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Constitutionality of Powers of the Chief Justice of India as the “Master of Roster”

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ABSTRACT

In today's world, the judicial administration deals with rulemaking, quasi-judicial, and purely administrative functions. As a result, the values envisioned in our Constitution, as well as the principles of natural justice, must be applied in a way that strikes a balance between the interests of individuals and the interests of the authorities. When the country's highest court of justice performs administrative tasks, it must be done with the utmost care and prudence. The principle of "Nemo judex in sua causa" constitutes one of the main pillars of our justice system and dates all the way back to Roman Law that not only intended to prevent a potential law-breaker from condoning his errors by justifying the validity of his own acts but also, to preserve public faith in the sanctity and independence of the judiciary itself. For decades, the Chief Justices of Indian courts, most notably the Supreme Court, have had sole authority over assigning cases to the judges. The recent controversy pitting four of the Supreme Court's senior most judges against the Chief Justice of India has sparked a debate over the power vested not just with the Chief Justice of India, but also with the Chief Justices of several High Courts. The administrative power of the Chief Justice, particularly the power that dictates how the Chief Justice works as the Master of the Roster, is a topic of constitutional law governing the Chief Justice's position. So far, we have only witnessed a few conventions to regulate the number of administrative roles played by the Judges. This Article therefore, aims to highlight the constitutional conventions and their importance in the functioning of the country while primarily discussing role of the Chief Justice of India as the sole “Master of Roster” at the Apex Court of Law. The article subsequently highlights the comparison between the Principles of Natural Justice, the Rule of Law and the prevailing scenario, providing suitable recommendations to help the judiciary to keep up with its most crucial goal i.e., administration of justice.

Keywords: Chief Justice of India, Justice, Roster, Constitution of India, Supreme Court, Judiciary.

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I. INTRODUCTION

The foundation document of our democracy is the Constitution of India and the Constitution ensures that democracy functions smoothly by making all three organs of a state independent from each other. Judiciary in itself is an independent body which functions to protect the rights of the people. Judiciary is independent to adopt its own functioning regulations protocols. Chief Justice of India is the supreme most member of the Indian Judiciary and CJI is empowered with the duty and responsibility to protect the dignity of Judiciary. It is important for a welfare state to have unbiased and well-functioning judicial system. This is important so that people have faith in the system established by law. Supreme Court is the top most court of country and is the ultimate stone in the judicial system of India. People appear before the court as the last resort to protect their interests and rights. Hence it becomes necessary to have fair and smooth functioning of The Supreme Court of India. The Chief Justice of India has the responsibility to be the Master of the Roster. It is the CJI who formulates the composition of benches in the supreme court and also regulates the Roster in the court. It is in the hands of the CJI to decide as to which court will hear the matter and what shall be composition of the bench in the court. The Indian Constitution, Supreme Court Rules, and judicial precedents all contribute to the Chief Justice's authority.

In terms of judicial power, any of the Supreme Court's judges has the same authority as the Chief Justice of India. As a result, he is only "first among equals."³ The CJI, on the other hand, is placed in a different position in terms of administrative authorities. Because the Indian Constitution is ambiguous when it comes to defining the administrative tasks of judges, norms and rules have evolved to address this. One such duty is the determination of the bench. In India, the HCs and SC follow the roster system to allot cases.⁴

Vesting an individual with total control is extremely dangerous because it opens the door to not only mismanagement but actual abuse of power. This is especially true when such power is delegated ex officio to someone in a position as powerful as the Chief Justice. In such circumstances, it would not be unreasonable to believe that India's Constitutional Courts are among the most powerful in the world.

II. CONSTITUTIONAL ANALYSIS

The Chief Justice is the "Master of Roster" and only the Chief Justice of India has the authority to allocate the cases to different Benches/Judges of the Supreme Court of India. It is conceded

³ Campaign for Judicial Accountability and Reforms v. Union of India, (2018) 1 SCC 589.

⁴ State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1: AIR 1998 SC 1344.

that in accordance to this principle, namely, the Chief Justice of Supreme Court of India is the Master of Roster, and is essentially responsible to maintain judicial discipline and decorum. It is also stated that the Chief Justice is first among equals, meaning that CJI and all the Judges of the Supreme Court of India are equal with same judicial power, with Chief Justice as the senior most Judge amongst them. At the same time, it is contended that this power should not be used to apply any superior authority by the Chief Justice and the power is to be exercised in a manner that is fair, just and transparent.

