

RESIGNATION V. REMOVAL: THE INDIAN IMPEACHMENT SAGA

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ABSTRACT

Acceptance of the resignation of a judge of the High Court of Calcutta by the President of India has raised academic debate on the propriety of impeachment proceedings of a judge. Tendering a resignation and subsequent acceptance in the midst of impending proceedings touches upon the issue of legal process involved in impeachment. . Whether the holder of the highest constitutional office should have waited for the completion of the process undertaken by the constitutional body or the resignation left the matter in fruituous and vitiated the need to drive the impeachment to a logical conclusion, is a question, which, this paper attempts to address. Reliving the nature and scope of impeachment proceeding, the script sheds light on the propriety of the action of the executive when the matter was under consideration before the pillar of democracy i.e., Parliament.

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I. INTRODUCTION

In the midst of an awakening movement on anti-corruption¹, the initiation of impeachment proceedings² against Justice Soumitra Sen Judge of Calcutta High Court, attracted attention of the whole nation.³ The nation was following the proceedings with immense expectation as they surfaced from an instance of corruption in a dignified office.⁴ The unprecedented response of the Members of Parliament across party lines, during the impeachment proceedings, raised phenomenal expectation amongst citizens of this country.⁵ However, the well-calculated, timely resignation by Judge Soumitra Sen leaves a question mark on such partly concluded proceedings.⁶

There lies a rationale behind devising a procedure of impeachment in high constitutional offices.⁷ The special procedure is designed, so as not to subvert the constitutional ideals which the country is cherishing

¹Pearl Kalra, *India Against Corruption Movement* (Oct. 22, 2011), <http://www.theworldreporter.com/2011/04/india-against-corruption-movement-anna.html>.

²The only Judge to be impeached in India is Shri Justice S.P Sinha. He was impeached in the pre-constitutional era under the provisions of Government of India Act, 1935.

³Ifthikhar Gilani, *Justice Sen impeached by Rajya Sabha*, TEHELKA (Oct. 22, 2011), http://www.tehelka.com/story_main50.asp?filename=Ws180811IMPEACHMENT.asp.

⁴Judge Soumitra Sen is not the only judge who has been found indulging in corrupt practices. In recent years, allegations have also surfaced against Justice Jagdish Bhalla, Justice Dinakaran, Justice Nirmal Yadav, Chief Justice F.I Rebello, Justice Mehtab Singh Gill; See, Avinash Dutt, *My Lord's, There's a Case Against You*, TEHELKA (Nov. 9, 2011), http://www.tehelka.com/story_main24.asp?filename=Ne123006My_lords.asp.

⁵Judge Soumitra Sen was charged on two counts and was found guilty by the inquiry committee on both the counts. See, REPORT OF THE INQUIRY COMMITTEE, RAJYA SABHA SECRETARIAT, VOLUME 133 (September, 2010).

⁶*President Accepts Justice Sen's Resignation*, DECCAN HERALD (Sept. 3, 2011), <http://www.deccanherald.com/content/188104/president-accepts-justice-sens-resignation.html>.

⁷The procedure prescribed by article 124(4) is the only mode of removing a judge of the Supreme Court or the High Court. See *Avadesh v. State*, [1991] 4 SCC 699.

for over six decades. Acceptance of resignation successfully averted the forgone conclusion of impeachment. Withdrawal of proceedings in the lower house of the Parliament has left the judicial proceeding mid-way and has left its effect, inconclusive. This article endeavours to leave its readers with a lightning rod, which the authors believe will stir a new debate on the purpose and scope of impeachment proceedings. With a challenge to Judge Sen's impeachment proceedings being raised before the honourable Supreme Court⁸, this article aspires to shed some light on the nature and importance of such proceedings.

