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EDITORIAL ANALYSIS

The Impeachment Paradox — Why India Has Never Removed a Judge

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CURATED & WRITTEN BY

Bharat Choudhary

UPSC Educator & Content Creator ●

linkedin.com/in/epicbharat

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The Impeachment Paradox — Why India Has Never Removed a Judge

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TH	**The Hindu**	MAINS RELEVANCE: `GS Paper 2`	

> 🎤 **INTERVIEW ANGLE**
>
> *"Is judicial independence being weaponised as a shield against accountability in India? How should the judicial removal process be reformed?"*

The submission of a removal notice against Justice G.R. Swaminathan of the Madras High Court by 107 INDIA bloc MPs on January 22, 2026 reignites one of India's most persistent constitutional debates: why has the world's third-largest judiciary — with over 5,000 sitting judges — never once successfully removed a judge since Independence?

THE CONSTITUTIONAL ARCHITECTURE

India's framers embedded judicial independence into the Constitution through an intentionally difficult removal process. Articles 124(4) and 124(5) — made applicable to High Courts via Articles 217 and 218 — require a motion to be signed by at least 100 Lok Sabha members or 50 Rajya Sabha members. If the Presiding Officer admits the motion, a three-member Inquiry Committee is constituted under the Judges (Inquiry) Act, 1968, comprising a Supreme Court judge, a High Court Chief Justice, and a "distinguished jurist." If found guilty, the motion must secure a **special majority** — two-thirds of members present and voting and a majority of total membership — in both Houses, followed by a Presidential address.

This architecture was designed to prevent judicial removal becoming a political tool. The framers were clear: judges must be able to give unpopular verdicts against governments without fear of retaliatory removal.

THE TRACK RECORD OF FAILURE

The mechanism has been invoked at least five times — and failed every time:

V.K. Shukla (1991): Motion against a Allahabad HC judge; never admitted

Justice V. Ramaswami (1993): The only case that reached a Lok Sabha vote. A three-member committee found Ramaswami guilty of wilful and gross misuse of public funds. Yet the ruling Congress party directed its MPs to **abstain** — the motion failed. Ramaswami remained a judge

Justice Soumitra Sen (2011): Rajya Sabha passed the removal motion — historic first. Before the Lok Sabha could vote, Sen resigned, rendering the process moot

Justice P.D. Dinakaran (2011): Resigned before the inquiry committee could complete its investigation

CJI Dipak Misra (2018): The Rajya Sabha Chairman rejected the notice at the admission stage — never reached a committee

The Justice Swaminathan notice in 2026 faces the same structural gauntlet.

THE PROBLEM: POLITICAL INCENTIVE MISMATCH

The process fails not because of constitutional drafting errors but because of political incentive structures. Removing a judge requires ruling party support. Ruling parties rarely support judicial removal because:

They benefit from having judges who are broadly sympathetic to the government

Joining an opposition-led removal motion appears partisan and politically costly

Judicial independence, however imperfect, is a constitutional value that citizens broadly support

The result: only judges already resigned or resigned-before-completion have effectively "faced" the process.

THE ACCOUNTABILITY VACUUM

The failure of the formal mechanism has created a governance vacuum. Complaints against judges are handled through an opaque "in-house procedure" — a system developed by the Supreme Court itself, where the CJI investigates complaints. There is no external oversight, no statutory framework, and no obligation to publish findings.

The **National Judicial Appointments Commission (NJAC) judgment of 2015** — where the Supreme Court struck down a constitutional amendment that would have given government and civil society a role in judicial appointments — widened this accountability gap. The Court defended collegium primacy but offered no reciprocal accountability mechanism.

WHAT REFORMS CAN BRIDGE THE GAP?

Several institutional reforms have been debated and deserve serious consideration:

A STATUTORY JUDICIAL CONDUCT COMMISSION

A permanent body — separate from the existing in-house procedure — staffed by retired judges, legal academics, and civil society representatives, with powers to investigate complaints, make public findings, and recommend action. This would not replace the constitutional removal process but would create a lower-stakes accountability layer below impeachment.

