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The Veeraswami case: When can a sitting judge face an FIR?

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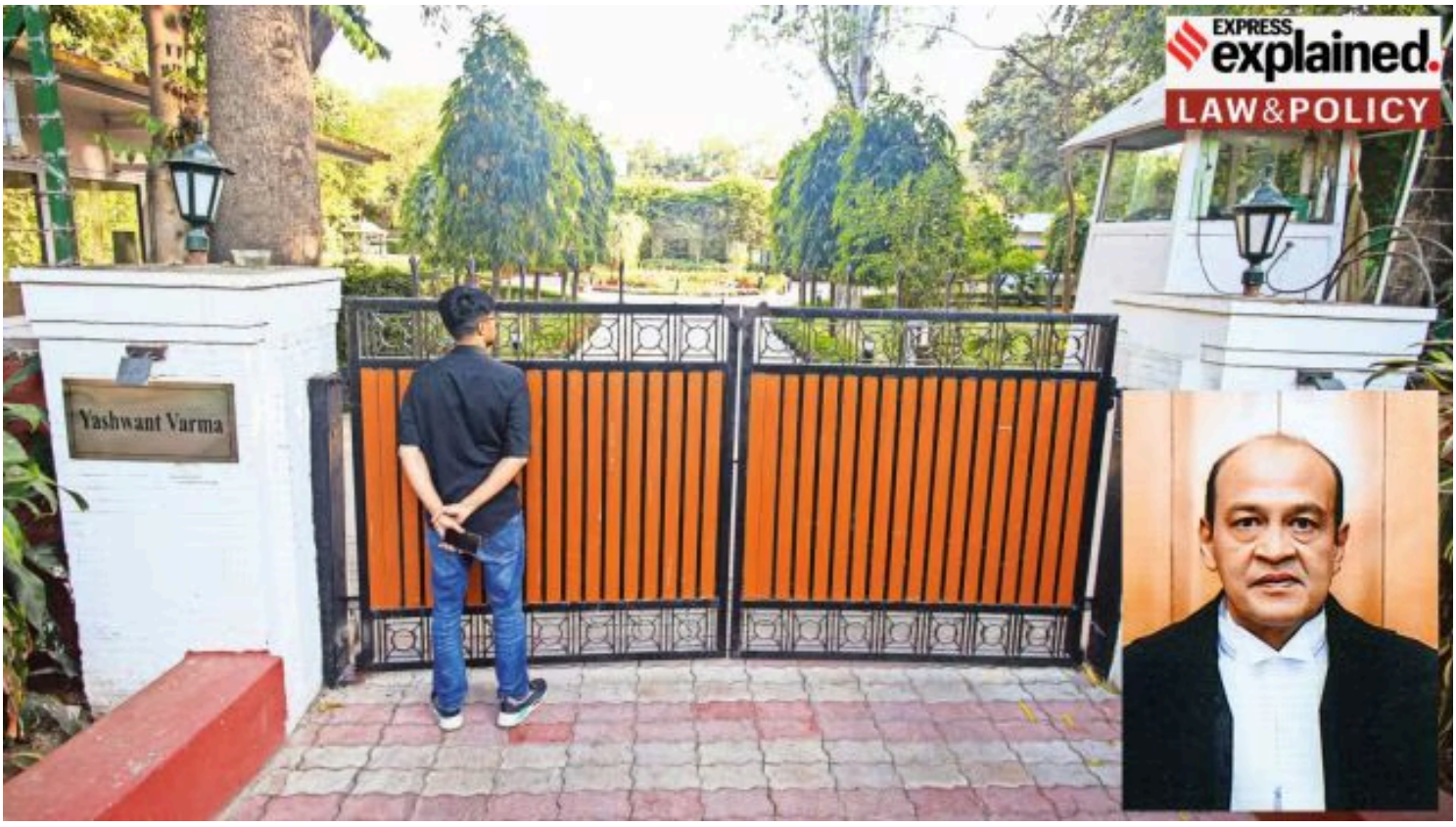

Justice Varma, a judge of the Delhi High Court at the time the cash was found but who has since been transferred to the Allahabad High Court, was indicted by the in-house inquiry on May 8.

Vice President Jagdeep Dhankhar said this week that the in-house inquiry ordered by the Supreme Court into the unaccounted cash found at the residence of Justice Yashwant Varma this

March "does not have any constitutional premise or legal sanctity", and sought an FIR against the judge.