II. IMPEACHMENT

Anecdotal history suggests that impeachment is very old in origin. It relocates the power of indictment from ordinary due process in court of law to special procedure before the legislature.⁹

One of the perennial debates about impeachment is whether "it is" or "should be" christened as a judicial or a political process.¹⁰ Purpose of

⁸In light of Judge Sen's impeachment proceedings, the petitioner has sought interpretation of Article 124(4) and 124(5) of the Constitution of India, 1950 and section 6 of the Judges Enquiry Act, 1968.

⁹T. F. T. Plucknett, *The Origin of Impeachment*, TRANSACTIONS OF THE ROYAL HISTORICAL SOCIETY, 4TH SERIES, VOL. 24 47-71 (1942).

¹⁰In interpreting the constitutional provisions in this area the court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. Rule of law is a basic feature of the Constitution which permeates the whole of the Constitutional fabric and is an integral part of the constitutional structure. Independence of the judiciary is an essential attribute of Rule of law. The constitutional scheme in India seeks to achieve a judicious blend of the political and judicial processes for the removal of Judges. Though it appears at the first sight that the proceedings of the Constituent Assembly relating to the adoption of Clauses (4) and (5) of Article 124 seem to point to the contrary and evince an intention to exclude determination by a judicial process of the correctness of the allegations of misbehaviour or incapacity on a more careful examination this is not the correct conclusion. Accordingly, the scheme is that the entire process of removal is in two parts – the first part under Clause (5) from initiation to investigation and proof of misbehavior or incapacity is covered by an enacted law, Parliament's role being

impeachment process is to protect the Constitution and to prevent abuse of power by the executive and judicial branches. By providing for a mechanism for pursuing and removing high ranking public officials for violations of law; the Constitution makes clear that no one is above the law, and that the nation is committed to rule of law. Perhaps, for this reason the standard of proof to establish misbehavior is very high. Therefore, the nature of impeachment is partly judicial and partly parliamentary. At the stage of voting on the motion, the process is political. The Parliament is sovereign with respect to conduct of its business.¹¹ Any Court cannot have any say in that political process.¹²

Impeachment from high office is necessary to rehabilitate the damaged constitutional order.¹³ The misconduct of the holder of a

only legislative as in all the laws enacted by it; and the second part only after proof under Clause(4) is in Parliament, that process commencing only on proof in accordance with the law enacted under Clause (5). Thus the first part is entirely statutory while the second part alone is the parliamentary process. The Constitution intended a clear provision for the first part covered fully by enacted law, the validity of which and the process thereunder being subject to judicial review independent of any political colour and after proof it was intended to be a parliamentary process. It is this synthesis made in our Constitutional Scheme for removal of a Judge. Indeed, the Act reflects the constitutional philosophy of both the judicial and political elements of the process of removal. The ultimate authority remains with the Parliament in the sense that even if the committee for investigation records a finding that the Judge is guilty of the charges it is yet open to the Parliament to decide not to present an address to the President for removal. But if the committee records a finding that the Judge is not guilty, then the political element in the process of removal has no further option. The law is, indeed, a civilised piece of legislation reconciling the concept of accountability of Judges and the values of judicial independence. *Sub-Committee on Judicial Accountability v. Union of India*, [1991] 4 SCC 699.

¹¹Constitution of India, art. 122 (1950); See also *M.S.M Sharma v. Dr. Shree Krishna Sinha*, A.I.R. 1960 SC 1186; *Ramdas Athawale v. Union of India*, A.I.R. 2010 SCW 2329.

¹²*Capt. Virendra Kumar, Advocate v. Shiv Raj Patil, Speaker Lok Sabha*, [1993] 4 SCC 97.

¹³Persons holding office to discharge constitutional duties and obligations are in the position of constitutional trustees and the morals of the constitutional trustees have to be tested in a much stricter sense than the morals of a common man. *In re Dr.*

high office is so serious that it justifies impeachment and conviction, leading to the removal from the office.¹⁴ Removal encompasses the element of punishment. The ways in which each impeachment episode is debated, understood, remembered and has produced winners and losers in history can define the terms of the debate in future impeachment disputes.¹⁵

III. THE CONSTITUTION: THE PROCESS INITIATED

The Constitution of India stands as the real safeguard of our freedoms.¹⁶ It represents the basic document on which the whole framework of this “Sovereign, Socialist, Secular, Democratic, Republic” stands. The foundations of this Republic have been laid on the bedrock of justice.¹⁷ The judges of the Supreme Court¹⁸ and High

Ram AshrayYadav v. Chairman, Bihar Public Service Commission, [2000] 4 SCC 309.

