

Fali slams SC panel for ignoring judge who penned gay verdict

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NEW DELHI: While sharing a dais with Chief Justice of India K G Balakrishnan, senior advocate Fali Nariman recently attacked the Supreme Court collegium for its failure to promote the author of the historic homosexuality verdict, chief justice of the Delhi high court A P Shah.

In a forthright speech at a public meeting on Monday, Nariman voiced a widely shared "disappointment" in legal circles over Shah becoming a casualty of the "vagaries of the present system of judicial appointments" despite being a "role model for all judges".

Paying a left-handed compliment to the CJI, Nariman said that he also knew that Justice Balakrishnan did not "disagree with this assessment" of Justice Shah, who was also present on the dais at the function held in the National Law University in Delhi.

According to the transcript of the speech made available to TOI, Nariman said, "The reason why I got this choleric thought off my chest is because I hate to speak behind anyone's back. Hence I thought it best to proclaim what I and many members of the bar think — here in the presence of the CJI, and not in his absence."

Justice Shah is due to demit office in three months as the retirement age for high court judges is 62, while the corresponding age for their Supreme Court counterparts is 65.

It is an open secret that, despite his sterling record as a high court judge in

Mumbai and as chief justice in Chennai and Delhi, Shah has been overlooked because one of the members of the Supreme Court collegium thwarted his candidature in the give-and-take negotiations that go on behind closed doors.

Nariman's broadside on the collegium went as follows: "I have always been of the firm opinion that he is a role-model for all judges and I say this in the presence of the Chief Justice of India, because I know he does not disagree with this assessment. The fact that Justice A P Shah is not yet in the Supreme Court is a God-send to the judges and lawyers of the Delhi high court but it is a matter of disappointment for the rest of us who have known him personally and this is only because of the vagaries of our present system of judicial appointments.

In a bid to drive home the whimsicality of the appointment system, Nariman cited the "glaring example" of Justice A K Patnaik, who, unlike Justice Shah, could make it to the Supreme Court because the particular collegium member who had opposed him retired recently. Nariman pointed out that Justice Patnaik "was in line for appointment many vacancies ago - at least two years ago - but could not or would not be recommended only because one member of the collegium steadfastly refused to accept him for appointment as Judge of the Supreme Court. So he was over-looked — not once not twice but three times."

That Justice Patnaik was immediately recommended by the newly constituted collegium, on the retirement of the member opposing him, "speaks volumes for the current judicial appointment procedure — making more comment superfluous".

At a time when the collegium is already under a cloud for recommending Justice P D Dinakaran despite the allegations of land grabbing, Nariman said that as judges were opposed to the creation of an independent commission for judicial appointments, he would rather have the pre-1993 situation

restored as the CJI then had the discretion to consult anybody and not be bound by the opinion of the senior colleagues forming the collegium.