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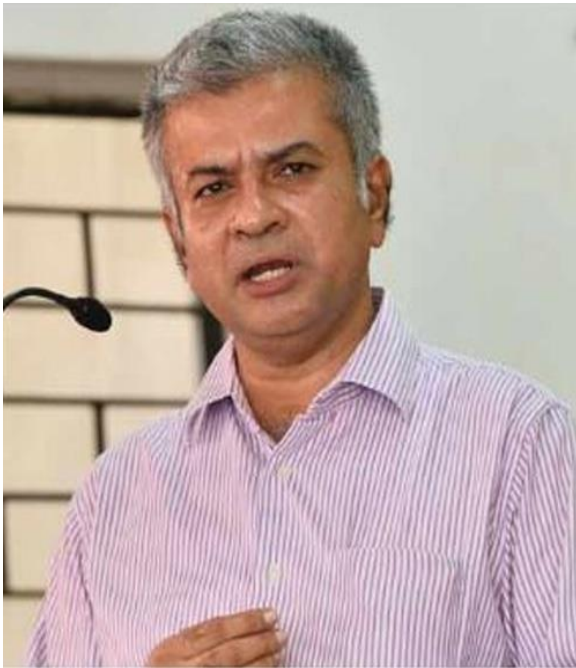
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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you



W H I T E   B L A C K  
L E G A L

# **ACCOUNTABILITY AND REMOVAL OF JUDGES IN INDIA, UNITED STATES OF AMERICA AND SOUTH AFRICA: A COMPARATIVE ANALYSIS**

AUTHORED BY- DIPENDER CHHIKARA

## **ABSTRACT**

From overseeing the other two branches of government to defending the rights of the people and dispensing justice, the judicial branch plays a crucial role in society. In every nation, the Judiciary is maintained independent in order to preserve its independence and integrity, therefore ensuring that the people have access to justice in a proper and fair manner. To achieve this, it is crucial that their nomination stays fair, that there is a competent constitutional mechanism for removing judges for misconduct, and that they declare their personal holdings to monitor their financial development while in office and avoid corruption. The essay aims to understand Judicial Accountability and Judicial Independence to underline the need for both concurrently and to make a complete suggestion to the current judicial impeachment procedure in India. This research evaluates the accountability and removal of judicial authorities under the constitutions of India, the USA, and South Africa. In this paper, the author employs laws from other nations to address problems without precise regulations. This article elaborates on the difficulties the Indian judicial administration has in terms of judicial accountability and identifies a number of existing systemic problems. The author concludes this study with a number of suggestions for addressing these problems.

**Keywords: Accountability, Constitution, Judiciary, Independence**

## **CHAPTER I:**

### **INTRODUCTION**

In terms of people, the Judges, the Judiciary is independent. Judges, unlike members of the legislature, represent no one, not even the citizens in a literal sense. Judges are not accountable and answerable to the legislature and the voters in the way that the political government is. This independence ensures that judges carry out their constitutional duty of upholding the Constitution's supremacy while exercising the power of judicial review in a fair and impartial way, free of coercion

and favoritism<sup>1</sup>. As interpreter, defender, and protector of the Constitution, the court checks and restrains violations of the Constitution by the government when it exceeds its constitutional limitations, violates the Constitution's core structure, infringes on fundamental rights, or acts contrary to the law<sup>2</sup>. In a democratic nation such as ours, the importance of an independent and courageous judiciary cannot be disputed, but this does not imply that the independence of the judiciary will be at risk if the removal of judges, even at the highest level, is not subject to the final authority of the courts. Judicial Accountability is necessary for every judge to operate without fear or external constraints. A judge's responsibility is evaluated in two ways: first, by the need to disclose explanation for every judgement, and second, by the security of tenure and removal.

### 1.1 Literature Review

Removal and accountability of the judges has been a sore subject from decades. The author for the purpose of comprehending the accountability and removal of judges in India vis a vis other nations has Surveyed various literature, some of the pertinent literatures are:

- **Juhi Mathur, “A Relook At Impeachment Of Judges In The Past,” International Journal Of Law And Humanities<sup>3</sup>**

The author in this article looked at the specific problem of judicial accountability in India, analyzing its salient characteristics and downsides in light of similar legislation in other countries. The author in the article talks about the process of removal of judges in USA and other countries. The paper also provides detailed criticisms of the Indian Impeachment procedure and several suggestions for improvement. To that purpose, the paper seeks to clarify the difference between judicial accountability and independence and to offer concrete recommendations for improving India's present judicial impeachment procedure.

