

The Public Hearing

That four senior-most judges of the Supreme Court addressed the nation through a press conference on Friday brings a moment as consequential as it is unprecedented in India's democracy. In stepping out of the courtroom and into the spotlight to declare unreservedly that "things are not in order", and in spelling out in the open their grievances with the functioning of the justice delivery system, and the independence of the high courts, and more specifically, their complaints against the conduct of the CJI in his role of "master of the roster", the four judges have posed enormously serious question marks against the institution they are an invaluable part of. Given the judiciary's critical role in the constitutional mosaic, this is a moment of reckoning for other institutions as well, the executive and the legislature. There is no going back to business as usual from here. Much will depend on whether, and how, in the coming days, India's institutions choose to respond to the crisis bared on Friday to public view.

Justice J. Chelameswar, the second senior-most judge after the CJI — and significantly, the lone dissenter on the 5-judge bench that struck down the National Judicial Appointments Commission, thus making a crucial contribution to the national debate on judicial accountability — laid out what he and his three colleagues saw to be currently at stake: "... unless this institution is preserved and it maintains its equanimity, democracy will not survive". In a letter to the CJI, the four judges speak of how "cases having far-reaching consequences for the nation and the institution had been assigned by the chief justice of this court selectively to the benches 'of their preference'". The letter alleges undue interference with the finalisation of the Memorandum of Procedure that concerns the appointment of judges. Of course, there can, and there will be, questions about the four judges going public with their anguish. Each of them has a formidable record on the bench and it is deeply troubling that an institution that plays the guardian and watchdog of freedoms, and the upholder of the constitutional order, should be seen to be so ill-equipped when it comes to listening to its own. This is especially a concern when the executive seems emboldened by a decisive electoral mandate to subdue other institutions. For the political establishment, the judiciary's internal trust deficit spilling out in the open could become another reason to question its autonomy — and find a way to muscle in. Yet, what is most important, for now, is to heed the gravity of the issues that the four judges have felt compelled and constrained to draw public attention to.

There is no option now for anyone to turn an unseeing eye — either to the fact that there is a crisis within the judiciary, or to the reality that this crisis draws on a larger institutional disrepair while also deepening it. The Supreme Court has always maintained that key to its independence is its ability — and its need — to be left alone to self-regulate, to reform. How Chief Justice Dipak Misra replies to the letter of the four judges (reprinted on the Ideas Page) could be a moment of reckoning for the highest court.

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