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IAS Study Circle

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IMPEACHMENT OF JUDGES

MOST IMPORTANT NOTES FOR MAINS

"Success is the sum of small efforts - repeated day in and day out."

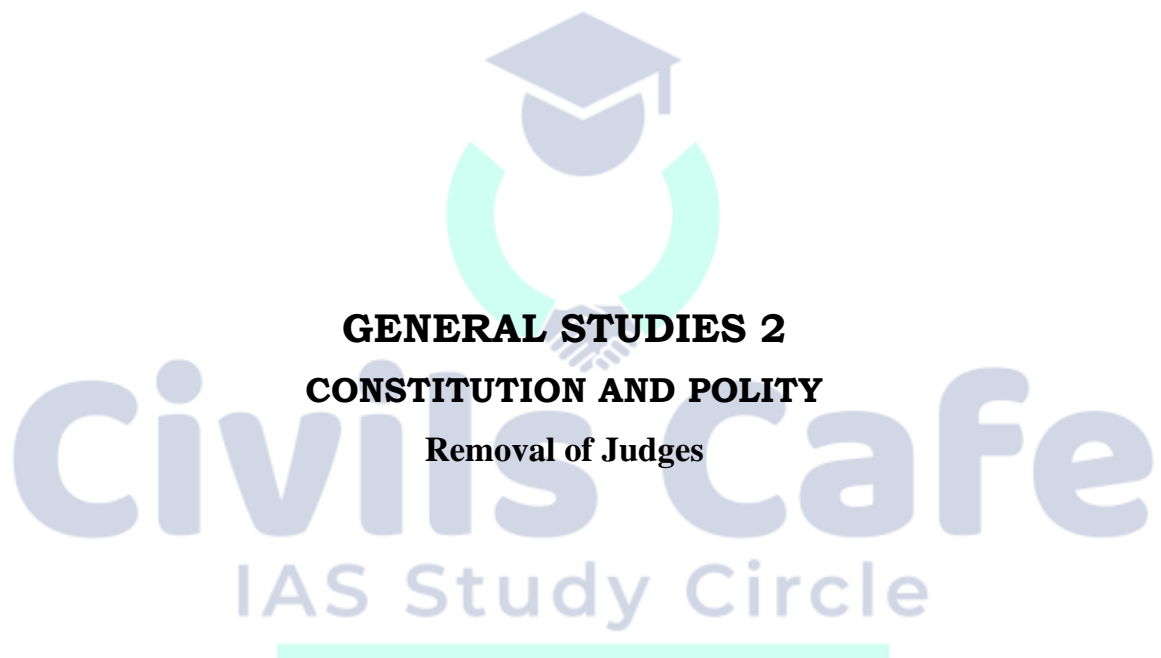
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Impeachment is a term used colloquially for removal of judges. So far, no Supreme Court judge has ever been impeached in India.

- A judge of the Supreme Court can be removed from his Office by an order of the president.
- The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.
- It should be supported by a **special majority** of each House of Parliament (i.e., a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting).
- The grounds of removal are two—**proved misbehaviour or incapacity**.

PROVISIONS FOR REMOVAL

- Removal/impeachment has been mentioned under **Article 124(4)** (for the removal of a Supreme Court judge) and **Article 218** (for the removal of a High Court judge).
- Further the procedure for removal of judges is elaborated in the **Judges Inquiry Act, 1968**.

PROCEDURE FOR REMOVAL

- ❖ Removal proceedings against a Supreme Court or a High Court judge can be initiated in either house of Parliament. For this:
 1. A minimum of 100 members of Lok Sabha may give a signed notice to the speaker, **or**
 2. A minimum of 50 members of Rajya Sabha may give a signed notice to the Chairman.

- ❖ The speaker or chairman may consult individuals and examine relevant content related to notice and according to that, he or she may decide to either admit or refuse to admit it.
- ❖ After the motion is admitted, the Speaker of the Lok Sabha or Chairman of the Rajya Sabha will form an Inquiry Committee as per **section 3(2) of the Judges (Inquiry) Act, 1968** to start investigating the complaint. It consist of following members:
 - A Supreme Court judge,
 - A High Court Chief Justice, and
 - A distinguished jurist, as per the opinion of the Speaker/Chairman.
- ❖ If such notices have been admitted in both the Houses of Parliament, the Inquiry Committee will be formed together by the Speaker and the Chairman of the respective houses.
 - In this scenario, the notice that has been on a later date will stand rejected.
 - If such notices have been passed by both the Houses of Parliament on the same day, the Inquiry Committee will not be formed.
- ❖ After concluding its investigation, the Inquiry Committee will put down its findings in a formal report and submit it to the Speaker or Chairman.
- ❖ If the report finds the Judge to be guilty of **misbehaviour or incapacity**, the motion for removal has to be put to vote in both The Lok Sabha and Rajya Sabha. As per Article 124(4) of the Constitution, the motion is required to be adopted in each house by:
 - A majority of the total membership of the House (absolute majority) **and**
 - A majority of not less than two-thirds of members present and voting.

