WITHDRAWAL OF PARLIAMENTARY SUPPORT IN IMPEACHMENT MOTIONS: A LEGAL AND POLITICAL DILEMMA WITH CONTEXT TO INDIA, USA, UK AND CANADA

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ABSTRACT

The Indian Constitution provides a rigorous and solemn procedure for removing High Court and Supreme Court Judges to uphold the integrity of the judiciary. However, this process has largely remained untested due to legal uncertainties and political factors, with one of the most important being the withdrawal of parliamentary support after introducing an impeachment motion. This paper analyses the constitutional and legal framework of judicial impeachment in India, critically examines instances where motions were stalled after MPs withdrew support, and discusses the ethical and political challenges involved. This study shows how the lack of clarity surrounding support withdrawals has weakened judicial accountability.

Keywords: Constitution, Impeachment, Judicial Accountability, Rule of Law, Public Trust.

INTRODUCTION

The Indian judiciary, especially its higher courts, enjoys significant independence, which is fundamental to its Democratic nature. This independence is balanced by a constitutional process for removing Supreme Court and High Court judges in cases of proven misconduct or incapacity. The impeachment process aims to ensure accountability and uphold integrity. Since Justices Sen and Dinakaran resigned before they could be impeached. It can be said that not a single Indian judge has ever been impeached in the history of independent India. There have been efforts indeed, but the steady pattern has been that Members of Parliament (MPs) withdraw support once an impeachment motion is laid. This well-known pattern, not addressed by law, is a sign of a conflict between constitutional provisions for judicial accountability and

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political reality in India. The question arises whether the impeachment process works and whether political considerations can determine the outcome.

CONSTITUTIONAL AND LEGAL FRAMEWORK FOR IMPEACHMENT

Constitutional Provisions: The Constitution of India provides the grounds and process for removing Supreme Court judges in Article 124(4)[1] and 124(5).[2] Under Article 218,[3] these provisions apply mutatis mutandis to the removal of High Court judges. These articles state that a judge may be removed on the grounds of "proved misbehaviour or incapacity," and the removal must be accompanied by an address from each House of Parliament passing by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting and the Indian Constitution permits Parliament to make laws regulating the procedure for presenting an address and inquiring into and proving the misbehavior or incapacity of a Supreme Court judge.

Statutory Mechanism: In pursuance of these constitutional provisions, Parliament thus enacted the Judges (Inquiry) Act, 1968, and the Judges (Inquiry) Rules, 1969, which set out in detail the procedure for the initiation and inquiry of impeachment motions. First, a motion must be signed by a minimum of 100 members of the Lok Sabha or 50 members of the Rajya Sabha. After Parliament has received a motion, the Speaker or the Chair may admit it and then constitute a three-member inquiry committee. After which, if the inquiry committee finds that the judge is guilty of misbehaviour, it will forward its report to Parliament for a vote. A very large gap lies between the constitutional provisions and statutory provisions: there is nothing in the Constitution or the statutory framework as to whether members of Parliament are free to remove their support after submitting a motion, or what the consequences could be if members of Parliament were to withdraw their support.

The Procedure and Role of MPs: The involvement of Members of Parliament is important for the impeachment process. They sign a motion to start it and then vote to decide a judge's fate if accused of wrongdoing. However, since there is no binding obligation after submitting the motion, they can withdraw support at any time before it is admitted. Therefore, MPs' political considerations, pressure, and career prospects often take priority over ethical and legal concerns. As a result, even when there is strong evidence supporting the motion, it may still

[1] The Constitution of India, 1949, Art 124(4).
[2] The Constitution of India, 1949, Art 124(5).
[3] The Constitution of India, 1949, Art 218.

fail due to procedural issues related to support withdrawal. This becomes an even bigger problem because impeachment requires a supermajority, and losing support severely undermines accountability.

