

In house Procedure: CJI Bobde dismisses the case against Justice Ramanna

April 19, 2021

The 'in house inquiry procedure' of the Supreme Court has again come to the limelight over the appointment of the future CJI itself. Through a confidential in-house enquiry, the Supreme Court has dismissed the complaint against Justice NV Ramana for allegedly influencing the judges of Andhra Pradesh High Court in politically sensitive matters for passing adverse orders against the state government.

In news: Andhra CM's complaint against Justice Ramana dismissed by CJI

Placing it in syllabus: Law & Policy

Dimensions

- What was the case related to ?
- In house Procedure : Procedure for Inquiry Against Judges
- Problems with In House Procedure
- Reform Proposals

Content:

What was the case related to?

- The current CM of Andhra Pradesh has accused the upcoming CJI and one other Judge of abusing their judicial position. The CM also wrote a letter to the present CJI in this regard in October 2020.
- The allegation related to the creation of favourable benches to support the opposition party in Andhra Pradesh.

- In 2017 as well, a senior Supreme Court judge had addressed the upcoming CJI in the same issue. He also wrote a letter to the then CJI.

Remedy against a judge of the Supreme Court/High Court

- **Article 124** provides for the appointment and removal of judges of the Supreme Court.
- Similarly, **Article 217** deals with the appointment and removal of judges of the High Court.
- In the **Judges' (Inquiry) Act of 1968**, provisions are made for an investigation into misbehavior or incapacity of a judge.
- It may be noted that since judges of the superior courts occupy very high positions, disciplinary proceedings that apply to other employees cannot be thought of.
- A judge cannot be removed from his office except by impeachment by a majority of the House and a majority of not less than 2/3rd present and voting as provided by Articles 124 and 217 of the Constitution of India.
- The Judges (Inquiry) Act provides for the manner in which an inquiry can be conducted into an allegation of judicial misconduct after an impeachment motion is endorsed by at least 100 Lok Sabha members or 50 Rajya Sabha members.
- The Presiding Officer of the concerned House has the power to constitute a Committee consisting of three persons as enumerated therein.
- No other disciplinary inquiry is envisaged or contemplated either under the Constitution or under the Act.
- Experience has shown that **this cumbersome procedure has not achieved its intent.**
- Since there was no other procedure against a judge of a Supreme Court or High Court, an in-house procedure was laid down.

In house Procedure : Procedure for Inquiry Against Judges

- Allegations of misconduct against serving judges of the superior judiciary, that is, the various high courts and the Supreme Court, are dealt with through an 'in-house procedure'.
- The "in-house procedure" is in reality a peer review wherein the sitting judges will examine the complaint to find out if it has any substance.
- This envisages an informal procedure of examining the complainant and also the material which may be produced by the complainant.
- The objective of the "in-house procedure" is to preserve the independence of the judiciary by having the allegations against the concerned judge examined in the first instance by his peers, and not by an outside agency.
- The nature of inquiry is fact-finding, where the judge would have his say. It is settled law that the inquiry would not be a formal judicial inquiry.
- It would not involve the examination and cross-examination of witnesses.
- The committee can devise its own procedure consistent with the principles of natural justice.

Origin

- The idea of self-regulation as a method by which allegations of misconduct against judges can be approached came up first in a 1995 case concerning the then Chief Justice of the Bombay High Court.
- The Chief Justice resigned amidst an uproar caused by reports that he had been paid unjustifiably high amounts by a publisher.
- In a case relating to this allegation, the Supreme Court outlined the procedure that may be adopted in such situations.

- Until then, misconduct on the part of superior court judges was perceived as something that only Parliament could deal with through the procedure for removal of judges given in the Constitution.
- However, the court made a distinction between 'impeachable behaviour' and bad behaviour.
- Later, in 1997, when Justice J.S. Verma took over as Chief Justice of India, he took up the issue. He circulated a document titled 'Restatement of Values of Judicial Life', a guide containing the essential elements of ideal behaviour for judges so that their independence and impartiality are beyond reproach.
- The Full Court passed a resolution that an 'in-house procedure' would be adopted for action against judges for acts of commission or omission that go against accepted values of judicial life

Procedure for Complaint against HC Judge

- When a complaint is received against a High Court judge, the Chief Justice concerned has to examine it.
- If it is frivolous or concerns a judicial matter, she may just file the complaint and inform the Chief Justice of India.
- If she considers it serious, she should get a response from the judge concerned.
- If she is satisfied with the response and feels no further action is required, she may close the matter and keep the CJI informed.
- However, if the CJI feels a deeper probe is needed, she should send the complaint as well as the judge's response to the CJI, with her own comments, for further action.

