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## **THE REMOVAL OF JUDGES IN INDIA: REFORM, RETAIN, OR REIMAGINE?**

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### **ABSTRACT**

The concept of checks and balances was carefully built into the Indian Constitution by its framers to prevent the concentration of power in any one organ of the state. This system ensures that the three pillars of democracy—the executive, the legislature, and the judiciary—function within their own domains, without encroaching upon each other’s authority. It’s a mechanism designed to uphold democratic integrity and maintain a healthy equilibrium among the wings of the government. If even one of these checks is weakened or removed, it sets off a chain reaction kind of domino effect which disrupts the balance and potentially leads to misuse of power or institutional overreach. In such a scenario, the very foundation of accountable governance can start to erode. In any true democracy, the presence of an independent and unbiased judiciary is essential to uphold the rule of law. It forms the very foundation for protecting the fundamental rights and freedoms guaranteed by the Constitution. If judges of the Supreme Court or High Courts could be removed without proper procedure or safeguards, it would severely compromise judicial independence and open the door for executive interference. To prevent this, the Constitution deliberately makes the process of removing a judge a rigorous and carefully controlled one. The process of removing judges in India is notably stringent, and over the years, the limited number of successful attempts has highlighted just how challenging it truly is. Article 124 of the Indian Constitution lays down the procedure for such removal. This rigid framework is rooted in the principle of ‘guarding the guardians’ which ensures that the independence of the judiciary is not compromised. However, the recent controversy involving a Delhi High Court judge has reignited debate around this mechanism, raising an important question: has the judicial removal process in India become practically redundant?

## **The Historical Arc of Judicial Appointments and Removals**

As Justice DY Chandrachud aptly observed that “Legitimacy of the judiciary lies in the faith and confidence it commands from the people, who in turn depend on judicial independence. People's faith in the judiciary is determined by the single most important factor that judiciary is the first and last access for citizens in distress”

Indian constitutional designers borrowed the independence of judiciary from the United States constitution, but they also understood that the Judges are accountable to the people. When accountability slips, public trusts erodes and with it every foundation of the rule of law and democracy.

Before the government of India Act, Judges were not given wide power, they held office “at the pleasure of the crown” which means that a judge could be removed anytime whenever the British government demanded. Independence of judiciary and the protection for the guardians were diminutive. After the Act of 1947, judges got some protection for securing their power. To remove a judge, seven judges from the federal court had to investigate and submit the report confirming the misconduct. Only after such report the king in council approve the removal. This ensured that protectors of the law are given more power and independence is maintained without the interference of government. Under this rule only 1 judge was removed Justice Sinha from the Allahabad High Court after amicably agreement was reached between the seven judges that he committed misconduct.

The supreme court of India's collegium system where appointment of judges is intimated is because of the 3 landmark cases which includes **S.P. Gupta v. union of India**<sup>1</sup> also known as “First Judges Case” where the existing method of appointing judges was challenged, warning the undue executive influence threatened judicial independence.

The second judge case which is **Supreme court Advocates on Record Association v. union of India**<sup>2</sup> which dealt with the process of appointing and transferring the judges and it challenged the 99<sup>th</sup> constitutional amendment act 2014 and the National Judicial Appointments Committee (herein referred to as NJAC)) as unconstitutional and void. It stated that the rule under the NJAC, that the collective decision of the senior judges could be overruled by the

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<sup>1</sup> S.P. Gupta v. Union of India, AIR 1982 SC 149.

<sup>2</sup> Supreme court Advocates on Record Association v. Union of India, AIR (1994) SC 268.

three non-judge members which meant that the people outside the judiciary could veto judicial appointments which the court saw minacious. It was held ultra vires and beyond what the constitution permits and from this case the collegium system blossomed.

The third Judge case<sup>3</sup>, which laid down strict guidelines for the appointment of judges of the supreme court and high courts and expanded the collegium to a five-member body comprising CJI and four seniors most judges.

Determined to shield judges from political pressure, post-independence lawmakers preserved—and tightened—the rigorous removal standards inherited from the 1935 Act. The Judges (Inquiry) Act of 1968 sets out a meticulous investigative procedure, requiring overwhelming parliamentary majorities before the President can dismiss a judge. The history shows how India built layers of protection in both appointment and removal of judges, but it also raises question: is the process too protective, making it impossible to remove corrupt or unfit judges?

