituted 84.21% of the candidates whose files the DoJ returned to the collegium.

The DoJ raised objections more frequently in relation to the recommendations approved by the Supreme Court collegium presided by Dipak Misra (9.84%). The corresponding figure for the collegium presided by Ranjan Gogoi was 2.92%. The Misra collegium reversed its decision more often than the Gogoi collegium when faced with an objection from the DoJ (Figure 2, p 36).

The collegium did not note the reasons behind the objections raised by the DoJ in 84.21% of the cases. In 10.53% of the cases, the objections seem to have been based on the fact that the proposed appointees had not attained the minimum age of 45 years on the date the high court collegium recommended their name. As per the prevailing memorandum of procedure, agreed to between the government and the Supreme Court collegium, a lawyer must be 45 years of age to be appointed as a judge in the high court. The Constitution does not prescribe an age requirement but requires a minimum 10 years of professional experience. In relation 5.26% of the cases, the collegium clearly noted that no reason was cited for the objection.

As a logical corollary to its decision of not sharing the reasons behind the objections raised by the DoJ, the collegium failed to explain its response to such objections. No reasons were cited for reversing its earlier acceptance candidates and none for persisting with a candidate. On certain occasions, while reiterating a recommendation, the collegium noted that the objections of the DoJ were not based on any fresh material but on materials already on record and considered by the collegium. The collegium often used this as a justification for persisting with a candidate. However, without the substance of the objections revealed, such justifications cannot qualify as "reasons" for its decisions. Ignoring an objection on a technicality does not enhance the understanding of the public. The rationale of collegium's response can be reasonably understood in only 15.79% of such decisions relating to an objection from the DoJ.

When the name of a prospective appointee is sent to the DoJ after being cleared by the high court collegium and then approved by the Supreme Court collegium, one would hope that the candidature would be reversed only in exceptional situations. However, due to the opaque practice of the collegium, in all instances where the Supreme Court collegium reversed its decision, the reasons for such reversal are unknown in 90% of the cases.[8]

Reasoning behind Decisions

As has been noted earlier, the collegium not only resolved to publish its decisions but also to share the reasons for its decisions. The collegium qualified its intention to share reasons with the condition of confidentiality. There was no conceptual clarity on what the collegium considered to be worthy of confidentiality. There was no clear benchmark articulated by the collegium to determine if particular information ought to be considered confidential or sensitive. However, it is reasonable to expect that some kind of substantive explanation would suffice the requirement of a reasoned decision. While it might be reasonable for the collegium to be mindful of the reputational interests of the candidates, it was expected to maintain a purposive balance between the objective of transparency and the need of confidentiality. Confidentiality should not become a ground for completely sidestepping the requirement of a reasoned decision.

When considering a recommendation from a high court collegium, the range of decisions taken by the Supreme Court collegium can be classified into the following alternative categories: (i) It has accepted the recommendation; (ii) it has deferred its decision on the recommendation; (iii) it has rejected the recommendation; and (iv) it has returned the recommendation to the high court collegium.

When considering a situation where its recommendation has been returned by the DoJ requesting reconsideration, the range of decisions can be classified into the following alternative categories: (i) It has reiterated the recommendation; (ii) it has rejected the recommendation; (iii) it has returned the recommendation to the high court collegium; and (iv) it has deferred the decision.

In the eventuality of any of the above decisions being taken, the expectation is that the collegium would furnish reasons for its decisions. The reasons needed to be lucid enough to understand why the collegium decided in one manner and not in another. Generic explanations that do not underscore the specific grounds of a decision are not helpful in understanding the reasoning behind any decision.

The collegium completely failed to deliver on the promise of publishing "reasoned" decisions. The reasons were evident in only 4.43% of the decisions taken by the collegium. Most instances of reasoned decisions coincided with a decision to return or reject a recommendation from a high court collegium. That

does not however mean that decisions to reject or return a recommendation were often reasoned. Reasons were given in only 10.81% of cases where a recommendation was returned or rejected. Seventy-five percent of the reasons constituted a recommended candidate not fulfilling the income criteria that the collegium had set. Twenty-five percent of the reasons dealt with a recommended candidate not fulfilling the age criterion.

Returning, rejecting or reiterating a recommendation are perhaps the most critical decisions requiring a reasoned explanation. When the Supreme Court collegium returns or rejects a recommendation, whether at the first instance or in response to an objection raised by the DoJ, it is either a disapproval of a decision by the concerned high court collegium or reversal of its own decision to approve the recommendation. Reiteration of a recommendation is refutal of any objections that the DoJ may have raised. In all such cases, the reason for such overruling, reversal or reiteration is critical information, which should have been shared if the objective was to be transparent.