- ❖ If the motion is adopted by this majority in one house, the motion will be sent to the other house.
- ❖ As per Article 124(4), after the motion is adopted in both the houses by the required majority, it is placed before the President of India, who will issue an order for the removal of the judge.

Issues

1. Words '**misbehaviour**' or '**incapacity**' are not defined under the constitution, which risked the independence of the judiciary subject to any interpretations of these words by the legislature.
2. K.G. Balakrishnan, the 37th Chief Justice of India, has admitted in the past that the agreements for impeachment were formed in such a manner that it would be difficult and onerous in order to keep the judges independent of any external pressure.
3. **Complex procedure:** To keep the judges independent of any external pressure, removal procedure is complex. In recent time some of the judges try to get benefited from it
4. **Penalise Judges:** Despite having complex removal procedures, there is the threat to judicial independence when the removal process is used to penalise or intimidate.
5. **Judges by executives:** that is removal of judges is by and large a process by executives, hence hampering separation of powers
6. **Resignation in between:** Once Judges/judge is/are convinced that the motion has a high probability of being passed by both the Houses, they tender resignation and skip

the removal process. Eg Justice Soumitra sen of Kolkata high court.

7. In K Veeraswami vs Union of India case, the Supreme Court decided that prior written consent of the Chief Justice of India is mandatory for any proceedings regarding the prosecution of a judge of a High Court or the Supreme Court to be initiated in the Parliament. The Veeraswami case holds good on the judicial side as it gives an edge to the judges.

Way forward

- **Action based on misconduct:** Removal from office is the most severe disciplinary action; make some provision for lesser measures such as a formal such as demotion.
- **Appropriate and clear reason:** Judges should be subject removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties.
- **Selection procedure:** a rigorous judicial selection process and high standards of ethical conduct may help to minimise the need for removal of judges.
- Judges are expected to perform of their legal and constitutional duties by giving reasoned judgments and rulings in open court
- The Supreme Court has cleared the air around misbehaviour to some extent but it has repeatedly refrained from delving too much on the issue.

The principles of judicial accountability and independence underpin public confidence in the judicial system. Providing proper procedures for the removal of judges on grounds of incapacity or

misbehaviour that are required to support the principle of independence of the judiciary, any disciplinary procedures should be fairly and objectively administered.

REMOVAL OF JUDGES: ATTEMPTS SO FAR

- ❖ In the V RAMASWAMI case of the late 1980s, inconsistencies were found in an audit done regarding purchases made for the High Court. The Inquiry Committee instituted by the Lok Sabha had found him guilty going by the necessary evidence but he escaped any consequences as the motion did not get enough votes. The party in power altogether decided to abstain from voting on the motion.
- ❖ In Justice P D Dinakaran case in 2011: it was alleged that P.D. Dinakaran, former Chief Justice of Sikkim High Court, had accumulated disproportionate assets and was involved in land acquisitions in Arakkonam (his hometown), exceeding the limit that was fixed by the Tamil Nadu Land Reforms. A motion was admitted in the Rajya Sabha by its Chairman in December 2009 and met with success to the extent of the constitution of an Inquiry Committee, seeking his removal on the charges of corruption and abuse of his office. However, before the proceedings could be completed in one House, he tendered his resignation on grounds of lack of confidence and faith in the three-member Inquiry Committee probing the charges against him and thus, the removal was halted.
- ❖ The furthest impeachment proceedings have been taken forward in the case of Justice Soumitra Sen ,a former judge of the Calcutta High Court, for being accused of misappropriating public funds. He

was accused of misappropriating rupees thirty-three lakhs in a conflict between Steel Authority of India and Shipping Corporation of India in 1993 over the supply of fire bricks. In 2009, 58 MPs of the Rajya Sabha moved a motion for impeachment against him. The three-member committee formed by the Chairman suggested that Justice Sen was guilty of corruption and hence, that constituted 'misbehaviour' under Article 124(4) read with proviso (b) to article 217(1) of the Constitution of India. Hence, the impeachment found overwhelming support in the Rajya Sabha and was to be taken up in the Lok Sabha. However, on September 1, 2011, Justice Sen decided to resign before the motion could be passed in the Lok Sabha.

- ❖ Justice Pardiwala of the Gujarat High Court ran into trouble after making certain 'casteist' remarks against reservation in a judgement. 58 MPs of the Rajya Sabha introduced a petition before the Chairman seeking his impeachment for his alleged 'unconstitutional' remarks against reservation. However, the motion lost its momentum after the Judge removed the controversial remarks from the judgement.
- ❖ In 2018, an impeachment motion signed by 71 MPs of the Rajya Sabha was passed against the then Chief Justice of India, Dipak Misra, accusing him of five charges in the full text of the statement against him and also stated that the CJI acted arbitrarily in allocating cases to brother judges as "master of roster". However, the Chairman and Vice-President M.Venkaiah Naidu rejected the motion as he did not find any misbehaviour on the judge's part after consulting with Constitutional experts, legal luminaries and Senior Parliament officials.

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THE UNBEATABLES 2023

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