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IMPEACHMENT OF JUDGES

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IMPEACHMENT OF JUDGES

The Parliament, the Executive and the Judiciary are the three main pillars of our democratic edifice. The Constitution of India defines powers, delimits jurisdictions and demarcates the responsibilities of each organ. As regards the relationship between the Parliament and the Judiciary, both are under constitutional obligation not to encroach upon each other's jurisdiction. In this respect, Article 121 provides that the conduct of the Judge of the Supreme Court or High Court cannot be discussed in Parliament except upon a motion, for presenting to the President, praying for the removal of such Judge. Also, the matters which are *sub judice* cannot be discussed in Parliament. Article 122 provides that the Judiciary too cannot question the validity of any proceedings of Parliament on the ground of any alleged irregularity of procedure.

Constitutional Provisions for the resignation/removal of Judge

A Judge of the Supreme Court or of a High Court may, by writing under his hand addressed to the President, resign his office, but he cannot be removed from his office except by an order of the President passed after an address by each House of Parliament in the prescribed manner. The Procedure is contained in Article 124(4) of the Constitution of India read with proviso (b) to Article 124(2)(a) and proviso (b) to Article 217(1) for 'proved misbehaviour or incapacity'.

The address for the removal of a judge, whether of the Supreme Court or a High Court, can be presented to the President only on the ground of 'proved misbehavior' or 'incapacity'. Such an address has to be presented to the President in the same session in which it is passed by each House of Parliament supported by a majority of the total membership of each House and also by a majority of not less

than two-thirds of the members of each House present and voting. If the address of both the Houses is in conformity with the aforesaid provision of the Constitution, the President issues an order for the removal of the Judge from office.

Procedure for the removal of Judge

The Parliament, in exercise of the power conferred by Clause (5) of Article 124, enacted the Judges (Inquiry), Act in 1968. The law was enacted with a view to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President and for matters connected therewith.

The procedure for the investigation and proof of the misbehaviour or incapacity of a Judge and for the presentation of an address to the President has been prescribed by the Judges (Inquiry) Act, 1968. Under the procedure laid down by the Act, a notice of a motion for presenting an address to the President for the removal of a Judge, if given in Lok Sabha, is to be signed by not less than one hundred members of the House and if given in Rajya Sabha, by not less than fifty members of that House. The Speaker or the Chairman, as the case may be, after due consideration and consultation, may admit or refuse to admit the motion.

Consequent on the admittance of the motion, the Speaker or the Chairman, as the case may be, constitutes a Committee of three members, one each from among the following: (i) The Chief Justice and other Judges of the Supreme Court; (ii) Chief Justice of the High Courts; (iii) distinguished jurists. In case the notices of motion are given on the same day in both the Houses, the Committee will be constituted only if the motion has been admitted in both Houses and thereupon jointly by the Speaker and the Chairman. In case notices of motion are given in

both the Houses on different dates, the notice which is given later shall stand rejected.

The Committee will frame definite charges against the Judge on the basis of which investigation is proposed to be held. The Committee will have the powers of a civil Court in respect of summoning persons for examination on oath, production of documents, etc. The 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 a case of alleged physical or mental incapacity and where such an allegation is denied, a Medical Board will be appointed for the medical examination of the Judge by the Speaker or, as the case may be, the Chairman or, where the Committee has been constituted jointly, by both of them.

At the conclusion of the investigation, the Committee will submit its report to the Speaker or, as the case may be, to the Chairman, or where the Committee has been constituted jointly, to both of them, stating therein its findings on each of the charges separately with such observations on the whole case as it thinks fit. The report will thereafter be laid before the respective House, or the Houses where the Committee has been appointed jointly by the Speaker and the Chairman.

If the Committee absolved the Judge of any misbehavior or incapacity, the motion pending in the respective House or Houses, as the case may be, will not be proceeded with. If the report of the Committee contains a finding that the Judge is guilty of any misbehavior or suffers from any incapacity, the motion will, together with the report of the Committee, be taken up for consideration by the House or the Houses in which it is pending.

In the event of the adoption of the motion in accordance with the constitutional provisions, the misbehaviour or incapacity of the Judge will be deemed to have been proved and an address praying for the removal of the Judge will be presented in the prescribed manner by each House of Parliament in the same session in which the motion has been adopted.

