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JUDICIAL IMPEACHMENT AND ACCOUNTABILITY: A COMPARATIVE ANALYSIS OF INDIA AND AFRICA

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Abstract

Judicial impeachment is the most constitutionally significant mechanism for ensuring judicial accountability in democratic systems. This article undertakes a comparative analysis of judicial impeachment processes with reference to India and selected African jurisdictions, particularly South Africa and Kenya. In India, despite a constitutionally robust framework under Articles 124(4) and 217 of the Constitution of India, 1950, read with the Judges (Inquiry) Act, 1968, no judge of the Supreme Court or a High Court has ever been successfully removed through impeachment. The process has been rendered functionally ineffective owing to extreme procedural rigidity, dependence on parliamentary politics, the absence of a dedicated judicial disciplinary body, and structural loopholes that permit judges to resign and evade accountability. In sharp contrast, South Africa witnessed its first-ever judicial impeachments in February 2024, when Judge President John Hlophe and retired Judge Nkola Motata were removed from office following proceedings before the Judicial Service Commission (JSC) and the National Assembly. Kenya's constitutional architecture, anchored in Articles 168 and 172 of its 2010 Constitution, similarly demonstrates a more functional accountability model through an empowered JSC. By examining these contrasting experiences, this article argues that India's impeachment framework requires fundamental institutional reform — specifically, the creation of a statutory judicial oversight body, codification of misconduct standards, and procedural reforms that prevent judicial evasion — in order to render accountability meaningful without compromising judicial independence.

Keywords: Judicial Impeachment, Judicial Accountability, India, South Africa, Kenya, Judicial Service Commission, Judges (Inquiry) Act 1968, Article 124(4)

I. INTRODUCTION

In every constitutional democracy, the judiciary occupies a unique position as the guardian of fundamental rights, constitutional values, and the rule of law. Its authority derives not from popular mandate but from constitutional design and institutional credibility. This distinctive positioning renders questions of judicial accountability simultaneously indispensable and constitutionally sensitive. The tension between judicial independence — which protects judges from external pressures — and judicial accountability — which ensures that judicial power is not misused — lies at the very heart of constitutional governance.

In India, the constitutional framework under Articles 124(4) and 217 of the Constitution of India, 1950,¹ read with the Judges (Inquiry) Act, 1968,² provides for the removal of Supreme Court and High Court judges on the grounds of proved misbehaviour or incapacity. The process is deliberately stringent: it requires a special majority in both Houses of Parliament, passage in the same session, and an inquiry by an independent three-member committee. Despite its constitutional robustness, however, no judge of the higher judiciary has ever been successfully removed through this mechanism since India's independence in 1947.

The contrast with certain African jurisdictions is instructive. In February 2024, South Africa witnessed its first-ever judicial impeachments in the post-apartheid constitutional era, when the National Assembly voted to remove Judge President John Hlophe and retired Judge Nikola Motata from office following findings of gross misconduct by the Judicial Service Commission (JSC).³ These historic removals, though long overdue after proceedings spanning more than a decade, demonstrated that functional judicial accountability mechanisms can be operationalised even within the constraints of a parliamentary democratic system. Kenya's constitutional architecture under Articles 168 and 172 of its Constitution of Kenya, 2010,⁴ similarly provides a framework that combines an independent judiciary with structured institutional oversight through a constitutionally empowered JSC.

This article proceeds in six parts. Part II examines the constitutional and statutory framework governing judicial impeachment in India. Part III analyses the historical record of impeachment attempts in India and identifies the structural and political reasons for their failure. Part IV surveys the judicial accountability frameworks of South Africa and Kenya, with particular

¹ Constitution of India, 1950, arts. 124(4), 217

² The Judges (Inquiry) Act, 1968 (Act 51 of 1968).

³ John Hlophe Impeachment, Wikipedia, https://en.wikipedia.org/wiki/John_Hlophe_impeachment (last visited Apr. 25, 2026); see also Aneeqah Meyer, *Impeaching Judges – Challenge or Achievement?*, Judges Matter (2024), <https://www.judgesmatter.co.za/wp-content/uploads/2024/09/Impeaching-Judges.pdf>.

