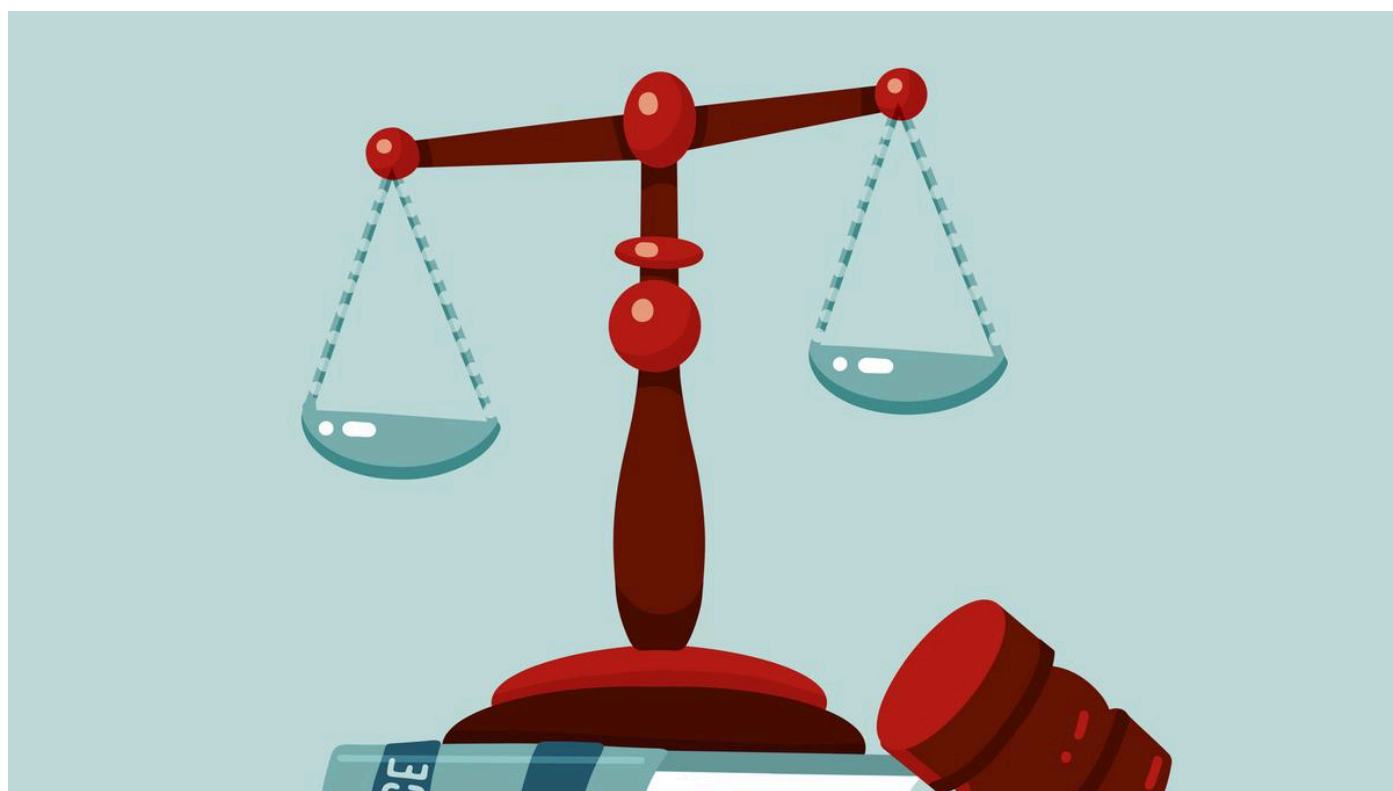


The challenge of holding judges accountable

The review mechanism for judges in India requires ‘proved misbehaviour or incapacity’ to be decided by a committee set up under the Judges (Inquiry) Act, 1968. This committee functions like a trial court, but is set in motion only after a successful attempt to impeach the judge is moved either in the Lok Sabha or the Rajya Sabha

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A speech delivered by **Justice Shekhar Kumar Yadav of the Allahabad High Court**, that made apparent his biases against the Muslim community, at an event organised by the legal cell of the Vishwa Hindu Parishad within the Court precincts on December 8, has once again spotlighted the difficulty in India’s review mechanism to hold judges of the higher judiciary accountable.

