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Judicial Removal - Tough Law with a Loophole

Context

- The notice of an **impeachment** motion by 107 Members of Parliament against Justice G.R. Swaminathan of the Madras High Court has renewed debate on the constitutional process for judicial **removal** in India.
- The charges include alleged violations of **secular** constitutional principles and **bias** towards a particular community.
- Beyond the specific allegations, the episode raises fundamental questions about the effectiveness of the constitutional framework governing judicial **accountability** while preserving **independence**.

Constitutional and Legal Framework for Judicial Removal and Meaning of Misbehaviour and Judicial Standards

• Constitutional and Legal Framework for Judicial Removal

- The **Constitution** of India lays down the procedure for removing judges of the Supreme Court and High Courts under Articles 124, 217, and 218.
- While the term impeachment is reserved for the President, the process for judges emphasises removal through a rigorous parliamentary mechanism.
- Article 124(5) empowers **Parliament** to regulate procedures for investigating and proving **misbehaviour** or **incapacity**, leading to the enactment of the Judges (Inquiry) Act, 1968.
- This framework reflects a deliberate intent to make judicial removal rare and difficult, thereby safeguarding the **judiciary** from political pressure.

• Meaning of Misbehaviour and Judicial Standards

- The Constitution does not define misbehaviour, leaving interpretation to judicial pronouncements.
- The Supreme Court has clarified that not every judicial error qualifies as misconduct.
- Only wilful abuse of office, lack of **integrity**, **corruption**, or conduct involving moral turpitude meets the constitutional threshold.
- These standards underline the principle that judges must adhere to exceptionally high ethical norms, as public trust in the judiciary depends on both actual and perceived impartiality.

Procedural Safeguards and the Role of Parliament

- The removal process is deliberately stringent. A motion requires signatures from at least 100 members of the Lok Sabha or 50 members of the Rajya Sabha.
- Final removal demands an address passed by each House with a special majority, ensuring broad political **consensus**.
- Upon admission of a motion, an inquiry **committee** comprising senior judicial figures conducts a detailed **investigation** into the charges.
- This multi-layered process is designed to prevent frivolous or politically motivated attempts to unseat judges.

The Critical Flaw: Discretion at the Threshold Stage

- A serious flaw emerges at the preliminary stage. Under the Judges (Inquiry) Act, the **Speaker** of the Lok Sabha or the **Chairman** of the Rajya Sabha has the power to admit or reject the motion at the outset.
- The Act does not specify criteria for this decision, granting wide **discretion**.
- If the motion is rejected, the process ends immediately, regardless of the seriousness of the allegations or the number of MPs supporting it.
- This unfettered discretion risks **arbitrariness**, especially since the presiding officer acts as a statutory authority rather than merely as a parliamentary functionary.
- The absence of defined standards for **admissibility** makes the decision vulnerable to political considerations, undermining the credibility of the process.

Constitutional Inconsistency and Democratic Implications

- Article 124(5) authorises Parliament to regulate procedures for investigation and proof, but it does not explicitly empower the presiding officer to block the process altogether.
- Proof of misbehaviour is meant to arise from an impartial inquiry, not from a preliminary political filter.
- The power to reject a motion at the **threshold** therefore appears inconsistent with the constitutional design.
- The implications for **democracy** are significant. If the executive or ruling majority influences the presiding officer, a constitutionally sanctioned mechanism for ensuring judicial accountability can be rendered ineffective.
- This does not strengthen judicial independence; instead, it weakens public confidence by insulating potentially errant judges from scrutiny.

Conclusion

- India's impeachment framework reflects a strong commitment to judicial independence through high thresholds and complex procedures.
- However, the unchecked discretion vested in the Speaker or Chairman at the preliminary stage disrupts the intended **balance** between independence and accountability.
- Revisiting this provision is essential to prevent misuse and to ensure that serious allegations against judges receive impartial examination.
- Meaningful **reform** in this area would strengthen constitutional governance without compromising the autonomy of the judiciary.

Judicial Removal — Tough Law with a Loophole FAQs

Q1. What constitutional term is used for the impeachment of judges in India?

Ans. The Constitution uses the term removal rather than impeachment for judges.

Q2. On what grounds can a judge of the higher judiciary be removed?

Ans. A judge can be removed only on the grounds of proved misbehaviour or incapacity.

Q3. Which law governs the procedure for the removal of judges?

Ans. The procedure is governed by the Judges (Inquiry) Act, 1968.

Q4. What is the main procedural flaw in the current impeachment process?

Ans. The Speaker or Chairman has unchecked discretion to reject the motion at the threshold stage.

Q5. Why is this flaw considered constitutionally problematic?

Ans. It allows political discretion to prevent an impartial investigation into serious allegations against judges.