Legal and Ethical Implications of Withdrawal: The issue of withdrawing signatures when submitting a motion raises relationship, constitutional, and ethical concerns. Legally, there is no clear provision that allows or forbids withdrawing signatures, creating a grey area. Ethically, there is a risk of sidestepping the Constitution's intent by using constitutional provisions as tools to achieve political goals. If MPs are allowed to sign and then withdraw their signatures on matters of significant importance, it diminishes the seriousness of holding judicial institutions accountable. Likewise, the potential for lobbying and political influence to persuade MPs to withdraw signatures further undermines accountability for the judiciary's actions. This process, already difficult, becomes more prone to manipulation and erodes public trust in democratic institutions.

The process of withdrawing one's signature once the motion has been tabled raises several constitutional and ethical issues. Constitutionally, there is no explicit law in either direction specifically allowing or disallowing withdrawal, which produces a sense of possible ambiguity. Ethically, it raises the question of whether MPs should be permitted to withdraw their signature presented to the House of Commons. We ought to consider how it brings an aspect of a lack of seriousness to calling for a motion to hold the judiciary in check when individual MPs can simply tick a box when they sign and motion of privilege, then withdraw their signature.

By allowing MPs to withdraw their signature later, it can also create room for lobbying and political pressure that is aimed at them, which is the opposite of making the judiciary accountable. Furthermore, it makes the process unnecessarily complicated and erodes public trust in our democracy and the public's trust in democratic institutions.

The impeachment procedure, though constitutional, is highly political. MPs are political representatives, and their moves tend to represent party positions, electoral interests, or strategic inclinations. This politicisation injects bias and inconsistency in dealing with motions. For example, opposition parties can employ impeachment as a tool to embarrass the government, whereas ruling party members tend not to initiate proceedings against judges who are seen as leaning in their favour. Reconsideration of support by MPs is usually driven by the party's internal decision-making, external pressure, or even quid pro quo. This politicisation

undermines the intent of the constitutional protection and can potentially make impeachment a political rather than a matter of justice.

Worldwide, judicial accountability processes are diverse. In the United States, the impeachment is initiated by the House of Representatives, which is followed by a trial in the Senate. The process, once initiated, does not provide for withdrawal. In the United Kingdom, complaints are dealt with by the Judicial Conduct Investigations Office, keeping the process totally outside of the political institutions. In Australia and Canada, grievances about judges are investigated by impartial commissions, and removal is very unusual and subject to judicial rather than political control. These models show that less politicised and more open systems for addressing judicial misconduct could be more compelling. India can learn from these models to depoliticise its process, perhaps through establishing an independent body to review claims and manage initial inquiries before involving Parliament.

India provides the most graphic example of the difficulties. Its Constitution raises the bar so high for removal that the address of both Houses of Parliament supported by a two-thirds super-majority, that no judge has ever been removed until the present time. All motions since Justice V. Ramaswami in 1993 have failed, often because MPs withdrew support quietly or the judge resigned before the final vote. Analysts increasingly find this binarist paradigm to be a constitutional dead end, minor offences go unchecked, and serious accusations hardly survive supporters' scheming.

On the other side, the United Kingdom has followed a different path. Complaints about judicial conduct since 2013 are monitored by the JCIO, which can issue private advice, formal warnings, suspension, or only in the most serious cases, a resolution to Parliament for removal. Canada implemented Changes via Bill C-9 (2023) that now permit the CJC to impose different types of penalties (public apologies, counselling, education) and to hold participation hearing panels for serious complaints, with parliamentary removal remaining available at the ultimate level.

DIFFERENCE BETWEEN INDIA AND THE UNITED KINGDOM'S IMPEACHMENT PROCESS

The United Kingdom, while being a common law nation such as India, has a very different method. Unlike the misunderstanding among some, the UK does not employ a formal procedure of impeachment for judges. Although a joint address of both Houses of Parliament

to the monarch still remains the formal method to remove senior judges, it is often employed. The UK, instead, developed a more flexible and effective method based largely on administrative control as opposed to political procedures. The central institution in the system is the Judicial Conduct Investigations Office (JCIO), which was created by the Constitutional Reform Act 2005. The JCIO is charged with dealing with complaints against judges, magistrates, and tribunal members in England and Wales. If a complaint is made, it will be observed and could go forward to an investigation. The Lord Chief Justice and the Lord Chancellor together determine discipline based on the JCIO's report. Sanctions may vary from unofficial advice and warning to official reprimand or suspension. Most serious ones, which merit removal from office, are taken to Parliament for a collective address. This administrative method enables the UK to deal with a large number of complaints effectively. For instance, in the 2023–24 JCIO report, more than 2,300 complaints were dealt with, of which dozens of them led to disciplinary action. This system supports accountability without involving Parliament in everyday affairs, maintaining judicial independence and introducing transparency to uphold public confidence.