The Chief Justices of the Supreme Court has the complete responsibility of assigning cases to judges of the court and to form benches. Due to this institutionalized practice corruption and misuse of statutory power have made their way through. This institutionalized practice has not only resulted in undemocratic rule in the judiciary but has also led to wrong/biased judgments being delivered.

As the Master of Roster, it is also conceded that it is the Chief Justice of India who has to decide as to which Bench will hear a particular case. The apprehension expressed is that keeping in view the predisposition and favourism of particular Judges, the Chief Justice may assign cases to those Judges to achieve a predetermined outcome which the CJI wants. Hence, we need a more rational and transparent system of listing and re-allocation of the matters to avoid any such malpractices.

The provisions of the Supreme Court Rules, 2013 (hereinafter referred to as the 'Rules') are not followed in strict sense and hence it leads to arbitrariness. These Rules, empower the Chief Justice of India to allocate certain cases by exercising his discretionary power. In order to ensure that such a discretion is exercised in a fair manner, the expression 'Chief Justice' should be interpreted to mean 'Collegium' of first five Judges of the Supreme Court, as held by the Supreme Court of India.⁵ It is submitted that in certain cases, the manner in which matters are allocated to certain benches reflect that either there was no strict adherence to the Rules or the transparency was lacking.

Constitution of India expressly confers powers on the Supreme Court under Article 145 to make rules. Articles 145 (2) and (3) thereunder fix minimum number of judges to sit for any purpose including for deciding a case involving substantial question of law as to the interpretation of the Constitution or a reference under Article 143. Article 124 establishes and constitutes the Supreme Court. Thus, the expression 'Supreme Court' includes the Chief Justice and other Judges of the court. The power to frame Rules under Article 145 is, therefore,

⁵Supreme Court Advocates on Record Association v. Union of India, AIR 1994 SC 268.

conferred upon the entire court, which power includes power to frame the Roster and direct hearing/ listing of matters.⁶ Thus, although the Chief Justice is the Master of the Roll under the convention, the Constitution has diverted from the conventional Scheme to confer power upon the Supreme Court.

The expression 'Chief Justice' has been interpreted by a Constitution Bench of the Supreme Court in the First Judges' case to mean a 'Collegium'.⁷ This was done to ensure a guard against the absolute power being conferred upon the Chief Justice alone. It was observed in the said judgment as follows that the human beings have own likes and dislikes, own predilections and prejudices and the human mind is not comprehensive to be able to take each and every aspect of question and the information on which the judgment is based may be incorrect or inadequate and they may also be imperceptibly influenced by irrelevant or extraneous considerations. Hence it is thought not to entrust power in any significant or sensitive area to a single individual only.⁸ The court also suggested that there must be check and controls in the use of any power especially power to make appointments and it must be available to plurality of hands rather than to a single individual. This principle has been subsequently followed by this Hon'ble Court in the Second and Third Judges' case.⁹ The interpretation formed by this Court must apply to all in preview of the power which is claimed by the Chief Justice of India as the Master of the Roster. It is well settled that in a statute a particular expression must receive the same and consistent meaning.¹⁰

Responsibility and powers such as 'framing of Roster' and 'listing of important and sensitive matters' are extremely crucial, important and should not be to the sole discretion of the Chief Justice as per the law laid down in precedent of the First Judges' case. What so ever the circumstances may be such exclusive discretion given to the CJI is anathema to the Constitutional scheme and provisions which is an important element and forms part of the basic structure. It is, therefore, important that the expression 'Chief Justice' must mean the Supreme Court or, as held by this Court in series of judgments, the 'Collegium' of five senior most judges of Supreme court. The Rules framed under Article 145 of the Constitution of India includes powers given to the Registrar under Order III Rules 7 and 8 to deal with preparation of cause lists and fixing of hearings of petitions, which would include listings. The matters are

⁶Constitution of India, Article 145.

⁷S.P. Gupta v. Union of India and Anr, 1981 Supp SCC 87: AIR 1982 SC 149.

⁸ S.P Gupta case, supra note 3.

⁹SUPREME COURT ADVOCATES ON RECORD ASSOCIATION V. UNION OF INDIA, AIR 1994 SC 268; SPECIAL REFERENCE NO. 1 OF 1998, RE, (1998) 7 SCC 739.

