

## Bench vs Bench in Supreme Court

Kurian Joseph

In a rare show of public anguish, a three-judge Supreme Court Bench led by Justice Madan B. Lokur criticised another Bench for “tinkering with judicial discipline”.

Justice Lokur’s Bench, which includes Justices Kurian Joseph and Deepak Gupta, found fault with a judgment delivered by another Bench of three judges led by Justice Arun Mishra in a land acquisition case on February 8.

Justice Mishra’s Bench, on February 8, held that a 2014 judgment of the Supreme Court was pronounced without due regard to law or *per incuriam*. The 2014 verdict was also delivered by a three-judge Bench led by then Chief Justice of India R.M. Lodha and had Justice Kurian on board. It was a majority 2:1 verdict.

Judicial discipline dictates that Supreme Court Benches of the same numerical strength cannot overrule each other’s judgments. The disputed case has to be referred to another Bench of larger strength. In this case, Justice Mishra’s three-judge Bench, instead of choosing to refer it to a five-judge Constitution Bench, chose to declare the 2014 verdict *per incuriam*.

In a strong expression of his “painful concern” about the turn of events, Justice Kurian said in open court that such tinkering with judicial discipline would eventually cost the judicial institution.

“This court has to remain as one. It should be one and you have to make it one. You have to have proper judicial discipline for that,” Justice Kurian said. “Be very clear, this is a matter of judicial discipline, judicial propriety and consistency. Can a three-judge Bench overrule another three judge Bench verdict? It has to be referred to a larger Bench in case of difference of opinion,” Justice Kurian said.

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