⁴ Constitution of Kenya, 2010, arts. 168, 171, 172.

attention to the 2024 South African impeachments. Part V undertakes a comparative analysis, identifying the institutional differentiators between the Indian and African models. Part VI proposes reform measures that India may adopt to strengthen judicial accountability while preserving judicial independence. Part VII concludes.

II. THE CONSTITUTIONAL AND STATUTORY FRAMEWORK IN INDIA

A. Constitutional Provisions

The constitutional basis for judicial removal in India is contained in Articles 124(4) and 217(1)(b) of the Constitution of India, 1950. Article 124(4) provides that a Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament, supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, presented in the same session for such removal on the ground of proved misbehaviour or incapacity.⁵ Article 217(1)(b) extends this procedure to High Court judges.⁶ The Constitution does not define the terms misbehaviour or incapacity, a deliberate omission that reflects the framers' intent to avoid rigid categorisation while entrusting Parliament with evaluative authority. Drawing on H.M. Seervai's authoritative constitutional commentary, misbehaviour encompasses corruption, abuse of office, violations of judicial ethics, and conduct unbecoming of a judge, while incapacity refers to physical or mental inability to perform judicial duties.⁷ Article 124(5) empowers Parliament to enact legislation regulating the procedure for investigation and proof of misbehaviour or incapacity, which was exercised through the Judges (Inquiry) Act, 1968.⁸

B. The Judges (Inquiry) Act, 1968

The Judges (Inquiry) Act, 1968 provides the detailed procedural framework for impeachment proceedings. The process may be initiated in either House of Parliament upon a motion signed

⁵ Constitution of India, 1950, art. 124(4).

⁶ Id. art. 217(1)(b) ("A Judge of a High Court shall not be removed from his office except by an order of the President made after an address by each House of Parliament in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court.").

⁷ H.M. Seervai, *Constitutional Law of India 1994-95* (4th ed., Universal Law Publishing 2010); see also Mir Mubashir Altaf & Mohd. Ayub Dar, *An Analysis of the Mechanism of Removal of Judges of the Higher Judiciary in India*, *ShodhKosh Arts Journal* (Granthaalayah Publication), <https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/download/2916/2668/18259>.

⁸ Constitution of India, 1950, art. 124(5) ("Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).")

by at least 100 members of the Lok Sabha or at least 50 members of the Rajya Sabha.⁹ Upon admission of the motion by the Speaker or the Chairman of the Rajya Sabha, a three-member Inquiry Committee is constituted comprising a judge of the Supreme Court, the Chief Justice of a High Court, and an eminent jurist.¹⁰

The Inquiry Committee functions quasi-judicially: it frames charges, examines evidence, affords the judge an opportunity to be heard, and submits findings to the Speaker or Chairman. If the Committee finds that the allegations of misbehaviour or incapacity are proved, the motion is taken up for parliamentary debate and must pass both Houses by the requisite special majority in the same session.¹¹

The Act contains a notable structural deficiency: it does not prohibit a judge from resigning after proceedings have commenced. In three of the five major impeachment attempts in Indian history, the judges concerned resigned before proceedings reached their conclusion, thereby extinguishing the inquiry. Upon resignation, a judge retains pension and other retirement benefits, effectively escaping the reputational and financial consequences that impeachment might otherwise entail.¹²

C. The In-House Procedure

Recognising the limitations of formal impeachment, the Supreme Court of India developed an informal in-house procedure in 1997 to address complaints of judicial misconduct below the threshold of impeachment.¹³ This non-statutory mechanism, operating under the Restatement of Values of Judicial Life adopted by the Full Court of the Supreme Court, empowers the Chief Justice of India to receive complaints and initiate inquiry. However, the procedure lacks statutory backing, operates in secrecy, and can impose only informal consequences such as requesting voluntary resignation or recommending non-assignment of work. It neither constitutes a bar to fresh proceedings nor results in any enforceable sanction. Legal scholars have characterised this mechanism as institutionally opaque and insufficient to meet

⁹ The Judges (Inquiry) Act, 1968, sec. 3(1) (requiring a signed notice of motion by at least 100 members of the House of the People or at least 50 members of the Council of States).

