

Back to the court: on the impeachment controversy

With the [Rajya Sabha Chairman rejecting](#) the notice given by 64 Opposition members for the impeachment of the Chief Justice of India, the focus has shifted to the presiding officer's power to admit or reject a motion. The Congress, spearheading the move, is planning to approach the Supreme Court. Section 3 of the Judges (Inquiry) Act, 1968, says the presiding officer may admit or refuse to admit the motion after holding consultations with such persons as he thinks fit, and considering the material before him. The law is open to interpretation on whether he can reject the motion on merits without sending the charges to a committee for investigation. A common sense view suggests the Chairman has to apply his mind to the nature of the charge. To argue that he should merely satisfy himself on the number of signatures appended to the motion and straightaway constitute a probe committee is unlikely to find judicial favour. However, it needs a court to delineate the contours of such an interpretation. Rajya Sabha Chairman and Vice-President M. Venkaiah Naidu held there is little merit in any of the five charges. He has considered the implications for judicial independence if an investigation were ordered into charges that he says are based on mere suspicion and conjecture. He has picked holes in the motion's wording, saying the signatories themselves are unsure of the veracity of the charges.

Speaker must act as 'reasonable man'

As for the legal foundation of his order, Mr. Naidu has cited the Supreme Court ruling in *M. Krishna Swami v. Union of India* (1992), which directed the Speaker (or Chairman) to act with utmost care, circumspection and responsibility and to keep equally in mind "the seriousness of the imputations, nature and quality of the record before him, and the indelible chilling effect on the public administration of justice and the independence of the judiciary in the estimate of the general public". He has also gone by *Mehar Singh Saini* (2010) to elaborate on the phrase "proved misbehaviour or incapacity", used in Article 124(4) of the Constitution, the ground for impeachment of a Supreme Court judge. What is possibly the main charge — that Justice Misra misused his control over the roster to assign cases selectively with a view to influencing their outcome — is indeed a serious one. But the question is whether impeachment is an option in the absence of concrete material to establish this charge. The Opposition is divided on initiating impeachment proceedings and there are two views within the Congress itself. Taking the matter to court may result in a judicial resolution, but it is unlikely to end the controversy over the functioning of the Supreme Court, an issue that has unfortunately assumed a very political and polarised character.

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