However, the practice of the collegium leaves us with no better understanding of the situation. Lack of reasoned decisions is especially baffling when amongst the same batch of recommendations from a high court collegium, some recommendations were accepted and the rest were returned/rejected without any assigned reason.

The collegium was also not forthcoming in sharing the complaints that it received against the proposed appointees. In its resolutions dealing with multiple recommendations, it often noted that complaints were received, but rarely specified the candidates against whom complaints were been made.[9] The collegium uniformly dismissed all such instances of complaints as lacking prima facie merit without sharing the details of the complaints even once.

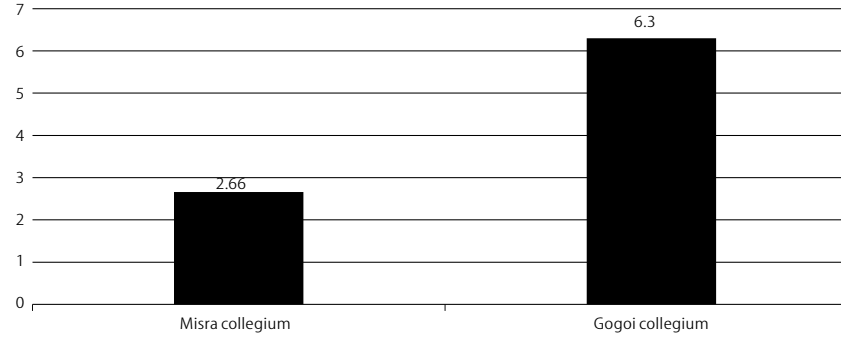
Dithering Deferrals

A decision to defer delays the actual substantive decision. Instead of deciding on the merits of the recommendation received from a high court collegium, the Supreme Court collegium uses this option to postpone the decision-making to a later unspecified date. Adopting this option has particular ramifications in relation to the appointment of additional judges. Appointment of additional judges relates to existing vacancies whereas appointment of permanent judges from their position as additional judges does not immediately affect the availability of workforce. Filling up vacancies in time is crucial to the continued capacity of courts to manage caseload. Thus, one would hope that the collegium would not opt for this option in the absence of clearly stated reasons.

Out of every five substantive decisions taken by the collegium, one was a deferral, often without specifying any reason. The Misra collegium opted for deferral more often than the Gogoi collegium. Overall, the ratio of substantive decisions for every deferral was 2.66 for Misra collegium and 6.3 for Gogoi collegium (Figure 4). The Misra collegium gave reasons in only 5% of its deferrals and the Gogoi collegium did not specify any reason even once.

It needs to be noted that there were multiple deferrals in relation to the same candidates and thus, the number of deferrals does not mean the candidature of as many persons was deferred. It is also important to note that the number of deferrals does not mean that the substantive decisions regarding as many candidates were never taken. In many of the cases, subsequent to the deferrals, final decisions were taken by the collegium.

Figure 4: Ratio of Substantive Decisions per Deferral



Source: Data collected from the website of the Supreme Court (SCI nd); author's analysis.

Conclusions

While the decision by the collegium to publish its resolutions was obviously a positive one, one has to wonder if the actual practice of publishing the resolutions was reduced to token symbolism. As we have seen, the snippets of information shared by the collegium through its resolutions did not facilitate a better understanding of its functioning.

The resolutions did serve the limited utility of making the decisions of the collegium public. Earlier, information about the high court collegium recommendations being accepted/returned/rejected was accessible to those in the active circles of legal profession or the media. Similarly, one got to know about the tussles between the Supreme Court collegium and the DoJ only through media reports or if one was active in the relevant circles of the legal profession. However, while publication of the resolutions meant the public had better access to the decisions of the collegium, it did not allow for a greater understanding of the reasons behind such decisions. Even accounting for the latitude of maintaining necessary confidentiality, the collegium failed to deliver on its promise of publishing reasoned decisions to ensure transparency.

The collegium did not state clearly the colleague judges who have been consulted. We often did not know how many colleague judges have been consulted. It also did not state clearly if their views were positive or negative and we were left with no answers as to why certain recommendations were returned while others were accepted. We have no knowledge of the reasons for which the DoJ objected to the appointment of certain candidates. We are clueless about the grounds on which the collegium overruled or accepted the objections of the DoJ. No reasons were given

when decisions on certain recommendations were deferred.

