

# **Impeachment Procedure: Removal of Judges of the Supreme Court and High Court's**

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## **I. Introduction**

Judiciary occupies a very important place in a federal constitution. But in the interest of an efficient judicial system, it is essential that the judiciary must be independent. It should in no case, be under the control of the executive or the legislature. Realising the importance of an independent judiciary, the fathers of our constitution have sought to establish an independent Supreme Court free from the influence of the executive or the legislature.

The Supreme Court plays a unique role in the scheme of Constitutional Government in the country as the highest appellate judicial authority and the final interpreter of the constitution as well as the guardian of our Fundamental Rights. Although, the constitution establishes a federal system of government, unlike many other countries with federal constitutions, India has a single judicial system which has brought about not only jurisdiction unity but also the establishment of a single judicial cadre, as it were for the whole country, with the Supreme Court as its apex, the Indian judiciary is a fully integrated system under which the writs of the Supreme Court runs not only all over the Country- Central- States and local areas but also with all fields of law- constitutional, civil and criminal.

## **II. Independent and Impartial Judiciary**

The Constitution envisages an independent Supreme Court. The Independence of the judges is ensured by the following provisions:

- (i) Every judge of the Supreme Court is appointed by the President of India after consultation with such of the judges of the Supreme Court and of High Courts of the States as President may deem necessary for the purpose. But in the appointment of a judge other than a chief justice, consultation with the Chief Justice of India by the President is obligatory.
- (ii) A judge of the Supreme Court and High Courts once appointed, hold office until he completes the age of sixty-five and sixty two years respectively.

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- (iii) A retired judge is prohibited from practising law before any court in India.
- (iv) A supreme Court judge or a High Court judge can be removed from office by an order of the president only on the grounds of proved misbehaviour or incapacity after a resolution for the purpose is passed by both Houses of parliament supported by a majority of the total membership of the House and a majority of not less than two-thirds of the members present and voting.
- (v) The conditions of service of a judge cannot be altered to his disadvantage after his appointment.
- (vi) The independence of the judges is further safeguarded by making all their actions and decisions taken in their official capacity immune from criticism.

The outgoing Chief Justice R.M. Lodha on 13.9.2014 said that the independence of the judiciary is not negotiable and any attempt to tinker with it will not succeed, adding that to strengthen the rule of law the judiciary will have to ensure that it was completely corruption free. He made this observation at the 'Rule of Law' Convention, 2014 organized by the Bar Association of India in the National Capital, New Delhi. Justice Lodha said: "The independence of the judiciary is not negotiable. By and large, people understood that judicial independence is something which cannot be touched". When economy grows, industry grows and also grows corruption. It is very important that judiciary is corruption free. It is worst form of ailment for a thriving democracy." It is the legal fraternity to guard against any attempt to corrupt the judiciary. He also said that, "Judicial independence gives confidence to the people that there is an independence judiciary that will rescue the people of the country from the executives and others. He emphasized that the appointment of judges for the higher judiciary should be in a transparent manner.

### **III. What is Impeachment?**

A member of the higher judiciary, which means the Judges and Chief Justices of the Supreme Court of India and the State High Courts, can be removed from service only through the process of impeachment under Article 124(4) of the Constitution on grounds of proven misbehaviour or incapacity.

In India, there is no other process by which a judge can be removed from office before his terms comes to an end. However, the process is very cumbersome

#### **IV. Who decides if a judge should be impeached?**

As per the Judges Inquiry Act, 1968, a complaint against a judge has to be made through a resolution either by 100 members of the Lok Sabha or 50 Rajya Sabha members. After the MPs submit a duly signed motion to this effect to their respective presiding officers- Chairman of the Rajya Sabha or Speaker of the Lok Sabha- the presiding officer constitutes a three member committee comprising two judges- one from the Supreme Court and one Chief Justice of a High Court if the complaint is against a sitting judge; and two Supreme Court judges if the complaint is against a sitting judge of the apex court- and a jurist to probe the complaint and determine if it is a case fit for initiating the process of impeachment.

This team can involve any independent agency, either from the government or the private sector, to investigate the charges, before making a recommendation to the House. Thereafter, if the committee has concluded that impeachment proceedings be launched, the matter is debated in both Houses of Parliament. The judge who is facing impeachment is also given the opportunity to rebut the charges, either in person or through his representatives. However, the entire process- debate onwards- has to be completed within a single session of the House, failing which the motion is deemed dropped and can only be taken up if the entire process is repeated afresh in any subsequent session.

After the debate ends and the judge has been heard, if the House decides to put the motion to vote, the resolution has to be passed by two-thirds majority in both houses in the same session. The resolution is then sent to the President, who orders removal of the Judge.

#### **V. Has any judge ever been impeached since Independence?**

Till date the only judge in the history of Indian judiciary Justice 'Soumitra sen' of Calcutta High Court has been impeached. The first time, Parliament came close to impeaching a judge was in the case of former Punjab and Haryana High Court Justice V Ramaswami for corruption in 1991.

