When Courts Turn Into Justices

Judicial Governance and Institutional Crisis in Brazil

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The Brazilian Supreme Federal Court (*Supremo Tribunal Federal*, STF) is currently facing the most severe crisis of judicial governance in its democratic history: the consolidation of individualized judicial power at the expense of collegiality. The recent Banco Master scandal – centered on allegations of massive banking fraud and improper ties between the bank's owner, public authorities, and even relatives of Supreme Court justices – exposes how conflicts of interest, opaque decision-making, and the concentration of authority in individual justices can erode the institutional foundations of a constitutional court.

India experienced a very similar crisis back in 2018. But at the Indian Supreme Court, justices publicly defended institutional integrity: The scene was extraordinary: constitutional court justices going public to warn of internal institutional risks. Their justification was equally extraordinary: "democracy is at risk" if institutions cease to function according to transparent and collegial rules. The Indian episode offers a comparative mirror of remarkable clarity for understanding what is now unfolding at Brazil's STF.

Collegiality, individual power, and the risk of personalized Courts

In recent years, Brazilian scholarship has identified a widely recognized phenomenon at the STF: the so-called "*ministrocracia*", a term used to describe a court in which individual decisions by its justices dominate the decision-making process, often displacing collegial deliberation (see the analysis by Diego Werneck Arguelhes and Leandro Molhano Ribeiro). This decision-making practice functions without the institutional checks that collective accountability is designed to provide. Justices control agendas, grant injunctions of enormous institutional impact, and often determine the direction of constitutional controversies without full deliberation. The result is a Court in which institutional authority fragments into individual powers.

This phenomenon produces an institutional paradox. On the one hand, the STF has never been so powerful. On the other hand, its authority as a collegial tribunal is weakened. This erodes the idea that its decision is, first and foremost, a collectively constructed opinion of the Court. When collegiality weakens, the tribunal ceases to be perceived as an institution and comes to be seen as the sum of its members' individual preferences.

The Indian judicial governance crisis

It was precisely this kind of structural vulnerability that triggered an institutional crisis in India in January 2018. In both cases, the crisis is primarily about the internal governance of the court itself. In India, as will be shown, concerns focused on the opaque allocation of cases, while in Brazil, they revolve around the concentration of procedural and investigative powers in individual justices.

In an unprecedented move for the Indian judiciary, four of the Supreme Court's most senior justices – Jasti Chelameswar, Ranjan Gogoi, Madan B. Lokur, and Kurian Joseph – held a historic press conference to publicly warn of internal institutional risks and defend the Court's integrity. During the event, they disseminated an open letter to Chief Justice Dipak Misra. The document denounced grave institutional practices, including the strategic assignment of cases and the composition of judicial panels in ways that could potentially influence the outcome of sensitive decisions (see the analyses by Richard Albert and Adeel Hussain). The episode was not merely a personal conflict. It revealed a deeper crisis of judicial gover-

nance, centered on the Court's internal decision-making structures.

The Chief Justice has the prerogative to assign cases to panels, a power traditionally exercised on administrative and institutional grounds. According to the four dissenting justices, however, that power was being exercised in an opaque and potentially strategic manner, with politically sensitive cases directed to panels considered favorable to certain positions. The complaint did not target the merits of the decisions; rather, it addressed the Court's operational structure and the specific conduct of its Chief Justice. It was institutional in essence: when case allocation ceases to be transparent and predictable, the risk of decisional manipulation increases. The Indian justices' reaction was radical. By making the letter public, they broke a tradition of institutional discretion.

But they justified the measure as an attempt to protect the Court itself, to preserve its institutional integrity.

