INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 6 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

THE INEFFECTIVE PROCESS OF REMOVING INDIAN JUDGES: A CRITICAL ANALYSIS

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BEST CITATION – DHINAGAR. P & Ms. EZHILARASI M, THE INEFFECTIVE PROCESS OF REMOVING INDIAN JUDGES: A CRITICAL ANALYSIS, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (6) OF 2026, PG. 478-485, APIS – 3920 – 0001 & ISSN - 2583-2344.

Abstract

India's constitutional framework for judicial removal—impeachment under Articles 124(4) and 217(1)(b) of the Constitution of India 1950—has never resulted in the removal of single jude in over seventy-five years of independent India. This paper critically analyses the systemic defects that have rendered this mechanism wholly inoperative. Drawing primarily on an examination of the structural issues and challenges identified through doctrinal analysis and a review of all significant impeachment attempts—Justice V Ramaswami (1993), Justice P D Dinakaran (2010), Justice Soumitra Sen (2011), Justice S K Gangele (2015), Justice C V Nagarjuna Reddy (2017), and Justice Yashwant Varma (2025–2026)—the paper argues that failure is the product of compounding constitutional, legislative, definitional, political, and institutional defects. The paper further draws on comparative models from the United Kingdom, the United States, Canada, and Australia to propose targeted reforms, including the creation of an independent National Judicial Accountability Commission, a statutory definition of "proved misbehaviour," a preliminary screening mechanism, and a legislative response to the resignation loophole.

Keywords: *judicial accountability, impeachment, proved misbehaviour, Judges (Inquiry) Act 1968, judicial independence, judges removal, constitutional reform*

I. INTRODUCTION

The judiciary stands as the guardian of India's constitutional democracy. Judicial independence—insulated from executive pressure and legislative interference—is not merely an institutional preference but a constitutional imperative affirmed as a basic feature of the Constitution. Yet independence without accountability is impunity. The central paradox of India's constitutional design is that while Articles 124(4) and 217(1)(b) provide for removal of judges through impeachment, not a single judge of the Supreme Court or a High Court has ever been removed through this process since 1950.[921]

This research investigates why this mechanism has remained entirely inefficacious. The impeachment process was intended by the Constitution's framers to serve as the ultimate check on judicial misconduct and incapacity. Instead, an accumulation of procedural, definitional, political, and institutional barriers

1. Constitution of India 1950, art 124(4): removal requires an address by each House supported by a majority of total membership and two-thirds of members present and voting. Art 217(1)(b) extends the same framework to High Court judges.

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has rendered it practically unusable—a constitutional provision existing in text but not in effect. The paper analyses six major impeachment episodes alongside the legislative framework governing them, synthesising the systemic reasons for failure and proposing a coherent agenda for reform.[922]

The central hypothesis is that the persistent failure of judicial impeachment in India is not an isolated anomaly but the structural product of compounding defects: a supermajority threshold designed for political invulnerability; the Judges (Inquiry) Act 1968 having no independent investigation mechanism; the absence of a statutory definition of judicial misbehaviour; overbroad immunities created by the Judges (Protection) Act 1985 and the ruling in *K Veeraswami v Union of India*; endemic politicisation of proceedings; and institutional resistance embedded in the collegium system—all operating in concert to neutralise the accountability mechanism.[923]

II. THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

2.1 The Constitutional Provisions

Article 124(4) of the Constitution of India 1950 mandates that a Supreme Court judge may be removed only upon an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting, on grounds of "proved misbehaviour or incapacity." Article 217(1)(b) extends this structure to High Court judges. The President then issues the removal order.[924]

The supermajority requirement was a deliberate choice of the Constituent Assembly to insulate judges from partisan removal. Dr B R Ambedkar made clear during the debates that judges must answer only to the law and the Constitution—yet independence was never intended as a shield against accountability for genuine misconduct. The fatal drafting omission, however, was the failure to define either "proved misbehaviour" or "incapacity," leaving those constitutional grounds without a principled legal framework for over seventy-five years.