¹⁰ Id. sec. 3(2) (providing that the Inquiry Committee shall consist of a Supreme Court judge, the Chief Justice of a High Court, and a distinguished jurist).

¹¹ Id. sec. 3(5)-(8); Constitution of India, 1950, art. 124(4).

¹² Naveen Talawar, *Removal of Judges of Higher Judiciary in India: A Difficult Process and a History of Unsuccessful Attempts*, 11 *Lex-Manthan* 67, 70-72 (2022), <https://ssrn.com/abstract=5121323>.

¹³ Supreme Court of India, *In-House Procedure for Dealing with Complaints of Misconduct against Judges* (adopted 1997); *Restatement of Values of Judicial Life*, Full Court of the Supreme Court of India (May 7, 1997).

contemporary standards of judicial accountability.¹⁴

III. THE RECORD OF IMPEACHMENT IN INDIA: A HISTORY OF FAILURE

Despite multiple allegations of judicial misconduct, bribery, and ethical violations since 1950, not a single judge of the Supreme Court or a High Court has been successfully removed through impeachment in India. The history of impeachment attempts reveals a consistent pattern of procedural collapse, political fragmentation, and judicial evasion.

A. Justice V. Ramaswami (1993)

The first impeachment attempt in independent India was directed against Justice V. Ramaswami of the Supreme Court. An Inquiry Committee constituted under the Act found that Justice Ramaswami had committed financial irregularities during his tenure as Chief Justice of the Punjab and Haryana High Court, including misappropriation of court funds and misuse of judicial perquisites.¹⁵ When the motion came to a vote in the Lok Sabha in 1993, members of the Indian National Congress — then in government — abstained en masse, denying the motion the requisite two-thirds majority. Justice Ramaswami was thus spared removal not because the inquiry committee had acquitted him, but because political calculation prevailed over institutional accountability.¹⁶ This case starkly exposed the vulnerability of the impeachment mechanism to partisan manipulation.

B. Justice Soumitra Sen (2011)

Justice Soumitra Sen of the Calcutta High Court was accused of misappropriating funds received during his tenure as a Court-appointed Receiver and subsequently misrepresenting facts before the High Court. The Rajya Sabha passed an impeachment motion against him in 2011 — the first time any House of Parliament had done so.¹⁷ However, before the Lok Sabha could vote on the motion, Justice Sen tendered his resignation. His resignation brought the impeachment proceedings to a close, and he continued to receive post-retirement benefits. The

¹⁴ Law Commission of India, Report No. 230: Reform of Judicial Administration — Aspects of Judicial Accountability and Standards (2009).

¹⁵ Sub-Committee on Judicial Accountability v. Union of India, AIR 1992 SC 320; Sarojini Ramaswami v. Union of India, AIR 1992 SC 2219.

¹⁶ A Relook at Impeachment of Judges in the Past, 3 Int'l J. L. Mgmt. & Human. (2020), <https://www.ijlmh.com/wp-content/uploads/A-Relook-at-Impeachment-of-Judges-in-the-Past.pdf>; Talawar, supra note 12, at 71.

¹⁷ Supreme Court Observer, Number of Times Impeachment Proceedings Were Initiated Against a SC or HC Judge, <https://www.scobserver.in/journal/number-of-times-impeachment-proceedings-were-initiated-against-a-supreme-court-or-high-court-judge/> (last visited Apr. 25, 2026).

case illustrated a fundamental loophole in the statutory framework: a judge facing near-certain removal could effectively nullify the constitutional process simply by resigning.

C. Justice P.D. Dinakaran (2011)

Justice P.D. Dinakaran, Chief Justice of the Sikkim High Court, faced sixteen charges including the unlawful appropriation of agricultural land in Tamil Nadu. A judicial inquiry panel had been constituted under the Act when Justice Dinakaran resigned on the very first day of the panel's sitting in July 2011.¹⁸ His resignation effectively aborted the proceedings. The case drew significant public attention to the inadequacy of the existing framework in dealing with judicial misconduct before formal removal proceedings could be completed.