Perhaps the greatest difference between the two systems is the spectrum of disciplinary options. India's system is rigidly dual in type; a judge is either removed from office or, at worst, suffers no sanctions whatsoever. There is no option for lesser sanctions such as reprimand, warning, or suspension. That rigidity creates a paradox in which serious charges either go unchecked or trigger an extra response that is impossible to implement politically. In contrast, the UK system is balanced and tiered. The JCIO and the senior judicial leadership can impose a range of sanctions based on the seriousness of the misconduct. For instance, a judge who makes an improper comment might be issued a private warning, while repeated unethical behaviour could result in a formal reprimand or even suspension. Such availability of intermediary punishments renders the system much more responsive and credible. It also assures that judges are held accountable in a proportionate and timely manner, without having to invoke the complicated and politically sensitive route of parliamentary removal.

In India, judicial misconduct proceedings may be initiated only by Members of Parliament. A motion for removal shall be signed by not less than 100 members of the Lok Sabha or 50 members of the Rajya Sabha. This restricts initiation to politicians and makes it political in nature. In addition to that, such reliance on parliamentary initiative also implies that a majority of the real grievances of the public or the legal fraternity never make it to light unless they

coincide with political interests. In the UK, any member of the public, a solicitor or a litigant may complain about a judge through the JCIO's official online platform. The openly accessible model makes the judiciary accountable not only to politicians but to members of the public as well. It enables regular and serious misconduct to be reported and investigated without political involvement.

India's system puts Parliament at the forefront of judicial control. Both Houses need to approve the motion for removal with a special majority, and no other body can control a higher judiciary judge. This central role has resulted in extreme politicisation of the process. Political parties might protect judges of their ideological orientation or disrupt motions for tactical considerations. This was seen in the case of Justice V. Ramaswami in 1993, when the Congress party withdrew from voting, thus allowing the motion to fail despite absolute findings of misconduct. In the UK, Parliament intervenes only when removal from office is necessary, something which has never been done very often. The overwhelming majority of complaints are handled administratively by the JCIO and the senior judiciary. This minimises the danger of political interference and prevents judges from being removed or protected on strong grounds. Parliament is still a check of last resort, not the first line of defence.

Transparency is yet another field in which the UK leaves India behind. The JCIO issues a report each year that includes the number of complaints filed, the nature of the grievances brought out, the actions taken, and significant cases where sanctions were imposed. These reports are filed in Parliament and placed in the public domain so that there is a high degree of institutional transparency. In India, there is a lack of transparency. The inquiry reports are released only if the impeachment motion is submitted and admitted in Parliament, which is extremely rare. Even then, there is no formal system for publishing disciplinary information, keeping a database of complaints, or even making the public aware of the resolution of misconduct cases. Such secrecy generates public distrust and hinders the assessment of the effectiveness of the current system.

India's procedure consists of a number of structural defects that the UK model has mostly been able to overcome. First, demanding a supermajority in both Houses makes impeachment virtually impossible. Second, MPs are allowed to withdraw their signatures once a motion has been submitted, something that has caused motions to fall through in several instances (e.g., Justice Nagarjuna Reddy). Thirdly, the judges can resign at any time before a motion is passed and still qualify for post-retirement benefits, which presents an easy way out. Conversely, the

UK system is time-bound, formalised, and resistant to such manipulation. Fast evaluation of complaints and the presence of intermediate sanctions mean that judges are penalised even for minor misconduct. Additionally, because the UK permits complaints from anyone and excludes Parliament from the normal process, it keeps out the bottlenecks and obstructions that became a problem for India's system.