MANDATORY ASSET AND CONDUCT DISCLOSURE

Currently, judges are not legally required to publicly disclose assets (though some do). A statutory disclosure requirement, enforceable and auditable, would deter conflict-of-interest situations before they require a removal motion.

TIME-BOUND INQUIRY PROCESS

The three-member committee under the Judges (Inquiry) Act has no statutory deadline. Sen and Dinakaran cases dragged for months/years before resignations. A 90-day inquiry clock would force resolution.

SEPARATION OF POLITICAL DECISION FROM LEGAL FINDING

A structural reform could separate the legal determination of guilt (inquiry committee) from the political vote (Houses). If the committee finds a judge guilty of misbehaviour, automatic consequence (rather than discretionary vote) could follow — removing the political incentive to abstain.

THE PRESENT CASE: JUDICIAL INDEPENDENCE OR IDEOLOGICAL PARTISANSHIP?

The Justice Swaminathan notice raises a distinct issue. The MPs allege that his ruling — directing Tamil Nadu authorities to allow a religious lamp-lighting ceremony despite law-and-order concerns — evidenced ideological bias. Legal scholars are divided: some see this as a legitimate governance order; others as overreach into executive domain.

What the case exposes is that judicial accountability debates in India are almost always politically mediated — initiated by opposition parties against judges seen as sympathetic to the ruling coalition's rivals. This undermines the legitimacy of even well-founded removal attempts.

CONCLUSION

India's inability to remove a judge is not accidental — it is the product of a constitutional design that prioritises judicial independence over accountability. But independence without accountability breeds opacity. The answer lies not in making removal easier but in building a robust, non-political infrastructure of judicial accountability that can address misconduct below the impeachment threshold. Until then, the constitutional clause remains a paper tiger — invoked dramatically, delivered never.

📌 **FACTS CORNER — KNOWLEDGEPEDIA**

CONSTITUTIONAL FRAMEWORK — JUDICIAL REMOVAL:

SC Judges: Articles 124(4) and 124(5)

HC Judges: Articles 217 and 218 (apply SC removal procedure to HCs)

Threshold: 100 Lok Sabha OR 50 Rajya Sabha members

Governing statute: Judges (Inquiry) Act, 1968

Three-member committee: SC judge + HC Chief Justice + distinguished jurist

Vote required: 2/3rd of members present and voting AND majority of total membership in each House

Final step: Presidential address for removal

HISTORICAL IMPEACHMENT ATTEMPTS:

Justice V. Ramaswami (1993): Found guilty by committee; Congress abstained; motion failed

Justice Soumitra Sen (2011): RS passed; resigned before LS vote

Justice P.D. Dinakaran (2011): Resigned before inquiry completion

CJI Dipak Misra (2018): Rajya Sabha Chairman rejected notice at admission

Justice G.R. Swaminathan (2026): 107 INDIA bloc MPs; submitted to Lok Sabha Speaker

RELATED CONCEPTS:

NJAC Judgment (2015): SC struck down NJAC Act and 99th Constitutional Amendment; restored collegium system

Collegium System: SC and HC judges appointed by President on recommendation of Chief Justice + 2/4 senior judges

In-house procedure: SC's own internal mechanism for complaints against judges (no statutory basis)

Second Judges Case (1993): Established collegium primacy in appointments

Third Judges Case (1998): Expanded collegium to 4 senior SC judges + CJI

OTHER RELEVANT FACTS:

India has ~5,000 sitting judges (SC + 25 HCs + subordinate courts)

Vacancy rate in HCs: ~30-35% (structural problem independent of removal)

Justice Ramaswami case: First and only time an HC/SC judge's removal reached a full Lok Sabha vote

The word "misbehaviour" in Article 124(4) is not defined in the Constitution or the Judges (Inquiry) Act

Sources: The Hindu, The Leaflet, The Wire

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in linkedin.com/in/epicbharat

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