

# REMOVAL OF SUPREME COURT & HIGH COURTS JUDGES AND ITS STAGES: A COMPARATIVE STUDY

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## **Introduction:**

It is very easy for the human mind to find justification for a conclusion which accord with the dictates of emotion. Reason is a ready enough advocate for the decision one, consciously or unconsciously, deserves to reach I would like to quote the brilliant filing of ShriAurobindo in this peon “Savitri” used by justice P.N. Bhagwati in Judges case

Bhagwati in Judges case

“An in conclusive play in reason toil each strong idea can use her as its tool accepting every brief she pleads her case open to every thought she cannot know.”

We have therefore to rid our mind of any preconceived notions or ideas and interpret the constitution as it is and not as we think it ought to be.

Indian constitution establishes a three-tier judiciary with the subordinate courts at the floor level, the High Court at the state level and the Supreme Court at the Union level. The Independence of Judiciary is a very crucial issue. An independent Judiciary is the since qua non of a visible democratic system only Independent and an impartial judiciary can stand as a bulwark for the protection of the rights of the individual and mete out even handed justice without fear or favor. The judiciary is the protector of the constitution and as such it may have to strike down executive, administrative and legislative acts of the center and the state for rule of law to prevail, judicial independence is of prime necessity. Being the highest court in the land, it is necessary that Supreme Court is allowed to work in an atmosphere of independence of action and judgment and is insulated from all kinds of pressure, political or otherwise.

The Supreme Court and parliament has a special kind of relationship. The constitution provides detailed provisions which cannot be touched by ordinary legislative process. But as per constitution Scheme, Parliament has some powers vis-a-vis the court. The minimum members of its judges are fixed by the constitution but parliament has authority to increase, not to decrease, this number. The Indian constitution confers a security of tenure on the Judges subject to Parliament moving and address for removal of a judge. The power thus vested in parliament cannot be misused owing to several safeguards. As per the values and philosophy of constitution is concerned, neither the Supreme Court is supreme, nor the parliament is Supreme only the pious document that is known as Indian Constitution is supreme and that supreme shall be maintain either in case of appointment of Judges or any other agency like CAG or Election Commissioner etc.

### **REMOVAL OF A JUDGE –COMPARATIVE STUDY**

In every democratic country, special provisions are made making removal of Judges an extremely difficult exercise. The question of removal of a Judge Before the age of retirement is an important one as it has a significant bearing on the independence of the judiciary. If a Judge of High Court or Supreme Court is removed without following a reasonable procedure, then it can be imagined that the court would lose its independence and become subject to the control of the executive.

Till 1688, judge of the Superior Courts in England held their office during the king's pleasure, with the result that they could be dismissed by the king if their judgments were not to the king's liking, as chief Justice Coke was dismissed. The Act of settlement of 1688 substituted for the tenure at pleasure the tenure during good behaviour. In the USA, a Supreme Court judge holds office for life and irremovable only by the process of impeachment in case of treason, bribery or other high crimes and misdemeanors. Provision has, however been made by law for voluntary retirement on full salary after ten year of service and attainment of the age of seventy.

The constitution of India also makes provision under Article 124(4) for the removal of Supreme Court and High Court Judge.

*Article 124(4):- 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 has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.*

Since the framers of our constitution were most anxious to secure the Independence of the judiciary, it was provided that the judges of the Supreme Court and the High Courts should their office till the age of superannuation that is during good behaviour. That is implicit in Article 124(4) which provides that a Supreme Court Judge can be removed by a process of impeachment for proved misbehaviours. The provision that a Supreme Court Judge holds office during good behaviour requires as a necessary corollary that if it is proved that a Supreme Court Judge is guilty of provide misbehavior be should be removed from his office as a judge.

*Article 121:- No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.*

Article 121 provides a general provision which is designed to prevent a discussion in parliament about the conduct of a judge of the Supreme Court or of the High Court in the discharge of His duty, and it has nothing to do with discussion in Parliament in the debate for the removal of a judge by impeachment. Article 124(4) is a special article and it must prevail over the general article.

## **STAGES OF IMPEACHMENT**

There are 5 stages in the process of impeaching a Supreme Court and High Court Judge for misbehavior.

At the first stage, there shall not be less than 100 members of Lok Sabha and not less than 50 members of the Rajya Sabha respectively, give notice of a motion for presenting an address for the removable of a judge to the

Speaker of the Lok Sabha or to the Chairman of the Rajya Sabha as the case may be or to both of them on the same day, and if the chairman or the speaker or both refuse to admit the notice of motion the matter ends.