- **Stephen Colbran, “The Limit of Judicial Accountability: The Role of Judicial Performance Evaluation, “Legal Ethics (Oxford, England) <sup>4</sup>.**

This scoping paper categorically outlined the process of accountability of federal judges and the author critically analyzed the importance of keeping a balance between the accountability and the independence of judiciary. The author seems to be in support of judicial independence which according to the author forms the basis for every nation to achieve its vision for establishment of Justice. The author however talks about the accountability of judges and categorically asserts that if judges in any case are shown to be

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<sup>1</sup> Law Commission of India ‘Constituent Assembly Debates’ (Law Com No 456 ,1989) 959.

<sup>2</sup> *Asif Hameed and others v state of Jammu and Kashmir* 1989 AIR 1899.

<sup>3</sup> Aprajita Karki, ‘importance of constitution International’ (2021) 4(1) J of Law Management & Humanities 456.

<sup>4</sup> Stephen Colbran, ‘The Limit of Judicial Accountability: The Role of Judicial Performance Evaluation’(2003) 6(1) Intl J of L Rev 678.



corrupt, negligent, or unfit for office, a rigorous, strong, and politically neutral judicial discipline and removal process can help.

- **L Siyo & JC Mubangizi, “The Independence Of South African Judges Constitutional And Legislative Perspective,”**

The author in this article talks about judicial independence and accountability in context of the South African constitution and states that the accountability and the independence of judiciary is a cornerstone of a functional democracy. The author in his paper keeps his major emphasis on the process of removal of judges in the context of South Africa. With respect to the accountability and independence, the author reminds us of the South African constitution where effective provisions to resolve the conflict exists. The author through his article tries to examine if the level of judicial protection available in South Africa is enough.

### **1.2 Statement of Problem**

India, as the largest democracy in the world, must possess or demand two things that are considered to be essential components in a democratic Nation: accountability and transparency. However, it is evident that there are still a few things in our democracy that are not transparent and others that are not held accountable. Evidently, the process for removing a judge is quite complex; this was done to preserve the independence and integrity of the court, and this has reduced the likelihood of removing or impeaching a judge. It is impossible to assert that each and every judge would strive to protect justice and behave fairly; hence, impeachment was required to remove corrupt judges from the court. But despite the number of growing allegations against judges come to record, none of them could be removed which is a major concern for a democratic country like ours.

In America and South Africa, though the procedure has been outlined in the respective constitutions, however it does not give a real abstract as to how the process for accountability would occur. In order to strictly enforce the process of accountability, it becomes impediment to look for reforms and amendments in the respective clauses.

### **1.3 Objective of the study**

The researcher through the paper would try to evaluate and compare the literature, with an objective of comprehending the following propositions, namely:

1. To understand the concepts of accountability and independence of judiciary in India and compare it with other nations.
2. To compare the process for the removal of judges in India with that of USA and south Africa and highlight the procedural similarities or differences between the same

3. To critically evaluate and compare the number of judicial impeachments in the past in India as compared to the respective nations
4. To find a more effective way for strengthening the judicial accountability in our nation.

#### **1.4 Hypothesis**

The researcher in this paper is of view that irrespective of various provisions and enactments which ensures accountability of judges there is sheer imbalance between accountability of judges and independence of judiciary. It is inarguable fact that the removal of judges is influenced by political and other factors which ultimately make the removal process rigid and hence there have been very few removals of judges till date and this also depicts how the accountability of judges is overlooked in the name of independence of judiciary.

#### **1.5 Research Questions**

The researcher through the paper would try to find a solution to the following questions -

1. What is the process of judicial accountability and independence in India?
2. What is the process of removal of judges under the Indian Constitution and simultaneously comparing it with the provisions of USA and South Africa?
3. Whether there is a need to amend the law relating removal of judges in India by looking at the provisions in USA and South Africa?

#### **1.6 Research Methodology**

The project's chosen research approach is of a doctrinal character. The researcher will attempt to ascertain the comparison between the provisions relating to the accountability of judges in India usa and south Africa. The researcher has concentrated on secondary material, including case laws, books, journals, and articles. No empirical study has been conducted, and this research endeavour makes no use of any empirical research data.