D. The Structural Reasons for Failure

The failures of impeachment in India are not merely episodic but systemic. Several structural reasons account for the consistent failure of impeachment proceedings. First, the dual threshold of absolute majority of total membership and two-thirds of members present and voting creates a near-impossible bar, particularly in a fragmented parliamentary democracy where coalition politics frequently determines voting behaviour. Second, the absence of a non-partisan oversight body means that the process is inherently susceptible to political influence. Third, the Law Commission of India's 121st Report and 230th Report both acknowledged the rigidity of the existing framework and recommended the creation of a statutory national judicial commission, recommendations that have not been implemented.¹⁹ Fourth, the Judicial Standards and Accountability Bill, 2010, which sought to establish a National Judicial Oversight Committee, failed to receive parliamentary approval, leaving the accountability landscape fundamentally unreformed.²⁰

IV. JUDICIAL ACCOUNTABILITY FRAMEWORKS IN AFRICA

A. South Africa: The Judicial Service Commission Model

South Africa's constitutional framework for judicial accountability is contained in Section 177 of the Constitution of the Republic of South Africa, 1996. A judge may be removed from office only if the Judicial Service Commission finds, through a Judicial Conduct Tribunal inquiry, that the judge suffers from incapacity, is grossly incompetent, or is guilty of gross misconduct;

¹⁸ Id.; Talawar, *supra* note 12, at 72-73.

¹⁹ Law Commission of India, Report No. 121: A New Forum for Judicial Appointments (1987); Law Commission of India, Report No. 230, *supra* note 14; Talawar, *supra* note 12, at 73-74.

²⁰ Judicial Standards and Accountability Bill, 2010 (Bill No. 136 of 2010) (lapsed on dissolution of the Fifteenth Lok Sabha).

and if the National Assembly resolves, by a resolution supported by at least two-thirds of its members, that the judge be removed.²¹ The President then carries out the removal. This framework was operationalised by the Judicial Service Commission Act, 9 of 1994, as amended.²²

The Judicial Service Commission is a constitutionally established body with a broad composition that includes the Chief Justice, the President of the Supreme Court of Appeal, designated judges, representatives of the legal profession, the Departments of Justice, and civil society representatives nominated by Parliament. Critically, the JSC has the institutional capacity to receive complaints, initiate inquiries, appoint Judicial Conduct Tribunals, and recommend impeachment to the National Assembly — functions that in India are diffused across Parliament, the Speaker, and an ad hoc inquiry committee without a permanent institutional home.²³

B. The 2024 Impeachments: A Historic Watershed

February 21, 2024 marked a watershed moment in South African legal history: for the first time in the post-apartheid constitutional era, the National Assembly voted to impeach two members of the judiciary.²⁴ Judge President John Hlophe of the Western Cape Division of the High Court was found guilty of gross misconduct for having visited Justices Nkabinde and Jafta of the Constitutional Court in 2008 in an attempt to improperly influence their decisions in proceedings concerning former President Jacob Zuma.²⁵ Retired Judge Nkola Motata was similarly impeached for a drunk-driving incident and his subsequent mendacity regarding the circumstances of the accident, conduct the JSC found to constitute gross misconduct incompatible with judicial office.²⁶

Both impeachments followed prolonged proceedings that exposed certain weaknesses in the JSC framework — particularly its susceptibility to delay when respondent judges employ strategic litigation to challenge every procedural step. Hlophe's case spanned approximately

²¹ Constitution of the Republic of South Africa, 1996, sec. 177.

²² Judicial Service Commission Act 9 of 1994 (S. Afr.).

²³ Genevieve Maujean & Dimakatso Nchodu, *The Importance of Hlophe and Motata's Impeachment Vote for Judicial Accountability*, Judges Matter (Feb. 21, 2024), <https://www.judgesmatter.co.za/opinions/the-importance-of-hlophe-and-motatas-impeachment-vote-for-judicial-accountability/>.

