

Explained: How the judiciary's in-house inquiry against Justice Yashwant Varma will work

A three-member committee will look at the allegations against Justice Yashwant Varma of Delhi High Court. The procedure for such an inquiry was laid down by a panel appointed by the SC three decades ago, and was revisited by the top court in 2014. Here's what will happen now

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Police outside the residence of Delhi High Court judge Justice Yashwant Varma in New Delhi on Sunday (PTI)

Chief Justice of India (CJI) Sanjiv Khanna on Saturday initiated an unprecedented three-member in-house inquiry into the conduct of Delhi High Court judge Justice Yashwant Varma following allegations that wads of currency notes were found in his official residence where a fire broke out on March 14.

The internal inquiry of the judiciary — which follows a process that is distinct from that of impeachment under the Constitution — will be carried out by the Chief Justice of Punjab & Haryana High Court Justice Sheel Nagu, Chief Justice of Himachal Pradesh High Court Justice G S Sandhawalia, and Justice Anu Sivaraman of Karnataka High Court.

Removal of a judge

The process of impeachment of a judge of the Supreme Court is laid down in Article 124(4) of the Constitution of India. Article 218 says the same provisions shall apply in relation to a judge of the High Court.

Under Article 124(4), a judge can be removed by Parliament through a laid-down procedure on only two grounds: “proved misbehaviour” and “incapacity”.



(From left) Chief Justice of Punjab & Haryana High Court Justice Sheel Nagu; Chief Justice of Himachal Pradesh High Court Justice G S Sandhwalia; and Justice Anu Sivaraman of Karnataka High Court

For an impeachment motion against an SC or HC judge to be accepted, at least two-thirds of those “present and voting” in both Lok Sabha and [Rajya Sabha](#) must vote in favour of removing the judge — and the number of votes in favour must be more than

50% of the “total membership” of each House.

If Parliament passes such a vote, the President will pass an order for the removal of the judge. In cases where Parliament is dissolved or its term ends, a motion for impeachment of a judge would fail.

In-house procedure

It is not necessary that a complaint against a judge is made only by or to parliamentarians. The CJI or Chief Justice of an HC may also be called upon to examine a complaint against a judge.

The need for an internal mechanism was felt in 1995, after allegations of financial impropriety surfaced against then Bombay High Court Chief Justice A M Bhattacharjee.

After the Bombay Bar Association, headed at the time by senior advocate Iqbal Chagla, moved a resolution calling for the judge's resignation, a writ petition was filed before the Supreme Court seeking to restrain the Bar from protesting.

While hearing the case, Justices K Ramaswamy and B L Hansaria of the SC noted the “hiatus between bad behaviour and impeachable misbehaviour” (C. Ravichandran Iyer v. Justice A.M. Bhattacharjee).

The SC noted there was no process to hold a judge accountable for “bad conduct inconsistent with the high office”, when such conduct did not meet the high bar of impeachment set by Article 124 of the Constitution.

To fill what the judges called “a yawning gap between proved misbehaviour and bad conduct inconsistent with the high office”, the SC decided to formulate an in-house procedure.

It constituted a five-member committee comprising Justices S C Agarwal, A S Anand and S P Bharucha from the SC, and Justices P S Mishra and D P Mohapatra, the senior-most HC Chief Justices at the time, to devise the procedure “for taking suitable remedial

action against judges, who by their acts of omission or commission, do not follow the accepted values of judicial life, including the ideals expressed by the Supreme Court in the Restatement of Values of Judicial Life”.

The committee submitted its report in October 1997. It was adopted with amendments in a full court meeting of the SC in December 1999.

Process revisited in 2014

In 2014, when a woman additional district and sessions judge from Madhya Pradesh filed a complaint of sexual harassment against a sitting judge of the High Court, the SC revisited its in-house procedure.

Justices J S Khehar and Arun Mishra summarised and explained this process through “seven steps” (Additional District and Sessions Judge ‘X’ v. Registrar General High Court of Madhya Pradesh).

Essentially, this process begins when the Chief Justice of a HC, the CJI, or the President of India receives a complaint. The CJ of the HC or the President will forward the complaint to the CJI.

This complaint can be dropped at any stage, if not found serious enough by the CJI. However, to test the veracity of the complaint, the CJI can seek a preliminary report from the CJ of the HC concerned.

If the CJ of the HC, in the preliminary report, recommends that a “deeper probe” is warranted, the CJI may examine the recommendation and the statement of the judge facing the accusations, and then decide to order a three-member inquiry, comprising two other HC Chief Justices and one HC judge.

This committee has the powers to devise its own procedure “consistent with the rules of natural justice” (which, in this case, would include giving Justice Varma a chance to explain his case).

Once the inquiry has been concluded, the committee will submit its report to the CJI. This report must state whether:

- There is any substance to the allegations against the concerned judge and,
- If there is sufficient substance to the allegations, whether they are serious enough that they require initiation of removal proceedings against the judge.

If the report finds there is substance to the allegations, it will be sent to the judge concerned as well. If the committee concludes that the misconduct is not serious enough to warrant removal proceedings, the CJI may "advise" the judge concerned, and direct that the committee's report be placed on record.

If the committee decides that the allegations are serious enough to initiate removal proceedings, the CJI will advise the concerned judge to resign or retire voluntarily.

If the judge does not accept, the CJI will direct the HC Chief Justice not to assign any judicial work to said judge. (In Justice Varma's situation, CJI Khanna has already asked Chief Justice of [Delhi](#) High Court Devendra Kumar Upadhyaya not to assign any judicial work to Justice Varma.)

If the judge does not abide by the CJI's advice to resign or retire, the CJI will inform the President and the Prime Minister of the committee's finding that removal proceedings should be initiated.

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