Independence of Judiciary

What is the issue?

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- In a medical college bribery case, an advocate claimed that the FIR in the case directly involves the Chief Justice of India (CJI).
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- The Judge hearing the case however repeatedly stressed that it was contempt to say that the FIR named the CJI.
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- It becomes imperative, in this context, to understand the various provisions in place for protecting the independence of judiciary.
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What are the legal provisions?

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- **FIR** - A five-judge Constitution Bench of the Supreme Court had earlier made clear the procedure in registering FIR.
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- Unless the government first "consults" the CJI, no criminal case shall be registered under Section 154 of the CrPC (an FIR) against a judge or Chief Justice of the HC, or a judge of the SC.
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- CJI's assent is imperative as he/she is a "participatory functionary" in the appointment of judges.
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- If the Chief Justice is of the opinion that it is not a fit case for proceeding under the Act, the case shall not be registered.
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- If the CJI allows registration of FIR, the government shall, for the second time, consult the CJI on the question of granting sanction for prosecution.
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- If the CJI himself/herself is the person against whom the allegations are received, the government shall consult any other judge or judges of the

Supreme Court.
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- Notably, the majority in the Constitution Bench classified a judge as a "public servant".
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- **Arrest** - The Supreme Court has also laid down guidelines for the arrest of a judicial officer of the subordinate judiciary.
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- The court has held that a judicial officer should be arrested for any offence only under intimation to the District Judge or the High Court.
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- The immediate arrest shall only be a "technical or formal arrest".
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- After arrest, it should be immediately communicated to the District and Sessions Judge of the district concerned and the Chief Justice of the HC.
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- The arrested judicial officer shall not be taken to a police station without the prior orders of the District Judge.
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- And no statements shall be recorded from him or her except in the presence of a counsel. He or she will also be not handcuffed.
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- **Proceedings** - Provisions in Judges (Protection) Act, 1985 protects judges and former judges of the SC and HCs from any civil or criminal proceedings.
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- This applies for any act, thing or word committed, done or spoken by him/her in the course of their judicial duty or function.
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- No court shall entertain such complaints.
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- Section 77 of the Indian Penal Code exempts judges from criminal proceedings for something said or done during judicial duties.
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- The government can however initiate criminal proceedings against a sitting or former judge of a superior court if it can produce material evidence to show that a judgment was passed after taking a bribe.
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Source: The Hindu

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