¹⁴The holder of office of the judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behavior, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well established traditions is the guidelines for judicial conduct. The conduct that tends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities. Krishna Swami v. Union of India and Ors., A.I.R.1993SC1407.

¹⁵Youngjae Lee, *Law, Politics and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective*, THE AMERICAN JOURNAL OF COMPARATIVE LAW, Vol. 53, No.2 403-432 (Spring 2005).

¹⁶Constitution is the vehicle of nation’s progress. It has to reflect the best in the past traditions of the nation; it has also to provide a considered response to the needs of the present and to possess enough resilience to cope with the demands of the future. H. R. KHANNA, MAKING OF INDIA’S CONSTITUTION (Eastern Book Company, 2nd Edition, 2009).

¹⁷Bharat Bank Ltd. v. Employees A.I.R. 1950 SC 188.

¹⁸Constitution of India, art. 124(6). Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule. Schedule 3 further provides the form of oath. Form of oath or affirmation to be

Courts¹⁹ are obligated under the Constitution to vow for upholding the Constitution and other laws. They have also been entrusted with the task of safeguarding the fundamental rights of people and upholding the rule of law.²⁰ Infraction of the Constitution and other laws by the sitting judges of the Supreme Court and High Courts is not only deleterious for the whole state but is also detrimental for the trust which a common man renders on the judiciary. The legitimacy of judiciary flows from the faith of people. Conduct of a judge as a judge must befit the office of judge as it constitutes the foundation of faith. Constitution has placed each and every organ of the state at the same pedestal. Independence and interdependence of each organ lies at the heart and soul of this basic document. It has also placed checks and balances to protect “we the people” from the plague, which results from a malfunctioning limb of the state.²¹ Impeachment of the

made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India: 'I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court of India (or Comptroller and Auditor-General of India) do swear in the name of God / solemnly affirm, that I will bear true faith and allegiance to the Constitution of India as by law established, [that I will uphold the sovereignty and integrity of India,] that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.'

¹⁹Constitution of India, art. 219. Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule. Schedule 3 further provides the form of oath. Form of oath or affirmation to be made by the Judges of a High Court: 'I, A.B., having been appointed Chief Justice (or a Judge) of the High Court at (or of).....do swear in the name of God / solemnly affirm, that I will bear true faith and allegiance to the Constitution of India as by law established, ² [that I will uphold the sovereignty and integrity of India,] that I will duly and faithfully and to the best of my ability, knowledge, and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.'. See also *Shabbir v. State* A.I.R. 1965 All 97(99).

²⁰*N. Kannadasan v. Ajoy Khose*, [2009] 7 SCC 1; *Supreme Court Advocate on Record Assn. v. Union of India*, [1993] 4 SCC 441.

²¹*Terrence J. Brooks, How Judges Get into Trouble*, HEINONLINE 23 JUDGES J. 4 (1984). Independence of judiciary is not inconsistent with accountability for judicial conduct.

judges, who are proved to have misbehaved or are proved to lack capacity, is one such check which keeps the judicial organ of the state on its toes. The exercise of impeachment has been provided in the Constitution. Impeachment does not mandate overpowering of one limb by the other.²² The procedure for impeachment prescribes the grounds on which an impeachment proceeding can be undertaken. The grounds being limited to proved misbehavior and incapacity.²³ The term misbehavior has not been defined in the Constitution. It represents a vague and elastic term, the import of which can embrace

²²No discussions 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. Constitution of India, art. 121. This article buttresses the premise that independence of judiciary has been given paramount importance in the Constitution.