¹⁰ Shanti Bhushan v. Supreme Court of India, 8 SCC 396.

listed strictly as per these Rules.¹¹

Further Collegium must be there so that important and sensitive matters are assigned to Benches by the Collegium of five senior most Judges of the supreme, including the Chief Justice of India. Fairness in action is the hallmark of any power regarding an administration. While exercising this power as the Master of Roster in allocating a Bench to hear particular kind of cases, the Chief Justice performs his function in an administrative capacity. It is also submitted that applicability of the principle of bias is to be judged by applying the test of reasonable apprehension of bias that arise in the mind of a party.¹² It is emphasized that the Constitution of India has created an independent and impartial judiciary which is vested with the power of judicial review which helps in determining the legality of administrative actions and, thus, it is considered the solemn duty of the judiciary to keep the organs of the State within the limits of the power conferred by them in the Constitution by exercising the power of judicial review which acts as a safe guard.¹³

III. ANALYSIS IN COMPARISON WITH THE CONCEPT OF RULE OF LAW AND PRINCIPLES OF NATURAL JUSTICE

An important task has been assigned to the judiciary, power of listing the cases has to be exercised in a fair and transparent manner to build and maintain confidence in the public and to ensure that Rule of Law i.e., supremacy of law, which is a part of the basic structure of the Constitution. In this context, it is argued that the power to allocate the cases should not be with one individual and this could be dealt with care by applying the principle laid down in the Second Judges' case it was held that, the court recognizes that there exist room of discretionary authority within the operation of law and it has to be reduced to the minimum extent It reduces the area of discretion if any exists but discretionary authority has to be given workable system. The further check is the conferment of this discretionary authority in the highest functionaries. The phraseology which has been used indicates that absolute discretion to the Chief Justice of India as an individual in the matter of appointments is not desirable, so that it acts as system of check and balances. It is the reason why the word 'consultation' instead of 'concurrence' is used. Rule of law contemplate the concept of discretion to the minimum, requirement. Idealism and pragmatism are linked together and integrated, to make the system functioning in an efficient manner.

¹¹ Constitution of India, Article 145.

¹² *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611.

¹³ *Ranjit Thakur case*, supra note 11.

In a recent order passed, by the honourable Supreme Court, the court relied on Prakash Chand case and the aforementioned rules to declare that the CJI is the 'master of roster' and had the sole authority to decide the roster for cases in the SC.¹⁴In spite of the fact that the CJI was amongst the people against whom allegations were levelled in the petition, the matter was taken up and heard by the CJI¹⁵. This was a strong violation of the principle of '*nemo iudex in causa sua*'. CJI further went on to say that it is only the President of India that can be approached with a complaint against the CJI.

Bias is an operative prejudice, even if conscious or unconscious, which is a result of some preconceived opinion or predisposition, in relation to the issue of the party. The dictum "*Nemo Iudex in Causa Sua*" governs the rule against such bias which translates as "no person shall be a judge in his/her own case", is widely considered as basis to an authentic, trustworthy, ethical, honest and unbiased judicial system. This creates an impression that the principle of *Nemo Iudex in Causa Sua* does not apply to the highest Court of the land as the Chief Justice of India is the 'Master of the Roster' and, in the present case also, the Chief Justice of India has himself decided the composition of the bench which deals with the issue that whether the Chief Justice must be deemed to include five seniors most judges of the Apex Court or not. This certainly is in violation of the Principle of Natural Justice.

An individual if provided absolute power is highly problematic. This is evident such power is ex officio vested in a person holding a position as strong as that of the CJI. In a leading case it was held that constitutional authorities must adhere to non-arbitrary practices as mentioned in Article 14 of the Constitution of India. Further, even Article 145 talks about emphasis on transparency under clause (4).¹⁶

The hon'ble court should rely upon paragraph 44 of the judgment in the Third Judges' case wherein the Court answered the questions saying that "*The Chief Justice of India is not entitled to act solely in his individual capacity, without consultation with other Judges of the Supreme Court, in respect of materials and information conveyed by the Government of India for non-appointment of a Judge recommended for appointment.*"¹⁷

IV. CONCLUSION

Considering the above statements, it can be argued that modern trend in all strong legal systems governed by principles of democracy is to ensure that even the powers regarding administrative

¹⁴Kamini Jaiswal v. Union of India, 2006 (II) SLJ 439.

¹⁵State of Rajasthan v. Prakash Chand (1998) 1 SCC 1.

¹⁶Maneka Gandhi v. Union of India (1978) SCC 248: AIR 1978 SC 597.