V. Ramaswami was the judge of the Supreme Court of India and the first judge against whom impeachment proceedings were initiated in Independent India. He began his career by practising both civil and criminal law at Madras High Court from 31 January, 1971. He was later transferred and appointed Chief Justice of Punjab and Haryana High Court on 12 November, 1987. At the height of his career, he was appointed judge of the Supreme Court on 6 October, 1989, from which he retired on 14 February, 1994.

## **VI. Investigation**

A scandal surfaced in the middle of the year 1990 when several media outlets reported about his ostentatious expenditure on his official residence during his tenure as a Chief Justice of Punjab and Haryana. In a serious turn of events, on 1 February, 1991, Supreme Court Bar Association passed a resolution calling for his impeachment and requesting Chief Justice not assign him any further legal work. Bharatiya Janata Party and Left Parties submitted a notice of motion to the Indian Parliament seeking his removal from office.

Accepting the motion on 12 March 1991, speaker Rabi Ray constituted a committee composed of Justice P.B. Sawant of the Supreme Court, Chief Justice P.D. Desai of the Bombay High Court and Justice O Chinnappa Reddy, retired judge of the Supreme Court to investigate the affair. The Committee found Ramaswami guilty of 11 out of 14 charges.

## **VII. Impeachment in the Lok Sabha**

The impeachment motion was placed in the House for debate and voting on 10 May 1993. Well known lawyer and a Congress politician Kapil Sibal was the defence lawyer. Out of 401 members present in the House of Lok Sabha that day, there were 196 votes for impeachment and no votes against the motion, but 205 abstentions by ruling Congress and its allies, thus defeating the motion. The motion which required not less than two third majority of the total number present in both Houses of the Parliament and an absolute majority of its total membership thus failed to pass.

## **VIII. Impeachment of Justice Soumitra Sen**

Soumitra Sen is a retired judge of Calcutta High Court. He was the first judge in Independent India to be impeached in Rajya Sabha for misappropriation of funds. He was appointed a permanent judge of the High Court at Calcutta on 3 December, 2003.

## **IX. Allegation**

Justice Sen has been bearing the allegation for appropriating Rs.32 lakhs as a receiver in 1993 in a law suit between Steel Authority of India Limited (SAIL) and Shipping Corporation of India over supply of fire bricks.

The Chief Justice recommendations was made shortly after a three-judge Inquiry Committee had established for justice Sen's misconduct in depositing the money in his personal account. Justice Sen retained the money even after being appointed as the High Court Judge in 2003. It was in 2006 after High Court order he returned money.

Justice Sen was held guilty of misappropriation of public funds he received in his capacity as receiver appointed by the High Court of Calcutta and misrepresenting facts with regard to it by a committee of three judges set up by former CJI K.G. Balakrishnan recommended his impeachment to the Prime-Minister office after which a legal opinion obtained by the law ministry endorsed the Judges' Committee report. In 2009, 58 MPs of the Rajya Sabha moved a motion for impeachment of Calcutta High Court Judge Soumitra Sen for his involvement in Financial misappropriation. Probe Panel was set-up by Rajya Sabha Chairman Hamid Ansari in February, 2009. It was headed by Supreme Court Judge justice B. Sudershan Reddy and had as its members Punjab and Haryana High Court Chief Justice Mukul Mudgal and noted jurist Fali S. Nariman. The Committee said the charges were duly proved.

The report of three member Committee, placed in both Houses of Parliament, said it was of the opinion that justice sen was guilty of misbehaviour, under Article 124(4) read with proviso (b) to Article 217(1) of the Constitution of India.

Article 124(4) when read with proviso(b) to Article 217(1) states that a judge of a High Court shall not be removed from his office except on the ground of 'proved misbehaviour'. The prefix 'Proved' only means proved to the satisfaction of requisite majority of Parliament, if so recommended by the inquiry committee.

The report said the oral and documentary evidence had established that two separate accounts were opened by justice Sen as 'receiver' in his own name and a total sum aggregating Rs.33,22,800/- being the sale proceeds of goods were brought in to two accounts between 24 March 1993 and 5 May 1995.

The indictment of justice Sen paved way for Parliament to take up the impeachment of the judge who had been found guilty of collecting Rs. 33,22,800/- from a purchaser of goods, keeping it in a savings bank account and misrepresenting facts to the High Court.

Subash Bhattacharya the lawyer of Justice Soumitra Sen said that his client is innocent and he will prove he is innocent. As per the Judges Inquiry Act, the motion was moved in the Rajya Sabha and debate upon. Justice Sen was given opportunity to defend himself through his counsel. On 18 August 2011 Rajya Sabha passed the impeachment motion by overwhelming majority of 189 votes in favour of and 17 against the motion.