#### **1.7 Scope and Limitation of the Study**

The present study is restricted only to higher judiciary and no account has been taken of judge's removal at state level.

## Chapter 2:

### JUDICIAL INDEPENDENCE & ACCOUNTABILITY: STRIKING A BALANCE

#### 2.1 JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

Judges possess the authority to neglect the statutory provisions and deliver a judgement in breach of it. Though there is no inherent right in them but they have the power to transgress the already existing precedents.<sup>5</sup>The objective of the constituent assembly regarding Indian judiciary is apparent in the present constitution framework. The framers had a vision that our judiciary ought to be independent and must be sufficient in itself.<sup>6</sup> The Constitution attempts to render even the lower judiciary independent of any external or extraneous influence.<sup>7</sup> We have established an independent judiciary through the Constitution. It is difficult to identify anything else that would make the Supreme Court and High Court independent from executive interference. Judicial independence is the hallmark for constitutional democratic society which ensures that the society is in adherence to the rule of law.<sup>8</sup>

Before adopting the structure as outlined, the framers of the Constitution gave this element careful consideration and analysed it from every conceivable viewpoint. As far as the district and subordinate courts are concerned, the High Court has control, but when it came to the High Court and Supreme Court Judges, it was deemed sufficient for the preservation of their independence to approve and enact the current Constitution. There is no reason to question the wisdom of the Constituent Assembly's decision to entrust the matter exclusively to the Parliament, nor is there any reason to suspect that the Members of Parliament or their representatives, the Speaker and the Chairman, will not act in accordance with the Constitution's provisions. Three organs of the Indian democratic system owe more than a verbal respect to the doctrine of separation of powers<sup>9</sup>. Though all these organs work in their respective domain but they are bound by their limits to not intrude in the function of other. The most notable effect of the idea of separation of powers is the institutional independence of the court vis-à-vis the other institutions of the State.<sup>10</sup>

The Judiciary, however, checks situations or subtleties when the legislative branch and the executive branch go beyond the bounds of their jurisdiction. Regardless of their religion, caste, gender, or

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<sup>5</sup> BY Benjamin N. Cardozo, 'The Nature of the Judicial Process' Yale University Press' (1921)4 (1) Int. j of L rev 567,786.

<sup>6</sup> Law commission of india, 'CONSTITUTIONAL ASSEMBLY DEBATES,( law com no 258, 1945) 258.

<sup>7</sup> .Law commission of india 'Dr. Rajendra Prasad, Speech to the Constituent Assembly of India' (Law com:456, 1948)

<sup>8</sup> K. T. Shah, CONSTITUENT ASSEMBLY DEBATES, vol. VIII, 218-19 para. I of the Draft Universal Declaration on the Independence of the Justice.

<sup>9</sup> Justice D.D. Basu , *Administrative Law* (second edition, 2016 ) 23.

<sup>10</sup> *Sri Ram v. State of Bombay* AIR 1959 S.C. 459.

place of birth, Indian citizens and their lawyers constantly seek the administration of justice in a fair and honest manner. The law also protects social, economic, and political justice for all citizens through the application of the rule of law. <sup>11</sup>The judiciary serves as a blessing in disguise if the Constitution is a blessing for the people. <sup>12</sup> While the Constitution guarantees all of our fundamental rights and duties, the judiciary ensures that those same rights are upheld and enforced. Therefore, in order to protect justice, the court needs to be given a certain level of independence. <sup>13</sup>The independence of judges to render an impartial and just decision while doing their duties frequently coincides with the rights of the public. <sup>14</sup> The Constitution stipulates that when judges don't carry out their duties properly, the Members of Parliament can vote on it, take appropriate action, and start an impeachment process. <sup>15</sup>

## **2.2 WHY DO WE NEED TO STRIKE A BALANCE BETWEEN ACCOUNTABILITY AND INDEPENDENCE OF JUDICIARY**

Accountability of the judiciary is apparently an upshot to the process of judicial independence and it is universally followed that the judiciary ought to be sovereign and independent. Between the independence of judiciary and the accountability, comes the doctrine of separation of powers. A democracy which runs on the principle of rule of law demands that all the facet of government ought to be answerable and judiciary is no exception. <sup>16</sup> It is to be remembered that accountability of judiciary is not to hamper the judicial independence. One of the foremost requirement for the effective functioning of a democratic institution is the doctrine of separation of powers which vibrantly postulates that all the three organs of a democratic set up are independent in their domain with each organ having sovereign powers and exclusive responsibilities <sup>17</sup>. No organ is allowed to barge in the characteristic domain of another which ensures that the status quo for independent judicial system remains intact. 'Judges that serve in the community ought to be answerable to the community.'