The second stage is reached when the speaker or the chairman admits the notice of Motion and constitutes a committee U/s 3(2) of the Inquiry act. The committee has been described as a high power committee. Because it is consisted of Chief Justice of India or a setting Judge of the Supreme Court of India, of a setting Chief Justice of High Court and of an eminent Jurist

The third Stage is reached when the committee proceeds to investigate the charges against the judge see Section 3 sub- sections (3) &(4) of the Inquiry Act are set out below:-

*(3)The Committee shall frame definite charges against the Judge on the bases of which the investigation is proposed to be held.*

*(4)Such charges together with a statement of the grounds on which each such charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defense within such time as may be specified in this behalf by the Committee.*

At the fourth stage, the high power committee makes a report and forwards the same to the speaker or the chairman or both. If the committee finds that the judge concerned is not guilty of misbehavior or does not suffers from any incapacity, the impeachment proceedings ends, for it is provided by Sec. 6 (1) of Inquiry Act.

*Section 6(1)If the report of the Committee contains a finding that the Judge is not guilty of any misbehavior or does not suffer from any incapacity, then, no further steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses of Parliament shall not be proceeded with.*

If the committee finds that the judge is guilty of any misbehavior or suffers from any incapacity then, the notice of motion together with the report of the committee is to be taken for consideration by the house or houses of parliament in which it is pending. At this stage the courts are not in the picture because the report of the committee does not determine the rights of the judge nor can the courts in any manner override the report and hold that no committee could possibly find the judge guilty of the charges made against him.

The fifth and final stage is reached when the two houses proceed to act in the manner prescribed by Sec. 65(3) of the Inquiry Act. It is obvious that if the votes cast separately in the Lok Sabha and in the Rajya Sabha fall short of the majority required in either House, namely, not less than half the number of members of the total membership of the house, and not less than 2/3 of the members present and voting, the motion for impeachment fails and the concerned judge cannot be removed from judicial duty if there is time to do so. If however the motion for impeachment is carried by the requisite majority under Sec. 6(3) then “the misbehaviour or incapacity of the judge shall be deemed to have been proved and an address for the removal of the judge shall be presented in the prescribed manner to the president by each house of parliament in the same session in which the motion has been adopted”.

After discussion of all the five stages, I observed that these above provisions reflect a semblance of a positivistic approach of Austin and a provision of the inquiry act governed by totalitarian theory of China. If any member of the committee shows open bias for or against the judge whose conduct is being investigated after the inquiry was commenced, it would be easy to remove the alleged judge from his office.

## **SOCIAL UTILITARIANISM, CATEGORICAL IMPERATIVE AND IMPEACHMENT**

### **PROCEEDINGS:-**

Ihring, pointed out that the origin of law is to be found in social struggles. He considered law as a means to an end. The ultimate end of law is social purpose. Impeachment of a judge serves a social purpose which is guaranteed in the preamble of the constitution and the removal procedure is a means to achieve that end. If any judge is found guilty of misbehavior then the punishment awarded to him is removal from the office. Ihring,

considers punishment as a means to a social ends. This theory has been called as “Social utilitarianism”. The Preamble of constitution provides to secure to all its citizens justice social, economic and political. The transparent and impartial judiciary is a social interest that is given to people of India and to achieve that end constitution of India have article 124(4) & (5) along with Judges Inquiry act as a means to achieve that end i.e. social justice.

**Conclusion:-**At last I come to conclude that the Impeachment proceedings become purely parliamentary & in proceedings there is no interference of any Court. In Maneka Gandhi versus Union of India the Supreme Court held that procedure shall be just, fair & reasonable. It should not be whim & caprice. So the proceeding held in parliament be based on principle of Natural Justice and followed & supported by Rule of Law. Kant has propounded principal of “Categorical Imperative”. By maxim “Categorical Imperative” means a rule of principle that gives the reason for your action. If committee finds a Judge guilty or not guilty that conclusion should be based on a reason. Kant is saying in effect, that we should act only on principle that we should universalize without contradiction. Thus the Natural Justice and rule of law is universal principle and it should not seem to be done but it should be reflected in spirit and substance. Impeachment proceedings shall be based on perfect reasoning of these principles.

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