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Title:

**Independence of Judiciary in Search of Independence**

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## **INDEPENDENCE OF JUDICIARY IN SEARCH OF INDEPENDENCE**

Justice is one of the pristine values embodied in the Preamble of the Indian Constitution among others. It is the duty of the State to secure justice to every citizen of country and hence the onus to protect the independence of the servers of Justice on the State is greater . But the impeachment motion moved against Justice G. R. Swaminathan of Madras High Court is a stark contradiction which indicates systemic failure. Surprisingly, the motion is reasoned not on the grounds of proven misbehaviour or incapacity but on the allegations of favouring Hinduism and particular caste of society in his decisions. In a country like India which embraces the principle of secularism, allegations on a judge of being biased towards a particular religion is highly unsustainable and strikes at the credibility of the Judiciary. The alleged controversy revolves around his decision allowing the lighting up of a lamp on a stone pillar near a dargah on Madurai's Thiruparankundram Hill, claiming it is the traditional spot where the lamp should be lit.

This impugned order dated December 2, 2025 stated that it did not affect the rights if Dargah or the Muslims. The judge reasoned that upper pillar was an part of the temple property and must be included in rituals. The Constitution provides the provisions regarding removal of the Supreme Court judges under clauses 4 and 5 of Article 124. These clauses provide that a judge of the Supreme Court can only be removed only on the grounds of proven misbehaviour or incapacity . Article 218 extends these provisions for removal of the judges of the High Courts also in the same manner as provided for the judges of the Supreme Court.

The framers of the Constitution set out a deliberately high bar for removing a judge of the Supreme Court or a High Court. Articles 124(4) and 217 require both proof of misbehaviour or incapacity and the support of a special majority in the Parliament for setting high standards of security to judges. Such movement can be seen as an attempt to tarnish the integrity of judges and erode high standards of judicial independence envisaged by our Constitution. The joint statement issued by thirty six former Supreme Court and High Court judges slammed the opposition's move stating that this is a brazen attempt to browbeat judges who do not fall in line with the ideological and political expectations of a particular section of society. If such an attempt is permitted to proceed, it would cut at the very roots of our democracy and the independence of the judiciary.<sup>1</sup> The judge is alleged of favouring the advocates of his caste and giving judgements in support of Hindus. His decisions are said to be influenced by his alignment with the Rashtriya Swayamsewak Sangh during his college days.

In a country governed by rule of law the remedy against a judicial pronouncement shall be sought by way of appeal or review or any other appropriate mechanism laid down for the purpose under the statute concerned and not directly exercising such a remedy kept for extraordinary circumstances. Attempting to remove a judge straightaway for his judgements without any bona-fide reason is blatant abuse of the procedure established by law.

This instance reminds of one of the watershed moments in the history of Indian judiciary when Justice H.R. Khanna who was deprived of the post of Chief Justice for his famous dissent in the case of *ADM Jabalpur v. Shivkant Shukla* in which he expressly stated that an individual's liberty cannot be curtailed except by procedure established by law which must be just, fair and reasonable.<sup>2</sup> A judge bears an obligation of loyalty towards the Constitution of India and not to political leaders cherishing their personal agendas. This instance can be seen as highly detrimental to judicial independence and judicial competence surrendered to the authoritative power of the government. Although no impeachment motion moved against a judge has proved out to be successful till date, but such actions have the potential to erode the authority of judges if not exercised sparingly. The standards for removing any constitutional functionary having a high repute must be made more precise and sufficiently safeguarded to prevent its misuse. In this regard there still exists a laxity in our Constitution as it fails to clarify what would constitute the 'proven misbehaviour' under clause 4 of Article 124. The instances where judicial independence has been undermined by repeated attacks on judicial review of courts are not unprecedented. 24<sup>th</sup> Constitutional Amendment Act of 1971 inserted clauses 4 and 3 in Articles 13 and 368 respectively which made the constitutional amendments immune from judicial scrutiny and was merely done to overturn the judgement of the apex court in the case of *Golaknath v. State of Punjab*<sup>3</sup> which restrained Parliament from amending Fundamental Rights. Similar attempts were made through 25<sup>th</sup>, 38<sup>th</sup> and 39<sup>th</sup> amendments to the Constitution and reflected a tussle between Parliament and the Judiciary when Parliament left no stone unturned to establish its supremacy.

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1. '36 ex-judges slam Opposition move to impeach Justice Swaminathan' *The Hindu* ( New Delhi, 20 December 2025) <<https://www.thehindu.com/news/national/36-ex-judges-slam-opposition-move-to-impeach-justice-swaminathan/article70419178.ece> > accessed 23 December 2025.
  2. (1976) 2 SCC 521.
  3. 1967 AIR 1643.

Judiciary functions to uphold the rule of law in the country and cannot become vulnerable to political forces which tend to suppress it. An independent judiciary not only calls for less interference by the Executive but also non suppression by the law makers which can deliberately exercise their powers to curtail its judicial review. Judicial review is the core value of judicial independence and attempts which curtail it should be discouraged. Hence Parliament should not be given absolute liberty to initiate such proceedings against any constitutional functionary on such baseless grounds which could invite serious ramifications. Courts serve as the protector of civil liberties and propagators of law and thus respecting the majesty of courts becomes more imperative where judges could survive in free air this can only be achieved by cooperative efforts of State as well as it's citizens.