Before the procedure for the removal of Judges was laid down by law (i.e. The Judges (Inquiry) Act, 1968), notices of motions for the removal of a Judge on the ground of misbehaviour or incapacity were on occasions tabled by members. Whenever a notice was received from a member of his intention to move such a motion, the Speaker discussed the matter with the member and examined the material on which the allegation was based to ensure that there was a *prima facie* case to proceed in the matter. He asked the member not to make the contents of his motion public: in fact, a strict secrecy about the matter was ensured. After the Speaker was satisfied that there was a *prima facie* case, he sent a copy of the complaint to the Chief Justice of the concerned High Court and to the Chief Justice of India to look into the matter. A copy was also sent to the Minister of Home Affairs for his comments. The Speaker adopted this procedure in order to resolve the matter without its being raised on the floor of the House.

As a result of the adoption of this procedure in such cases, either the Judge concerned retired voluntarily or the defect was soon rectified and thus unpleasant controversy which might have lowered the prestige of Judiciary was avoided on the floor of the House, and the cases complained of were resolved before the matter could be raised in the House.

Instances of Impeachment

After the passing of the Judges (Inquiry) Act, 1968, a notice of a motion for presenting an address to the President for the removal of a Judge of the Supreme Court was given in Lok Sabha by S.M. Joshi and 198 other members on 15 May 1970 (10 Session, 4LS). The Speaker (Dr. G.S. Dhillon) did not consider it to be a fit case for action under the Judges (Inquiry) Act, 1968 and did not admit the notice. The following cases have come up before the Parliament.

I. Case of Justice V. Ramaswami

The first such case involved the impeachment motion in Lok Sabha of Justice V. Ramaswami of the Supreme Court in May 1993 on charges relating to gross abuse of his financial and administrative powers as the Chief Justice of the Punjab and Haryana High Court and criminal misappropriation of property. The Notice of Motion was signed by Prof. Madhu Dandavate and 107 others, which was admitted by the Speaker (9th Lok Sabha), Shri Rabi Ray on 12 March 1991. The Speaker, in pursuance of Section 3(2) of the Judges (Inquiry) Act, 1968, constituted a Committee consisting of Justice P.B. Sawant, Judge of the Supreme Court of India, (Chairman), Justice P.D. Desai, Chief Justice of the High Court at Bombay and Justice O. Chinnappa Reddy, former Judge of the Supreme Court of India (Members) for making an investigation into the grounds on which the removal of Justice V. Ramaswami was prayed for. Before the Committee could submit its report, the Ninth Lok Sabha was dissolved by the President on 13 March 1991. The question whether the Motion lapsed or remained alive on the dissolution of the Lok Sabha was raised in a petition filed before the Supreme Court which held that the Notice of Motion remained alive. Justice Sawant Committee submitted its report to the Speaker of the

Tenth Lok Sabha in July 1992. The Report found that Justice Ramaswami was guilty of misbehaviour and was laid on the Table of the House on 17 December 1992 by the Secretary-General, Lok Sabha. As this was the first case of its kind, the Speaker in consultation with the Leaders of Parties and Groups in the House, formulated the procedure. After two days discussion, the motion and the address were put to the vote of the House. As a result of the division (Ayes:196 and Noes: Nil) the motion and the address were declared as not carried by the requisite majority in accordance with clause (4) of Article 124 of the Constitution.

II. Case of Justice Soumitra Sen

The second case involved Justice Soumitra Sen of the Calcutta High Court whose removal from office was sought on two grounds by the following motions: (1) misappropriation of large sums of money in his capacity as the receiver appointed by the High Court of Calcutta; and (ii) misrepresentation of facts with regard to this misappropriation of money before the High Court of Calcutta. The Committee found him guilty of both the charges. The Committee Report was laid on the Table of both the Houses on 10 November 2010 by the respective Secretaries-General. After discussion, the motion and the address were put to the Vote of the House on 18 August, 2011. The Rajya Sabha voted in favour of his impeachment by 189 votes in favour and 16 votes against. The motion along with the address was listed for consideration in the Lok Sabha on 5 September 2011. The Motion was proposed in the name of Speaker, Lok Sabha. Subsequently, Lok Sabha at its sitting held on 5 September 2011 agreed that the motion and the address for presenting to the President praying for the removal from office of Justice Soumitra Sen may not be proceeded with.

III. Case of Justice P.D. Dinakarn

The third case involved Justice Paul Daniel Dinakaran, Chief Justice of the Karnataka High Court, against whom charges of corruption were made. On 14 December, 2009, three notices of motion, each signed by several Members of Rajya Sabha for presenting an address to the President of India for the removal of Justice Paul Daniel Dinakaran, under Article 217 read with article 124 (4) of the Constitution of India were received. All the three notices taken together had been signed by 75 members of Rajya Sabha. The Motion was admitted by the Chairman, Rajya Sabha on 17 December, 2009. The Chairman, Rajya Sabha, set up Inquiry Committee on 15 January 2010, to investigate into the grounds on which his removal was sought for. However, before the Committee could complete its investigation and submit its Report, the concerned Judge submitted his resignation on 29 July 2011 by addressing a letter to the President of India. In view of this, the notice of motion praying for presenting an Address to the President became infructuous and the Chairman, Rajya Sabha, brought the work of the Inquiry Committee to a close.