2.2 The Judges (Inquiry) Act 1968: Structure and Deficiencies

The Judges (Inquiry) Act 1968 supplies the procedural mechanism: a three-member inquiry committee—comprising one Supreme Court judge, one High Court Chief Justice, and one distinguished jurist—investigates the charges and submits a report. If guilt is found, Parliament may vote on the removal address. However, the Act replicates the constitutional phrase "proved misbehaviour" in section 2 without definition, creates no screening mechanism to filter frivolous motions, prescribes no time limits for any stage of inquiry, establishes no independent investigative agency, and makes no provision for consequences if the judge resigns during proceedings.

The Judges (Protection) Act 1985, compounded by the Supreme Court's ruling in *K Veeraswami*, provides sweeping immunity from civil and criminal process, requiring the Chief Justice of India's consent before a judge may be prosecuted for any offence. Remarkably, judges are also excluded from the Lokpal's jurisdiction under the Lokpal and Lokayuktas Act 2013. Together, these provisions make impeachment the only meaningful accountability route, while

2. S P Gupta v Union of India AIR 1982 SC 149 (First Judges Case); Supreme Court Advocates-on-Record Association v Union of India (1993) 4 SCC 441 (Second Judges Case); In re Special Reference No 1 of 1998 (1998) 7 SCC 739 (Third Judges Case).

3. K Veeraswami v Union of India AIR 1991 SC 2239. The Court held that a sitting judge cannot be prosecuted under the Prevention of Corruption Act 1988 without prior consent of the Chief Justice of India. See also Judges (Protection) Act 1985, s 3.

4. Constituent Assembly Debates (Official Report), vol VIII (24 May 1949) 258 (B R Ambedkar). The deliberate omission of a definition of "misbehaviour" was not a drafting error but a choice to leave content to future legislation under art 124(5).

5. Judges (Inquiry) Act 1968, s 2 (definition clause defines only "Judge" and "committee," making no reference to "misbehaviour" or "incapacity"). See H M Seervai, Constitutional Law of India (4th edn, Universal Law Publishing 2013) vol 2, 1827–1851.

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simultaneously making that route extraordinarily difficult to complete.[925]

III. ISSUES: DEFECTS IN THE IMPEACHMENT MECHANISM

This section constitutes the central analytical contribution of the research. Drawing on doctrinal examination and the empirical record of all six major impeachment attempts, six interlocking systemic defects can be identified.

3.1 The Definitional Vacuum: "Proved Misbehaviour" and "Incapacity"

The most fundamental obstruction in the entire framework is the complete absence of any statutory definition of "proved misbehaviour." Article 124(4) invokes this phrase as a legal standard, but neither the Constitution nor the Judges (Inquiry) Act 1968 supplies content to it. Every inquiry committee has consequently been compelled to construct its own normative framework from first principles.[926]

The consequences of this vacuum are manifold. In the Ramaswami inquiry, "misbehaviour" was interpreted as misuse of court funds for personal expenditure. In the Soumitra Sen case, the operative conduct was misappropriation of funds held in a fiduciary capacity and providing false information to the inquiry committee. In the Gangele matter, the inquiry committee found that gender insensitivity in handling a rape case did not amount to "proved misbehaviour." Each committee operated on a different normative baseline, producing an incoherent and unpredictable body of quasi-jurisprudence with no authoritative definition to bind it

The concept of "incapacity"—the second constitutional ground—is even more neglected. Whether it encompasses physical incapacity, mental incapacity, or functional incapacity (gross incompetence) is entirely unclear. In seventy-five years of constitutional operation, not a single attempt has been made to remove a judge on grounds of incapacity, partly because no one knows what it legally means. This definitional lacuna is not merely a technical shortcoming: it defeats the purpose of a legal accountability standard and exposes inquiry proceedings to challenge, delay, and manipulation.

