

Who will Guard the Guardians? Rethinking Judicial Accountability and the Collegium's Role in Removals:

"The judiciary is the guardian of fundamental rights and must remain independent of the executive. It must be a watchdog against tyranny, whether of the legislature or the executive." Dr. B.R. Ambedkar (Constituent Assembly Debates, Volume VII, November 4, 1948)

The bedrock of our democracy is the rule of law which necessitates an independent judiciary where Judges must be able to make decisions without being influenced by the changing political climate. The ongoing debate on judicial appointments and removals raises a fundamental question: *Who will judge who is to judge?* This question has persisted since the framing of the Constitution and has now gained renewed significance in light of recent controversies, such as the *Justice Yashwant Varma* case.

The Constituent Assembly extensively debated upon the matter of appointment of judges, ultimately incorporating Articles 124 and 217 into the Constitution. Dr. B.R. Ambedkar, while discussing the role of the Chief Justice in appointments, cautioned against granting absolute power to any single entity. As a result, the term "*consultation*" was included instead of "*concurrence*," thereby ensuring that no judge could be appointed without the involvement of the Chief Justice of India (CJI). Over time, however, this balance shifted significantly, with the judiciary asserting more control over appointments through the evolution of the collegium system.

Article 50 explicitly mandates the separation of the judiciary from the executive, reinforcing the idea that the judiciary must function without undue influence. However, judicial accountability is equally critical, and the impeachment process, as the sole means of removing a judge, has proven highly ineffective.

The process of judicial appointments and removals has long been a subject of debate, particularly concerning the independence and accountability of the judiciary. At present, the appointment of judges to the High Court and Supreme Court follows a rigorous collegium system, ensuring judicial independence from

executive influence. However, the removal mechanism remains cumbersome, relying solely on impeachment under Articles 124(4) and 217 of the Constitution, a process that has repeatedly proven ineffective.

The removal of High Court and Supreme Court judges in India is governed by Articles 124(4) and 217. The only available mechanism is impeachment by Parliament, which requires a special majority in both Houses. This process is exceptionally cumbersome, politically fraught, and has never resulted in the actual removal of a judge in India's democratic history.

While the judiciary is meant to be independent, instances of misconduct have repeatedly raised questions about whether the impeachment process is an effective safeguard. The case of *Justice V. Ramaswami*, who faced impeachment proceedings in 1993 but was ultimately saved due to political maneuvering, exemplifies the near impossibility of this route achieving its intended objective.

In addition to *Justice Ramaswami*, the Indian judicial system has witnessed multiple failed impeachment attempts. *Justice Soumitra Sen*, who was accused of misappropriation of funds, became the first judge whose impeachment was approved by the Rajya Sabha in 2011. However, he resigned before the motion could be tabled in the Lok Sabha, effectively nullifying the process. *Justice P.D. Dinakaran* faced corruption allegations and a motion was moved against him, but he too resigned before proceedings could be initiated. These instances demonstrate how impeachment, as the only removal mechanism, can be circumvented with strategic resignations. Similarly, *Justice S.K. Gangele* of the Madhya Pradesh High Court faced allegations of sexual harassment. Despite a Rajya Sabha inquiry committee being constituted, he was absolved of charges, and the impeachment motion did not move forward. Justice *C.V. Nagarjuna Reddy* of the Andhra Pradesh/Telangana High Court was accused of misconduct, including caste-based discrimination and disproportionate assets. Two impeachment attempts were made, but signatories withdrew their support at the last minute, causing both motions to collapse.

Even the former *Chief Justice of India Dipak Misra* faced an impeachment attempt in 2018. The motion, backed by opposition MPs, alleged misuse of power and involvement in a medical college bribery case. However, the Rajya Sabha

Chairman rejected it at the admission stage, citing a lack of "*proven misbehavior*." This underscores how political influence and procedural roadblocks render impeachment ineffective.

The dissatisfaction with executive-led judicial appointments led to a series of judicial interventions. The landmark case of *S.P. Gupta v. Union of India* (First Judges Case) affirmed that the executive had primacy in appointments. However, this decision was overturned in *Supreme Court Advocates-on-Record Assn. v. Union of India* (Second Judges Case) in 1993, which established the collegium system. The Third Judges Case further refined the process, ensuring that appointments were decided by the Chief Justice in consultation with a group of senior judges.

