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EDITORIAL ANALYSIS

Removal Without an Office: Impeaching a Judge Who Has Resigned

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Removal Without an Office: Impeaching a Judge Who Has Resigned

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THE LIFT LINE

The Constitution gives Parliament a formidable but narrow power: to remove a sitting judge for **proved misbehaviour or incapacity**. It is a scalpel meant for a single purpose, which is to take away a judicial office from a person unfit to hold it. When the judge has already surrendered that office by resigning, the scalpel finds nothing to cut. The cash-at-residence controversy surrounding **Justice Yashwant Varma** has forced this uncomfortable clarity into the open. If the aim of removal is to vacate an office, and the office is already vacant, then a full impeachment proceeding risks becoming an expensive symbol rather than a legal remedy. Yet the instinct behind the demand, that grave allegations cannot simply dissolve with a resignation letter, is entirely sound. The resolution is not to bend the removal machinery beyond its design, but to build a credible accountability route that does not depend on the office still existing.

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

Judicial accountability is one of the most durable themes in GS2, and it tests a candidate's ability to hold two goods in tension: the independence of the judiciary and its answerability. This editorial adds a fresh twist, the post-resignation scenario, that lets a well-read aspirant show original reasoning rather than textbook recall.

It also invites precise constitutional citation, and precision on articles and procedure is what separates a top answer from an average one.

GS Paper 2: Structure, organisation and functioning of the judiciary, and the mechanisms for judicial accountability.

GS Paper 2 (Polity): Separation of powers and the checks that Parliament and the judiciary exercise on each other.

For **Prelims**, hold the specifics: Supreme Court judges are removed under **Article 124(4)**, with the investigation procedure enabled by **Article 124(5)**; High Court judges are removed under **Article 217** read with **Article 218**, which applies the same process. The only grounds are **proved misbehaviour or incapacity**. The procedure is governed by the **Judges (Inquiry) Act, 1968**, under which a motion signed by the required number of members triggers a three-member inquiry committee. Removal needs a **special majority in each House**, meaning a majority of the total membership and at least two-thirds of members

present and voting. The judiciary also runs an **in-house inquiry mechanism** for allegations against sitting judges. No judge has ever been removed by Parliament; in the **Justice V. Ramaswami case (1993)**, the motion failed when it fell short in the Lok Sabha even after the inquiry committee found misconduct.

For **Mains**, the argument is that removal is office-specific, and once the office is gone the constitutional remedy of impeachment loses its legal object, which is why the accountability gap must be closed elsewhere.

BACKGROUND AND CONTEXT

The framers built removal to be difficult on purpose. A judge who could be dismissed easily would be a judge who bends to the political wind, so the process demands a special majority, a **statutory** inquiry and a high evidentiary bar of **proved misbehaviour or incapacity**. This **deliberate** difficulty is a feature of judicial independence, not a flaw in accountability.

The record confirms how high the bar sits. In **1993**, despite an inquiry committee finding misconduct against **Justice V. Ramaswami**, the removal motion collapsed when governing-party members abstained in the Lok Sabha. No judge has ever been removed. Against this backdrop, the **Justice Varma** episode, in which large sums of cash were reportedly discovered at a judge's residence, triggered both an in-house inquiry and calls for parliamentary removal. When resignation entered the picture, the constitutional question sharpened: does a removal motion retain any meaning against a person who no longer holds the office the motion seeks to strip?

THE CORE ARGUMENT / ISSUE

Removal is tied to the office, not the person

The text of **Article 124(4)** speaks of removing a judge from office. The remedy is the vacation of the office; it is not a criminal punishment, a fine or a declaration of guilt with independent legal effect. Once a judge resigns, the office is already vacant, and the specific thing the Constitution empowers Parliament to do has already happened by another route. Pressing the machinery forward yields no operative order, because there is no office left to remove the person from.

The risk of symbolic proceedings

A proceeding that cannot produce its intended legal effect risks becoming performative. It consumes parliamentary time, subjects a former judge to a process with no constitutional payoff, and may set a precedent that removal is about censure rather than office. That confuses the purpose of the power and could, in future, be weaponised against retired judges for their past decisions, chilling independence.

But accountability cannot simply vanish

The counter-instinct is legitimate. If grave misconduct can be laundered away by a timely resignation, judges gain an exit hatch that shields pensions, post-retirement eligibility and reputation from consequence. The answer is not to distort removal, but to ensure that other mechanisms, criminal investigation where an offence is alleged, forfeiture of post-retirement benefits, and a strong in-house process, carry the accountability that impeachment cannot.

QUESTION	REMOVAL (IMPEACHMENT)	ALTERNATIVE ACCOUNTABILITY
Legal object	Vacate a judicial office	Investigate conduct, impose consequences
Effect after resignation	No office to vacate, remedy is spent	Criminal law and benefit forfeiture still apply
Grounds	Proved misbehaviour or incapacity	Ordinary criminal and service standards
Forum	Parliament under Judges (Inquiry) Act, 1968	Courts, in-house committee, executive on benefits
Track record	No judge ever removed (Ramaswami, 1993)	Underused, needs strengthening

HOW TO THINK ABOUT THIS (ANALYTICAL FRAME)

Frame this as a **purpose-of-the-remedy** analysis. Every constitutional power has an object; when the object disappears, the power becomes moot however strong the moral case for using it. Impeachment's object is the office. Distinguish this cleanly from the separate question of whether the individual should face consequences, which the criminal law and service rules answer.

Then apply the **independence-versus-accountability balance**. Judicial independence requires that removal be hard and office-specific, so judges are not hounded after they leave. Accountability requires that misconduct meet consequences regardless of resignation. These are reconciled not by stretching one instrument to do everything, but by matching each objective to the right instrument, with the in-house mechanism and ordinary law filling the gap that a resignation exposes.

THE DIAGRAM IN WORDS

Allegation against judge -> In-house inquiry finds substance -> Judge resigns -> Office already vacant -> Article 124(4) removal has no office to act on (remedy moot) -> Shift to criminal investigation + benefit forfeiture + robust in-house accountability

WAY FORWARD

- ❶ **Recognise the limit of removal.** Accept that impeachment is office-specific under **Article 124(4)** and **217**, and avoid symbolic proceedings against a resigned judge that yield no constitutional remedy.
- ❷ **Strengthen the in-house mechanism.** Give the judiciary's internal inquiry process statutory backing, defined timelines and transparent findings, so accountability does not hinge on whether the office still exists.
- ❸ **Pursue the ordinary law.** Where an alleged act is a criminal offence, ensure a fair, independent investigation proceeds on its own track, since resignation does not confer immunity from criminal liability.
- ❹ **Attach consequences to conduct, not office.** Provide, through law, for forfeiture of post-retirement benefits and disqualification from certain post-retirement roles where an in-house or judicial finding of grave misconduct stands.

PYQ LINKAGE AND PRACTICE

This links to past GS2 questions on judicial accountability, on the independence of the judiciary, and on the mechanisms available to check judicial conduct. UPSC often asks candidates to balance independence against accountability, and the post-resignation angle offers a sharp, current illustration.

Practice question: Removal of a judge under Article 124(4) is a remedy tied to the vacation of a judicial office. In light of a case where the judge has resigned before proceedings conclude, examine whether impeachment retains its purpose, and suggest how judicial accountability can be secured through other means. (15 marks, 250 words)

Sources: The Hindu, Constitution of India, Articles 124 and 217, Judges (Inquiry) Act, 1968

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