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CLEAN UP THE JUDICIARY

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In 1993, a nine-judge bench of the Supreme Court laid down a new system for making appointments of judges to the high courts and Supreme Court. This system gave enormous powers to a collegium of senior judges of the Supreme Court to select and make recommendations to the government for these appointments. Their recommendations were also directed to be binding on the government and president.

The only right the government had was to return the recommendation once, but subsequently if it was unanimously reiterated by the collegium, it would have to be implemented. This was done on the logic that to preserve independence of the judiciary, the right to select judges must also remain with them. For the last 14 years that this system has been in place, its performance has been very disappointing. Now it appears to have totally collapsed.

The people of India deserve an efficient and clean judiciary, particularly at the apex level.

However, recent events have shown that there is considerable corruption in the judiciary, even at the top. Neither the government nor judiciary have bothered to put in place a credible, independent and transparent system for the appointment of judges and for investigating and taking action against those involved in misconduct.

The government and members of Parliament appear to be only interested in competing for power and its benefits. Even the judiciary is content to enjoy enormous power without any accountability, particularly the arbitrary power to appoint anyone they choose. It is only civil society, the consumer of justice, and the common citizen, suffering because of the virtual collapse of the judicial system in the country, who have a real stake in the matter.

The decision of the nine-judge bench was the following: "The process of appointment must be initiated well in time to ensure its completion at least one month prior to the date of an anticipated vacancy; and the appointment should be announced soon thereafter, to avoid any speculation or uncertainty. This schedule should be followed strictly and invariably in the appointment of the chief justices of the high courts and the chief justice of India (CJI), to avoid the institution being rendered headless for any significant period. In the case of appointment of the chief justice of a high court to the Supreme Court, the appointment of the successor chief justice in that high court should be made or dinarily within one month of the vacancy".

The collegium of judges, which was entrusted the power of appointments to the Supreme Court, consists of the five senior most judges of the apex court, including the CJI. It appears that many of them have their own proteges to promote and usually the best people do not get selected. They are also often at loggerheads with each other which also greatly delays the selection. The whole process is also totally ad hoc and

arbitrary and no system for comparative evaluation of the suitability of the candidates is followed.

There are, at present, five vacancies in the Supreme Court alone and dozens in the high courts.

A vacancy that occurred in the Supreme Court 16 months ago has not been filled, though according to the nine-judge judgment, appointments to all these vacancies should have been announced before they occurred. Many high courts have had acting chief justices for many months, sometimes for more than a year, a practice totally contrary to the 1993 judgment.

The time has come for civil society and the media to realise their strength and use it to compel Parliament to amend the Constitution and put in place a National Judicial Commission as a permanent body for the appointment and removal of judges. It should consist of the following five members: A chairman to be nominated by all judges of the Supreme Court; a member to be nominated by all the chief justices of high courts; a member to be nominated by the Union Cabinet; a member to be nominated by a committee of the leader of opposition in the Lok Sabha, in consultation with the leader of different opposition groups in the two houses of Parliament; the fifth member could be nominated by a committee of the chairman of the Rajya Sabha, speaker of the Lok Sabha and attorney general of India.

Since different members would be nominated by different functionaries and since they would enjoy a fixed tenure (during which they could only be removed by impeachment), they would act independently and also function as checks and balances on each other.

The judicial commission is an absolute necessity to put in place a transparent system for selecting judges for appointment. They should also have an investigative machinery at their disposal, through which they can evaluate complaints against judges and proposed candidates investigated.

Such an institution is more likely to result in the selection of proper candidates and would introduce at least a modicum of urgently needed accountability in the judiciary. We need to work to create the necessary public opinion to put pressure on Parliament to enact this constitutional amendment.