

**Ill-judged**

The confrontation that has broken out in the Supreme Court over the last few days is unedifying and disheartening. As Chief Justice of India Dipak Misra and Justice J. Chelameswar take on each other, and as lawyers take sides in the tussle in open court, the case itself — arising out of the arrest of a former high court judge for allegedly holding out a promise to influence a decision by the highest court in a matter concerning medical college admissions — has been overtaken by the spectacle it has occasioned. At stake, now, is something much more important and large: The reputation and credibility of an institution that has earned itself the title of India's most trusted, a protector of citizens' freedoms, an upholder of the constitutional poise. What is more, this public display of divisions within comes at a time when the court appears at its most vulnerable without. In the last three years or so, the independence of the judiciary has often seemed besieged in the face of a strong political executive that has sought to use the electoral mandate to subdue dissent and circumscribe other institutions, including in the crucial matter of the appointment of judges.

In this courtroom drama, all the lead players are in the dock, even though each of them — from lawyer for the petitioner, Prashant Bhushan, to Justice Chelameswar and CJI Misra — has a formidable record of advancing judicial independence. By listing the case in question before a constitution bench comprising the five senior-most judges, Justice Chelameswar can be accused of playing with procedure, and of attempting to bypass the CJI in his role as “master of the roster”. It is the CJI's prerogative, and his alone, to constitute a bench and to direct that a particular matter be heard by that or any other bench. The argument that Justice Chelameswar did so in order to prevent a conflict of interest — even though the CJI's name does not figure in the FIR, a judgement previously given by him is implicated in the case — is undermined by the ill-judged manner in which Justice Chelameswar sought to make his point. At the CJI's door lie two key questions: How to address potential conflict of interest issues and how to assert the primacy of his position in a manner that strengthens rather than divides the institution.

Judicial corruption is an important issue but the judiciary cannot address it by turning on itself. If its seniormost judges give the impression of using a case to settle scores with each other, the institution will only lay itself open to further onslaught by an executive asserting its right of way with all the agencies at its command, including the CBI. Most of all, it will be failing in its duty to live up to the trust and faith that the people of India have come to vest in it.

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