

**Not this way**

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A group of seven Opposition parties has submitted a notice for an impeachment motion against Chief Justice of India Dipak Misra citing five reasons. This is the first such move against the top judge of the apex court in the country. It is a moment for a nation to pause, take a deep breath, ask some questions. First and fundamentally: Is impeachment, which is the extreme step to punish an errant judge, merited in this case? India's Constitution prescribes a layered and cumbersome process involving several stages. The bar is set deliberately high on the admissibility of such a move because the consequences for the system can be destabilising and debilitating. The judiciary is the guardian of the Constitution and its guarantee of individual liberties. Its independence is indispensable for other institutions and for the framework of checks and balances to remain in good health. So, do the five grounds on which CJI Dipak Misra is sought to be indicted meet the standard, pass the test? They don't.

There is an unmistakable air of tentativeness about the chargesheet drawn up against CJI Misra — his alleged involvement in a case relating to an educational trust that allegedly involved the payment of illegal gratification, his acquisition of land 39 years ago and surrendered later, his allocation of cases as master of roster. An impeachment motion must involve clear incapacity or proven misconduct. It cannot be the instrument by which mere suspicions about a judge's conduct are sought to be expressed or confirmed. It cannot be propelled by a difference of views in court. An impeachment motion must not be — it must not be seen to be — mired in the politics of the day. The move of the Opposition parties against the CJI comes a day after a CJI-led bench spoke on a case that has drawn extraordinary political attention — it dismissed petitions that sought an independent probe into the 2014 death of Judge BH Loya, who at that time was hearing the Sohrabuddin fake encounter case in which BJP president Amit Shah was an accused. Its timing does little to insulate the impeachment notice from Union Finance Minister [Arun Jaitley's](#) accusation that it is a "revenge petition".

To be sure, there is an unseemly stand-off, an unprecedented breakdown of trust within the Supreme Court today. Sharp anxieties have also been stoked about the court's ability and willingness to stand up to an executive armed with a decisive mandate, in the matter of the stalled Memorandum of Procedure or government delay in clearing appointments recommended by the Collegium. It is also true that for both these crisis, the CJI must take prime responsibility. Yet, an impeachment move by a divided Opposition is neither the answer nor the way out. It will only lead to a bruising politicisation of a court already divided, and to its embitterment, at a time when it needs to stand firm against external challenge. Perhaps the Opposition leaders helming the impeachment move should have listened to Justice J Chelameswar, one of the four SC judges who held a press conference against the CJI in January, but who insists that the solution must be found through an institutional "audit" and by putting in place a "proper alternative" — through correcting the system, that is, not by unsettling it.

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