

Resisting attack on judiciary's independence

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The recent events relating to a petition that has been signed and circulated allegedly by a lawyer, making defamatory statements against a sitting judge of the Supreme Court, raises numerous questions relating to the fragility of independence of the judiciary and the inherent vulnerability of the judges.

Irresponsible statements and wild allegations have been made against Justice DY Chandrachud in the petition. It is filled with vituperative innuendoes made with a mala fide intention to defame one of India's most distinguished judges and a world-renowned jurist. The fact that this has surfaced barely days after the Union Law Minister's letter to the Chief Justice of India (CJI), seeking his recommendation for the appointment of his successor, demonstrates a potentially deep conspiracy to undermine the judiciary as an institution. I have no doubt about the fact that the CJI, Justice UU Lalit, in exercising his constitutional functions and responsibilities, will do the right thing as our judicial institutions are robust and strong.

The contents of this petition do not deserve any deep analysis, examination, reflection or rebuke, let alone rebuttal. They are obviously defamatory and deserve necessary action as per law by the institutions that are expected to do so. It is deeply gratifying to learn that the statutorily established institution, the Bar Council of India (BCI), which represents the entire legal fraternity of the country, has powerfully responded to this attack on the judiciary through its Chairman, Manan Kumar Mishra. The BCI letter observes, "...The Bar Council of India has thoroughly examined the contents of this 165-page-long letter and it finds that it is nothing but a scurrilous and malicious attempt to interfere with the functioning of the judiciary and the administration of justice... The contents of the complaint itself expose the frivolity of the allegations and the malicious purpose and intent behind it... The country and the Indian Bar have complete faith in Dr Justice DY Chandrachud... surprisingly, even such popular Judges are being attacked..."

However, the fact that this petition has come into the public domain raises several issues relating to independence of the judiciary and indeed the vulnerability of individual judges.

The strength of a liberal democracy is its deep commitment to freedom of speech and expression and the efforts to create an open society where people are free to express their views and perspectives. However, this constitutionally protected freedom of speech and expression on certain occasions leading to its irresponsible abuse in the form of defamatory statements made against judges raises a very complex question of law and policy. The strength of the judiciary as an institution significantly depends on the reputation of the individual judges. This reputation is built over decades of living a life of honesty, integrity, rectitude and personal humility. When irresponsible people make defamatory statements about the reputation of the judges, what are the institutional mechanisms that we have that can effectively respond to such situations?

Unfortunately, judges are themselves uniquely situated as they maintain dignified silence even when attacks are made against them; they are not only the guardians of the rule of law but are expected to maintain a complete sense of fairness, justice, and equanimity. The support for individual judges in discharging their constitutional functions is not

about protecting the reputation of any individual judge. Rather, it is about protecting the faith and trust of the people of India in the judiciary as an institution. Thankfully, in this case, the BCI and several other distinguished and senior members of the Bar have responded. Dr Abhishek Manu Singhvi, Senior Advocate, Supreme Court, observed, "... Perverse, false, frivolous and vexatious allegations at the cusp of assuming office of CJI... Scurrilous social media petition against Justice Chandrachud gravely damages the institution..."

Every individual and institution have an onerous responsibility to protect independence of the judiciary. The judiciary is the last bastion of democracy that is constitutionally given the duty and responsibility to protect the rights and freedoms of people and ensure the effective functioning of all other democratic institutions. It is mistakenly assumed that protecting independence of the judiciary is something that the members of the judiciary are seeking for themselves. It is quite the contrary as independence of the judiciary is the bedrock on which we can build a society based on the rule of law. All efforts to promote access to justice will go in vain if collective initiatives are not undertaken to protect this independence. This petition, which has scandalised the functioning of judicial institutions, deserves to be opposed and disapproved by all members of society. This petition is not just about efforts to tarnish the unimpeachable character and reputation of Justice Chandrachud. It is a larger sinister effort to undermine the judiciary; it deserves to be vociferously rejected.

The judiciary as an institution is directly involved in promoting transparency in governance and seeking accountability of the government, while exercising its constitutional functions. Liberal and constitutional democracies have expressly entrusted it with the responsibility of making power holders accountable to the judiciary. This is a very significant responsibility because of which the judges are indeed vulnerable. Governments of the days, regardless of whichever party is in power, may have discomfiture at the functioning of the judiciary as the decisions of the government will be challenged in the court of law. The vulnerability of judges to unfair criticism and in extreme cases, defamatory observations, undermines their own independence and, in the process, the institutional autonomy of the judiciary. These threats to the judiciary as an institution are potentially grave threats to democracy and all of us, including the government, need to be mindful of the vulnerability of the institution as we work towards protecting and strengthening it.

Let us recall the prophetic words of Dr BR Ambedkar, "The Constitution can provide only the organs of the State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics."

If constitutionalism must be embedded in our civic and political culture as Dr Ambedkar desired, we need to work much harder towards protecting independence of the judiciary.