Though both India and the UK want to ensure judicial independence and public faith in the judiciary, they do so in very different ways. India's impeachment mechanism, although good-intentioned, is too strict and politicised to serve its purpose. It has not resulted in the removal of even a single judge in more than seven decades. At the same time, the UK's administrative model, headed by the JCIO and the most senior judiciary, has demonstrated the capacity to maintain judicial independence while holding judges accountable in a just, effective, and transparent way. The Indian model was not borrowed from the UK. Rather, it is a distinctive, constitutionally established method that is now generally regarded as outdated. In the future, India can take much from the system of the UK, specifically by embracing an independent disciplinary authority, establishing a form of proportional penalties, and increasing public transparency. These reforms would ensure that Indian judges are held to the same principles of honesty that they expect of the society they serve.

CANADA JUDICIAL SYSTEM

The Canadian Judicial Council (CJC) sits at the core of the system of judicial accountability. Created in 1971, the CJC consists of the chief justices and associate chief justices of the superior courts of Canada. It is headed by the Chief Justice of Canada. The CJC has been given the task for the investigation of investigating the allegations of misbehaviour against federally appointed judges and making recommendations for disciplinary action in appropriate cases. It can make a complaint, create panels to consider evidence, and finally recommend a sanction or even removal when serious misconduct is involved. The CJC was established to serve as a firewall between the judiciary and politics so that complaints are addressed neutrally, not for political reasons.

Before the reforms of 2023, the mechanism for dealing with complaints against judges in Canada was long and slow. A complaint filed with the CJC could be referred to a Public Inquiry Committee if deemed serious enough. The inquiry process worked similarly to a judicial tribunal, with representations, hearings, and evidence. The full CJC would then hear the

conclusions and determine whether or not the conduct of the judge merited his removal. If so, a suggestion was made to the Minister of Justice, who might move a joint address motion in both Houses of Parliament. Only if both Houses approve it, then the Governor General remove the judge. But this process was usually dealt with delays, legal actions, and excessive expenses, with some investigations costing millions of dollars and taking years to finish. There was also no provision for issuing minor penalties, and the system was thus faced with a sole option of removal or doing nothing.

The enactment of Bill C-9 in June 2023 introduced significant reform into Canada's system of judicial discipline. The legislation sought to harmonise the process, eliminate legal defects, and bring a broader range of disciplinary actions. Under current conditions, when a complaint is lodged, it goes through a multi-level review process. A preliminary screening can reject patently baseless complaints. If the matter cannot be resolved by way of a Review Panel of three, which may include a private person, corrective action such as consulting, education, or apology can be enforced. In more serious cases, a Hearing Panel of five, including common members, conducts a full hearing. Such decisions are subject to review by an Appeal Panel. In the most extreme cases, only the CJC make a recommendation to Parliament for removal. This new framework enhances fairness, effectiveness, and public confidence in the disciplinary process, with Parliament's role maintained in the most severe cases.

The process, flexibility, and outcomes of the Canadian and Indian systems are quite different. Judicial impeachment in India is parliamentary only and may be introduced by MPs (100 Lok Sabha or 50 members of the Rajya Sabha). It has no internal judicial mechanism with investigative or disciplinary powers over judges. There is a process of constituting an investigation committee, and it involves the need for a supermajority in both the Houses of Parliament. Notably, India's system does not permit graded punishment—a judge is either removed or not, with no middle ground. Canada's system, on the contrary, permits any individual to file a complaint and has an independent, multi-level disciplinary system that can enforce different sanctions based on the seriousness of the misconduct. Further, Canada's use of common people on its panels helps ensure transparency and public trust in the process, as opposed to India's process being mostly opaque and unclear to the public.

Canada's system is a delicate balance between accountability and judicial independence. Through the delegation of initial inquiry and action are in the hands of the CJC, and the participation of Parliament only in exceptional cases, the process keeps politics far from the

judicial process. The improvements brought about by Bill C-9 have made the system very easy, made it less costly, and more transparent. The addition of non-judges to review and hearing panels improves legitimacy, and categorised sanctions provide for calibrated responses to a broad definition of misconduct. Notably, the public is able to observe that the judiciary is not unprotected, while judges themselves are still insulated from political harassment or improper interference in their decision-making. These characteristics render Canada's model an effective and modern system of judicial accountability.

