

Why it's so difficult to remove a judge

NEW DELHI: Unprecedented as it is, Chief Justice of India K G Balakrishnan's recommendation to the government for the removal of Calcutta High Court judge Soumitra Sen has exposed a legal lacuna. For, Judges (Inquiry) Act 1968 does not envisage a contingency where the judiciary approaches the executive for the removal of a judge; the impeachment process provided by it is entirely in the domain of Parliament.

If law minister H R Bharadwaj said on Monday that he would take "appropriate action according to the current law", it was a tacit admission of the anomaly that the CJI's bid to take disciplinary action against a judge can succeed only if it finds requisite support in the two Houses at the end of a long-winded impeachment procedure.

But Bharadwaj is partly to blame for the awkward situation in which the CJI finds himself for seeking to remove a recalcitrant judge. For two years, Bharadwaj has been sitting on a Bill that spares the judiciary the preliminary requirement of having the backing of at least 100 members of Lok Sabha or 50 members of Rajya Sabha to initiate the impeachment process.

The Bill does so by providing that if the National Judicial Council, consisting of a panel of serving judges, is satisfied that a judge deserves to be removed, it will make recommend so directly to the President who will in turn "cause the findings of the Council along with the accompanying materials to be laid before both Houses of Parliament."

Creating the option of a judicially-initiated impeachment process, the Bill, which seeks to amend the 1968 legislation and is pending before the Rajya Sabha, says that on laying the advice of the Council, "the Government shall move a motion in either House of Parliament for presenting an address to the President praying for the removal of the said judge."

Drafted by the Law Commission and introduced by Bharadwaj, the Bill fills a constitutional gap by conferring statutory powers on the in-house procedure of inquiry adopted by the Supreme Court in 1997. The council is envisaged to take the place of the three-member committees that have since been appointed on an ad hoc basis whenever the CJI felt that the allegations against a judge warranted an inquiry. One such inquiry was appointed only last month to find out the circumstances in which a Haryana law officer sent huge cash to the residence of a high court judge.

Justice Balakrishnan's recent recommendation for the removal of Justice Sen is based on the findings of an earlier in-house inquiry. This was because, as Bhardwaj explained to media persons, Justice Sen might have defied the CJI and refused to resign. The last time a judge resigned on being indicted by an in-house committee was in 2003 when the then

CJI V N Khare forced Justice Arun Madan of the Rajasthan high court out of office allegedly for seeking a sexual favour from a female litigant.

In the existing law, the only way Bharadwaj can implement Justice Balakrishnan's recommendation is by mobilizing the signatures of the requisite MPs of either House on the notice of impeachment motion before it can be submitted to the presiding officer concerned. After admitting the motion, the presiding officer will constitute a fresh inquiry under the 1968 Act by a committee consisting of a Supreme Court judge, a High Court chief justice and a jurist.

If the statutory probe too recommends Justice Sen's removal, then Bharadwaj will have to place the motion before each House successively. According to Article 124 of the Constitution, the judge will be impeached if the motion is supported by two-thirds of the members of the House present and voting. The President will then order his removal.

The only time Parliament has ever tried to impeach a judge was in 1993 when Justice V Ramaswamy of the Supreme Court got off the hook as Congress MPs of Lok Sabha abstained from voting en masse. In a further irony, the MP who had moved the impeachment motion against Justice Ramaswamy was none other than the current speaker, Somnath Chatterjee.