The review mechanism requires “proved misbehaviour or incapacity” to be decided by a three-member committee set up under the Judges (Inquiry) Act, 1968. This committee functions like a trial court, but is set in motion only after a successful attempt to impeach the concerned judge is moved either in the Lok Sabha or the Rajya Sabha, which must be approved by the presiding officer of the House — the Speaker in the case of the Lok Sabha, or the Vice-President/Chairman in case of the Rajya Sabha. The provisions for this mechanism flows from Articles 124 (4), (5), 217, and 218 of the Constitution of India, and the those of the Judges (Inquiry) Act, 1968.

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Justice V. Ramaswami’s trial

Only two judges out of seven so far, aside from Justice Yadav against whom impeachment has been attempted, have been found guilty for their “misbehaviour” by the three-member committee, which must comprise of a Supreme Court judge, a Chief Justice of a High Court and an eminent jurist.

The first was retired Supreme Court Justice V. Ramaswami, who was found guilty of extravagant spending on his official residence such as buying air conditioners, plush furniture and bedding, without following due process, much like the accusations made against Trinamool Congress MP Mahua Moitra by the ruling BJP last year. While such misdemeanours by current accounts of corruption seem like an arcane quibble over propriety, they nevertheless animated public discourse on a judge’s conduct in the late 80s and early 90s. Such discussions led to the foundation of the ‘Restatement of Values of Judicial Life’ adopted by the Supreme Court on May 7, 1997, as the code of conduct for those holding high offices in judiciary.

Speaking to *The Hindu*, retired Madras High Court Justice K. Chandru, who played a pivotal role in the impeachment proceedings against Justice Ramaswami, recollected how the judge “bought 6+1 = 7 maces, one with a silver head to denote the Chief Justice’s arrival and took it on a cargo plane in 1988, and not by rail,” following his elevation as the Chief Justice of the Punjab and Haryana High Court. “There was no tendering process that was followed for the purchase of the maces,” Justice Chandru added. He was referring to the colonial practice followed at the Madras HC where an orderly precedes a judge, to signal his arrival to ensure those in the hallway and the courthouse “maintain decorum”. Justice Ramaswami deemed it fit to continue this practice at the Punjab and Haryana High Court, which did not have this practice as it was founded in independent

India, much to the shock of his “brother judges”. In his Tamil book, *I too became a judge*, Justice Chandru recalled a letter dated August 18, 1988, in which then Chief Justice V. Ramaswami’s colleagues wrote “You will remember that most of us told you later too that we are opposed to the introduction of maces. Maces are but a relic of the imperial past and out of tune with our socialistic pattern of society.”

The adverse verdict by the three-member panel constituted under the Judges Inquiry Act against V. Ramaswami set the precedent of then CJI Sabyasachi Mukherjee deciding not to allocate any work to him in 1993. The failure of the impeachment motion in the Lok Sabha that year, did not lead to a reversal of the CJI’s decision. No cases were listed for hearing before Justice Ramaswami’s Bench until his retirement three years later.

Article 124 (4) of the Constitution stipulates that the panel’s finding must be voted upon by Parliament. The motion requires either a two-thirds majority of present MPs voting in favour of the motion or an absolute majority in each House, for the judge to be removed. On May 10, 1993, of the 401 members present in the Lok Sabha, 196 voted for Ramaswami’s removal. While no one voted against the motion, 205 abstentions by the ruling Congress ensured the defeat of the impeachment.