The concept of independent judiciary is a matter of both privilege and protection for the citizens. Judicial independence is not to be considered as an end rather it is the inverse of judicial accountability. A compliant and hinged judicial system abandons the system of checking the power given to the political branches which defeats the very spirit of a democratic system making the rights

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<sup>11</sup> *Makhan Singh v. State of Punjab* AIR 1964 SC 381.

<sup>12</sup> Hamilton A, 'The Judiciary Department' (1788) 4(1) The federal papers 567.

<sup>13</sup> *State of Tamil Nadu v state of Kerala* AIR 1978 SC 818.

<sup>14</sup> *Laxmi Narayan v Union of India* AIR 1976 SC 554.

<sup>15</sup> *Shri Prithvi cotton mills ltd. v broach borough municipality* AIR 1963 SC 31

<sup>17</sup> Sir Anthony Mason, 'The Bench's Independence, the Bar's Independence, and the Bar's Role in the Judicial System' (1993) 1(2) Australian Bar Review 567.



of individual fragile therefore making way for political corruption An authoritative court may hinder self-government and political accountability. To sustain the rule of law, the court must administer justice effectively and promptly<sup>18</sup>.

The analytic function of the judiciary is not only to apply the law but also to interpret it without any whims and caprices<sup>19</sup>. All over the world and the societies, the very essence of delivery of veracious justice is nothing other than an impartial judicial system. It is impediment for the judges to sustain in the courtroom a bearing which gives an affirmation to the people at dispute that the case will be judged only on merits and not on the pre conceived notions.<sup>20</sup>

## CONCLUSION

Judicial independence and judicial accountability have always been considered as incompatible. The premise is that every attempt to improve the independence of the judiciary makes it more difficult to hold judges responsible, and that any accountability programme weakens the independence of the judiciary. Consequently, much focus has been placed on striking the "correct" balance between these two notions, one of which is essential but can only be promoted at the cost of the other. However, the dispute over how these two should be balanced has continued. There is strong reason to assume that the correct balance may be achieved without reference to particular legal cultures and traditions. Being independent is the foremost natural right attached to the judiciary which prevents them from external threats and blandishments.

## Chapter 3:

### PROCESS OF REMOVAL OF JUDGES UNDER INDIAN CONSTITUTION

Ihring pointed out that the basis of law lies in social conflicts. He believed that the law was a means to an end. The ultimate goal of law is to serve society. Impeachment of a judge serves a constitutionally-guaranteed social objective, and the removal procedure provides the mechanism to attain that end. If a judge is found guilty of misconduct, his punishment is dismissal from office. After 70 years of our Constitution being in effect, India's literati have been inclined to reflect on the seeds planted by the framers of our constitution on January 26, 1950, and the trip we have travelled since then. The removal of judges is referred to informally as impeachment. In India, there has never been a Supreme Court judge impeachment. Justice V Ramaswami was the first Supreme Court judge

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<sup>18</sup> Austin, G., *The Indian Constitution: Cornerstone of a Nation*

<sup>18</sup> *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256

<sup>19</sup> J Ryan, 'Evaluating judicial performance: problems of measurement and politics' (*live law*, 5 august 2022).

<sup>20</sup> G. V. Mahesh Nath, 'Judicial Accountability: The Present Contours and the Way Forward' (2021) 5(1) 456.

against whom an impeachment motion was filed. The Inquiry committee declared the judge guilty, however the Lok Sabha voted against the motion.

