

All About Impeachment of CJI

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Justice should not only be done, but must also be seen to be done

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What is the issue?

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- Vice president of India/ Presiding Officer (PO) in Rajya Sabha has rejected the impeachment motion passed to remove the CJI.

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- It calls for understanding the whole impeachment procedure, a tool to ensure judiciary's credibility.

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What are the constitutional provisions?

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- There is **no specifically any provision** in the Constitution that deals with the **impeachment of the CJI**.

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- “Proved misbehaviour or incapacity” is mentioned in **Article 124(4)** of the Constitution.

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- It is the ground for impeachment of a **Supreme Court judge**.

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- The CJI is only the first among equals.

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- Hence, the CJI too, like other judges of the SC and HCs, can be impeached on this ground.

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What is the impeachment procedure?

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- The **Judges (Inquiry) Act, 1968** contains details of the process.
- The **motion** is to be signed by 50 members of Rajya Sabha or 100 members of Lok Sabha.
- If it is admitted, an **inquiry committee** will probe the charges.
- It will consist of an SC judge, a Chief Justice of an HC and a distinguished jurist.
- If the charges stand proven, the motion is to be presented to each House of Parliament.
- It has to be passed by a **majority** of the House **and 2/3rds** of those **present and voting** in the same session.
- Even if the charges are proved, the Parliament is not bound to remove the judge.
- Finally, the **President** will issue the **order removing the judge**.
- **Judge's Right** - The particular Judge has the right to be heard.
- However, this is not available at the time of admission of the motion.
- During the inquiry, the judge has the full right to defend.

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What is the complexity?

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- Impeachment process is **neither entirely political nor entirely judicial**.
- It is a fine and judicious blend of the two.

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- Admission of the impeachment motion, constitution of inquiry committee, and its findings are in the nature of judicial processes.
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- But the adoption of the motion by Parliament is certainly a political process, as members do vote along party lines.
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- The complexity of the impeachment process has ensured that no judge has been removed so far.
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What is the PO's role?

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- The presiding officer may admit or refuse to admit the motion.
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- But the PO should not ideally take over the role of the inquiry committee.
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- The Presiding Officer is not supposed to mechanically admit any motion.
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- It means that the requisite number of members having signed the motion is not the only criteria.
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- “Proved misbehaviour” is the ground for the removal of a judge.
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- But it is the job of the inquiry committee to give a finding on whether the charges are proved.
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- But again, the charges could sometimes be prima facie totally without substance.
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- In that case, the PO has the right to block the motion at this initial stage itself.
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What all constitute ‘proved misbehaviour’?

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- The **Constitution does not define** ‘incapacity’ and ‘proved misbehaviour’.
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- The misconduct of a judge is to be proved outside Parliament before a non-

parliamentary committee.

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- The **Judges (Inquiry) Bill, 2006**, defines 'proved misbehaviour':

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- i. wilful or persistent conduct bringing dishonour or disrepute to the judiciary
- ii. wilful or persistent failure to perform the duties of a judge
- iii. wilful abuse of judicial office, corruption, lack of integrity or committing an offence involving moral turpitude

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- The **Judicial Standards and Accountability Bill, 2010**, proposed to widen the definition of misconduct.
- Under this, 'lack of integrity' included rendering judicial decisions for collateral or extraneous reasons.
- Giving judgements or any other acts that have the effect of subverting the administration of justice.
- The failure to furnish a declaration of assets and liabilities or wilful giving of false information was included within 'misbehaviour'.
- The **Supreme Court** itself has laid down that misbehaviour is a wider term.
- Therefore, if, due to a judge's conduct, the **judiciary's credibility has suffered**, it can be considered '**Misbehaviour**'.

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Why was the current motion rejected?

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- The Vice-President is not duty-bound to give reasons.
- However, in this case, M Venkaiah Naidu has given detailed reasons.
- He has said that misbehaviour has not been proved.

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- There was little merit in any of the charges laid for impeachment.
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- The **charges** are said to have been based on mere **suspicion and assumption**.
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- He says the signatories themselves are unsure of the reliability of the charges.
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- He has considered the implications for **judicial independence** if an investigation is ordered on unreliable charges.
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- **Ruling** - He cited one of the earlier Supreme Court ruling in this regard.
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- Accordingly, Speaker (or Chairman) has to act with utmost care, circumspection and responsibility.
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- Seriousness of the imputations, nature and quality of the records have to be kept in mind.
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- The effect on public administration of justice and independence of the judiciary are also to be considered.
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Is this a case for “proved misbehaviour or incapacity”?

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- The main charge against CJI Misra is that he misused his control over the roster.
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- Cases were assigned selectively with a view to influence their outcome.
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- But the question is whether impeachment is an option in the **absence of concrete material** to establish this charge.
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- Evidently, the Opposition is divided on initiating impeachment proceedings.
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What next?

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- The opposition is now planning to approach the Supreme Court.

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- If that happens, ideally, the CJI should not hear the matter or constitute the Bench to hear it.

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- In fact, no judge who is in line to be CJI in the future should sit on the Bench.

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- The principle of “no one shall be a judge in his own case” should be strictly adhered to.

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Source: Indian Express, The Hindu

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