²³*C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, [1995] 5 SCC 457. The constitutional process of removal of a Judge as provided in Article 124(4) of the Constitution is only for proved misbehavior or incapacity. The founding fathers of the Constitution advisedly adopted cumbersome process of impeachment as a mode to remove a Judge from office for only proved misbehavior or incapacity which implies that impeachment process is not available for minor abrasive behavior of a Judge. Removal of a Judge by impeachment was designed to produce as little damage as possible to judicial independence, public confidence in the efficacy of judicial process and to maintain authority of courts for its effective operation. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigor, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's, official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than expected of a layman and also higher than expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

within its sweep different facets of conduct as opposed to what is considered as good conduct.²⁴ Qualification of the word misbehavior by the term “proved”, lays emphasis on the fact that before the parliament takes up the motion for exercising its vote, the conduct of the impugned judge has been proved. Parliament, subsequently, puts a stamp on the incapacity or misbehavior by adopting the motion in both the houses. It is only after such endorsement, the misbehavior or incapacity is deemed to have been proved. Perhaps, the reason of using “proved misbehavior” as a ground of removal is because a high magnitude of dereliction should be considered for impeachment. Therefore, what constitutes proved misbehavior is aptly left with wisdom of time.

IV. THE BEGINNING OF THE IMPEACHMENT

Impeachment proceedings instituted in the Parliament were brought to halt by the executive by accepting the resignation of Judge Sen. During the course of the proceedings; recurrent themes which occupied the limelight were rule of law and independence of judiciary. Article 124(4) and Article 218 of the Constitution of India, 1950, provide for the mechanism of removal of Judges of the Supreme Court and High Courts respectively. Article 218 enjoins that the same procedure as being followed for the removal of a judge of the Supreme Court shall be followed for removing the judge of a High Court. The President cannot on his own remove a Judge of the Supreme Court or a High Court unless an address by each House of Parliament supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of

²⁴C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, [1995] 5 SCC 457, ¶24; Delhi Judicial Service Association v. State of Gujarat, [1991] 4 SCC 406; Daphtary v. Gupta, [1971] 1 SCC 626.

that House present and voting,²⁵ is passed and presented to him for removal of the Judge on the ground of proved misbehavior or incapacity.²⁶ Law made by the parliament under Article 124(5), namely, the Judges Enquiry Act, 1968 is to be read along with Article 124(4) to find out the constitutional scheme for the removal of a judge. The Act provides that a requisite number of members have to move a motion for the removal of the judge before the speaker of the house. The speaker then decides whether the matter calls for an enquiry or not.²⁷ If the speaker decides to take up the matter on the consideration of the available material; she has to constitute a committee in order to investigate the accusations made against the Judge.²⁸ If the findings of the committee point towards the culpability of the Judge, then the parliament considers the motion for removal of

²⁵The term “present and voting” discounts the deemed inclusion of absent members of the Parliament. Abstaining from voting would not tantamount to deemed support for the motion. *Lily Thomas v. Speaker, Lok Sabha*, [1993] 4 SCC 234.

²⁶Constitution of India, arts. 124(4), 218.

²⁷Judges Enquiry Act, 1968§3(1). If notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,(a) in the case of a notice given in the House of the People, by not less than one hundred members of that House;(b) in the case of a notice given in the Council of States, by not less, than fifty members of that Council, then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him either admit the motion or refuse to admit the same.