The Indian Constitution has provisions for removing a judge from office and regulating the procedures involved. The Constitution stipulates that a judge of the Supreme Court or a High Court may resign by letter written to the President, but he cannot be removed from office except by an order of the President issued following an address by each House of Parliament in the proper way.<sup>21</sup> Article 124<sup>22</sup> of Indian constitution talks about the appointment and removal of Supreme Court judges particularly on the grounds of proved incapacity and misbehaviour.<sup>23</sup>

### **3.1 PROCESS OF REMOVAL UNDER THE JUDGES INQUIRY ACT**

The Judges (Inquiry) Bill of 1964 was drafted, outlining the method envisioned under the preceding Constitutional Article, and referred to a Joint Committee of the two Houses. On 13 May 1966, the Joint Committee issued its report following a lengthy debate in which distinguished members of Parliament, the then-Attorney General, and the former Attorney General all testified<sup>24</sup> The Committee's suggestions were heeded, and The Judges (Inquiry) Act, 1968 was enacted, establishing the method for the inquiry and proof of misbehaviour and incapacity of Judges of the Supreme Court, including the Chief Justice of India, the Chief Justices and Judges of the High Courts

### **3.2 PROCEDURE OUTLINED UNDER THE JUDGES INQUIRY ACT:**

Fifty members of the Rajya Sabha (Upper House of the Indian Parliament) and one hundred members of the Lok Sabha (Lower House) must sign a notice of a decision for filing an Address to the President for the removal of a Judge in accordance with the procedure described in the Act. The Chairman or the Speaker, as appropriate, will give the motion careful consideration and discuss with other members before deciding whether to accept or reject it. If the motion is approved, the Chairman or Speaker, as the case may be, will appoint a Committee of three people: (i) the Chief Justice and other Supreme Court Judges, (ii) the Chief Justices of the High Courts, and (iii) distinguished jurists. In the event that notices of motion are filed on the same day in both houses, the Committee will be created only if the motion is approved by both chambers and then jointly by the Chairman and Speaker. If a notice of motion is presented to one House on one day and the other House on a separate day, the latter submission will be disregarded. To launch an inquiry, the

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<sup>21</sup> The Constitution of India, 1950 art 124(2)(a) and 217(1)(a).

<sup>22</sup> *ibid* art124.

<sup>24</sup> M. N. Kaul and S. L. Shakhder, *Practice and Procedure of Parliament* (Anoop Mishra ed, sixth edn, Lok Sabha secretariat India 2009).

Committee will first come up with concrete complaints against the Judge; it will then have the same powers as a civil court, including the ability to subpoena witnesses, require them to testify under oath, and order the production of relevant documents. In the event of a claim of physical or mental incompetence and the subsequent rejection of such an allegation, the Chairman or the Speaker, as the case may be, or, where the Committee has been created jointly, by both of them, will appoint a Medical Board to conduct a medical examination of the Judge. The Committee's report to the Chairman or, as the case may be, the Speaker will include its conclusions on each allegation separately, as well as any other comments the Committee feels are necessary. If the Chairman and the Speaker appointed the Committee together, the report will then be presented to the relevant House or Houses.

If the Committee exonerates the Judge of any misconduct or incompetence, the motion pending in the relevant House or Houses, as applicable, will not be pursued. If the Committee's report contains a determination that the Judge is guilty of misconduct or suffers from incompetence, the motion, along with the Committee's report, will be considered by the House or the Houses in which it is pending.<sup>25</sup>In the event that the motion is adopted in accordance with the constitutional provisions, the misbehavior or incapacity of the Judge will be deemed to have been proven, and an Address requesting the Judge's removal will be presented by each House of Parliament in the same Session in which the motion was adopted.<sup>26</sup>

### 3.3 CONCLUSION

The judiciary is a far larger and more significant foundation of this country, and it also needs established and supported laws and regulations, just like a corporate corporation does. The people have faith in the legal system because they revere the justice delivered. Maintaining a strong and effective judiciary is therefore crucial. In this professional setting, there is a great need to develop the right and necessary code of behavior.

It is true that the impeachment process for judges who commit small offences or engage in aggressive behaviour appears to be a shame and a contempt for their integrity, dedication, and professional abilities. Additionally, this will be a major violation of judicial independence. Because of this, there is an even stronger case for enacting penalties for offences that don't result in impeachment. As mediators of disputes, judges are renowned for their professionalism, and the nation relies on them to administer justice. Due to the rising number of crimes in the country, the

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<sup>25</sup>*Sub Committee On Judicial Accountability v Union of india* 1991SCR (2)741

<sup>26</sup> *Smt. Saroj Giri v Vayalar Ravi And Ors* 1999 CriLJ 498.

judiciary is one of the most essential aspects of society; it is a beacon of justice. In India, the removal of judges is governed by a stringent process, which is designed to prevent powerful authorities from abusing their authority to remove a judge. We are aware that the Judiciary in India is integrated and independent, but only the Parliament has the power to remove a judge from office. This is due to the checks and balances in our country, and it is a very important element to ensure that no one in the legislative, executive, or judicial branches feels omnipotent in regards to the powers they possess.

