[**Judicial reconciliation**](https://www.dawn.com/news/1711386/judicial-reconciliation)

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“Though there had been personal rivalries among judges in the Supreme Court in the past, the Chandrachud-Bhagwati disagreement was unique for how incredibly public it was. Several judges were highly critical of how publicly the court had polarised, and how it had developed into two factions — a Chandrachud faction and a Bhagwati faction.” — Abhinav Chandrachud, Supreme Whispers

AS tensions between judges of the apex court come to the fore once again, questions have emerged as to whether the court can continue to safeguard the rights and interests of the public when its chief justice and senior puisne judge refuse to engage despite “sharing a wall”. With the memory of Justice Saeed-uz-Zaman’s revolt and chief justice Sajjad Ali Shah’s unceremonious exit fresh in the minds of most Pakistanis, is the present crisis a harbinger for another constitutional breakdown or can the situation be salvaged?

Before dilating on the future, however, where does the genesis of the current discord lie? While many associate the current conflict with the malicious and ill-advised reference against Justice Isa, tensions between judges began to threaten the functioning of the Supreme Court well before the initiation of the said reference.

In 2018, a bench comprising then chief justice Saqib Nisar, Justice Isa, and Justice Mansoor Ali Shah was hearing a case when, upon Justice Isa expressing reservations with the court’s human rights cell initiating cases, chief justice Nisar rose from his seat, announcing that the bench would be reconstituted. Justice Isa subsequently wrote a note observing that it was “unprecedented to reconstitute a bench whilst hearing a case. To do so undermines the integrity of the system and may have serious repercussions”. Concurring with Justice Isa, Justice Shah observed: “Naturally, the judge knows the law and the power it grants to the judge, but he must also learn the limits imposed on him as a judge.” The present crisis is, thus, the culmination of tensions which have been simmering under the surface for nearly half a decade. Where then do we go from here?

Dialogue is the first stop on the road to reconciliation.

Constitution of benches: Order XI of the Supreme Court Rules vests the chief justice with the power to constitute benches. Nonetheless, recent years have witnessed unprecedented scrutiny into the manner in which such powers are exercised and the frequency with which some judges are entrusted with the hearing of politically consequential cases. Lamenting the exclusion of certain judges from benches hearing politically sensitive cases, former justice Maqbool Baqar, in his retirement speech, cautioned that such exclusion affects the morale of judges consigned to irrelevant ben­ches and fosters “feelings of estrangement”.

Resultantly, while Chief Justice Umar Ata Bandial’s decision to include Justice Isa on the same bench as himself was a welcome change, it may also be time to structure the powers under Order XI so as to entail meaningful consultation with the two senior-most judges of the court, thus making the process more inclusive and transparent.

Appointments to the judiciary: Given the acrimony that characterised the Judicial Commission of Pakistan’s previous meeting, the JCP remains paralysed as nearly a third of the seats in the apex court remain vacant while judges like Justice Rizvi of the Sindh High Court, despite their integrity and competence, await their elevation due to the JCP’s dysfunctionality.

It is, therefore, critical that the concerns of the commission’s members are assuaged and appointments are not viewed as a turf war for competing ideologies where judges, notwithstanding their merit, are rejected on tenuous grounds like ‘temperament’ or based on unfou­nded allegations as regards their integrity.

Open channels of communication: Notwithstanding the judicialisation of mega politics over the last year and the internal divisions within the apex court, no meeting of the full court has been summoned for nearly two years. Unsurprisingly, with channels of communication entirely shut, reservations that would ordinarily be raised internally are done so through letters, thus exacerbating tensions and extinguishing the possibility of reconciliation. With dialogue being the first stop on the road to reconciliation, can there be any reconciliation in the absence of meaningful dialogue?

The people of Pakistan look upon the apex court as a custodian of the Constitution, and the fate of the court rests in the hands of the chief justice and senior puisne judge. While Chief Justice Bandial and Justice Isa have both had illustrious careers, their legacy shall be determined by their ability to put aside their differences in the interest of preserving the interests of the institution whose dignity they have sworn to uphold. Will they succeed or are we on the brink of another judicial crisis? The dignity of the court hangs in the balance!

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