

Transparency and Accountability in the removal of a Judge

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Manifest Pedagogy

Issue of Transparency and Accountability has been a lot in news. Many articles have already been written in MANIFEST-11 under in this topic. Hence it is not a separate article but is being given as an addendum so that aspirants can read them all together and get an integrated view.

In news

The allegations made by a former Supreme Court employee against the Chief Justice of India

Static dimensions

Judiciary – Transparency and Accountability

Current dimensions

RTI and Judiciary

Opacity in Judicial appointments

Probing mechanisms in Judiciary and problems in them

Recent issue of allegations of Sexual Harassment against CJI

Content

The mechanism to probe Judge

- 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'
- While examining the allegations by the judge's peers, outside agencies are kept out, and the independence of the judiciary is maintained.
- The in-house procedure envisages that false and frivolous allegations can be rejected at an early stage and only those that are not baseless and may require a deeper probe, are taken up for inquiry.

Working of the in-house procedure(steps)

- 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.
- 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.

- 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.
- 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.
- If the inquiry committee finds that there is substance in the allegations, the committee can either hold that the misconduct is serious enough to warrant removal from office, or that it is not so serious as to warrant removal. In the former case, it will call for initiation of proceedings to remove the judge.
- The judge concerned would be advised to resign or take voluntary retirement. If the judge is unwilling to quit, the Chief Justice of the High Court concerned would be advised to withdraw judicial work from him, and the President of India and the Prime Minister would be informed of the situation.
- Such action may clear the way for Parliament to begin the political process for impeachment.
- In case, the committee finds substance in the allegation, but it is not grave enough to warrant removal from office, the judge concerned would be advised accordingly, and the committee's report will be placed on record.

Provisions of Judges standard and accountability bill

The Judicial Standards and Accountability Bill try to lay down enforceable standards of conduct for judges. It creates mechanisms to allow any person to complain against judges on grounds of misbehaviour or incapacity.

Provisions of the Bill

- The Judicial Standards and Accountability Bill, 2010 requires judges to declare their assets, lays down judicial standards, and establishes processes for removal of judges of the Supreme Court and High Courts.
- Judges will be required to declare their assets and liabilities, and also that of their spouse and children.
- The Bill establishes the **National Judicial Oversight Committee**, the Complaints Scrutiny Panel, and an investigation committee. Any person can make a complaint against a judge to the Oversight Committee on grounds of 'misbehaviour'.
- A motion for removal of a judge on grounds of misbehaviour can also be moved in Parliament. Such a motion will be referred for further inquiry to the Oversight Committee.
- Complaints and inquiries against judges will be confidential and frivolous complaints will be penalized.
- The Oversight Committee may issue advisories or warnings to judges, and also recommend their removal to the President.

Procedure to remove judges

A judge may be removed from office on the grounds of '**proven misbehavior or incapacity**' by **a motion adopted by Parliament**. Although the Constitution does not use the word 'impeachment', it is used colloquially to refer to the proceedings pursuant to **Article 124 (to remove a judge of the Supreme Court) and Article 218 (to remove a judge of the High Court)**.

The Constitution provides that a judge can be removed only by an order of the President, based on a motion passed by both Houses of Parliament. The **procedure for removal of judges** is elaborated in the **Judges Inquiry Act, 1968**. The Act sets out the following steps for removal from office:

- Under the Act, an impeachment **motion may originate in either House of Parliament**. To initiate proceedings: (a) at least 100 members of Lok Sabha may give a signed notice to the Speaker, or (a) at least 50 members of Rajya Sabha may give a signed notice to the Chairman. The Speaker or Chairman may consult individuals and examine relevant material related to the notice. Based on this, he or she may decide to either admit the motion or refuse to admit it.
- If the motion is admitted, the Speaker or Chairman (who receives it) will constitute a **three-member committee** to investigate the complaint. It will comprise: (a) a Supreme Court judge; (b) Chief Justice of a High Court; and (c) a distinguished jurist. The committee will frame charges based on which the investigation will be conducted. A copy of the charges will be forwarded to the judge who can present a written defence.
- After concluding its investigation, the Committee will submit its **report to the Speaker or Chairman**, who will then lay the report before the relevant House of Parliament. If the report records a finding of misbehaviour or incapacity, the motion for removal will be taken up for consideration and debated.
- **The motion for removal is required to be adopted by each House of Parliament by:** (a) a majority of the total membership of that House; and (b) a majority of at least two-thirds of the members of that House present and voting. If the motion is adopted by this majority, the motion will be sent to the other House for adoption.
- **Once the motion is adopted in both Houses, it is sent to the President**, who will issue an order for the removal of the judge.