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## In- House Procedure Against Judges of Higher Judiciary

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### Why in News

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Recently, in a letter to the Chief Justice of India (CJI), Andhra Pradesh Chief Minister has accused the Supreme Court judge, Justice N.V. Ramana and some judges of Andhra Pradesh (AP) High Court of **misconduct, corruption and political bias**.

The allegation against the judges is unprecedented since it has been made publicly.

### Key Points

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- **Issues Involved:**
  - The Constitution of India **protects the independence of judges of the High Courts and the Supreme Court** by making them **removable only through a process of impeachment**. **Article 121 and 211** expressly bars the Parliament and State Legislatures from discussing the misconduct of judges.
    - **Article 121** states that **no discussions shall take place in Parliament** with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties **except upon a motion for the removal of the judge**.
    - **Article 211** says that **no discussion shall take place in the legislature of a state** with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties.
  - However, the AP CM has **not made the allegations against the judges in the legislative assembly**, and therefore, the **bar under Article 211 is not attracted**.
  - The chief minister of a state can make such allegations by circumventing the bar under Article 211, as the constitution does not envisage such a possibility.
  - However, generally **such allegations against judges are not made publicly**, since it **may cast aspersion on the credibility of the judiciary**.
  - Since, AP CM has made the allegations publicly, such an act may invite action for **contempt of court**.

- **Action in Cases of Misconduct of Judges:**
  - A **judge can be removed from office on grounds of ‘proved misbehaviour or incapacity’.**
  - However, **not all forms of misbehaviour will warrant removal.** There could be other kinds of impropriety too.
  - There are times when serious complaints of misconduct are made and CJI is called upon to examine them. Since 1997, judges have adopted an **‘in-house procedure’** for inquiring into such charges.
- **In-House Procedure:**
  - Under the in-house procedure, when a **complaint is received against a High Court judge,** the CJI should decide if the issue is frivolous or serious.
  - If a **deeper probe** is considered necessary, **both the complaint and the judge’s response, along with the High Court’s Chief Justice’s comments, are recorded for further action.**
  - If deemed necessary, **CJI can also form a three-member committee** to hold an inquiry into the matter.
    - The committee should have **two Chief Justices from other High Courts and one High Court judge.**
    - The inquiry it holds is of the nature of a **fact-finding mission** and is **not a formal judicial inquiry** involving examination of witnesses. The judge concerned is entitled to appear before it.
- **Outcome of In-House Procedure:**
  - If the committee finds substance in the charges, it can give **two kinds of recommendations.** One, that the **misconduct is serious enough to require removal from office,** or that it is **not serious enough to warrant removal.**
  - If the misconduct involves removal of a judge, the judge concerned will be urged to resign or seek voluntary retirement.
    - If the judge is unwilling to quit, the Chief Justice of the High Court concerned would be asked to withdraw judicial work from him.
    - The President and the Prime Minister will be informed of the situation, clearing the way for Parliament to begin the process of removal.
  - If the misconduct does not warrant removal, the judge would be advised accordingly.
- **Procedure in Case of Chief Justice of High Court/ Judge of Supreme Court:**
  - If the case is against a **High Court’s Chief Justice,** the **same procedure** is followed as that of a judge of the High Court, but the probe **committee comprises a Supreme Court judge and two Chief Justices.**
  - **If a Supreme Court judge faces such a charge,** the in-house **panel will comprise three Supreme Court judges.**
  - Also, the in-house procedure does not give any separate provision to deal with complaints against the **Chief Justice of India.**

## Way Forward

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- **Separation of powers** between legislative, executive and judiciary has been regarded as a basic feature of our constitution in ***Kesavananda Bharati v State of Kerala, 1973.***
  - The constitution does not envisage supremacy of any of the three organs of the state. But the functioning of all the three organs is controlled by the constitution.
  - Wherever interaction and deliberations among the three organs have been envisaged, a delicate balance and mutual respect are contemplated.

**Source: TH**