Dhankar also called for revisiting the SC's K Veeraswami judgment, which he said has "erected a scaffolding of impunity" around the judiciary. The 1991 ruling deals with the filing of criminal cases against judges.

Justice Varma, a judge of the Delhi High Court at the time the cash was found but who has since been transferred to the Allahabad High Court, was indicted by the in-house inquiry on May 8.

On Wednesday, the SC dismissed a petition seeking an FIR and a criminal investigation against him, and told the petitioners that the report of the inquiry had already been forwarded to President Droupadi Murmu and Prime Minister Narendra Modi.

Can an FIR be registered against Justice Varma? What did the 1991 ruling say?

Protection for judges

It is fundamental to the independence of the judiciary that judges should be able to decide cases without fear of personal consequences, including criminal prosecution.

Disgruntled litigants, political actors, or the executive can file cases to harass or intimidate judges. Therefore, the Constitution has set a high bar for initiating action against them.

The only procedure prescribed in the Constitution is the removal of a judge through impeachment. Under Article 124, impeachment is largely a political process, initiated by parliamentarians, which ensures due process for a judge.

However, in the 75 years since the SC and the Constitution came into being, not a single attempt at impeachment has been successful.

Looking for alternative mechanisms to deal with complaints against judges, the SC developed the mechanism of the in-house inquiry, in which the Chief Justice of India (CJI) sets up a panel of

judges to verify if there is a prima facie case against a judge. (The CJI himself has limited powers to deal with errant judges beyond transferring or withdrawing work from the judge.)

Ultimately though, the finding of this panel, too, has to go to the executive for impeachment to be initiated. It is at best a signal that the judiciary itself is on board with the impeachment motion, if one were to be made.

There has been a view that even initiating the process of impeachment has not been a sufficient deterrent. It is in this context that calls for criminal investigation against a sitting judge are made.

The Veeraswami case

Justice K Veeraswami was the Chief Justice of the Madras High Court from May 1969 to April 1976. A biography by his colleague, Justice S Natarajan, noted that Justice Veeraswami, who was a "very competent Judge who knew all branches of law" had turned down his elevation to the SC.

A couple of months before his retirement, Justice Veeraswami went on leave after allegations of corruption surfaced against him. It was alleged that the judge "was in possession of pecuniary resources and property disproportionate by Rs. 6,41,416.36 to known sources of income". The Central Bureau of Investigation (CBI) in Delhi had registered an FIR against him.

Incidentally, Justice V Ramaswami, who would, in 1993, become the first judge to face impeachment proceedings in Parliament, was the son-in-law of Justice Veeraswami. Justice Ramaswami was elevated as a judge of the Madras High Court in 1971, two years after Justice Veeraswami became Chief Justice.

The FIR against Justice Veeraswami raised larger constitutional questions on whether such a step could be initiated against a sitting judge. Justice Veeraswami moved the Madras High Court seeking the quashing of the FIR.

In 1979, a full Bench (comprising three judges) of the Madras HC refused to quash the investigation in a 2-1 ruling. Justice Veeraswami moved the SC in appeal, which finally decided the matter in 1991.

The SC had to decide whether a judge of a High Court or of the SC is a "public servant" for the purpose of the Prevention of Corruption Act, 1947. If so, who is the "competent authority" to

grant sanction to prosecute the public servant?

The government argued that, unlike the President and Governors, there is no immunity for judges of the higher judiciary under the Constitution.

In a 3-2 verdict, the SC held that while a judge can be considered a public servant for a corruption case to be registered against him, the sanction must come from the CJI.

Ordinarily, sanction is granted by the authority that has the power to appoint the public servant. But the SC emphasised that "there is no master and servant relationship or employer and employee relationship between a Judge and the President of India in whom the executive power of the Union is vested under the provisions of Article 53 of the Constitution."

The inclusion of the CJI, therefore, ring-fenced the prosecution of judges against executive interference.

Sanction for prosecution

The 1991 Veeraswami ruling came just two months after the impeachment motion against Justice V Ramaswami had been made. Justice Veeraswami had retired by then, and was not impacted by the ruling.

But it is significant that the SC did, thereafter, allow the CBI to register a case against a sitting judge. However, this power has been used sparingly by the CJI.

In 2019, for the first time, then CJI Ranjan Gogoi gave permission to the CBI to register an FIR against Justice S N Shukla of the Allahabad High Court for alleged favours to a private medical college for MBBS admissions.

Justice Gogoi's predecessor, CJI Dipak Misra, had recommended the impeachment of Justice Shukla, but the government did not act on it.

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