²⁴ *Impeachment in South Africa*, Wikipedia, https://en.wikipedia.org/wiki/Impeachment_in_South_Africa (last visited Apr. 25, 2026).

²⁵ *The Impeachment of Judge Hlophe and Judge Motata: A Win for Democracy and Accountability*, African Law Matters (Apr. 19, 2024), <https://www.africanlawmatters.com/blog/the-impeachment-of-judge-hlophe-and-judge-motata-a-win-for-democracy-and-accountability>.

²⁶ *Id.*; Meyer, *supra* note 3.

sixteen years from the initial complaint to final parliamentary vote.²⁷ Nonetheless, the significance of the 2024 impeachments lies in the fact that the constitutional mechanism functioned: despite the delays, the institutional architecture of the JSC and the National Assembly ultimately produced a result. Genevieve Maujean and Dimakatso Nchodu of the University of Cape Town Faculty of Law argued that the impeachments demonstrated that while a low moment for the South African judiciary, they constituted a vindication of South Africa's strong constitutional mechanisms at play.²⁸

C. Kenya: Constitutional Reform and the 2010 Framework

Kenya's experience offers a complementary African perspective on judicial accountability reform. Following decades of executive domination over judicial appointments and the absence of meaningful accountability mechanisms, the Constitution of Kenya, 2010 established a new constitutional order in which the Judicial Service Commission occupies a central role.²⁹ Article 171 establishes the JSC, and Article 172 confers upon it the constitutional mandate to promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice.³⁰ Article 168 governs the removal of judges, providing that a judge of a superior court may be removed from office for gross misconduct or misbehaviour, abuse of office, and incompetence — following a petition to the JSC, investigation by a tribunal, and consideration by Parliament.³¹

The Kenyan framework is notable for several features that are absent from the Indian model. First, the JSC is a permanent, constitutionally mandated body with ongoing jurisdiction over judicial conduct. Second, the Constitution of Kenya, 2010 specifies substantive grounds for removal that go beyond the undefined standard of misbehaviour, including explicit reference to abuse of office and gross incompetence. Third, the JSC operates with a degree of transparency — including public hearings in certain cases — that contrasts with the opacity of India's in-house procedure.³²

²⁷ It Took 16 Years but South Africa Has Impeached a Senior Judge — Who is John Hlophe and What Went Wrong?, *The Conversation* (Mar. 25, 2024), <https://theconversation.com/it-took-16-years-but-south-africa-has-impeached-a-senior-judge-who-is-john-hlophe-and-what-went-wrong-224386>.

²⁸ Maujean & Nchodu, *supra* note 23.

²⁹ Kenya Law, *Policy Direction and Administration of the Judiciary by the Judicial Service Commission*, <https://kenyalaw.org/kl/index.php?id=1929> (last visited Apr. 25, 2026).

³⁰ Constitution of Kenya, 2010, art. 172(1)

³¹ *Id.* art. 168.

³² ICJ Kenya, *Balancing Act: Judicial Accountability and Independence in Kenya's Legal Landscape* (Jan. 3, 2025), <https://icj-kenya.org/news/balancing-act-judicial-accountability-and-independence-in-kenyas-legal-landscape/>.

V. COMPARATIVE ANALYSIS

A. Institutional Architecture: Ad Hoc vs. Permanent

The most fundamental difference between the Indian model and the African models examined is the institutional architecture for receiving and adjudicating complaints of judicial misconduct. In India, there is no permanent statutory body charged with judicial oversight. Complaints may be received informally through the in-house procedure, but no institution with investigatory powers and enforceable sanctions exists outside of parliamentary impeachment proceedings. The consequence is an accountability vacuum: minor misconduct goes unaddressed through the in-house procedure which has no binding sanctions while major misconduct faces the near-insurmountable obstacle of parliamentary impeachment.

