

In-House procedure in SC

May 2, 2020

Why in the news?

The allegations made by a former Supreme Court employee against the Chief Justice of India have brought the focus on the mechanism that exists to **examine charges of misconduct against members of the higher judiciary.**

What is the In-House procedure?

- In 1997, under CJI J.S.Verma, 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. Report of the 5 judge committee was adopted in 1999 and the procedure has been adhered to since then.
- According to the In-House procedure, **complaints of misconduct may be filed by any person to CJI or President of India.**
- The CJI is required to determine whether the complaint is either frivolous or serious. If the complaint is frivolous or relates to a pending case, no further action will be taken. If the CJI finds that the complaint involves serious misconduct or impropriety, he will seek the response of the concerned Judge. Based on the response and supporting materials, if the CJI finds that the complaint needs a deeper probe, he will constitute an inquiry committee.
- The **Committee will comprise three judges including a Judge of the Supreme Court and two Chief Justices of other High Courts.** It may report to CJI that
 1. there is no substance in the allegation made, or,
 2. there is substance in the allegations but the misconduct is not of such serious nature as to warrant removal, or,

3. the misconduct is serious enough to initiate removal proceedings against the judge.

- If the finding is under category (2) above, the CJI may call and advise the Judge accordingly and direct that the report be placed on record. If the finding is under category (3) above, the CJI may ask the judge to resign or seek voluntary retirement. If the judge refuses to resign, the CJI may decide to not allocate any judicial work to the judge concerned. Further, the CJI may inform the President of India and the Prime Minister of his reasons for the action taken and forward a copy of the inquiry report to them.
- 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**.
- 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 lawyers or examination and cross-examination of witnesses. The committee can devise its own procedure consistent with the principles of natural justice.
- **The other processes for investigation of charges against a Supreme Court judge are**
 1. Sexual harassment guidelines (Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013)- the Supreme Court framed regulations for protection of women against sexual harassment in the Supreme Court. Under the regulations, the CJI is required to constitute a Gender Sensitisation and Internal Complaints Committee (GSICC)
 2. Removal for proven misbehaviour or incapacity- Charges of misconduct may also be investigated in the context of proceedings for removal of a

judge. Article 124(4) of the Constitution of India provides that a judge can be removed only by Parliament on the basis of a motion in either the Lok Sabha or Rajya Sabha.