

‘My law ministry is not a post office’

NEW DELHI: Union minister for law and IT Ravi Shankar Prasad spoke to Hindustan Times’ Shishir Gupta and R Sukumar on the controversial issue of judicial appointments, and the even more controversial issue of Aadhaar. Edited excerpts:

The memorandum of procedure or MoP on appointment of judges to the higher judiciary seems stuck with the court. What’s the way forward? The need for improving the collegium system has been there for a long time. Even in the NJAC judgment... many of the concurring judges have said there is a need to reform the collegium system. Our whole view is that there is a compelling need for better screening of candidates. This particular stand we have taken and sent the matter to the Supreme Court. On July 11, 2017, the then secretary of the department wrote to the court saying there is a need for better screening.

We have a serious reservation about the NJAC judgment. A rare consensus in the polity of the country, based upon proper recommendations for change, was annulled by the court. We also have serious reservations with the reasoning of the judgment. But we have accepted and respected it. Our commitment to an independent judiciary is complete and total.

The collegium system is a judge invented platform—in 1993. It’s been exactly 24-25 years that it has been around. Before that it was a process involving the government, the CJI, even the home minister has been involved. Some of the biggest legal luminaries in the Indian system have come from that period.

Twenty-five years down the line, don’t you think there is a case for some audit by the SC itself, without reference to the government, on how the collegium system has functioned? It is time for them to have some audit. There is a need for correction.

As far as our record is concerned, we have appointed 126 high court judges in 2016, 115 in 2017 and eight so far in 2018. The average appointment since 1989 has been 79 to 82.

We have also made 170 additional judges permanent in the last three years.

And don’t forget. We came to power in 2014. We came up with the NJAC law. For almost two years, it was stuck in the courts.

Have you done some sort of audit of the collegium system’s appointment? No, it’s not my job. I respect the independence of the judiciary.

But surely I will ask one question—If you are sending 30 names, those 30 names are picked from how many names?

We had suggested in the MoP that all judges should give names. There must be a corpus from which you pick up.

There must be a mechanism. For instance, (the collegium should say), we considered these 50 candidates, or 60; here is the criteria we measured them on; and we picked up these 20. Right now, we just get the names. We respect the judiciary’s choice. But the norms of screening, how the recommended names were chosen, have to be there. This is our main contention.

The government has the view that there is a need to review the screening mechanism. But this I want to say very clearly: my law ministry is not a post office. We have a role to play in MoP.

When the NJAC judgment and other judgments are full of the need to make the collegium system more objective, more transparent, the transparency in the consideration of names is equally important.

What is the road ahead? There’s no movement on MoP to show. But work isn’t stopping; we are

appointing judges...

But who is going to resolve the issue? By consultation, we have to do it. We have some ideas. Would the screening committee be different from the collegium? But all these will also have to be decided upon by the judges themselves. We are not in the game.

But right now when there is internal turmoil in the court... On turmoil, I have nothing to say except that I trust their statesmanship and foresight to handle that.

The ideal situation is to have something like the NJAC. Would any other thing, such as the MoP being discussed be a compromise, or can it achieve the objective?

It can be achieved. We have conveyed our views and am hoping we can arrive at a meaningful conclusion.

There is all sorts of buzz that lines of communication have broken down, that the SC and the law ministry do not engage... No. There is a meaningful and purposive engagement. But we have stayed out of their internal situation.

But in general, there is a perception that there haven’t been enough appointments. How many judges to the lower courts have you appointed since the NDA government came to power in 2014? In the high courts there are 404 vacancies. For 288 posts, the recommendation hasn’t come from the collegium.

There are close to 5,000 posts of subordinate judiciary vacant. In the appointment of the subordinate judiciary, the government of India has no role and the state government has only the administrative role of issuing the notification.

In some high courts, including Delhi, they conduct the examination for appointments themselves.

In many, at their recommendation, the state public services commission does.

There is a compelling case for a more professional subordinate

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judiciary—I have always said that. Even if you don’t call it a National Judicial Service, there are so many good law schools these days that we must have a proper all India merit-based examination.

In terms of our support to the cause—as far as supporting infrastructure is concerned—as on date, we have a centrally sponsored scheme for development of legal infrastructure. It is there from 1993-94. As on date, ₹6,020 crore has been released. Of this, ₹2,575 crore has been released since May 2014. That is our support.

There seems to be a paucity of law officers and you haven’t been able to appoint a Solicitor General of India. We are in the process of doing so.

Despite what you say about continuing appointments, there are clearly flashpoints. For instance, the tussle over the appointment of justice KM Joseph of the Uttarakhand high court as recommended by the collegium... How do you resolve this?

I don’t want to comment publicly on this; there is a mechanism available to address this. The norms for such appointments have also been laid down in the 1993 and 1998 judgments concerning the collegium. I don’t want to say any more.

Fine, now about Aadhaar... I won’t comment on the legal aspects which are sub-judice...

The biggest fear about Aadhaar is that far from being inclusive, it becomes exclusive...

... I’ve already addressed that. We will ensure no one is excluded from welfare schemes for lack of Aadhaar. I have myself taken care of this after hearing some reports, although the state government concerned has denied this. No poor shall be denied food because of the absence of Aadhaar. And in case there is a mismatch of biometrics, to just note down the Aadhaar number and give the ration. But if there is a stray case of failure, the system can’t be faulted.

... and, because it is a convenient Know Your Customer mechanism for private companies, they have started using it for a lot of things... If they are found wanting or misuse this, they have been punished

... So, does it make sense at all to link it to so many things? To sort of use it for everything? I would put it differently. You need IDs for lots of things—from entering buildings to getting a passport. Some degree of authentication by a document has become necessary. This whole issue of demonisation of biometrics isn’t on. Privacy can’t be a tool for the corrupt and for terrorists.

We have a very robust mechanism—the Aadhaar Act.

What about privacy where you have a draft put out by a committee on a privacy and data protection law?

We are going to have a very robust law. But there has to be a balance between data availability, data utility, data anonymity, and data privacy. As IT minister, I am very keen that India becomes the global hub for data analytics. Data is the new oil. Should we kill innovation in the name of privacy? No.



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