

Not so collegial

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It is the last thing that Indira Gandhi would have imagined. When she, as prime minister in the '70s, twice superseded senior Supreme Court judges to appoint her own as chief justice, little did she realise the consequences. For in subsequently deciding the question of who would select Supreme Court judges, the world's most powerful court chose itself. Selection to the court is now by a collegium of senior judges; the government and the legislature have no say. The only guarantee of a fair appointment is neither transparency nor outside checks; it is trust, trust in their lordships' abilities to select their own. But when some of our senior-most lawyers publicly cast aspersions on a high court chief justice about to become a Supreme Court judge, it calls into question the very basis of that trust.

In a letter to the Chief Justice of India K.G. Balakrishnan, some of the country's most respected jurists have called for a probe into allegations against Karnataka chief justice and Supreme Court appointee, P.D. Dinakaran. Justice Dinakaran, who strongly denies these charges, has been elevated to the Supreme Court by the collegium, with only the notification of his appointment pending. Let's suppose, for the sake of argument, that the senior lawyers have a point. Is there any other way they could have aired their concerns? Unlike, say, in the US, our judge selection lacks any semblance of public debate or inquiry. There is also no in-house system for the collegium of judges to listen to grievances or vet charges. Conversely, if the charges against Justice Dinakaran are motivated and false, the public questioning of his character is manifestly unfair. It will stain his reputation for ever. For what authority do judges have, if not for the public perception of their scruples? Either way, the lack of a transparent system is to blame for this mess.

In the clash between the court's independence and accountability, the pendulum has swung towards the former. Judges self-select and can't be disciplined except through an elaborate (in effect unattainable) impeachment process. All this requires enormous public trust. But that trust is being questioned by a series of controversies to hit the court — from corruption charges to the initial reluctance of the court to declare its assets to the public. With two bills currently pending — the Judges Assets Bill and the Judges Inquiry Bill — there is a sense that all is not well in our most powerful court. The current controversy only heightens that unease.

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