

# Opinion: Branding judges threatens India's constitutional culture

Attributing motives to judges weakens institutional legitimacy, and normalises executive pressure on courts

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**By Shashank Shekhar, Divya Sridhar**

Read the judgment and then speak — That was Justice B Sudershan Reddy's measured response when confronted with [political](#) attacks on his role in the Salwa Judum case. He also expressed quiet surprise that a “mighty Home Minister” would resurrect a 15-year-old judgment in this manner. The restraint in his words stands in sharp contrast to the gravity of the moment. What unfolded in Parliament on March 31, 2026, and in the political discourse preceding it, is not a disagreement over a judicial verdict. It is something considerably more consequential: the transformation of constitutional adjudication into a site of political vilification.

At the centre of this storm lies the Supreme Court's landmark ruling in *Nandini Sundar v State of Chhattisgarh (2011)*, where a bench led by Justice Reddy struck down the [Salwa Judum](#) policy. The court held that arming tribal civilians as Special Police Officers to fight Maoists was unconstitutional — that the state cannot outsource its monopoly on violence to private actors, however pressing the threat.

The ruling reaffirmed a foundational constitutional principle. Yet years later, that judgment is being recast not as principled constitutional reasoning but as ideological complicity. The claim that the ruling [“aided naxalism”](#) or prolonged insurgency collapses a fundamental distinction between judicial review and political governance. This is where the debate becomes genuinely dangerous.

## **From Critique to Vilification**

Criticism of judicial decisions is not only legitimate but essential in a democracy. Courts are not infallible, and their reasoning must remain open to scrutiny. But what we are witnessing today is not critique, it is attribution of motive. To suggest that a judge, while deciding a case, was guided by ideology rather than constitutional principle is to cross a constitutional red line.

In *CK Daphtary v OP Gupta (1971)*, the Supreme Court held that while judgments may be criticised, imputing motives to judges is impermissible — it strikes at the very foundation of the rule of law. The court characterised such conduct as “scandalous” within a constitutional framework that prizes judicial independence above political convenience. This distinction is not technical; it is civilisational. A democracy that allows judgments to be robustly debated is healthy. A democracy that allows judges to be branded is not.

## **The Misreading of Salwa Judum**

Justice Reddy’s own defence is disarmingly precise: the judgment did not prevent the state from combating Maoism, it merely held that the state cannot outsource that fight to civilians. This clarification exposes the fragility of the criticism being levelled against him. The Salwa Judum [ruling](#) did not weaken the state. It disciplined it. It insisted that constitutional ends cannot be pursued through unconstitutional means, and reaffirmed that internal security, however urgent, must operate within the boundaries of Articles 14 and 21 of the Constitution.

To assert that the judgment empowered insurgency is to misconstrue both insurgency and constitutionalism. Insurgency is a structural, socio-political phenomenon with deep historical roots. Courts do not create it; nor can they end it. What courts can and must do is ensure that the state’s response does not erode the Constitution itself. If that principle is abandoned — if courts are expected to look the other way when the executive transgresses constitutional limits — then the Constitution becomes contingent on convenience rather than supreme in application.

## **Judicial Independence**

The deeper concern here is institutional, not personal. When a former [Supreme Court](#) judge is labelled in political discourse for a judgment delivered years ago, it sends a message, not backward, but forward. It tells sitting judges that their decisions may invite not just criticism, but character assassination. This is not speculative alarmism.

Groups of retired judges have already warned that such political rhetoric carries a “chilling effect” on judicial independence, discouraging courts from deciding difficult cases without deference to executive preference.

*The issue is not the correctness of the Salwa Judum judgment, but whether India will preserve a constitutional culture where judges can decide without fear. Judicial independence is not a privilege — it is the foundation of citizens’ rights*

The danger lies in normalisation. Today it is one judgment; tomorrow it could be any decision that inconveniences the executive — on electoral bonds, on sedition, or on personal liberty. Judicial independence does not erode in a single dramatic moment. It erodes gradually, through language, through insinuation, and through the steady delegitimisation of constitutional reasoning. Each instance of [political](#) name-calling directed at a judge deposits another layer of institutional corrosion.

The Constitution rests on a carefully calibrated balance between the Legislature, the Executive, and the [Judiciary](#). Each branch possesses the authority to check the other but within constitutional limits. Parliament may debate judgments. The executive may disagree with them, even vocally. But neither can transform that disagreement into a political indictment of the judge who delivered the verdict. When that line is crossed, the doctrine of separation of powers is not merely strained, it is subverted.

The question is not whether Parliament can speak about judicial decisions. The question is whether it can do so in a manner that systematically undermines the institutional legitimacy of the judiciary as a coequal branch of the republic.

### **The Real Question: What Kind of Democracy?**

Justice Sudershan Reddy’s case raises a question that extends far beyond any single individual: What happens to a constitutional democracy when judges are evaluated not by the quality of their reasoning, but by political narratives constructed around their judgments? If constitutional adjudication is progressively reframed as ideological conduct, then every rights-based judgment becomes suspect, every check on executive power becomes a political act, and every judge becomes a potential target. At that point, the [Constitution](#) ceases to function as a restraint on power. It becomes a battleground for it.

The Salwa Judum judgment will endure not because it resolved insurgency, but because it clarified the limits of state power. It affirmed that tribal citizens cannot be converted into instruments of war, and that the state's duty is to protect its people, not to deputise them into conflict. For this reason, it stands as a milestone in what may rightly be called constitutional humanism.

Justice Reddy's judicial legacy reflects precisely those values that sustain a democracy: independence, fidelity to fundamental rights, and the moral courage to decide difficult cases without political favour. One may legitimately disagree with his reasoning. But to question his integrity for delivering that reasoning is to undermine the very institution he once served, and the constitutional order all citizens depend upon.

### **The Line We Must Not Cross**

Democracies do not collapse overnight. They weaken when institutions are gradually stripped of their legitimacy, one [political barb](#) at a time. The vilification of judges for their judgments is precisely such a moment — quiet, incremental, and cumulatively corrosive.

The real issue, therefore, is not whether the Salwa Judum judgment was right or wrong as a matter of policy wisdom. It is whether India is willing to preserve a constitutional culture where judges can decide without fear of political retribution. It is whether the political class understands that the independence of the judiciary is not a favour extended to courts, but a pillar on which every citizen's rights ultimately rest.

Because once that fear enters the courtroom, once judges begin to look over their shoulders before delivering inconvenient verdicts, the Constitution may remain intact in text. But it will have already begun to fade in practice.



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