IV. Case of Justice S.K. Gangele

On 4 March, 2015, fifty-eight Members of Rajya Sabha gave Notice to the Chairman, Rajya Sabha of a Motion for the removal of Justice S.K. Gangele, a Judge of the Madhya Pradesh High Court at Gwalior under Article 217(1) (b) read with Article 124 (4) on the grounds of misconduct (as listed in the notice of motion). The Chairman, Rajya Sabha admitted the Notice of motion and in pursuance of Section 3(2) of the Judges (Inquiry) Act, 1968 constituted a Committee for the purpose of making an investigation into the grounds on which the removal of Justice S.K. Gangele

was prayed for. The Committee was reconstituted on 10 February, 2016, 17 March 2016 and again on 8 April 2016. The Inquiry Committee, after investigation found that charges were not proved. On 15 December, 2017, the Secretary-General, Rajya Sabha laid on the Table, under sub-section (3) of Section 4 of the Judges (Inquiry) Act, 1968 read with rules 9 and 10 of the Judges (Inquiry) Rules 1969, the Report of the Inquiry Committee and a copy each of the evidence tendered before the Inquiry Committee and documents exhibited during the Inquiry.

Case of Justice Dipak Misra

On 20 April 2018, notice of Motion signed by 64 Members of the Rajya Sabha under Article 124(4) of the Constitution praying for the removal of Justice Dipak Misra, Chief Justice of India was submitted to the Chairman, Rajya Sabha for certain acts of misbehaviour specified in the Notice of Motion.

The Chairman, Rajya Sabha after considering the material contained in the Notice of Motion and consultation with legal luminaries, constitutional experts, opined (vide order dated 23 April, 2018) that the Notice of Motion did not deserve to be admitted and accordingly refused to admit the Notice of Motion.

Procedure for Removal of Judges in other countries

Australia

Federal judges may only be removed by the Governor-General in Council 'on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity'. Where there are allegations that concern a federal judge, the Chief Justice (or a judge delegated by the Chief Justice) will carry out preliminary investigations and may refer the

matter to a Conduct committee of the judiciary (Federal Court of Australia Act 1976) . If the Chief Justice, assisted by the findings of the Conduct Committee (if any), considers that there are grounds that might justify removal, the Chief Justice may approach the Attorney General to initiate the process of Parliamentary removal. Parliament may appoint a commission to conduct a public hearing and determine whether grounds for removal exist

Canada

Judges ‘shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons’ (Constitution Act, s 99; Supreme Court Act s 9(1)). This provision is complemented by the Judges Act, 1985 which authorises the Canadian Judicial Council, primarily composed of heads of Courts, to carry out formal enquiries and to act as a Court (Judges Act 1985, s 63). – The judge who is under investigation has the right of ‘being heard at the hearing, of cross-examining witnesses and of adducing evidence on his or her own behalf’ (Judges Act 1985, s. 64).

The Council may recommend removal from office on the following statutory grounds: ‘(a) age or infirmity, (b) having been guilty of misconduct, (c) having failed in the due execution of that office, or (d) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of that office’ (Judges Act 1985, s 65).

United Kingdom

Judges in England and Wales hold office ‘during good behaviour’. They are removed from office by the Crown on an address presented by both Houses of Parliament (Senior Courts Act 1981, s 11(3)). – The same removal mechanism applies to members of the UK Supreme Court (Constitutional Reform Act, s 33).

A member of the Supreme Court who faces an allegation of misconduct will have the opportunity to appear before a tribunal whose members include the heads of Court of the various jurisdictions within the UK, and the tribunal must report before any motion is tabled in Parliament. If a complaint is received against a judge in England and Wales, the Office for Judicial Complaints operates a system of preliminary inquiry and investigation carried out by two different judges, followed by a review panel which decides whether to advise the Lord Chancellor to table a motion in Parliament (Judicial Discipline (Prescribed Procedures) Regulations 2013).

USA

The impeachment of federal judges, in fact, is often an even more murky process than the impeachment of other officials. While Article II, Section 4 contains some vague guidelines for what warrants impeachment proceedings – and this section relates to federal officials in general – Article III only explains that judges are supposed to remain in office only while in “good Behavior.” This is an incredibly open-ended standard. Only 15 federal judges have ever been impeached and only eight have ever been convicted and removed. But even then, the “articles of impeachment,” the list of misconduct the accused is on trial for, have described quite a wide range of inappropriate behavior.”

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