



## **DAILY EDITORIAL ANALYSIS**

**TOPIC**

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**JUDICIAL IMPEACHMENT IN INDIA:  
TOUGH LAW WITH A LOOPHOLE**

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## JUDICIAL IMPEACHMENT IN INDIA: TOUGH LAW WITH A LOOPHOLE

### Context

- The motion submitted to **Lok Sabha Speaker** for **removal of Justice GR Swaminathan** of Madras High Court by **INDIA bloc MPs** has renewed public debate over the **procedure and safeguards** involved in the **removal of judges** under the Indian Constitution.

### Constitutional Basis for Removal of Judges

- Articles 124 and 217 of the Constitution:** The removal of judges in India is governed by:
  - Article 124(4) & (5)** for Supreme Court judges;
  - Articles 217(1)(b) & 218** for High Court judges;
- The Constitution uses the term '**removal**' in the case of judges although commonly referred to as '**impeachment**'.
  - The term '**impeachment**' applies only to the **President of India** (Article 61).
- Grounds for Removal:** A judge can be removed only on grounds of **proved misbehaviour or incapacity**.
  - However, the term misbehaviour **is not defined in the Constitution of India**, but **judicial interpretation has clarified its meaning**.

### Judicial Interpretation of Misbehaviour

- The Supreme Court of India, in **K. Veeraswami vs Union of India (1991)**, emphasized that **honesty and impartiality** are absolute standards for judges.
  - In **M. Krishna Swami vs Union of India (1992)**, the Supreme Court held that not every **error of judgment or negligence** amounts to misbehaviour, it must involve **wilful misconduct, corruption, or moral turpitude**.

### Legislative Framework: Judges (Inquiry) Act, 1968

- Parliament enacted the **Judges (Inquiry) Act, 1968** and the corresponding **Rules**, outlining the procedure for investigating charges against judges under **Article 124(5)**
- Key Provisions:**
  - A motion for removal must be **signed by at least 100 Lok Sabha MPs or 50 Rajya Sabha MPs**.
  - The motion is submitted to the **Speaker (Lok Sabha)** or **Chairman (Rajya Sabha)**.
  - The **Speaker/Chairman decides whether to admit or disallow** the motion.
- A **three-member inquiry committee** is constituted, comprising a **Supreme Court judge, a Chief Justice of a High Court, and distinguished jurist**, if admitted.
- If the committee finds the judge guilty of misbehaviour or incapacity, **both Houses of Parliament** need to pass a motion **by a two-thirds majority** before it is sent to the **President**, who then issues an order for removal.

### Structural Flaw in the Impeachment Process

- Role of Speaker or Chairman:** The removal procedure lies in the **discretion vested in the Speaker or Chairman to admit or disallow the motion**.
  - The system's weakness lies in allowing a **single presiding officer** to effectively terminate the process **before investigation** begins.
  - Even when **100 or more MPs** sign a motion, it can be **dismissed at the threshold**, rendering Parliament's role redundant.
  - It undermines the **principle of judicial accountability** and gives undue power to the **executive branch**, which can indirectly influence the Speaker or Chairman's decision.

- **Lack of Defined Criteria:** The **Judges (Inquiry) Act** does not specify the **conditions for admissibility** of such a motion.
  - ◆ Consequently, the **decision to disallow** can be made **without assigning reasons**, potentially nullifying a constitutionally backed effort supported by over 100 MPs.
  - ◆ It raises concerns about **arbitrariness and executive influence**, especially when the Speaker or Chairman acts as a **statutory authority** rather than as the presiding officer of the House.
- **Constitutional Ambiguity:** Article 124(5) does **not empower the Speaker/Chairman** to reject a motion.
  - ◆ It merely authorizes Parliament to regulate the procedure for **investigation and proof** of misbehaviour.
  - ◆ The **proof** needs to come through a **judicial inquiry**, not through the Speaker's preliminary scrutiny.

### Need For Reform

- **Reconsidering the Speaker's Role:** Given the **constitutional intent of checks and balances**, it is imperative that the **Speaker's or Chairman's role** be **limited to procedural verification** rather than substantive judgment of allegations.
  - ◆ The actual evaluation should rest with the **independent inquiry committee**.
- **Ensuring Transparency:** Any decision to reject a motion should be accompanied by **written reasons** and made **subject to judicial review** to avoid arbitrariness.
- **Legislative Reforms:** A re-examination of the **Judges (Inquiry) Act, 1968** is necessary to:
  - ◆ Define **clear admissibility criteria** for motions.
  - ◆ Mandate **automatic reference** to an inquiry committee when a motion meets constitutional requirements.
  - ◆ Safeguard the process from **political interference** while preserving **judicial independence**.

### Conclusion

- The impeachment motion has reopened vital discussions about the **balance between judicial independence and accountability**.
- The Constitution of India has a removal process **to prevent misuse**. However, the **discretionary gatekeeping power** vested in the **Speaker or Chairman** threatens to reduce this process to a **political formality**.
- The law needs to ensure that **serious motions by elected representatives** are not dismissed without due consideration to uphold public faith in the judiciary.
  - ◆ Revisiting the **Judges (Inquiry) Act, 1968** is not just a procedural necessity, it is a **constitutional imperative** for a transparent and accountable judiciary.

Source: TH

### Daily Mains Practice Question

**[Q]** Examine the constitutional and procedural framework governing the removal of judges in India. Does the discretion vested in the Speaker or Chairman to admit or reject an impeachment motion undermine the principles of judicial accountability and parliamentary democracy?