The Brazilian Banco Master scandal

In Brazil, the Banco Master scandal has produced a crisis that is similar in structure but far more severe in its consequences. In November 2025, Brazil's Central Bank ordered the liquidation of Banco Master following a series of suspected financial irregularities, including the issuance of high-yield instruments backed by illiquid or fraudulent assets (see Folha de S. Paulo and The Economist). As reported by CNN Brasil, the case soon expanded into a complex, multi-institutional investigation involving financial actors, public authorities, and regulatory bodies, eventually reaching the Supreme Federal Court. But the true constitutional significance of the crisis lies not in the magnitude of the financial fraud, but in the contamination of the STF itself through conflicts of interest that reach the heart of judicial governance.

Justice Dias Toffoli, rapporteur of the Master inquiry, ordered seized evidence to be stored at the STF's own premises rather than with the Federal Police, selected the experts responsible for analysis, and travelled to the Copa Libertadores final aboard the same private aircraft as one of the defense lawyers. Meanwhile, his family's stake in the Resort Tayayá, in Paraná State, had been sold to a fund linked to the brother-in-law of Daniel Vorcaro, the very target of the investigation he was conducting. On 12 February 2026, after a 200-page Federal Police report detailed these connections, a three-hour meeting of the ten justices culminated in Toffoli's departure from the case, as reported by Tiago Angelo and Giullia Colombo.

The parallels with the Indian episode are striking. In India, the crisis centered on the opaque exercise of the Chief Justice's case-allocation prerogative. In Brazil, it centered on the rapporteur's power to direct an investigation in which he was, in effect, implicated (see Ricardo Brito). In both cases, what was at stake was the structural integrity of governance mechanisms that are supposed to be transparent, impersonal, and institutionally accountable.

Power concentrated in one Justice

If Toffoli's case is a testament to the problem of conflicts of interest in case management, the involvement of Justice Alexandre de Moraes reveals a distinct but equally corrosive pathology: the concentration of investigative, adjudicatory, and retaliatory powers in the hands of a single justice.

Moraes's connection to the Master scandal is mediated through his wife, Viviane Barci de Moraes, whose law firm signed a contract worth R$ 129 million (roughly U$ 25 million) to represent Banco Master -a contract in which payments of R$ 3.6 million per month were treated as an absolute priority by the bank's founder, as reported by Joan Royo Gual in El País. The most recent revelations, however, go much further. Messages recovered from Vorcaro's seized phone show that the banker maintained an intense exchange with Moraes on the very day of his arrest, 17 November 2025, asking, at one point, whether the justice had managed to "block" something. The use of self-destructing messages and the exchange of screenshots containing typed notes indicate a pattern suggesting an effort to avoid scrutiny, reflecting a high degree of awareness regarding the highly problematic nature of the contact. Separate messages reveal that Vorcaro visited Moraes's home and that Moraes visited

Vorcaro's residence in Brasília, where the justice was reportedly introduced to the then-president of the BRB, the state bank whose purchase of Master was subsequently blocked by the Central Bank.

Rather than recuse himself, Moraes initiated an ex officio inquiry to investigate the purported leakage of financial data from both the Council for Financial Activities Control (COAF) and the Federal Revenue Service (Receita Federal), using his authority as rapporteur of the Fake News Inquiry to order ankle bracelets, passport revocations, and bans from Receita Federal premises against suspected public officials (see CNN Brasil).

This is the *ministrocracia* taken to its most extreme expression. When a single justice controls the most consequential investigative instrument available to the Court, and deploys it not only against threats to democracy but against those who expose the justices' own conduct, the boundary between institutional protection and individual self-preservation collapses.

The Ethics Code impasse and the silence of the Brazilian Supreme Court

One further dimension of the crisis is quite fascinating in a comparative perspective. In early March 2026, STF Chief Justice Edson Fachin signaled the need for a formal Code of Ethics, designating Justice Cármen Lúcia to lead discussions (see the report by Sarah Teófilo, Mariana Muniz, and Ivan Martínez-Vargas in O Globo). Toffoli and Moraes immediately opposed the proposal in plenary session, arguing that the existing regulation was sufficient, as reported by Isadora Rupp. Toffoli went further, defending judges' right to maintain business interests and to receive dividends from family enterprises.