Misconduct on the bench in Canada may be of various ways, from inappropriate comments in open court, racial or gender discrimination, failure to maintain professional standards, to more serious matters such as criminal conduct, conflict of interest, or abuse of power. Nevertheless, the CJC is determined that legal mistakes or unpopular decisions are not, standing alone, misconduct. It is a matter of ethical conduct, integrity, and specialisation and not judicial interpretation. For example, if a judge shows personal bias in the pronouncement of a judgment or mistreats litigants, it may lead to proceedings for discipline. The distinction prevents the judges from being penalised for making unpopular or contrary decisions in good faith.

India's system of impeachment, constitutionally strong as it may be, is too rigid, opaque, and politically complicated to handle judicial misconduct effectively. Conversely, Canada's system is a well-balanced, independent, and flexible mechanism that maintains judicial autonomy while promoting accountability. India is not required to emulate Canada wholesale, but by taking its structural changes, India can create a modern, reasonable, and independent system of judicial accountability that gains public confidence while upholding judicial integrity.

India can learn several important lessons from Canada's system of judicial discipline. The most significant one is the need to transfer judicial accountability outside the political process. India's existing system, depending only on Parliament and providing no intermediate measures of discipline, is not in a position to confront current challenges. Canada demonstrates that it is valid to have an independent agency, such as the CJC, to manage grievances, review evidence, and impose appropriate penalties, and still maintain judicial autonomy. The system of graded response gives a guarantee that the judges will not be dismissed for minor errors, yet not above censorship when deemed properly. If India were to replicate such a model, presumably by establishing a National Judicial Conduct Commission, it would be able to encourage accountability, increase public trust in the judiciary, and end the potential for political interference with the impeachment process.

USA's Impeachment Process, in Contrast with India's System: The impeachment of U.S. federal judges has been derived directly from the U.S. Constitution. Article II, Section 4 states that the President, Vice President and all civil Officers of the United States shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and misdemeanours. Civil officers include federal judges, as confirmed by judicial precedent and legal scholarship. Article III guarantees that federal judges shall hold their Offices during good Behaviour, but this tenure is not absolute. Congress reserves the authority to impeach and remove judges who commit grave misconduct. The Constitution entrusts the House of Representatives with the exclusive power of impeachment**, and the** Senate with the sole power to try impeachments, requiring a two-thirds supermajority to convict.

Unlike India's constitution, which defines removal grounds as proved misbehaviour or incapacity, the U.S. Constitution uses broader phrases like high crimes and misdemeanours, allowing political considerations to inform the interpretation of what constitutes impeachable conduct. Thus, judicial impeachment in the U.S. combines legal standards with norm-based community expectations regarding judicial integrity.

Impeachment starts in the House Judiciary Committee, which can initiate an inquiry after authorising it through a resolution. There may be a formal investigation with hearings leading to articles of impeachment prepared by the committee. A bare majority vote by the full House on any article serves to impeach the official concerned, essentially formally accusing them. Once impeached, the judge is tried by the Senate sitting as a jury. Senators are sworn before trial, and, in the case of the President, the Chief Justice presides, though for judges, proceedings are usually overseen by the Vice President or presiding officer. Evidence can be introduced, witnesses subpoenaed, and defence counsel permitted. Conviction and removal require a two-thirds present vote of the Senators. The Constitution specifically confines post-conviction sanctions to removal and possible disqualification from future federal office, a response employed in Judge Porteous's case in 2010.

PROPOSED REFORMS

To address the loopholes and weaknesses in the impeachment process, especially the issue of withdrawal of support, several reforms can be considered as follows:

Prohibit Post-Submission Withdrawal: After a motion is filed with the signatures as prescribed, it must not be subject to withdrawal. This can be made clear by modifying the Judges (Inquiry) Act or by way of a parliamentary resolution.

Judicial Complaints Commission: A distinct commission in line with globally practised rules could be created to address judicial misconduct separately from the legislature, but with the power to investigate, propose suspension, or refer to Parliament only in exceptional circumstances.

Transparency and public accountability: Publication of the findings of the inquiry committee (with appropriate safeguards) and recording the grounds of withdrawal would make the process more transparent and enhance public trust.