Further, there was no evidence of the collegium actively looking into the informational needs of various stakeholders. As the most basic purpose of any transparency initiative is to generate trust and credibility, the structure and content of shared information must be decided through a consultative dialogue and not through unilateral decisions. The satisfaction of the stakeholders with the transparency standards of an institution is the crucial benchmark, and not that of the authorities who administer the institution (Rawlins 2009).

Thus, the practice of publishing resolutions definitively fell short of the stated goal to promote transparency. Any future discourse on reforms has to acknowledge the collegium's failure to establish a meaningful threshold of transparency in its disclosure practices even when it categorically declared its intention to do so. More particularly, it is clear that the formality of publishing banal "statements" cannot be redressed by resuming the halfhearted practice of publishing nebulous and opaque resolutions.

NOTES

1 According to Rawlins (2009), information ought to be inclusive, auditable (verifiable), complete, relevant, accurate, neutral, comparable, clear, timely, accessible, reliable, honest, and holds the organisation accountable.

2 Parent high court refers to the court where a person first became a judge. So if a judge was first appointed as a judge in the Madras High Court and later transferred to Gujarat High Court, Madras would be parent high court for the judge.

3 For example, one would infer that two judges were consulted when the collegium mentions the following: "while one of the two consultee-colleagues has offered no views about his suitability, the other colleague has found him suitable for elevation" (SCI nd).

4 Every single such instance is when only one colleague judge had been consulted.

5 The following pro forma statement was quoted for as many as three candidates as constituting the views of a colleague judge in a resolution dated 3 October 2017 for appointment of judges in the Kerala High Court: "that his integrity is very good and to his knowledge Shri ABC carries good reputation as Judicial Officer; that he has found his intellectual acumen as befitting for a Judge of the High Court and that he is quite suitable for appointment as Judge of the High Court of XYZ" (SCI nd).

6 This was in relation to a batch of recommendations made by the Karnataka High Court collegium. The objections were not in relation to individual candidates but on the broader point of inadequate representation of a cross-section of society on the high court bench. The governor questioned the efficiency of the candidates without specifying anybody in particular. Of the 10 recommendations to which objections were raised, the Supreme Court collegium approved the appointment of five candidates. It rejected the appointment of one candidate and returned four recommendations to the high court collegium. However, the decision to return/reject certain candidates was seemingly taken on separate grounds as the Supreme Court collegium categorically dismissed the objections raised about inadequate representation (SCI nd).

7 This was in relation to the appointment of Ravi Krishan Kapur of the Calcutta High Court. The Department of Justice had raised the issue of Kapur's father, a practising advocate at Calcutta High Court, not having furnished a required undertaking. The collegium dismissed the objection on the grounds that the requirement of an undertaking from a practising relative is in the nature of an administrative instruction and not a mandatory requirement (SCI nd).

8 There were 10 such instances where the Supreme Court collegium had reversed its decision after receiving objection from the DoJ. The reasons for reversal were spelled out in only one case (SCI nd).

9 As it was impossible to identify the individual candidates against whom complaints have been made, it has been presumed that complaints have been filed against all candidates discussed in a resolution. This is a presumption of necessity. By this calculation, there were complaints against 30.47% of all candidates recommended by different high court collegiums (SCI nd).

REFERENCES

Heimstädt, Maximilian and Leonhard Dobusch (2017): "Politics of Disclosure: Organizational Transparency as Multiactor Negotiation," *Public Administration Review*, Vol 78, No 5, pp 727–38.

Hollyer, James R, B Peter Rosendorff and James Raymond Vreeland (2011): "Democracy and Transparency," *Journal of Politics*, Vol 73, No 4, pp 1191–205.

Kumar, Alok Prasanna (2019): "Supreme Court Stops Uploading Collegium Resolutions on Website: Move Is a Major Self-inflicted Wound, Smacks of Institutional Cowardice," *Firstpost*, 22 October, https://www.firstpost.com/india/supreme-court-stops-uploading-collegium-resolutions-on-website-move-is-major-self-inflicted-wound-smacks-of-institutional-cowardice-7536991.html.

Rawlins, Brad (2009): "Give the Emperor a Mirror: Toward Developing a Stakeholder Measurement of Organizational Transparency," *Journal of Public Relations Research*, Vol 21, No 1, pp 71–99.

SCI (nd): "Resolutions of Collegium," Supreme Court of India, https://main.sci.gov.in/collegium-resolutions.

Supreme Court Advocates on Record Association v Union of India (2015): Writ Petition (Civil) No 13 of 2015.

— (2016): SCC, SC, 5, p 1.