²⁸Judges Enquiry Act, Judges Enquiry Act, 1968§3(2). If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case maybe, the Chairman shall keep the motion pending and constitute as soon as may be for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for, a Committee consisting of three members of whom (a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court; (b) one shall be chosen from among the Chief Justices of the High Courts; and (c) one shall be a person who is in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist: Provided that where notices of a motion referred to in sub-section (1) are given on the same day in both Houses of Parliament, no Committee shall be constituted unless the motion has been admitted in both Houses and where such motion has been admitted in both Houses, the Committee shall be constituted jointly by the Speaker and the Chairman: Provided further that where notices of a motion as aforesaid are given in the Houses of Parliament on different dates, the notice which is given later shall stand rejected.

the judge along with the committee's report and other available material.²⁹ Consideration is to be given by both houses of the Parliament. Copy of the report of the committee shall be forwarded to the impugned judge so that he is given a fair opportunity to defend his case.³⁰ If the parliament adopts the motion by a requisite majority, then the process culminates by the removal of the challenged judge by the President of India. When stamped by the President, the impeachment proceeding receives its proper fate which results in establishing the misbehavior or incapacity of the impugned judge.³¹

A fait accompli of resignation raises a question of status of impeachment proceeding initiated by the House after receipt of the report of the Committee. The overwhelming support in one of the Houses, the House of Learned and Elderly People, on impeachment motion is to be viewed not only as a requirement of technical procedure but also the voice of the constitutional body on issue of removal of a condemned judge. One house has successfully discharged constitutional function; the other house was under an obligation to undertake the function in order to fulfill the mandate of the Constitution. Non-fulfillment of the function makes the removal a goal too near, yet too far.

²⁹Judges Enquiry Act, Judges Enquiry Act, 1968§6(2).If the report of the Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in sub-section (1) of section 3 shall, together with the report of the Committee, be taken up for consideration by the House or the Houses of Parliament in which it is pending.

³⁰Sarojini Ramaswami v. Union of India, [1992] 4 SCC 506, ¶95.

³¹Judges Enquiry Act, Judges Enquiry Act, 1968§6(3).If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124 or, as the case may be, in accordance with that clause read with article 218 of the Constitution, then, the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying 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.

V. THE RESIGNATION: GOAL TOO NEAR, YET TOO FAR

Resignation of Judge Sen raises the question whether impeachment relates to only the executive and the condemned judge or whether it provides for an obligation to the system of justice and society generally. Legal landscape needs to be different in cases of removal of a holder of high constitutional office than that followed in ordinary service jurisprudence.³² Impeachment involves the question of position and reputation of office holder on one hand, and on other hand it engages the question of restoration of faith in our cherished constitutional philosophies.

There lies a sea difference between the import of the terms “resignation”³³ and “removal”. The moral aspect of indignity and

³²Union of India v. Sankalchand Himatlal Sheth and Anr., [1978] 1SCR423. So it is that we must emphatically state a Judge is not a government servant but a constitutional functionary. He stands in a different category. He cannot be equated with other 'services' although for convenience certain rules applicable to the latter may, within limits, apply to the former. Imagine a Judge's leave and pension being made precariously dependent on the executive's pleasure: To make the government not the State- the employer of a superior court Judge is to unwrite the Constitution..

³³Union of India v. Gopal Chandra Misra, A.I.R.1978 SC 694. Resignation' in the Dictionary sense, means the spontaneous relinquishment of one's own right. This is conveyed by the maxim : *Resignatio est juris propii spontanea refutation*. In relation to an office, it connotes the act of giving up or relinquishing the office. To "relinquish an office" means to "cease to hold" the office, or to "loose hold of the office; and to "loose hold of office", implies to "detach", "unfasten", "undo or untie the binding knot or link" which holds one to the office and the obligations and privileges that go with it. In the general juristic sense, also, the meaning of "resigning office" is not different. There also, as a rule, both, the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation, although the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus, resigning office necessarily involves relinquishment of the office which implies cessation or termination of, or cutting asunder from the office. Indeed, the completion of the resignation and the vacation of the office, are the casual and effectual aspects of one and the same event.

incrimination are absent in resignation. It is for this reason that the terms “removal” and “resignation”, as a means for vacating the post of a Judge, have been provided in different provisions of the same Article.³⁴ Moreover, the benefits which ensue after resignation are different from those which mark removal.³⁵ In the case of resignation, the High Court or the Supreme Court judge has the privilege to quit their office at their unilateral will, by sending to the President a written letter of resignation.³⁶ Removal of the judges by forced resignation is not only unconstitutional but also parlous to the independence of the judiciary.³⁷