Source: **The Hindu**

Lowering The Age of Juvenility for Crimes is a Step Back

Context

- A decade after the Juvenile Justice (Care and Protection of Children) Act, 2015 or the JJ Act, introduced the **“transfer system,”** a new Private Member’s Bill seeks to lower the age threshold for trying juveniles as adults.
- The proposed amendment would allow children aged 14–15, accused of “heinous” offences, to face adult criminal trials and prison, raising concerns about weakening rehabilitation-focused principles in favour of punishment.
- This article highlights why the proposal to lower the age of juvenility for heinous offences marks a regressive shift in India’s justice system, undermining rehabilitation, equality, and child-centred principles without empirical justification.

Juvenile Justice and the Transfer System

- India’s juvenile justice framework is rooted in the belief that children differ developmentally from adults and are capable of reform.
- However, after the 2012 Delhi gang rape case, the JJ Act, 2015 introduced the **“transfer system,”** allowing 16–18-year-olds accused of heinous offences to be assessed for adult trials.
- **Punitive Shift Without Evidence**
 - The introduction of the transfer system lacked empirical support.

- It was opposed by the Parliamentary Standing Committee, which found it inconsistent with domestic and international juvenile justice standards.

- **Arbitrariness in Assessments**

- Preliminary assessments by Juvenile Justice Boards focus on abstract notions like “mental capacity” and “understanding consequences,” rather than developmental stages or lived realities.
- No reliable tools exist to measure such capacities retrospectively.

- **Inconsistent and Discriminatory Outcomes**

- Decisions often hinge on subjective factors—such as remorse or awareness of wrongdoing—leading to unequal treatment of similarly placed children.
- Outcomes depend more on discretion than conduct.

- **Risks of Expanding the Transfer System**

- Lowering the age threshold to 14 would extend arbitrariness to younger children, undermining rehabilitation, reinforcing inequality, and weakening the core principles of care, reform, and reintegration in juvenile justice.

Adolescent Crime: Claims vs Evidence

- **Rising Crime Narrative Questioned**

- The proposed Bill claims a rise in serious crimes by 14–16-year-olds to justify lowering the age threshold. However, official data does not support this assertion.

- **What NCRB Data Shows**

- In 2023, cases involving Children in Conflict with the Law formed just 0.5% of total crimes.
 - Nearly 79% of apprehended children were aged 16–18, while only 21% were between 12–16, contradicting claims about younger adolescents driving crime.

- **Structural Vulnerability, Not Criminality**

- Many adolescents enter the justice system due to poverty, neglect, and unmet welfare needs. Often, they are both in conflict with the law and in need of care and protection.

- **Risks of Lowering the Age Threshold**

- Reducing the age limit would pull vulnerable children into harsher punitive processes without improving the system’s ability to distinguish vulnerability from culpability.

- **Harmful Impact of Adult Criminal Processes**

- Exposure to adult trials disrupts education, harms cognitive development, creates stigma, and causes psychological trauma.
 - Illegal detention in police stations and adult prisons shows systemic failure, not the need for harsher laws.

Prioritising Reform Over Punishment

- The Bill pushes juvenile justice toward earlier punishment, shifting focus away from early intervention, family support, education, mental health care, and systemic reform.
- Diluting child-centred protections undermines core principles of child rights.
- Addressing serious harm requires strengthening institutions and communities, not withdrawing safeguards from children least equipped to face punitive consequences.

Conclusion

- Lowering the age of juvenility prioritises punishment over protection, ignoring evidence, developmental science and systemic failures, and risks harming vulnerable children instead of strengthening institutions meant to support them.

Lowering The Age of Juvenility for Crimes is a Step Back FAQs

Q1. What change does the proposed Private Member's Bill seek to introduce in the JJ Act?

Ans. The Bill proposes lowering the age threshold from 16 to 14 years, allowing younger adolescents accused of heinous offences to be tried as adults.

Q2. Why is the 'transfer system' under the JJ Act criticised?

Ans. It relies on subjective assessments of mental capacity, lacks scientific tools, produces inconsistent outcomes, and shifts focus away from rehabilitation toward blame and punishment.

Q3. Does crime data support the claim that younger adolescents commit more serious crimes?

Ans. No. NCRB data shows that children aged 16–18 account for most juvenile cases, while those aged 12–16 form a much smaller proportion.

Q4. How does adult criminal trials affect adolescents?

Ans. Adult trials disrupt education, harm psychological development, create stigma, and expose children to trauma, often without addressing underlying vulnerabilities.

Q5. What is suggested as a better alternative to lowering the age threshold?

Ans. Strengthening early intervention, family support, education, mental health services, and accountability within juvenile institutions offers a more effective and rights-based response.

Source: TH