Procedure when CJI directly receives complaint against HC Judge

The procedure is the same if the CJI receives the complaint

directly.

- The comments of the high court Chief Justice, the judge concerned and the complaint would be considered by the CJI.
- If a deeper probe is required, a three-member committee, comprising two Chief Justices from other High Courts and one High Court judge, has to be formed.
- The committee will hold a fact-finding inquiry at which the judge concerned would be entitled to appear.
- It is not a formal judicial proceeding and does not involve lawyers or examination or cross-examination of witnesses.

Procedure for Complaint against HC Chief Justice

- If the charge is against a high court Chief Justice, the same procedure of getting the person's response is followed by the CJI.
- If a deeper probe is deemed necessary, a three-member committee comprising a Supreme Court judge and two Chief Justices of other High Courts will be formed.

Procedure for Complaint against SC Judge

- If the charge is against a Supreme Court judge, the committee would comprise three Supreme Court judges.
- There is no separate provision in the in-house procedure to deal with complaints against the CJI.

SC Ruling on the Procedure in 2003

- As per the 2003 judgment in **Indira Jaising v. Supreme Court of India**, the report of a committee constituted as part of the in-house procedure is not liable to be made public.
- The 2003 judgment states that the in-house procedure has been adopted for inquiry to be made by the peers of judges in case of a complaint against the Chief Justices

or Judges of the High Court in order to find out the truth of the imputation made in the complaint.

- That in-house inquiry is for the purpose of his (CJI's) own information and satisfaction.
- It also said that a "report made on such inquiry if given publicity will only lead to more harm than good to the institution as Judges would prefer to face inquiry leading to impeachment"

If the misconduct is serious enough to require removal from office, then:

- The judge concerned will be urged to resign or seek voluntary retirement.
- If the judge is unwilling to quit, the Chief Justice of the High Court concerned would be asked to withdraw judicial work from him.
- The President and the Prime Minister will be informed of the situation, thus making way for the Parliament to begin the process of impeachment.
- If it is not serious enough, the judge would be advised accordingly.

Problems with In-House Procedure:

- There are no timelines for the completion of the inquiry. So the inquiry time is getting unnecessary delays.
- The procedure gives wide discretionary powers to CJI. This can breed favouritism in Judiciary.
- Further, the procedure doesn't forbid the CJI from being part of his/her own complaint of misconduct. Thereby undermining the principle of natural justice.
- There is no need to disclose the report of the inquiry into the public domain or to the complainant. This is against transparency in the Judiciary.

Reform Proposals

Judicial Standards and Accountability Bill, 2010

- The **Judicial Standards and Accountability Bill, 2010** tried to lay down enforceable standards of conduct for judges.
- It proposed to widen the definition of 'misbehaviour' by adding "corruption or lack of integrity which includes delivering judgments for collateral or extraneous reasons, making demands for consideration in cash or kind", or "any other action... which has the effect of subverting the administration of justice".
- Failure to declare assets and liabilities, or wilfully giving false information was also included within the definition of 'misbehaviour'.

Judicial accountability and the rule of law

- To place judicial performance beyond scrutiny would be myopic, as liberty without accountability is freedom of the fool.
- Power without responsibility is the antithesis of constitutionalism. Accountability of public officials, including judges, is the very essence of a mature democracy.
- Judicial accountability promotes at least three discrete values: the rule of law, public confidence in the judiciary, and institutional responsibility.
- Both judicial independence and judicial accountability are purposive devices designed to serve greater constitutional objectives.
- Though the independence of the judiciary is a part of the basic structure of the Constitution, it is not an end in itself. In fact, it is an instrumental value defined by the purposes it serves.
- The rule of law demands judicial accountability. Accountability makes the exercise of power more

efficient and effective.

- The British constitutional theorist A V Dicey wrote that “no man is above the law [and] every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals”.
- Legal equality is the cardinal principle of the rule of law, and everyone including judges, must respect it.

Mould your thought: How are the complaints against judges of Higher judiciary dealt in India? What are the advantages and problems with the procedure adopted?

Approach to the answer:

- Introduction
- Discuss constitutional provisions, Inquiry Act and In-House procedure
- Discuss the advantages of these procedures
- Discuss the problems with the procedure
- Conclusion