3.2 Political Dynamics and Partisan Voting: The Ramaswami Precedent

The Ramaswami case of 1993 established a damaging precedent that has since shaped the political economy of every subsequent impeachment attempt. An inquiry committee found Justice V Ramaswami guilty on fourteen of fifteen charges of financial misconduct. When the motion came to a vote in the Lok Sabha in May 1993, the ruling Congress party directed its members to abstain rather than vote. The result: 196 members voted for removal, none voted against, but approximately 290 Congress members abstained, leaving the motion short of the required majority.[9]

The implications were systemic. Impeachment was revealed to be not a legal proceeding but a political contest in which the party in power holds a structural veto by simple inaction. The supermajority requirement, which necessitates affirmative cross-party cooperation, means that the ruling coalition can defeat any motion without opposing it—abstention alone is sufficient. [927] This dynamic has recurred in every subsequent case. Opposition parties initiate

6. Lokpal and Lokayuktas Act 2013, s 14(1)(f). Judges of the Supreme Court and High Courts are expressly excluded from the Lokpal's investigative jurisdiction, leaving impeachment as the sole formal accountability pathway.

7. Raju Ramachandran, "The Judges (Inquiry) Act: An Examination of Procedural Deficiencies" (2010) 4 NUJS Law Review 217, 220–222. Ramachandran observes that the term "incapacity" has never been tested in any formal proceeding in the seventy-five year history of the provision.

8. Report of the Inquiry Committee in the matter of Justice V Ramaswami (1991) (finding guilt on 14 of 15 charges of financial misconduct); Report of the Inquiry Committee in the matter of Justice Soumitra Sen (2011) (finding misappropriation of funds and false statements to the committee); Report of the Inquiry Committee in the matter of Justice S K Gangele (2016) (finding that gender insensitivity did not amount to "proved misbehaviour").

9. Lok Sabha Debates (Official Record, 11 May 1993). The final count was 196 votes in favour, nil against, with approximately 290 Congress members absent or abstaining on party direction. The motion required approximately 267 affirmative votes to pass

10. Soli Sorabjee, "The Ramaswami Impeachment: A Critical Assessment" (1993) 35 Journal of the Indian Law Institute 221; Fali S Nariman, India's Legal System: Can It Be Saved? (Penguin Books India 2006) 156–178. Both authors identify the Congress abstentions as a deliberate political decision unrelated to the merits of the findings.

proceedings as a political gesture; the government has no structural incentive to cooperate; the motion fails or is allowed to lapse. The result is a paradox: the formal constitutional mechanism is neutralised by the very political architecture within which it must operate.

3.3 The Resignation Loophole

Three of the six major impeachment attempts—Justice P D Dinakaran (2010), Justice Soumitra Sen (2011), and Justice Yashwant Varma (2026)—were effectively concluded by the judge's resignation before the formal process could be completed. There is no provision in the Judges (Inquiry) Act 1968 requiring an inquiry to continue after resignation, nor are there statutory consequences—loss of pension, bar from future appointments, prohibition on practice—that attach upon findings of guilt where the subject has already resigned.[928]

This resignation loophole is structurally perverse. It creates a rational incentive for judges facing serious charges to delay proceedings—through legal challenges, correspondence, and procedural manoeuvres—until resignation becomes the least costly exit. Resignation wipes the slate clean: there is no formal finding, no public judgment of guilt, no official record of removal for misconduct. The judge who resigns under the shadow of impeachment suffers no formal legal consequence beyond the loss of office, which was in any event imminent. This loophole represents perhaps the most practically significant defect in the current framework.[929]

3.4 Informal Accountability Through the Collegium System

In the absence of effective formal mechanisms, the Supreme Court's collegium has developed an informal system for managing judicial conduct: transfers, withdrawal of work, and quiet recommendations of resignation, conducted entirely outside the statutory framework and away from public scrutiny. The Yashwant Varma episode in 2025 is the most recent and illustrative example.[13] When substantial cash was discovered at his official residence in March 2025, the collegium constituted an in-house inquiry committee of three senior judges. The committee reported to the Chief Justice of India; the collegium recommended transfer from Delhi to Allahabad High Court; and Justice Varma resigned in April 2026 before formal impeachment proceedings could be initiated.