Despite criticisms of opacity and favoritism, the collegium system has played a vital role in insulating the judiciary from political interference. However, its major flaw is that while it has absolute control over recommendations for appointments, it lacks any mechanism to retract those recommendations or initiate disciplinary action post-appointment. This creates a paradox where the institution responsible for selecting judges is rendered powerless when confronted with credible allegations against its own appointees.

To address this lacuna, an amendment should be considered, granting the collegium the inherent power to retract its recommendation or recall a judge in cases where ethical violations or serious misconduct are established. Such a provision would allow for a swifter, more transparent process without compromising judicial independence.

Given that judicial appointments are shielded from unilateral executive discretion, it is logical to extend a similar principle to removals, ensuring that misconduct is addressed without undermining judicial independence. Just as the collegium plays a crucial role in selecting judges, it should also have the authority to review allegations of misconduct and recommend removals. However, the primary hindrance to such a framework lies in the express bar within Article 124, which mandates impeachment as the sole removal process. To rectify this lacuna, an amendment must be introduced, allowing for an alternative removal mechanism, akin to the appointment process.

A structured review mechanism, embedded within the collegium system, could be established to investigate allegations of ethical violations or misconduct. This committee, composed of senior judges, would examine evidence and, upon finding substantial grounds, recommend the judge's removal to the President. Such a process would bypass the procedural and political entanglements of impeachment while maintaining the judiciary's credibility. Furthermore, granting the collegium the power to retract its recommendation or recall a judge under specific circumstances would create a self-regulating framework, ensuring transparency and accountability. *Justice Yashwant Varma's* case is a reminder that the judiciary must evolve to maintain public trust. The decision of the CJI to disclose all materials related to the allegations is a commendable step toward transparency. However, without institutional reforms, similar controversies in the future may remain unresolved due to procedural hurdles.

The landmark Supreme Court judgment in *Supreme Court Advocates-on-Record Assn. v. Union of India (2015)* struck down the National Judicial Appointments Commission (NJAC) and the 99th Constitutional Amendment, reaffirming the judiciary's independence by restoring the collegium system. The NJAC judgment emphasized that executive interference in judicial appointments violates the basic structure doctrine, particularly the separation of powers and the independence of the judiciary. The Supreme Court ruled that allowing non-judicial members, including the Law Minister, to participate in judicial appointments diluted the judiciary's primacy, thereby threatening its autonomy. The rationale behind this decision underscores a crucial link to the debate on judicial removals: if judicial primacy in appointments is essential to safeguard independence, then it logically follows that the judiciary should also have a structured mechanism to oversee the removal of its own members. The same reasoning applies to the process of judicial removal, if external interference in appointments is deemed unconstitutional, then the existing process of removal, which depends entirely on Parliament through impeachment, must also be revisited. The current system, as structured under Articles 124(4) and 217, places judicial accountability in the hands of a political body, leading to procedural inefficiencies and the near impossibility of removing a judge, no matter how grave the allegations against them.

The *K. Veeraswami v. Union of India (1991)* verdict underscores the critical importance of judicial integrity, stating that even a single compromised judge not only disgraces their office but also threatens the entire judiciary's credibility, emphasizing that judges must remain "above suspicion" to uphold public trust. This principle gains urgency amid recent controversies involving *Justice Yeshwant Verma*, as allegations of judicial misconduct test the delicate balance between judicial independence and accountability. The case serves as a stark reminder that transparent mechanisms are essential to address ethical lapses without undermining judicial autonomy, a concern echoed by India's constitutional framers, who warned that an unchecked judiciary risks eroding democratic foundations. The judiciary's legitimacy hinges on its ability to self-regulate while maintaining the highest standards of impartiality, reinforcing why every judicial appointment and conduct must be beyond reproach.

The time has come to empower the collegium with not just the responsibility of appointment of a judge but also the authority to maintain the integrity of the judiciary throughout an appointed judge's tenure. Judicial accountability must not be held hostage to an impractical impeachment process but should be an intrinsic feature of the very system that appoints and oversees the higher judiciary.

Views are personal.

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