

Supreme Court judges vs CJI: A chance for SC and govt to finalise a transparent process to appoint judges

Roman poet Juvenal asked the question in Satires. Comic book writer Alan Moore repeated it, in English, in arguably the best comic book ever written. Who watches the watchmen?

That question was again in focus on Friday, when [four senior judges of the Supreme Court](#) (2, 3, 4 and 5 in order of seniority after the Chief Justice of India) took the unprecedented step of holding a press conference to air their grievances, which were presumably being ignored by the Chief Justice (CJ).

Independent India hasn't seen a judicial crisis as severe as this.

At the core of the matter is the fundamental issue of whether the CJ is "master of the roster" (as mentioned in a recent order of the Supreme Court that did not go down well with other judges, including the four who held the press conference) or just a first among equals. The complaint aired in the press conference seems to be that several senior judges in the court are being ignored while setting up benches to hear critical cases. A supplementary grievance is that efforts to discuss this with the CJ went nowhere, prompting his four senior colleagues to go public.

The result, while expected, is still insidious: the attribution of motives to both the CJ and the four aggrieved judges; the presentation of the conflict as yet another one between pro- and anti-Modi forces; a post mortem of case allocations by the chief justice; and the casting of aspersions on the abilities of some judges to whom the CJ has assigned cases. And that's just at the surface. What lies beneath are more serious questions – and the attribution of more insidious motives.

This isn't a political issue and parties of all hues would do well to steer clear of it. This is an issue concerning one of the country's most respected institutions – and one in which a majority of Indians still continue to repose tremendous trust.

The way out involves not just the what, but also the who. It would be best for the Chief Justice to take the initiative and reach out to his colleagues. If he doesn't, the government should get involved to the extent of appointing someone to mediate between the CJ and his senior colleagues. There is, fortunately, no shortage of eminent jurists in this country, including former CJs, and one of them should be appointed as mediator. The solution may well involve a committee-based approach to decision making in the judiciary (much like the committee-based approach to interest-rate setting to which the central bank has moved).

Finally, this is an opportunity for the court as well as the government to finalise a mutually-acceptable and transparent process to appoint judges – an issue on which not much progress has been made – which, while not being raised by the four judges, remains a contentious topic and one that, if not responsible for the current crisis, at least exacerbated it.

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