### **Constitutional and Parliamentary Procedure for Removing Judges in India**

Our Constitution has provided the removal process under Article 124(4), and it lays down the exclusive and rigorous procedure of removal of supreme court judges.

**“A Judge of Supreme court shall not be removed from his office except by an order of the president...”**

The President who is also the head of state, is the final authority and is bound to act only after the prescribed Constitutional process is completed by the parliament.

**“On the ground of proved misbehavior or incapacity...”**

The Constitution of India and even the Judges (Inquiry) Act, 1968, mention only two grounds for the removal of judges from the Supreme Court or High Courts—misbehavior and incapacity. However, these terms are not clearly defined in either document, which has often made their interpretation tricky and subjective. An effort to bring clarity was made through the **Judicial Standards and Accountability Bill, 2012**. This Bill aimed to introduce a framework

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<sup>3</sup> Special Reference No.1 of 1998, RE (1998) 7 SCC 739.

that would lay down clear judicial standards, build stronger mechanisms for holding judges accountable, and simplify the otherwise lengthy process of their removal.

According to the Bill:

Incapacity was defined to include **physical or mental conditions** that are, or are likely to become, **permanent in nature**, preventing the judge from effectively performing their duties. Misbehavior was explained more broadly to include actions such as:

- Willful abuse of judicial powers,
- Deliberate misconduct while in office,
- Corruption, lack of integrity, or
- Any offence involving moral wrongdoing (moral turpitude).

The Bill, although not passed into law, was a step toward making the process more transparent and ensuring that the **judiciary remains both independent and accountable** to the values it is meant to uphold.

**...after an address by each house of parliament...”**

**Both the Lok Sabha and Rajya Sabha must pass a formal motion recommending the removal of judges.**

**“Supported by:**

- i) a majority of total membership of that House, and**
- ii) a majority of not less than two-thirds of the members present and voting.**

Under the Judges (Inquiry) Act, 1968, the process of removing a judge—commonly referred to as impeachment—can originate in either House of Parliament. To initiate the proceedings, a notice must be signed by at least:

- **In the Lok Sabha**, at least **100 members** must sign and submit a notice to the **Speaker**.

- In the **Rajya Sabha**, at least **50 members** must do the same with the **Chairman**.

Upon receiving the notice, the presiding officer has the discretion to consult experts and examine relevant materials to assess the credibility of the allegations. Based on this preliminary review, the Speaker or Chairman may either admit the motion or reject it. If the motion is admitted, a three-member inquiry committee is constituted to investigate the allegations. This committee includes a judge of the Supreme Court, the Chief Justice of a High Court, and a distinguished jurist. The committee frames specific charges and provides a copy of the same to the concerned judge. Following the investigation, the committee submits its report to the Speaker or Chairman, who then lays it before the House. If the report concludes that the judge is guilty of misbehavior or incapacity, the motion for removal is formally taken up for discussion and debate in the House. To pass, the motion must be adopted by both Houses of Parliament separately, each with a majority of its total membership and by not less than two-thirds of those present and voting.

**...present to the President in the same session...”**

Only after both Houses adopt the motion with the prescribed majority can it be submitted to the President within the same parliamentary session, who may then issue the order for the judge's removal.

While the Constitution deliberately enshrines a rigorous process for the removal of judges to safeguard judicial independence, it simultaneously raises concerns about practical inaccessibility in cases of genuine misconduct. The absence of clearly defined standards for “misbehavior” and “incapacity” adds a layer of ambiguity, often making the system appear protective to a fault. In a democracy, accountability must walk hand in hand with autonomy. Therefore, while preserving the sanctity of judicial independence is non-negotiable, there is an urgent need to revisit and refine the procedural architecture to strike a more effective balance between protection and accountability.