¹⁷Special Reference No. 1 of 1998, Re, (1998) 7 SCC 739.

functions of the Chief Justice must be shared with other senior Judges so that the power is exercised properly and validly. If we consider the system that prevails in the United Kingdom Supreme Court, High Court of Australia (which is the apex court of that country), Supreme Court of Canada, German Federal Court and even European Court of Human Rights and European Court of Justice. *“The judiciary even without the sword or the purse, remains the guardian of the Constitution. Its sole strength lies in the public confidence and the trust”*. A.S. Anand, J. highlighted this aspect.

It is to be noted that the judiciary is assigned a pivotal role under the Constitution of India. In a Constitution Bench case the role of the Supreme Court as final arbiter of the Constitution and upholder of the rule of law being unbiased was upheld.¹⁸ It is also submitted that, *“where a power is vested in a very high authority, it must be presumed that the said authority would act properly and carefully.”*¹⁹

The main aim for functioning of a state is to help the people protect their rights and live with dignity and peace. If people have faith and trust on judiciary enforcement of law becomes much more simple and less cumbersome. Supreme Court being the highest pedestal for justice, has to function in a way that justice is served and not only seen. Rule of Law and Principles of Natural Justice are the essential foundation stone of the law. One cannot function in isolation with these core principles established in the society. CJI is vested with the power to maintain the functioning of the Judiciary but CJI cannot neglect the its duties as a ‘Judge’ first. Chief Justice as the master of roster should not be used to apply any superior authority by the Chief Justice and the power is to be exercised in a manner that is fair, just and transparent. The Chief Justice is only first among the equals and all judges are equal. The allocation of cases and formation of benches should also be a done by a collegium system which is also used in appointment of judges. The Chief Justice should not be given the exclusive responsibility to do so.

V. RECOMMENDATION

Despite the fact that many of the issues dealt by the Apex Court these days are public interest litigations, the court nevertheless, remains subordinate to the Constitution.²⁰ This is consistent with the established fact that our courts are constitutional courts. The requirement of explicit

¹⁸Government of NCT of Delhi v. Union of India & Another.

¹⁹Maru Ram v. Union of India, (1981) 1 SCC 107.

²⁰Alok Prasanna Kumar, Crises in the Judiciary: Restoring Order in the Courts, Economic & Political Weekly 10 (Jan. 20, 2018), <https://www.epw.in/journal/2018/3/commentary/crises-judiciary.html>.

rules for a sound judiciary is mandated under Article 145 (1).²¹ Transparency is also emphasised in Clause (4) of Article 145.²² This emphasises that, while conventions are observed to expedite the justice process, they should be viewed as complementary rules to keep the court's composure. The composition of a bench leads to speculations about the outcome, which should be maintained to a minimum. A judge's primary obligation is to uphold the Rule of Law and hence refrain from engaging in unconstitutional actions.

Much of the abuse of power is due to the absence of clear directives. This does not, however, empower the CJI to engage in arbitrary practises. The Supreme Court has ruled that even constitutional authorities must follow the non-arbitrary standards outlined in Article 14 of the Indian Constitution.²³ However, when it comes to case allotment, the Chief Justice has practically limitless power under the Constitution. The letter drafted by the Supreme Court's four senior most judges opens up a whole new universe of public debate that cannot be ignored. The authors, on the other hand, have some structural modifications in mind that they'd like to express. It will take time and resources to integrate these into the system. In the long run, however, these will help the judiciary to keep up with its most crucial goal: administering justice quickly and accurately.

Firstly, assuming that the current allotment is based on the CJI's personal preferences, we'd like to provide a basic approach for generating a roster with minimum prejudice and impact. The rosters must include not only the names of the presiding judges, but also the whole bench's makeup, as well as substitute judges in the event that one of the judges is unable due to unforeseen circumstances. A team of highly skilled judicial members will be required to establish such a roster. Judges' seniority should not be the exclusive criterion for panel selection; other factors such as understanding of a particular area of law should also be taken into account. Through a voting method, the Chief Justice and a collegium of four senior most judges must prepare the roster. The inclusion of a five-judge panel will encourage participation and a diversity of viewpoints, which is preferable over a one-man tyranny. Secondly, the algorithm for creating rosters should be made public in order to make the process more transparent and instructive. The enrolment plan must be published on the official SC website or in other generally accessible media. The current ambiguity over how a judge is assigned to a specific subject matter has caused a lot of consternation across the country.

²¹ Constitution of India, Article 145.

²² V.N. Shukla, *Constitution of India* 568 (12th ed. 2016).

²³ *Maneka Gandhi case*, supra note 15.1998.

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