

Restoring order in the court: on SC judges airing differences with CJI

The darkest day in the history of the judiciary in independent India is January 12, 2018. On this day, in an unprecedented move, the [four senior-most judges of the Supreme Court — Justices J. Chelameswar, Ranjan Gogoi, Madan B. Lokur, and Kurian Joseph — held a press conference and raised a banner of revolt against the Chief Justice of India \(CJI\), Dipak Misra](#). They alleged that the CJI has been assigning cases, which have far-reaching consequences to the nation, selectively to Benches of his preference, thus ignoring well established convention. In reply to a query from the media, they stated that the case relating to the death of former special Central Bureau of Investigation (CBI) judge B.H. Loya is one such instance. In justification of their otherwise objectionable conduct in addressing a press conference on these issues, they said they had been left with no other option. Asked if the CJI should be impeached, Justice Chelameswar said, "Let the nation decide". The judges also said: "It is a discharge of debt to the nation that has brought us here." Democracy is in peril, they added, and unless the institution is preserved, democracy will not survive.

Naturally, this incident has sent shock waves across the country in general and in the legal circles in particular. Many former judges, eminent jurists, and senior counsel have found the conduct of the four judges to be highly disagreeable. Former CJI, Justice T.S. Thakur, said that the conduct of the judges does not help resolve the issues. "It does not help anybody, particularly the institution, if someone was to bring it out in the open," he said. Justice N. Santosh Hegde, former Attorney General of India Soli Sorabjee, and others have also strongly disapproved of the decision of the judges in holding a press conference. They feel that the image and reputation of the judiciary has been tarnished, and the confidence of the people in the judiciary shaken.

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However, a few former judges and lawyers have sought to justify the action by asserting that the judges had no other choice as their repeated pleas to the CJI, including the one on January 12 morning, did not bring about the desired result. They also feel that it is more important to address the issues raised by the judges rather than find fault with them for going public. According to them, disapproval of the form of protest must not cloud the substance of the grievances.

The opinion is divided, but no one can deny that the action of the four judges has caused serious damage to the credibility of the institution. Neither can it be denied that it has set a bad precedent — convention is that judges will never approach the media for redressal of their grievances, which is an internal matter. The day after the press conference, Justice Gogoi said that there is no crisis in the judiciary. Justice Joseph said there is no need for outsiders to intervene. If the judges themselves could have sat together and sorted out their differences, why did they go to the press and damage the image of the judiciary?

The judges have also given an opportunity to politicians to fish in troubled waters. The Congress party lost no time in taking advantage of the situation and demanded that the Loya case be heard by the senior-most judges, and said that the issues raised must be addressed. Justice Chelameswar met with the leader of the Communist Party of India, D. Raja, at his residence minutes after the press conference. All these developments have enabled the media (both print and electronic) to extensively hold discussions about the functioning of the judiciary, which otherwise they could not have done. All this has further damaged the image of the judiciary. The common man, who had absolute faith in the institution and in the impartiality of judges, is now let to suspect that court decisions may not be purely based on merit.

The conduct of the CJI and the Prime Minister in maintaining silence on the developments is

commendable. The Central government has also rightly made its position clear that this being an internal matter of the judiciary, it will not intervene. The stand taken by the Bar Council of India and the Supreme Court Bar Association is also praiseworthy. Both have urged the Supreme Court judges to discuss the issues and settle them amicably by themselves. The Attorney General of India has also expressed the same opinion and is optimistic that the problem will be solved by the judges themselves.

Of course, the CJI also cannot absolve himself of his responsibility for the present state of affairs. No doubt, he is the master of the roster, but that does not mean that he can act arbitrarily in exercising his powers. He has to exercise his powers reasonably, without giving scope for any justifiable criticism. He is also not expected to brush aside any reasonable suggestions in this regard from his colleagues. Even in the past, there might have been some instances where there was similar criticism of assignment of cases to preferred Benches. But such instances were few and far between and they were never discussed in public.

The CJI is the first among equals and he is the captain who has to carry the whole team with him, while enjoying their goodwill and support. Let us hope that all the judges of the Supreme Court, including the CJI, will sort out their differences amicably and find a satisfactory solution to the problem. This will not only restore the diminishing image of the judiciary to some extent, but also put an end to the public debate on these issues.

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