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Statement seeking recall of Chief Justice Justice Sanjib Banerjee's transfer and transparency in appointments and transfers by the Collegium

The Campaign for Judicial Accountability and Reform expresses deep concern and disappointment with the decision of the Supreme Court collegium to transfer Chief Justice Sanjib Bannerjee of the Madras High Court to the Meghalaya High Court and recommends that the resolution to transfer Chief Justice Banerjee may be recalled by the collegium, forthwith.

We note with concern that the resolution to transfer Justice Bannerjee, while dated 16th September, 2021 has only been made public on the 9th of November, 2021 on the website of the Supreme Court. The absence of a timely reasoned decision made available on the Supreme Court website, is an unsavory practice that gives rise to insinuations that the resolution was backdated, and should forthwith be stopped by the Supreme Court. We call upon the collegium to upload its reasoned resolutions within twenty four hours of the meeting, keeping in mind the right of the public to know the important decisions regarding appointments and transfers and to bring in greater transparency and accountability in the functioning of the collegium system.

On the merits of the decision itself, CJAR expresses its deep disappointment with the move to transfer Justice Bannerjee from the Madras High Court to the Meghalaya High Court. While every High Court is equal in the eyes of the Constitution and enjoys the same powers, we cannot but note that the transfer of a judge from a larger, well established High Court to a smaller one, is perceived as punitive. While this may not be the intention of the collegium, in the absence of any material justification for the transfer, an adverse inference is likely to be drawn that Justice Bannerjee is being "punished" for some reason.

CJAR notes that Justice Bannerjee's record as the Chief Justice of the Madras High Court has been exemplary. Not only has he upheld the highest traditions of impartiality and neutrality to adjudication, he has shown his commitment to constitutional values in numerous cases relating to the management of Covid, free speech on the internet, secularism and free and fair elections in the State of Tamil Nadu. We note the representation made by the advocates of the Madras High Court to the collegium as a sign of the respect Justice Bannerjee enjoyed with the Tamil Nadu bar and as a certificate of his unimpeachable integrity as a judge.

CJAR also expresses its deep disappointment that the transfer of Justice Bannerjee adheres to a recent pattern where the collegium's decisions have conformed to the wishes of the Union Government. Whether it is in the refusal to nominate Justice Akil Kureshi, the acquiescence of the Union Government's pick-and-choose policy for appointment of High Court judges or the lack of strong backing given to nominees who are being rejected without reasons by the Union Government, we find a consistent pattern of the collegium refusing to conform to the Second and Third Judges' cases and the Memorandum of Procedure prepared in accordance.

We therefore call upon the collegium to:

- Recall its resolution to transfer Justice Bannerjee from the Madras High Court to the Meghalaya High Court.
 - Place on record the material and the basis for the decision to transfer Justice Bannerjee from the Madras High Court to the Meghalaya High Court.
 - Uphold the independence and integrity of the judiciary in the manner in which it participates in the judicial appointment process
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