## **Chapter 4:**

### **REMOVAL OF JUDGES UNDER USA AND COMPARATIVE ANALYSIS WITH INDIA**

#### **4.1 JUDICIAL ACCOUNTABILITY UNDER USA CONSTITUTION**

The judicial Power of the United States shall be vested in one supreme Court, and in such lower Courts as the Congress may from time to time ordain and create," states Section 1 of Article 3 of the United States Constitution. Supreme and lower court judges must maintain good behaviour while in office, and they must be paid a certain salary at regular intervals. This salary cannot be reduced while they are serving. The Good Behavior Clause's meaning has been hotly debated for a long time. While "high crimes and misdemeanours" are normally grounds for impeachment of federal officials, some have argued that the words "high crimes and misdemeanours" imply a different threshold of removal for federal judges. However, there are many who disagree and believe that federal judges should be guaranteed lifetime appointments barring a legally valid mechanism for their removal. While precedent from the early twentieth century lends credence to the idea that the phrase provides an extra foundation for removing a federal judge, the current Congress appears to take the position that "good behaviour" does not provide an independent threshold for impeachable conduct. To restate, the Good Behavior Clause simply provides that federal judges are not appointed for set periods and hence cannot be removed for any reason. Instead, removal of a federal judge requires both impeachment and conviction for a serious crime.<sup>27</sup>

The Judicial Conduct and Disability Act of 1980 is a legal statute in the United States. According to this law, citizens may make complaints or allegations against a federal judge who by his conduct has hampered the effective and expeditious administration of the business of the court or who has failed to discharge all the duties" of the judicial office due to a physical or mental disability.

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<sup>27</sup> Lewis Deschler, 'Precedents of the United States of the House of Representatives' (*Gov info*, 3 January 2022) <[https:// pdf www.govinfo.gov/content/pkg/GPO-HPREC-DESCHLERS-V3/pdf/GPO-HPREC-DESCHLERS-V3](https://pdf.www.govinfo.gov/content/pkg/GPO-HPREC-DESCHLERS-V3/pdf/GPO-HPREC-DESCHLERS-V3)> accessed 6 September 2022.



Appointment, tenure, and compensation for federal judges (including the Supreme Court) are all laid forth in Article III of the Constitution. Article III judges are appointed by the President and must be approved by the Senate. According to Article III, these judges "keep their office throughout good behaviour," which implies they are appointed for life, with very few exceptions. The only way to remove a judge from their position under Article III is for the House of Representatives to impeach them and for the Senate to confirm their conviction. In addition, the Constitution guarantees that judges' pay will never be cut while they are serving. Compensation for Article III judges is not based on where they work or how long they've been on the bench. No matter where they sit, appellate judges are paid the same. District court judges are in the same boat.

Although the intricacies of the impeachment process vary by federal and state constitution, it typically consists of two stages. The House of Representatives has the power to impeach federal judges, and the Senate has the power to convene a trial to determine whether or not the judge's removal is necessary, according to Article I of the United States Constitution. A judge can be impeached and removed from office by a majority vote in the House. When a judge has been tried and found guilty, removal from office requires approval from two-thirds of senators. Most states (Pennsylvania is an exception) employ the federal model for judicial impeachment and removal, which requires a simple majority in the lower house and a two-thirds majority in the upper house. However, in states like New York and Nebraska, the trial that follows an impeachment is conducted by a court comprised of state authorities and/or state judges. It takes less votes of approval to impeach or convict in other situations. In 1805, only Associate Justice Samuel Chase was impeached. After an impeachment vote in the House, the Senate ultimately sided with him.