This is the second case in the history of the Country in which Parliament has initiated proceedings for removal of a judge.

## **V. Resignation**

Ahead of impeachment motion against him in the Lok Sabha on 5 and 6 September, 2011, he resigned on 1 September, 2011. In his resignation letter he said that “Since the Rajya Sabha has decided in its wisdom that he should not continue as a judge, he has decided not to go to the Lok Sabha, and put in his papers instead”. Latter Lok Sabha decided to drop the impeachment proceedings against them, as there are no Constitutional or Statutory provisions restricting their entitlement in such a scenario.

## **VI. Corruption and misconduct of Judges**

In the year 2008, Supreme Court of India embroiled in several controversies, from serious allegations of corruption at the highest level of the judiciary, expensive private holidays at the tax payers expense, refusal to divulge details of judges’ assets to the public, secrecy in the appointment of judges, refusal to make information public under the Right to Information Act. The **Chief Justice K.G. Balkrishnan** invited a lot of criticism for his comments on his post not being that of public servant, but that of a Constitutional Authority. He later went back on his stand. The judiciary has come in for serious criticisms from former President of India, Pratibha Patil and A.P.J. Abdul Kalam for failure in handling its duties. Former Prime-Minister Manmohan Sing has stated that corruption is one of the major challenges facing the judiciary and suggested that there is an urgent need to eradicate this menace.

## **VII. Pending Cases**

According to Supreme Court News Letter, there are 58,519 cases pending in the Supreme Court, out of which 37,385 are pending for more than a year, at the end of 2011. Excluding connected cases, there are still 33,892 pending cases. As per the latest pending data made available by the Supreme Court, the total number of pending cases in the Supreme Court as on 1 April, 2014, is 64, 330, which include 34,144 Admission matters (Miscellaneous) and 30,186 Regular Hearing matters. Recently, in May, 2014, the outgoing Chief Justice of India, Justice R.M. Lodha proposed to make Indian Judiciary work throughout the year instead of the present system of having long vacation.

## **VIII. Conclusion**

The role of judges and lawyers or advocates was not and could not be confined only to courts. The pattern of legal institution undergoes changes from time to time in accordance with the need of the society though the concepts of justice had remained the same all through the ages. It is well

known that legal profession is nourished by great and glorious traditions. It is a noble profession. We are proud of belonging to that legacy. The society is moving very fast and accordingly its demand is for speedy justice. But law, lawyers and judiciary are not able to keep pace with the fast moving society. Courts exist to dispense justice and to serve the public interest. Arrears in all courts are mounting and the judicial system as a whole is facing a serious problem. Mr. Justice M.B. Shah of Supreme Court said, "...because of cancerous growth of pending litigations. This cancerous growth would require surgery by experts including surgery of amending Acts, but before surgery and during the healing period we must be in a position to see that litigating public at large should maintain confidence in the system as a whole". It is the duty of the law, lawyers and judges to see that the common man can survive safely by relying on lawyers, laws and judges and their administration.

In common law judicial functions were primarily performed by civil and criminal courts only. Now-a-days human activities have become so complex and complicated which need to have a variety of judicial functions and necessitate judicial functions to be performed by quasi-judicial bodies which are commonly known as "Tribunals". According to the former Chief Justice of India, Mr. Justice Y.V. Chandrachud, "Law is a growing science and with a marked change in the pattern of modern life, those who are not directly concerned with the practice of law on the day-to-day life of the common citizen. A large number of Administrative Tribunals have grown over the years and it is a sad comment on the response of the executive, that many of these tribunals are manned by persons who are ill-equipped to dispense justice through administrative forum".

At this stage it is strongly felt that the lawyers and judicial officers must be trained properly. There is no legislation to give proper training either to legal practitioners before their enrolment. Persons joining legal profession should be given proper training in specially established training centres and before joining legal profession the newly enrolled advocates must satisfy that they are fit to adopt a career in law as professionals. The lawyers are pillars of administration of justice and they should receive training on how to accept the brief, the way to deal with the clients, their duty towards clients, the art of presenting their cases and the essential mannerisms in the court rooms. On the other hand the judicial officers must be trained to ascertain the real issue between the parties, how to examine the pleadings, assess the evidence and maintain a balanced approach so that unaffected justice manifests in their verdict. They also must be trained about their jurisdiction, their powers in exercise of discretion, granting adjournments, admissibility of evidence, solemn and dignified attitude with regards to persons appearing or produced before them and respect for precedents.

The hallowed profession of law shall have to discharge the social obligations and fulfil the high expectations of society and particularly of the common man. Law court should not be made a much dreaded place where the high and mighty only can get relief. The fact of the matter is that there is no punishment in practical sense which is given to a judge. Transfers seem a way out in cases to deal with wayward judges. But even the Apex court has ruled out that transfer is not a punishment. A re-orientation in outlook that legal service is available to all without any burdensome cost and within a reasonable time frame is the call of the hour.

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