## **JUDICIAL CORRUPTION AND THE RECENT CASE**

In the recent incident involving **Justice Yashwant Verma** of the Delhi High Court, nearly ₹15 crore in unaccounted cash was reportedly discovered at his official residence on March 14,

following a fire outbreak.<sup>4</sup> After the news of the recovery became public, the Supreme Court Collegium immediately convened and proposed transferring Justice Verma back to his parent High Court in Allahabad. However, the very next day, the Supreme Court clarified that this proposed transfer was entirely separate from the ongoing in-house inquiry.<sup>5</sup> The concern that arises here is that because the removal process for judges in India is so rigid and complex, there's a genuine risk that a judge facing serious allegations might simply be transferred instead of being held directly accountable. This creates a loophole where, despite the severity of the accusations, procedural hurdles could allow a judge to sidestep meaningful consequences.

In the case of justice Yashwant Verma, an in-house inquiry was set up by then Chief justice Sanjiv Khanna. It is an internal investigation conducted to examine the judicial misconduct which is not binding for impeachment but becomes a basis for further steps in the impeachment process. It is framed by supreme court can be adopted to examine allegation against High Court and Supreme Court judges.<sup>6</sup> Former Law Minister Kapil Sibal made a serious remark stating, **“any motion to impeach justice Yashwant Verma on basis of the supreme court in-house inquiry would be unconstitutional.”**<sup>7</sup> He states that **Govt is bypassing constitutional process** by trying to remove Justice Varma using only the **in-house report**, without following the proper **Judges (Inquiry) Act, 1968**.

Sibal also raised concerns about inconsistency and bias. He pointed out that no action has been taken against Justice Shekhar Kumar, who is allegedly involved in hate speech and is already facing an impeachment motion.<sup>8</sup> Similarly, a motion to impeach Justice Yadav—submitted by 55 Members of Parliament back in December 2024 which remains ignored. Conversely, Justice Varma is being aggressively pursued, despite the fact that his case hasn't gone through the complete constitutional process.

This is leading to discrimination where one judge is being aggressively targeted, another is being **protected**. He believes this sets a dangerous precedent that can **threaten judicial**

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<sup>4</sup> Nistula Herbar, *Motion of Impeachment Against Justice Varma Likely During Monsoon Session*, **The Hindu** (India), June 4, 2025.

<sup>5</sup> Govind Mathur, *Justice Yashwant Verma Case: In-House Inquiry Is Not Immunity*, **The Indian Express** (India), June 13, 2025.

<sup>6</sup> Additional Dist. & Sessions Judge “X” v. Registrar Gen., High Court of M.P., A.I.R. 2015 S.C. 645 (India).

<sup>7</sup> The Hindu Bureau, *Removing Justice Yashwant Verma on the Basis of Supreme Court's In-House Report Would Be 'Unconstitutional'*, **The Hindu** (India), June 10, 2025.

<sup>8</sup> Sushovan Patnaik & Ajitesh Singh, *Justice Yadav 'Hate Speech' Case: An Acid Test for the Supreme Court*, (India), Feb. 12, 2025.

**independence.**<sup>9</sup>

There needs to be a balanced and transparent approach which should uphold the rule of law and sets precedent where accountability is applied equally.

**Justice V. Ramaswami** became the first judge of the Supreme Court of India to face impeachment proceedings.<sup>10</sup> Media reports in the early 1990s alleged that he had lavishly spent public money on furniture, home décor, luxury items, and misused government vehicles. The scandal drew national attention and triggered calls for his removal.<sup>11</sup>

In 1993 a formal motion to impeach him was introduced in the Lok Sabha. Under Article 124(4) of the Constitution, such a motion must be approved by two-thirds of the members present and voting. Although a simple majority voted in favor, a large number simply abstained, leaving the motion short of the constitutionally mandated super-majority. Procedurally, the impeachment failed not because the allegations were disproved, but the motion did not get the required numbers and failed. Public outrage and pressure from the legal community continued, with many demanding that Justice Ramaswami step down voluntarily. He declined to resign and instead completed his term, retiring in February 1994.<sup>12</sup>

The episode exposed a critical vulnerability in the impeachment mechanism: when a large number of MPs abstain, the high numerical threshold intended to protect judicial independence can also shield a judge from accountability. Justice Ramaswami's case remains a cautionary tale. It raises an important question: Should we rethink how impeachment works when accountability is at stake?