The South African and Kenyan JSCs, by contrast, constitute permanent constitutional bodies with both investigatory capacity and the institutional authority to refer matters to Parliament for impeachment. The existence of a dedicated oversight body with stated functions, structured processes, and institutional continuity produces a qualitatively different accountability environment. As Charles Manga Fombad has argued in the context of African constitutionalism, the creation of institutional mechanisms that embed accountability within the constitutional framework — rather than treating it as a parliamentary function alone — is essential to the effective functioning of judicial discipline.³³

B. Political Dependence and Parliamentary Dynamics

Both the Indian and South African models require parliamentary approval for the final act of removal. However, the nature and degree of parliamentary involvement differs significantly. In India, the initiation of proceedings itself requires a parliamentary motion, meaning that political will must be mobilised even before any inquiry commences. This gives the governing party an effective veto over whether any impeachment investigation proceeds at all, a structural feature that the Ramaswami case demonstrated in its most corrosive form.

In South Africa, the initiation of proceedings lies with the JSC, not with Parliament. Parliament's role is confined to the final vote on removal, following an inquiry conducted by a Judicial Conduct Tribunal that is insulated from direct parliamentary control. This design separates the investigatory function from the political function, reducing the risk that partisan calculations will suppress meritorious accountability proceedings. The two-thirds majority

³³ Charles Manga Fombad, *Separation of Powers in African Constitutionalism* (Stellenbosch Handbooks on African Constitutional Law Series, Oxford University Press 2016).

requirement for removal in the National Assembly is comparable to India's, but because the inquiry is conducted prior to and independently of parliamentary deliberation, the political stage is reached only after misconduct has been institutionally established.³⁴

C. The Resignation Loophole

A significant structural deficiency unique to the Indian framework is the absence of any provision preventing a judge from escaping accountability through resignation. In the cases of Justice Soumitra Sen and Justice P.D. Dinakaran, resignation effectively nullified ongoing impeachment proceedings, allowing both judges to avoid formal removal while retaining post-retirement benefits. South Africa's framework addresses this problem: Section 177(3) of the Constitution of South Africa, 1996 provides that the President must implement a resolution for removal, and a judge's resignation after a finding of gross misconduct by the JSC does not necessarily prevent the National Assembly from proceeding, as the institutional record of misconduct remains.³⁵

D. Transparency and Public Accountability

Transparency is a further dimension on which the Indian and African models diverge. India's in-house procedure operates entirely in secrecy, with no public disclosure of complaints received, investigations conducted, or outcomes reached. Even where formal impeachment proceedings are initiated, the parliamentary process is not designed with public transparency as a primary objective. This opacity has been identified by legal scholars as a significant contributor to declining public confidence in judicial institutions.³⁶

The JSC framework in South Africa and Kenya provides for public hearings in judicial conduct inquiries, public reporting of tribunal findings, and a parliamentary vote — all of which contribute to a greater degree of institutional transparency. While critics of the South African JSC have noted that certain proceedings have been marked by opacity and delay,³⁷ the overall architecture is designed to produce a public record of findings and reasons, thereby contributing to public confidence in the accountability process even where outcomes are delayed.

³⁴ Constitution of the Republic of South Africa, 1996, sec. 177(1)(b); Maujean & Nchodu, *supra* note 23.

³⁵ Constitution of the Republic of South Africa, 1996, sec. 177(3); Meyer, *supra* note 3.

³⁶ Drishti Judiciary, *Impeachment of Judges*, <https://www.drishtijudiciary.com/editorial/impeachment-of-judges> (Dec. 30, 2024).

³⁷ *Impeachable Offence: JSC Rules Against Two in Gross Misconduct Finding*, Central News South Africa (Feb. 26, 2026), <https://centralnews.co.za/impeachable-offence-jsc-rules-against-two-in-gross-misconduct-finding/>.

VI. REFORM PROPOSALS FOR INDIA

The foregoing analysis suggests that India's judicial accountability framework requires structural reform along three principal axes: institutional, procedural, and normative.