## 4.2 CONCLUSION

The United States judicial system allows for the impeachment and subsequent removal of sitting Judges. Impeachment by the House of Representatives and subsequent conviction in the Senate is the removal process for federal judges. Sixty-six federal judges have been investigated for Impeachment, 15 have been impeached, and just eight have been convicted by the Senate. The Impeachment process in the House of Representatives requires only a simple majority vote. Two-thirds of the Senate is needed for a conviction. U.S. law only allows for impeachment to occur under one circumstance: when a judge's conduct becomes manifestly unfit. In reality, Judges have been impeached for crimes including sexual assault, bribery, and more. Impeachment of state judges is handled in accordance with each state's impeachment procedures. The usual procedure for impeachment approval requires a simple majority in the lower house and two-thirds in the upper chamber. It is not the same in every state, though. The judges of states are impeached according to

the impeachment rules of each state. Commonly, impeachment is approved by the lower house with a simple majority and the upper house with a two-thirds majority. However, it differs from state to state. In India, judges may be dismissed for proven misbehaviour and incompetence by the president, however this presidential order to remove a judge requires the approval of a special majority of both chambers.

## **Chapter 5:**

### **REMOVAL OF JUDGES UNDER SOUTH AFRICA AND COMPARISON WITH ABOVE NAMED NATIONS**

The Constitution requires judicial independence, not because it's in the best interest of the judiciary, but because it's in the best interest of the public. Without this protection, judges might not be able to do their jobs without fear or favour, or the public might not think they can. In the context of South Africa, section 180 of the Constitution stipulates that national legislation may address any aspect of the administration of justice not covered by the Constitution, including the procedures for handling complaints against judicial employees.<sup>28</sup> The Judicial Services Commission Act governs the complaints procedure against judges. The purpose of the Act is stated in the preamble as follows: to:

1. provide procedures for dealing with complaints about judges;
2. establish a tribunal for Judicial Conduct in order to investigate and inform allegations of incapacity, utter incompetence, or gross negligence in conduct of business against judges; and
3. To provide for other incidental matters connected therein.

According to section 14 of the act anybody may file a complaint against a judge on the basis of disability resulting in the judge's inability to perform his responsibilities in line with existing norms. An investigation into allegations that are severe but debatable should be conducted in an inquisitorial fashion, and no one is required to establish or refute any truth during such an investigation.<sup>29</sup> Within a given time frame, the responder should be invited to reply to the claims in writing or as otherwise determined. The complainant must then have the option to react to the respondent's response within a stipulated time frame.<sup>30</sup> If there is no reasonable likelihood that a formal hearing on the matter will contribute to determining the merits of the complaint, the complaint must be dismissed, or it must be determined that the complaint has been proven and that

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<sup>28</sup> *Justice Alliance of South Africa v President of South Africa* 2011 5 SA 388 (CC) para 94.

<sup>29</sup> Judicial Services Commission Act, 1994 (9 of 1994) s 17(5)(a).

<sup>30</sup> *ibid* s17(5)(c)(iii).

the respondent has behaved in a manner unbecoming of a judge, and remedial steps must be imposed. In accordance with section 17(4)(c), the JSC may also suggest that the complaint be investigated by a tribunal. In contrast, if a formal hearing is necessary to assess the merits of the complaint, it must be held within a reasonable timeframe. Under section 17(4)(c), the JSC may also propose a tribunal investigation. If a formal hearing is needed to assess the complaint's merits, it must be scheduled promptly. Section 16(1) of the Act governs impeachable accusations against judges, and sections to establish the Judicial Conduct Tribunal, whose goals are to collect evidence, have a formal hearing, make factual findings, and determine the merits of the claims. Section 26(2) orders the tribunal to conduct its inquiry in an inquisitorial fashion, with no one required to prove or deny facts.<sup>31</sup> When evaluating complaints against a judge, the Tribunal must investigate all options and establish a record of its proceedings.