Another major flaw in the process of holding judges accountable is the **option of resignation**. In ordinary circumstances, when someone is accused of wrongdoing, they are subject to a full legal investigation and its consequences. However, when it comes to judges, **resignation often becomes an escape route**—letting accountability slip away like sand through fingers. A clear example of this was **Justice P.D. Dinakaran**, a judge facing serious allegations of **corruption**,

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<sup>9</sup> See id. at 7.

<sup>10</sup> T. Ramakrishnan, Justice Ramaswami: The First Judge of the Supreme Court to Face Impeachment Proceedings, *The Hindu (India)*, Mar. 12, 2025.

<sup>11</sup> R.K. Radhakrishnan, *V. Ramaswami (1929–2025): Only Supreme Court Judge to Face Parliamentary Impeachment*, *Frontline*, Mar. 10, 2025.

<sup>12</sup> See id.

**land grabbing, human rights violations, and abuse of judicial office.**<sup>13</sup> The Rajya Sabha had even formed a judicial panel to investigate these charges, which also included **illegal encroachment and tampering with evidence**. But before the impeachment process could officially begin, **Justice Dinakaran resigned from his position**. As a result, the entire removal process became **infructuous** meaning it had no legal consequence. This case highlights a major gap in the system: **resignation should not be a shield against accountability**. If judges can walk away before facing the consequences, it not only undermines public trust but also weakens the very foundation of judicial integrity and transparency.<sup>14</sup>

There's a fine line between having an opinion and making a judgment—especially for someone in a position of authority. The framers of our Constitution built a system where checks and balances were designed to protect public interest and maintain the dignity of institutions. Policies like **reservation** were introduced to promote equality, uplift marginalized communities, and create a level playing field for all.

However, when **Justice J.B. Pardiwala**, a sitting judge, stated that “two things have destroyed this country or rather, have not allowed this country to progress in the right direction i) reservation and ii) corruption,” it faced massive backlash.<sup>15</sup> Coming from someone in judicial office, such a generalized or panoptic statement not only challenged a constitutional provision but also carried the potential to influence public perception unfairly. This remark led to **impeachment proceedings** being initiated against him. However, once the judge **withdrew his comments**, the motion was dropped.<sup>16</sup> Can deleting a remark undo its damage? If judges can escape accountability this easily, it sets a dangerous precedent. **Justice must not just be done—it must be seen to be owned.**

In the same year 2015, **Justice S.K. Gangele** of the Madhya Pradesh High Court faced impeachment proceedings after allegations of sexual misconduct were raised against him. In response, the Rajya Sabha formed a three-member Inquiry Committee to thoroughly examine the charges. After a detailed investigation, the committee concluded that the accusations could

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<sup>13</sup> J. Venkatesan, Justice Dinakaran faced serious charges The Hindu, Nov. 17, 2021)

<sup>14</sup> NDTV Correspondent, Justice Dinakaran faces 16 charges including corruption, land grab, NDTV Mar 19,2011.

<sup>15</sup> PTI, 58 MPs seek impeachment proceedings against Gujarat HC judge, Economic Times, Dec. 18,2015.

<sup>16</sup> SCO Team, *Number of Times Impeachment Proceedings were Initiated against a Supreme Court or High Court Judge*, Supreme Court Observer, (Mar. 28, 2018) <https://www.scobserver.in/journal/number-of-times-impeachment-proceedings-were-initiated-against-a-supreme-court-or-high-court-judge/> (accessed 13 June 2025).



not be substantiated with sufficient evidence. As a result, the charges of sexual harassment were not proven, and the proceedings did not move forward.

## **CONCLUSION**

David J. Sachar, Director of the center for judicial ethics quoted “It behooves the judiciary to support measures that hold it accountable. While the majority of judges serve with honour, ethical missteps should be corrected, and major breaches of trust should be acknowledged”. It is the duty of the judiciary to uphold accountability and support measures that reinforce transparency within its own system. When a judge misjudges, the mistake should be addressed appropriately, rather than overlooked simply due to their position of authority. The impeachment process, in particular, must be guided by a balanced approach one that avoids both excessive rigidity and undue leniency to ensure fairness and preserve the integrity of the institution. For smooth functioning of the constitution, independence of judiciary is essential.