

In Supreme Court staying Lokpal order on HC judge, question of complaints procedure

In its January 27 order, the Lokpal bench led by former SC judge A M Khanwilkar held that it had the power to hear corruption complaints against former judges under the Lokpal and Lokayuktas Act, 2013 (Lokpal Act).

Written by [Ajoy Sinha Karpuram](#)

New Delhi | February 28, 2025 07:45 IST

 NewsGuard

 5 min read



In a separate case in January, the Lokpal applied this definition and ruled that it cannot hear cases against SC judges. It

held that the Supreme Court was established under Article 124 of the Constitution of India and not an “Act of Parliament”.

The Supreme Court last week stayed a Lokpal order that took cognizance of a corruption complaint against an unnamed High Court judge.

In its January 27 order, the Lokpal bench led by former SC judge A M Khanwilkar held that it had the power to hear corruption complaints against former judges under the Lokpal and Lokayuktas Act, 2013 (Lokpal Act).

However, the SC took suo motu cognizance of the case — and a Bench of Justices B R Gavai, Surya Kant, and A S Oka called it “something very, very disturbing” while staying the order. The next hearing has been posted for March 18.

SC’s rationale

While the Supreme Court has previously acknowledged criticisms of judges, its response has always been balanced with its efforts to protect the independence of judges and the judiciary. It has sought to establish safeguards against possible cases of executive overreach.

The Lokpal is an independent statutory body that is under the aegis of the executive. Admitting its January 27 order could have opened a new avenue for complaints against judges, without abiding by the process earlier laid down for such cases.

Complaint against judges

Section 77 of the Indian Penal Code, 1860 (IPC), effectively states that a judge cannot be charged with an offence if the allegation is related to the exercise of her official duties. This provision has been reproduced as Section 15 of the Bharatiya Nyaya Sanhita, 2023.

The Supreme Court added an extra layer of protection in *K Veeraswami v Union of India* (1991). Justice Veeraswami, a former Chief Justice of the Madras HC, was being investigated by the CBI in a disproportionate assets case and had moved to quash the case. The SC held that he was a “public servant” and could be investigated for offences under the Prevention of Corruption Act, 1947 (replaced by the new PCA enacted in 1988).

However, the court also held that the President must sanction any criminal case against a judge after consulting the Chief Justice of India to “protect a Judge from frivolous prosecution and

unnecessary harassment”. The President is bound by the advice given by the CJI.

Notably, the procedure for filing a case against a sitting judge is different from the procedure for impeaching a judge, where approval is required from Parliament.

Case before Lokpal

Two complaints were filed against an HC judge, alleging that he had influenced an Additional District Judge and another HC judge who were hearing suits filed by a complainant against a private company. According to the complainant, the company was a client of the judge when he was still an advocate. The Lokpal order only deals with whether it had the power to hear a case against an HC judge, and not the merits of the complaint.

The Lokayukta Act states that “It shall apply to public servants in and outside India”. The term “public servant” is defined under Section 14 of the Act, and while it does not explicitly include judges, sub-section (f) states that it includes “any person who is or has been a chairperson or member or officer or employee in any...autonomous body...established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it”.

In a separate case in January, the Lokpal applied this definition and ruled that it cannot hear cases against SC judges. It held that the Supreme Court was established under Article 124 of the Constitution of India and not an “Act of Parliament”.

However, in the present case, the Lokpal found that High Court judges do not share the same status. Several HCs were established and restructured under the High Courts Act, 1861, and the Government of India Act, 1935. The Lokpal noted that these would be considered an “Act of Parliament” as the General Clauses Act, 1897, specifically states that an Act of Parliament will include an Act passed “before the commencement of the Constitution”.

The Lokpal stated that “It will be too naive to argue that a Judge of a High Court will not come within the ambit of expression “any person”. But given the K Veeraswami ruling and out of an abundance of caution, it noted that engaging in further proceedings before the Lokpal “inevitably involves a probe into the allegations against a Judge of the High Court”. Thus, before conducting an enquiry, the Lokpal ruled that it would be “appropriate” to forward the complaint to the CJI for guidance on how to proceed.