

A supreme spat: decoding what the SC judges said and not how

Perhaps it's not surprising that most of the comments about the [press conference held by four senior judges of the Supreme Court](#) has been about the propriety of their action rather than what they revealed or, at least, alleged. The former lends itself to debate and controversy. The latter requires deeper reflection because it's disturbing.

When the four judges complained that well established conventions are being ignored and important cases listed before relatively junior judges, what they were really questioning was the integrity of the Chief Justice of India (CJI) and many of their brother judges. It's this we need to reflect upon.

First, when the four judges said that the CJI assigns important cases "selectively to the benches 'of their preference' without any rational basis", they're claiming that he has undertaken allocation in a way that could predetermine the outcome to suit his preference. In other words, he's giving cases to certain benches because he believes that those judges will deliver the sort of verdict he wants. Although the four judges did not spell out who this would benefit, we assume that they have the government in mind. Therefore, they're also suggesting that the CJI is beholden to the government or, at least, acting to further its interests. He is not independent of, but acting in support of, the executive.

Restoring order in the court

Second, the four judges are also accusing many of their colleagues of being pliable. They're suggesting that these judges are willing to do the CJI's bidding and deliver verdicts to please him. Again, we could assume that these junior judges also have an inappropriate connection with the government or are willing to deliver verdicts in its favour.

Once viewed in terms of what they have revealed or alleged, it's hard to see how the rupture that the press conference made public can be quickly healed or easily papered over. You cannot attack the integrity of individuals, as has been done, and then smile and shake hands. No doubt this is why Tuesday's meeting between the CJI and the four judges did not lead to a prompt resolution. It could be a while before the matter is settled.

On the other hand, if the charge against the CJI is true, does it not call for further action? When asked if he envisaged the CJI's impeachment, Justice J. Chelameswar intriguingly replied: "Let the nation decide." That clearly suggests that he doesn't rule it out. This alone could make resolution of their differences difficult and prolonged.

Much the same can be inferred from what was said by the four judges about their junior colleagues. Pliable judges are not desirable and they do no honour to the Supreme Court. Even if they're only acting to please their chief and not the government, they're still undermining the high offices they hold. Which, perhaps, explains reports that Justice Arun Mishra was very upset by what's been said of him and could recuse himself from the B.H. Loya case.

The Hindu Explains: 'master of the roster'

The sweeping accusations levelled by the four judges point inexorably to two further conclusions. First, if cases are being wrongly allocated, justice is not being done. If judges are not impartial but prone to favour the government or any one party, the outcome cannot be deemed proper or fair. Second, now that it's undeniably split 4:1, the collegium has been rendered dysfunctional. Where does this leave our procedure for appointing and transferring judges?

Let me return to the question of propriety. The controversy it has created might be best addressed by first understanding what the press conference revealed. If my elucidation is accurate and acceptable, then, surely, we need to know and any step that informs us is, ipso facto, justified. To have kept silent would be tantamount to keeping the people of India ignorant. That is not acceptable in a democracy. Conversely, if going public means breaching protocol, does not the gravity of the revelations justify the unprecedented or extraordinary nature of how they've been made public? Some things are too important to be kept hidden in the belief that in-house mechanisms are the best way of resolving deep disputes.

Now, when you bear in mind that what the four judges have said is not simply the result of a single development but a problem that has a long antecedence and was festering for long, yet repeatedly rebuffed or not addressed by the CJI, it follows that in-house mechanisms have failed to resolve the issue. As Justice Chelameswar said, this is why they chose to speak out. Not to have done so could have imperilled the apex court, the concept of justice and our democracy.

All this, of course, assumes that what the four judges have said is correct.

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