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Some order, my lord

DEMAND FOR scrapping the collegium system is growing. There is political unanimity that the current system needs to change, but the government is reluctant to take on the judiciary

appointing judges

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The Supreme Court may survive the latest onslaught on its opaque system of appointing judges, but it's losing the battle. Controversial Karnataka Chief Justice P. D. Dinakaran may or may not make it to the Supreme Court, but the way prominent jurists and bar leaders have opposed the recommendation for his promotion for "doubtful integrity" can prove to be a turning point in the history of Indian judiciary.

This is the judiciary's worst-ever credibility crisis. And the demand for scrapping the collegium system — that has been in place since 1993, when the judiciary arrogated to itself the power to appoint High Court and Supreme Court judges — is reaching fever pitch.

This is not for the first time that it has come under scrutiny. In the last three years, the government returned the collegium's recommendations at least twice.

First, asking for reconsideration of a recommendation to promote a judge as a high court chief justice, who was facing serious allegations of corruption. On the second occasion, raising a query on the denial of promotion to three senior most high court chief justices to the Supreme Court.

"Some of the appointments made in the high courts and now even the present selection of this controversial judge

to the apex court — all show that the collegium system is worse than the previous system of the executive selecting the judges," Supreme Court and Delhi High Court bar associations said.

Following a Supreme Court decision, judges' appointments are decided by the collegium and sent to the government for final approval of the President. The government may object to any name, but the final word remains with the judiciary.

Before this, the appointments were done by the government in consultation with the Chief Justice of India and chief justices of high courts.

There is political unanimity that the current system needs to be given up, but the government is reluctant to take on the judiciary on this sensitive issue.

"There is no doubt that the country needs sweeping judicial reforms, but these cannot be done with a confrontational approach, we will talk to the judiciary about this," said Law Minister M. Veerappa Moily.

His predecessor, H. R. Bhargava, who described the collegium system as nothing more than "give and take" that did not allow merit in judges' appointments, did favour a change, but could not do much.

"India is the only country in the world where judges appoint themselves," former Lok Sabha Speaker Somnath Chatterjee once said on the judges' appointment system.

The judiciary has so far brushed aside the criticism, even as the quality of judges

has despite the steadily declined. But how long they can resist the demands for change?

The worst example of the failure of the collegium system was the appointment of Santiraj Sen as judge of Calcutta High Court in 2006, even as he faced allegations of having misappropriated Rs 50 lakh (five million) while serving as a court-appointed lawyer in 1993 in a dispute between two public sector companies.

"How is it that the collegium which cleared him for appointment did not even bother to check his credentials, when the entire record was available in the court itself," said senior lawyer Prashant Bhushan.

A motion to remove (impeach)

him is pending in the Rajya Sabha, which has asked a committee of jurists to probe the allegations once again.

The real problem lies in the manner in which the collegium system functions. The Parliamentary Standing Committee on Law and Justice, in its report on judicial appointments, had slammed the "veil of secrecy" sur-



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rounding the entire process. "The world only comes to about anyone being appointed judge, once the notification is issued by the President. How the name is selected? What are the criteria? How the names are vetted, is one of the worst kept secrets," the committee said. So, what is the solution?

"The appointment of judges should be above suspicion and the best way to introduce transparency. The of those proposed to be appointed judges should be put up on the websites, and time should be given to the public in case anyone has an objection to any name," said former Supreme Court judge, Justice P. B. Sawan. Judicial appointment is not a time job that members of the collegium (judges) can perform after doing judicial work of deciding cases.

"We need a full-time broad-based National Judicial Commission to perform the task," said Delhi High Court Bar Association president, K. C. J.

Will it go the RTI way? Till back it seemed impossible. Judges would declare their interests. But a relentless fight by the society and exemplary cases shown by a handful of High Court judges finally forced the entire judiciary to agree to put their details in public domain.

The Dinakaran episode will mark the beginning of the end of the collegium system.

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