

Kolkata judge's case adds to judiciary woes

NEW DELHI: If Calcutta High Court judge Soumitra Sen is impeached, it will be an unprecedented event as the previous impeachment of Justice V Ramaswamy in 1991 failed to pass muster in the Lok Sabha as the then Narasimha Rao government failed to take a position on the issue.

The case of Justice Sen has also put the spotlight on corruption in the judiciary, which has caught public attention of late with the incident of cash being delivered to the "wrong" judge of the Punjab and Haryana High Court and the pension funds withdrawal scam involving the Ghaziabad judiciary.

With CJI's month-old letter now out in the open, Bhardwaj said, "Nobody can stop the impeachment motion as the Chief Justice of India himself has recommended it."

The CJI was virtually forced to write to the Prime Minister after Justice Sen refused to either resign or take voluntary retirement so as to escape the ignominy of being impeached.

Bhardwaj said, "The CJI has recommended initiation of impeachment process, so we have to go to Parliament." He indicated that the impeachment motion is likely in the Parliament session next month. He said the presiding officers of both Houses would set up a three-member investigation committee. This would comprise either CJI or an SC judge, a chief justice from a High Court and an eminent jurist.

The statutory mechanism includes placing of the motion, its admission and then reference to a peers committee, which would inquire into the allegations and frame a chargesheet against the judge that would be put up for debate and passage before each House.

The cumbersome process of getting signatures of 100 MPs of the Lok Sabha or 50 MPs of the Rajya Sabha, which is mandatory for initiating an impeachment motion against a sitting Supreme Court or High Court judge, may not be required in this case as it would be a government motion, the law minister said.

Senior advocate Arun Jaitley, during whose tenure as law minister Justice Sen was appointed to the Calcutta HC in 2003, said: "We in government have a very marginal role to play in the appointment of judges. The names come in bulk from the Chief Justice, who recommends them following the selection process involving the collegium. In India, it is the judges who appoint judges."

"This (Justice Sen's) case prima facie appears to be a clear case of impeachment and the government after initiating the process would have to take recourse to the statutory parliamentary mechanism," he said. Though Justice Sen paid the money back, the three-

judge committee noted in its February 6, 2008, report to the CJI that "mere monetary recompense under the compulsion of judicial order does not obliterate breach of trust and misappropriation of receiver's funds for his personal gain".

The committee, which comprised Chief Justice of Madras HC Justice A P Shah, chief justice of MP HC Justice A K Patnaik and judge of Rajasthan HC Justice R M Lodha, concluded: "The conduct of Soumitra Sen had brought disrepute to the high judicial office and dishonour to the institution of judiciary, undermining the faith and confidence reposed by the public in the administration of justice".

On March 16, the apex court Collegium comprising the CJI and two seniormost judges of the Supreme Court — Justices B N Agrawal and Ashok Bhan — gave a personal hearing to 50-year-old Justice Sen, who has not been assigned any judicial work for more than a year.

During the hearing, the earlier advice was reiterated — resign or take voluntary retirement on or before April 2. However, Justice Sen in his letter dated March 26, 2008 "expressed his inability to tender resignation or seek voluntary retirement".

Not a single MP in Lok Sabha voted in his favour. Yet, Supreme Court judge V Ramaswamy survived the impeachment motion against him on May 11, 1993 as the voting was cast entirely on political lines. All the 196 MPs who voted for his removal were from the Opposition ranks while all the 205 MPs of Congress and its allies who were present in the House abstained from voting. As a result, the motion failed to comply with constitutional requirement of being supported by two-thirds of members of the House present and voting.

That is how the first and so far the only attempt to impeach a judge since the promulgation of the Constitution in 1950 proved abortive.

It came as an anti-climax to a three-year campaign against Ramaswamy on the basis of audit objections to his profligate lifestyle as chief justice of the Punjab and Haryana HC. The issue of impeachment came up after Justice Ramaswamy returned from a five-month leave in December 1990 despite the public outcry. Two months later, 108 members of Lok Sabha belonging to BJP, National Front and Left parties submitted a notice of motion to Speaker Rabi Ray accusing Ramaswamy of abuse of financial and administrative powers.

Ray admitted the motion in March 1990 and, as mandated by the Judges (Inquiry Act), constituted a committee of Justice P B Sawant of the Supreme Court, Chief Justice P D Desai of the Bombay HC and retired SC judge O Chinnappa Reddy to inquire into the charges.

However, Ramaswamy did not submit to the inquiry committee's jurisdiction while his wife filed a writ petition challenging its validity. After clearing such hurdles, the

committee gave its report to the speaker Shivraj Patil, in July 1992. Ramaswamy was found guilty on 11 of the 14 charges, some in part and some in full. The report was tabled in December 1992 and the motion was put to vote five months later.