This parallel informal accountability structure raises grave concerns of due process, transparency, and legitimacy. The in-house procedure operates without a legislative mandate, without defined standards of evidence, without provision for external challenge or appeal, and without any formal consequence that amounts to removal. In effectively supplanting the statutory mechanism, it normalises opacity as the mode of judicial accountability and insulates the process from public scrutiny or democratic oversight.[930]

3.5 Absence of a Judicial Standards Code

India has no statutory code of judicial conduct. The "Restatement of Values of Judicial Life" adopted by the Supreme Court in 1997 and the Bangalore Principles of Judicial Conduct (2002) are aspirational documents carrying no legal force. The Judicial Standards and Accountability Bill 2010, which would have for the first time enacted a statutory definition of misbehaviour and compelled annual asset declarations, was passed by the Lok Sabha in 2012 but lapsed upon dissolution of Parliament

11. Rajya Sabha Official Records (2009); Rajya Sabha Committee on Petitions, Report on the Motion for Removal of Justice P D Dinakaran (2010). The inquiry committee was constituted but dissolved without a final report upon Dinakaran's resignation in 2011.

[929] Rajya Sabha Official Debates (18 August 2011): 189 votes in favour of removal, 17 against. Press Trust of India, "Justice Soumitra Sen Resigns" Times of India (18 August 2011). The resignation was received by the Lok Sabha Speaker before the lower house debate could commence.

[930] Press Trust of India, "Cash Found at Delhi Home of Judge Yashwant Varma; SC Takes Note" The Hindu (15 March 2025); Alok Prasanna Kumar, "The Yashwant Varma Episode: Why the In-House Mechanism Cannot Substitute for the Judges (Inquiry) Act" Bar and Bench (27 March 2025). Justice Varma resigned on 9 April 2026.

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before the Rajya Sabha could consider it. It has not been reintroduced.[931]

The combined effect is that judges operate without any clear, binding, and publicly known standard against which their conduct can be measured—a deficiency that undermines both accountability and predictability.

3.6 The Structural Barrier of the Supermajority

The constitutional requirement that a removal address must command both an absolute majority of total membership and a two-thirds majority of members present and voting in each House of Parliament in the same session represents a threshold that is, in the conditions of Indian coalition politics, virtually unreachable. The "same session" requirement adds further artificiality, requiring complex proceedings to be compressed within whatever parliamentary time is available in one session. The Law Commission of India has consistently recommended the abolition of the same-session requirement, noting that it serves no constitutional purpose and routinely truncates proceedings that deserve full deliberation.

IV. COMPARITIVE INSIGHTS

A comparative survey of judicial accountability mechanisms in four common law democracies illuminates the gaps in India's model. In the United Kingdom, the Judicial Conduct Investigations Office processes hundreds of complaints annually against judges below the senior judiciary, resulting in graduated sanctions from warnings to removal. For senior judges, removal by parliamentary address under the Constitutional Reform Act 2005 has never been used, but the active complaint infrastructure for the lower judiciary provides meaningful deterrence.[932]

In the United States, eight federal judges have been removed through impeachment since 1789—a record that demonstrates the mechanism can work where political will exists and the definition of impeachable conduct is reasonably understood. The Judicial Conduct and Disability Act 1980 additionally provides a circuit-level oversight mechanism that allows complaints to be investigated and acted upon without triggering full congressional impeachment.[933]

Canada's model is arguably the most instructive for India. The Canadian Judicial Council (CJC), a statutory body comprising all chief justices, receives and screens complaints against federally appointed judges. A two-stage process—preliminary screening followed by formal inquiry where warranted—filters out weak cases and provides a fair, structured process for serious ones. Parliamentary removal requires only a simple majority following a CJC recommendation. No judge has been formally removed, but the CJC process has produced effective accountability through resignation in serious cases.[934]

The comparative lesson is consistent: parliamentary mechanisms alone are insufficient for judicial accountability. Effective systems rely on independent institutional bodies to investigate, screen, and recommend—insulating the accountability process from purely partisan dynamics while preserving ultimate democratic oversight.[935]

V. PROPOSED REFORMS

The reform agenda proposed by this research operates across four dimensions. **First**, the

[931] Judicial Standards and Accountability Bill 2010 (Lok Sabha), cl 2(i) (definition of misbehaviour). The Bill passed the Lok Sabha in 2012 but lapsed upon dissolution of the 15th Lok Sabha before the Rajya Sabha could consider it. Law Commission of India, 195th Report (2006) para 3.5 (recommending abolition of the same-session requirement).

[932] Constitutional Reform Act 2005 (UK), s 33; Judicial Conduct Investigations Office, Annual Report 2022–23 (Courts and Tribunals Judiciary 2023) (recording 1,997 complaints received and 72 disciplinary outcomes in a single year).