## 5.2 CONCLUSION

The topic of judicial tenure concerns judges' dismissal from office. Every state has a provision for the removal of corrupt and inefficient judges. However, it must be difficult to avoid the abuse of authority and the application of it arbitrarily. If a judge's tenure is based on the whims of a certain individual or agency, neither independence nor impartiality can be guaranteed, as the tiniest act of disapproval could result in his departure. Therefore, it is believed that the process of removing a judge from office should require significant deliberation and the participation of multiple individuals or organizations. In Great Britain, a judge can be fired by the King if he is indicted by Parliament for corruption or moral turpitude. Impeachment is used to remove Supreme Court judges in the United States. The House of Representatives initiates impeachment proceedings by recommending charges, while the Senate conducts the trial. Prior to 1947, judges in India were appointed by the Crown. Based on a recommendation from the Judicial Committee of the Privy Council, the Crown dismissed Federal Court and High Court justices for misbehaviour or infirmity from their positions. According to India's Constitution from 1950, a judge on either the Supreme Court or a High Court may be removed from office by an order from the President, but only if an address from each House of Parliament is approved by a two-thirds majority of the members present and voting. One of the most important factors in determining the impartiality of the dominant party is the complexity of the removal process, which includes the participation of a number of agencies. This procedure maintains office security and is one of the most important factors in determining the dominant party's impartiality. In nations where the recall mechanism exists, however, the independence and dignity of the judiciary have been greatly compromised. The population and their

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<sup>31</sup> Ibid Ss26 26(3) 26(4).

caprices exert influence over judges. This method is also criticized for the same reasons that the public election of judges is deemed unsuitable. However, the Indian Constitution makes it clear that a judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address by each House of Parliament supporting such removal on the grounds of proven misbehavior or incompetence has been presented to the President in the same session and is supported by a majority of its total membership and by a majority of at least two-thirds of its members present and voting.

## **CHAPTER 6:**

### **CONCLUSIONS AND SUGGESTIONS**

As a conclusion to this study paper, I would like to note that just as corruption has contaminated the oxygen we breathe, the judiciary is no exception. In the courts, judges are frequently implicated in corrupt practises and engage in misconduct that exceeds their permitted boundaries. To restore the transparency and efficacy of our judicial system, it is vital that these acts be investigated and addressed. Thus, it is determined that the appointment and removal of judges must be free and impartial at all levels of the judiciary. Therefore, it is vital to establish maximum independence and accountability for the judiciary.

It is true that the impeachment mechanism for small offences or abrasive behaviour by a Judge appears disgraceful and disrespectful to their integrity, dedication, and professional competence. This will also significantly undermine judicial independence. Therefore, it is all the more important to create consequences for lesser offences than impeachment.

The current statutory system for judicial misconduct established by the Judges (Inquiry) Act of 1968 has utterly failed to penalise judges in the manner intended. Ironically, the nature of all impeachment trials escalates over time. Current Indian law has established a process for impeaching judges, but does not address breaches that are not grave enough to warrant impeachment. In 2006 and 2010, two bills to impose responsibility short of impeachment failed to pass in their original form.

In this legal vacuum, judicial incompetence has developed. The Indian Legislative can examine the prevalent legislation in South Africa and the United States in order to change their own.

There is an urgent need to tighten penalties for even small infractions. The transfer of judges is not possible. Due to a legal deficiency in the Indian Legal System, Justice C.S. Karnan's unacceptable behaviour has continued. His 2015 transfer from the Madras High Court to the Calcutta High Court



as a result of his caste-based and sexually discriminatory remarks proved to be ineffective. There has been no improvement in Justice Karnan's conduct. Lower Court judges are more susceptible to prosecution than judges of higher courts. This is due to the fact that higher court judges apply the term "Contempt of Court" to several allegations and complaints. The Supreme Court Judges likewise assert immunity under the 2005 Right to Information Act.

After analysing several aspects of the Judiciary, I now offer some recommendations. If these recommendations are taken into account, the need of the hour can be met.

To accomplish the intended goals, there must be a codified code of behaviour for Supreme Court and High Court judges that is enforceable. To avoid the appearance of corruption at the time of their nomination, judges must reveal their holdings. In the absence of this, citizens would lose trust in the judiciary. Complaints against judicial personnel and measures against incompetent judges must be taken seriously and handled according to the law. The Judges Inquiry Act of 1968 contains a comprehensive process for considering complaints.

In order to make the judges accountable to the public, the Chief Justice of India must have the authority to chastise all the other justices while also exercising self-control. \* As indicated previously, the definition of the term "misconduct" is ambiguous in our constitution and is up to the courts to define. This must be explicitly stated in our Constitution as soon as feasible. The fourth idea is that the Bar and the Press should be prohibited from criticising judges until the Supreme Court and High Court judges are proven guilty of misbehaviour or misconduct. The Right to Information Act must be vigorously enforced, and all court procedures, judicial nominations, and judicial decisions must be available to the public.

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