A. Establishment of a National Judicial Commission

The most urgent reform is the establishment of a permanent, statutory National Judicial Commission (NJC) with constitutional backing. Recommended by the Law Commission of India in both its 121st Report (1987) and 230th Report (2009), and partially contemplated by the Judicial Standards and Accountability Bill, 2010, such a body would serve as the permanent institutional home for judicial accountability in India.³⁸ The NJC should have the authority to receive complaints, conduct preliminary investigations, refer matters to an inquiry tribunal, and make recommendations to Parliament on removal. Its composition should include members of the judiciary, the legal profession, and civil society to ensure independence from executive and legislative influence. Importantly, the NJC should have statutory authority to impose graduated sanctions for misconduct falling below the threshold of impeachment, filling the accountability vacuum that currently exists.

B. Codification of Grounds and Procedural Reforms

India's constitutional standard of proved misbehaviour requires legislative elaboration. A reformed Judges (Inquiry) Act should codify a non-exhaustive list of conduct constituting misbehaviour, drawing upon international standards such as the Bangalore Principles of Judicial Conduct, 2002, and the Commonwealth Latimer House Principles, 2003.³⁹ Time-bound inquiry procedures, with prescribed maximum durations for each stage, would address the delay problem observed in both the Indian and South African frameworks. The requirement that both Houses pass the removal motion in the same session should be reconsidered, as it creates an artificial procedural cliff that has historically allowed judges to escape accountability across parliamentary sessions.

C. Closing the Resignation Loophole

Parliament should amend the Judges (Inquiry) Act, 1968 to provide that a judge's resignation

³⁸ Law Commission of India, Reports No. 121 and 230, *supra* notes 14, 19; Judicial Standards and Accountability Bill, 2010, *supra* note 20.

³⁹ Bangalore Principles of Judicial Conduct, U.N. Doc. E/CN.4/2003/65, Annex (2002); Commonwealth Latimer House Principles on the Three Branches of Government (Commonwealth Secretariat 2003).

after the admission of a motion for removal does not automatically terminate inquiry proceedings. Where an Inquiry Committee has submitted a finding of proved misbehaviour, the findings should be placed before Parliament for a vote regardless of resignation, and an adverse parliamentary vote should result in the forfeiture of post-retirement benefits. This reform would eliminate the perverse incentive for judges facing imminent removal to resign as a strategy for evading accountability.

D. Transparency and Public Reporting

Any reformed accountability mechanism must incorporate transparency requirements. The in-house procedure should be placed on a statutory footing with provisions for public reporting of the nature and outcome of complaints received. Inquiry proceedings should, save where confidentiality is essential to protect reputational interests during a preliminary stage, be conducted with a degree of openness sufficient to sustain public confidence. Annual reports on judicial accountability should be placed before Parliament and made available to the public.

VII. CONCLUSION

The comparative analysis undertaken in this article reveals a stark institutional contrast. India's judicial impeachment framework, though constitutionally sophisticated, has remained functionally dormant since independence, producing a systemic accountability deficit that has eroded public confidence and undermined institutional discipline. The structural reasons for this failure — political dependence, the absence of a permanent oversight body, the resignation loophole, and procedural opacity — are remediable through legislative and constitutional reform.

The African experience, particularly South Africa's historic judicial impeachments of February 2024 and Kenya's constitutionally empowered Judicial Service Commission, demonstrates that judicial accountability mechanisms can function effectively within democratic constitutional systems without compromising judicial independence. The key institutional insights from these models — the separation of the investigatory function from parliamentary deliberation, the permanence and independence of the oversight body, and the provision for graduated sanctions — offer a constructive template for Indian reform.

Impeachment embodies the constitutional promise that no public office, however elevated, is beyond scrutiny. As Genevieve Maujean and Dimakatso Nchodu of the University of Cape Town observed in the context of South Africa's 2024 impeachments, a functional accountability

mechanism is a vindication of strong constitutional mechanisms at play.⁴⁰ India's judiciary, given its expanded role in constitutional governance and the public trust it is called upon to sustain, deserves no less. Reform of the impeachment framework is not an assault on judicial independence; it is the institutional expression of the constitutional commitment to a judiciary that is both independent and accountable.



⁴⁰ Maujean & Nchodu, supra note 23.