

Unprecedented crisis: on independence of the judiciary

These are extraordinary times for the judiciary. From signs of a confrontation with the executive over judicial appointments to an **unpleasant rift among Supreme Court judges**, it has seen much turmoil recently. The process initiated by major Opposition parties to impeach the Chief Justice of India is an unprecedented crisis. The motion, details of which cannot be revealed under Rajya Sabha rules until it is admitted, draws its substance and arguments mainly from the points raised by the four senior-most judges, whose dissent brought simmering differences to the fore. Their main charge, that **CJI Dipak Misra** selectively assigns cases to Benches of his choice, had some dark ramifications, including insinuations about the way he dealt with a petition by a medical college on the judicial and administrative side, and a case of suspected judicial bribery. The CJI has stuck to his position that as ‘master of the roster’ he has the prerogative to allot cases. Are the senior judges who question this entirely wrong? While putting in place the collegium system for judicial appointments, the Supreme Court said “consultation with the Chief Justice” meant “consultation with a plurality of judges”. The argument that the power to allot cases should be exercised by the Chief Justice in consultation with senior judges may have some substance from this point of view. The counter-argument is that a principle evolved for appointments can’t be stretched to cover routine functions such as constituting Benches. But this still raises the question: could the CJI have better addressed his colleagues’ concerns and put in place an informal consultative system, so the damage the institution has suffered could have been avoided?

Impeachment move doesn't fetter CJI, say experts

The movers of the motion do not have the numbers to get it passed. And it is wholly within the power of Vice-President and Rajya Sabha Chairman M. Venkaiah Naidu to decide whether to admit it. Against this backdrop, the **impeachment attempt** led by the Congress may be perceived in some quarters as no more than a political move to highlight its claim that key democratic institutions are in danger under the present regime. To the people at large, the real question is whether it is the internal rift or the executive’s attempt to keep it under its thumb that poses the greater danger to the judiciary. The Rajya Sabha Chairman will have to weigh one question before admitting the motion: what will cause greater damage to the institution, pursuing the process or rejecting it outright? Some may say any inquiry into the CJI’s conduct will imperil judicial independence, and others may argue that ignoring the allegations will be more dangerous. The Constitution advisedly envisages the impeachment of superior court judges as a rigorous political process driven by Parliament. It has in-built safeguards such as an inquiry by a panel of judges, and a two-thirds majority in both Houses. The intention is to provide for both accountability and independence of the judiciary. Neither of these objectives can be dispensed in favour of the other.

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