[933]. Judicial Conduct and Disability Act 1980 (USA), 28 USC ss 351–364; Michael J Gerhardt, The Federal Impeachment Process: A Constitutional and Historical Analysis (2nd edn, University of Chicago Press 2000) 142–178. Eight federal judges have been removed through the full congressional impeachment process since 1789.

[934] Canadian Judges Act RSC 1985, c J-1, ss 63–65; Canadian Judicial Council, Procedures for Dealing with Complaints and Allegations of Misconduct by Federally Appointed Judges (CJC 2019) ss 4–12. Unlike India's supermajority, Canada requires only a simple majority parliamentary address following a CJC recommendation.

[935]. Shimon Shetreet and Sophie Turenne, Judges on Trial: The Independence and Accountability of the English Judiciary (2nd edn, CUP 2013) 245–267; Vicki C Jackson and Mark V Tushnet, Comparative Constitutional Law (3rd edn, Foundation Press 2014) 587–612.

Constitution must be amended to define "proved misbehaviour" in Article 124 itself—encompassing corruption, criminal conviction, wilful abuse of judicial power, gross procedural impropriety, and conduct fundamentally incompatible with judicial office—and to eliminate the "same session" requirement.[936]

Second, the Judges (Inquiry) Act 1968 must be replaced by a comprehensive Judicial Accountability Act that: (i) establishes a statutory definition of misbehaviour and incapacity; (ii) creates a preliminary screening mechanism to filter frivolous and politically motivated motions; (iii) imposes mandatory time limits at each stage of inquiry; (iv) vests investigative functions in an independent body rather than a committee constituted for each case; and (v) provides that upon a finding of "proved misbehaviour," consequences—including loss of pension and prohibition on future judicial appointment—attach regardless of whether the judge resigns before completion of the formal removal process.

Third, an independent National Judicial Accountability Commission (NJAC-II), modelled on the Canadian Judicial Council and established with the same constitutional status as the Election Commission of India, should be created. This body should comprise the Chief Justice of India, two senior Supreme Court judges, the Attorney General, two distinguished jurists appointed by the President, and a civil society representative jointly nominated by the Prime Minister, Leader of the Opposition, and Chief Justice. It should have power to receive complaints from any person, investigate suo motu, impose graduated sanctions, and recommend removal to Parliament.

Fourth, the Judges (Protection) Act 1985 should be amended to make clear that immunity does not extend to acts constituting misbehaviour as defined under the new law, and the requirement of the Chief Justice of India's consent for prosecution should be transferred to the NJAC-II, removing the structural conflict of interest that currently attends it.

VI. CONCLUSION

The record is stark: seventy-five years, six significant impeachment attempts, zero removals. This is not a constitutional anomaly—it is constitutional failure. The mechanism for judicial accountability provided by Articles 124(4) and 217(1)(b) has been rendered entirely inoperative by an accumulation of defects so fundamental that piecemeal amendment cannot cure them. The definitional vacuum around "proved misbehaviour," the absence of an independent investigative body, the resignation loophole, the structural veto available to the ruling party through abstention, the overbroad immunities created by statute and judicial decision, and the collegium's informal parallel accountability structure—these are not separate problems but interlocking components of a single systemic failure.

The Justice Yashwant Varma episode of 2025–2026 is not an exceptional case but a predictable product of this architecture. When the Supreme Court itself bypasses the statutory framework and conducts accountability through informal collegium processes, it signals that the formal mechanism is understood by its own primary actors to be unworkable. That signal demands a legislative and constitutional response.

Judicial independence and accountability are not antithetical values. A judiciary that is fearlessly independent from political direction but meaningfully accountable for its own conduct through transparent, principled, and effective processes is one that earns rather than merely demands public confidence. The reforms proposed in this paper are not an attack on judicial independence—they are a condition for the legitimacy on which that independence ultimately rests. The time for this reform is now.

[936]. Law Commission of India, 195th Report (2006) paras 6.2, 7.3, 8.1–8.5; Law Commission of India, 230th Report (2009). The Commission recommended creation of a National Judicial Oversight Committee with investigative powers as early as 2006.

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