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Justice Yashwant Varma case: Peer review is the proper channel

Accountability must be enforced within a constitutionally protected framework that ensures independence from political pressures



In this image released by the Supreme Court, a fireman at work during a firefighting operation at Delhi High Court judge Yashwant Varma's (right) house on the night of Holi.



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Arghya Sengupta begins his book *Independence and Accountability of the Higher Indian Judiciary* by juxtaposing the views of Jawaharlal Nehru and Justice Y K Sabharwal. Nehru upheld Parliament's supremacy, arguing that the judiciary could advise but not obstruct the legislative will in shaping the nation's future. In contrast, Justice Sabharwal underscored the judiciary's expanding role in securing good governance, highlighting how the Supreme Court has intervened in areas like environmental protection, electoral reform, and constitutional amendments to ensure the rule of law prevails. This tension reflects a fundamental shift.

The recent disclosure of cash recovered from the official residence of Justice Yashwant Varma has triggered a flurry of reactions: Vice President [Jagdeep Dhankhar](#) raised concerns about the absence of punitive outcomes following an internal inquiry and cast doubts on the legal sanctity of in-house procedures. Following intervention from the [Rajya Sabha](#), the SC dropped its inquiry into the alleged hate speech made by Justice Shekhar Yadav, sitting judge of the Allahabad High Court, citing that the final authority lies with Parliament and the President. These instances beg the question: Who judges the judges?

The judiciary forms one of the three pillars of a democracy and derives its authority from the Constitution. The outdated notion of legislative supremacy has now been replaced: The Supreme Court in *Keshav Singh vs Speaker, Legislative Assembly* (1965) and *People's Union For Civil Liberties vs Union of India* (2005) recognised that the Constitution is supreme. The Constitution provides strong safeguards for judicial independence, including security of tenure, fixed salaries charged to the Consolidated Fund, protection from discussion in legislatures, and immunity under laws like the Judges (Protection) Act, 1985. Provisions for the removal of high court and SC judges by Parliament on grounds of "proven misbehaviour" or "incapacity" under Articles 124 and 217 create an accountability mechanism.

Under Article 124(5), Parliament enacted the Judges (Inquiry) Act, 1968, which provides the procedures to investigate judicial misconduct. Further, on May 7, 1997, the SC's Full Court adopted the "Restatement of Values of Judicial Life". It authorises the Chief Justice to

constitute an in-house committee to investigate allegations against judges of the higher judiciary. This was recognised in *C Ravichandran Iyer vs Justice A M Bhattacharjee* (1995).

The VP, in one of his latest speeches, spoke of the need to revisit *K Veeraswami vs Union of India* (1991) in light of the controversy around Justice Varma's case. However, such arguments overlook the constitutional and legal procedures provided for investigating allegations against judges.

The Constitution does not permit ad-hoc procedures in matters involving the higher judiciary. Even prior to the Constitution's enactment, the Government of India Act, 1935, provided for a judicial disciplinary committee comprising judges. After Independence, when then-MP Meghnad Saha complained against a judge, Lok Sabha Speaker G V Mavalankar refrained from immediate action. He sought the opinion of the CJI before proceeding.

While drafting the Judges Inquiry Bill, 1964 under Article 124(5), eminent legal figures like C K Daphtary and G S Pathak emphasised that complaints against judges should originate from MPs, not the executive, and be submitted to the Speaker or Chairman. If accepted, a three-member judicial committee would investigate the charges. Only if the committee finds the judge guilty may Parliament initiate a debate; otherwise, the motion is dropped. This framework was upheld in *Sub-Committee on Judicial Accountability vs Union of India* (1991), wherein the Court highlighted practices from countries like the US, Canada, and Australia, where initial investigations are conducted by a judicial body, with legislative involvement occurring later. In *Veeraswami*, the Court held that judges can be prosecuted under the Prevention of Corruption Act, but only with presidential sanction after consultation with the CJI. This ensures accountability and judicial independence.

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In Justice Varma's case, any investigation must be initiated through a motion in Parliament, followed by a judicial inquiry under the Judges (Inquiry) Act, 1968. As the Court held in the Sub-Committee case, such inquiries are quasi-criminal in nature and cannot be replaced by political or administrative processes without violating constitutional safeguards.

Harry T Edwards, Chief Justice of Appeals for the District of Columbia, noted in a 1989 paper that "the ideal of judicial independence is not compromised when judges are monitored and are regulated by their own peers". The Supreme Court in *A M Bhattacharjee* noted that "peer review" is in the best interest of judicial independence and in consonance with international practices. The Law Commission of India in its 195th Report recommended the Judicial (Inquiry) Bill 2005, establishing the National Judicial Council, which was to consist of five judges, with the CJI as chairman. The Commission noted that this practice of inquiry finds its roots in various international principles like the Siracusa Principles (1981) and the Latimer guidelines for the Commonwealth (1998).

The judiciary, like any other institution, must be held accountable. But that accountability must be enforced within a constitutionally protected framework that ensures independence from political pressures. The rule of law demands not just that justice be done — but that it be done through proper channels, and equally for all.

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Supreme Court