Resignation before accountability

The second judge to face an impeachment motion was Justice Soumitra Sen of the Calcutta High Court. Justice Sen became the first judge of India’s higher judiciary who was voted to be removed by the Rajya Sabha by an overwhelming majority, but he resigned in September 2011, days before the motion was to be tabled in the Lok Sabha. Justice Sen was found guilty of misappropriating ₹33.23 lakh in a case in 1983, as a court-appointed receiver in his capacity as a lawyer, and misrepresenting facts before a Calcutta court.

Similarly, Chief Justice of the Sikkim High Court, P.D. Dinakaran resigned on July 29, 2011, the day of the first sitting of the three-member panel constituted under the Judges Inquiry Act, to look into 16 charges, some of them as grave as appropriating more than 300 acres of lands from farmers in Tamil Nadu’s Tiruvallur district, after he became a judge of the Madras High Court.

Such instances highlight that members of India’s higher judiciary enjoy a disproportionately greater level of immunity when compared with even elected officials as they “continue to enjoy the perks of being a retired judge, like pension” and other benefits, said jurist Mohan Gopal, who was part of the three-member committee in the Dinakaran case. Such resignations abort the trial and subsequent impeachment,

something not afforded to even sitting or former Chief Ministers, like in the case of Jayalalithaa in the disproportionate assets petition decided in 2014.

The Forum for Judicial Accountability (FJA) that led the campaign against judicial corruption in the Dinakaran case, wrote to the three-member committee on August 6 that year, seeking a continuation of the committee's investigations arguing that "the jurisdiction of the Committee is untouched by the factum of removal...". The FJA's contention was that there were two separate parts to the removal process of a justice — one that concerns finding guilt, which is governed by Article 124 (5) and the second, which is impeachment, which is governed by article 124 (4) and is within the jurisdiction of Parliament. "The purpose of impeachment is not merely removal from office, but a more substantial one about accountability to the people whose trust is alleged to be breached and whose confidence in judiciary needs to be reinforced," the FJA argued.

"Though Article 124(5) of the Constitution uses the words "removed from office" and is silent on the issue of disqualification from holding future office, the finding of guilt by the Committee and the subsequent proceedings in Parliament will have the effect of disqualifying the person from holding public office in future. It may be noted that Justice V.Ramasami having been found guilty by the Committee, continued to hold office as a judge of the Supreme Court and retired with all the benefits, taking advantage of the defeat of the impeachment motion. Post retirement he was appointed as Chairperson of the Tamil Nadu Law Commission," said FJA.

The need to complete proceedings

RTI petitions by former *Frontline* legal affairs editor, V. Venkatesan revealed that both jurist Mohan Gopal and the Chairman of the three-member panel retired justice Aftab Alam believed the work of the committee must continue. The RTI replies made public a set of correspondence between Mohan Gopal and the two members of the committee, and of the committee with the Rajya Sabha Chairperson Hamid Ansari. Mr. Venkatesan has included these letters as annexures to his 2014 book *Constitutional Conundrums: Challenges to India's Democratic Process*. In his August 15, 2011 letter to Justice Aftab Alam and J. S. Kehar, the then Chief Justice of the Karnataka HC, Mr. Gopal writes, "the resignation of Justice P.D. Dinakaran presents our Committee with an unprecedented situation. Any decision we take will have a profound and far-reaching impact on the framework for judicial accountability in our country — both in terms [of the] future implementation of the Judges Inquiry Act, 1968, and in terms of the manner in which the current Constitutional and legal framework for judicial accountability is reformed....While undoubtedly the investigation and the proof stage arises only when

there is a prayer for removal from office and is the essential first step or that purpose, it would be an error to ignore the independent role and value of the investigation and proof part of the process in and by itself... A view that the resignation would result in the investigation and proof process being aborted would in effect place in the hands of the judge who is the object of the investigation the power to end the investigation against him by resigning — an absurd situation that the legislature could not have intended. In such circumstances, there would be no incentive arising from this process for any judge to avoid misbehaviour as any judge can end investigation into charges against him at any point by resigning from office.”

While the Chair justice Aftab Alam concurred and sought the continuation of the Committee, the request was rejected by Rajya Sabha Chairman Hamid Ansari.

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