The contrast with the Indian case is instructive. In India, the crisis was triggered by justices who challenged the Chief Justice in the name of institutional integrity. In Brazil, the two justices most directly implicated have not only refused accountability but also have actively resisted any institutional reform that might constrain them. Where the Indian dissenters broke with tradition to defend the institution against its own leadership, Toffoli and Moraes have broken with some of their colleagues to defend themselves against the institution. The subsequent cancellation of the institutional lunch that Fachin had scheduled to discuss the code, and the reported silence of the other justices, speaks to the depth of the internal crisis in the Court (see Mariana Muniz and Sarah Teófilo).

Democratic erosion in an election year in Brazil

The timing of this crisis could hardly be worse. Brazil enters the 2026 electoral cycle – with general elections held on 4 October – as its highest judicial institution is engulfed in a scandal that, though not directly implicating President Lula, profoundly damages the institutional environment on which democratic governance depends. The Banco Master scandal exemplifies how a loss of judicial legitimacy, particularly during high-stakes periods like election years, creates a power vacuum that authoritarian populists readily exploit to deconstruct constitutional safeguards. The STF's legitimacy was a decisive bulwark during the Bolsonaro years, particularly against the invasion of the Three Powers, against attempts to subvert electoral results, and against the coordinated assault on democratic norms. That bulwark now stands compromised not by external attack but by internal corrosion.

The political risks are concrete and serious. The far right, whose project of institutional capture was challenged and defeated, in the end, by the STF's own action, now finds in the Banco Master scandal the most potent ammunition for its narrative of judicial illegitimacy. The moral authority of those judicial acts is retroactively called into question, not necessarily in law, but in public opinion, which is where elections are decided. Investigative reporting has already demonstrated the extensive connections between the Master group and figures of the right-wing coalition (see Murillo Camarotto et al.). The scandal is not ideologically one-sided. But the political exploitation of the STF's discredit is profoundly asymmetric: it serves above all those who wish to dismantle or subordinate the Court.

A weakened STF in an election year is an invitation to democratic regression. The scenario in which

public trust in the Court collapses, exactly when the Court may be called upon to decide on contested electoral outcomes, legislative overreach, or executive abuse, is the scenario most favorable to authoritarian populism. This is quite shocking, but the lesson of comparative constitutional experience is unambiguous: courts that lose their moral authority in the eyes of the public become unable to perform the counter-majoritarian function upon which constitutional democracy depends. When a court's legitimacy is exhausted, its rulings lose their character as authoritative mandates and are instead relegated to the realm of political bargaining. Brazil is currently teetering on this very precipice in 2026.

The Court and its Justices

Supreme courts are frequently analysed by their decisions. But their institutional legitimacy depends on something deeper: their internal practices. How are cases distributed? How are conflicts of interest managed? How do justices respond to their own crises? These questions are as important as the content of decisions.

The Indian episode demonstrated that institutional integrity may demand institutional courage, even from the justices themselves. The Banco Master scandal has forced into public view the governance structures that ordinarily operate behind the constitutional text. Yet while in India the alarm was raised by justices acting in defence of the institution, in Brazil it has been raised by investigative journalism, the Federal Police, and a reluctant political system, while the justices most directly implicated have responded with denial, retaliation, and resistance to any reform.

This different response reveals that what Brazilian scholarship has termed "*ministrocracia*" has reached a stage at which the Court's internal corrective mechanisms are themselves compromised. If the greatest lesson of the Indian case was that a strong Supreme Court is one in which the institution is greater than its justices, the Brazilian crisis of 2025–2026 offers its dark corollary: when individual justices grow more powerful than the institution, the institution loses its capacity for self-correction, and, most seriously, its claim to democratic legitimacy. And that is a lesson no democracy can afford to ignore.

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