A retired judge, which may include a judge who has resigned,³⁸ is endowed with sundry benefits which include amongst others, pensions³⁹ and ancillary benefits.⁴⁰ A retired judge is also entitled to payment of cash equivalent to leave salary for the period of earned leave at his credit on the date of retirement.⁴¹ Moreover, the Constitution itself provides that a retired judge of the High Court can plead before Supreme Court and the other High Courts.⁴² She can also be entrusted with the chairmanship of various statutory and non-statutory bodies.⁴³ Retirement through resignation⁴⁴, in such a case

³⁴Constitution of India, 1950 arts. 124(2), 217.

³⁵National Commission to Review the Working of the Constitution, *Superior Judiciary* (Oct. 22, 2011) <http://lawmin.nic.in/ncrwc/finalreport/v2b1-14.htm>.

³⁶*Supra* note 33.

³⁷*Supra* note 23.

³⁸Max Radin, *Legal Philology: Resign; Retire; Emolument*, 23 A.B.A. J. 771(1937). As far as public officials are concerned, it is clear that resignation is the form of retirement. There is in fact evidence that “retirement” is slightly euphemistic for resignation.

³⁹High Court Judges (Salaries and Conditions of Services) Act, Section 14 (1954).

⁴⁰High Court Judges (Salaries and Conditions of Services) Act, Section 23D (1954); Supreme Court Judges (Salaries and Conditions of Services) Act, Section 23C (1958).

⁴¹UOI v. Gurnam Singh, A.I.R. 1982 SC 1265.

⁴²Constitution of India, 1950 art. 220.

⁴³*Supra* note 35.

⁴⁴Burke Shartel, *Retirement and Removal of Judges*, HEINONLINE 20 J. AM. JUD. SOC. 133 (1936-1937). Voluntary resignation leads to voluntary retirement.

apparently seems to be a more lucrative recourse for the erring judges. The authors of this paper argue that just because an easy recourse is available for getting rid of a charged judge; it should not imply that the proper course of removal should not be followed.

Scholars have argued that the Parliament can withdraw the motion presented to it at any stage of the impeachment proceedings.⁴⁵ Though the authors endorse this view partially in light of the exit checks which are provided under the Judges Enquiry Act, 1968, such reading of Article 124(4) is contrary to the perception that an accused should, if charged, meet his fate in the form of either vindication or punishment. It can be argued by legal luminaries that the second part of the whole impeachment proceeding, being a political part, cannot be questioned in any Court in light of any irregularity. Such an argumentation, though cogent enough, undermines the aspect that the members of the Parliament are bound to uphold the Constitution.⁴⁶ Albeit, parliamentary proceedings are given an inviolable sanctity under the Constitution of India, the same cannot be upheld on grounds of fundamental breach of the Constitution. The function of one institution of the Constitution must be in conformity with the other institution. The impending impeachment proceeding should have been a reason for non-acceptance of resignation by the President. The Head of the Executive should have waited for the logical conclusion of the impeachment proceeding initiated by the Parliament. In any case, the President could have accepted the resignation of the Judge after successful completion of the proceeding. The act of acceptance of resignation by the President and the withdrawal of the proceeding by the Speaker raises a constitutional question of impropriety.

Removal of a judge by forced resignation and any deviation from the principle of “justice for all” would amount to transgression of the Constitution and the same cannot be justified on any ground. All the

⁴⁵M.P SINGH, V.N SHUKLA'S CONSTITUTIONAL LAW, (11th ed. Eastern Book Company, 2010).

⁴⁶Constitution of India, 1950, art. 99.

cant and clichés concerning the Rule of Law that surfaced during the recent impeachment proceedings should not obscure a fundamental truth.⁴⁷

VI. CONCLUSION

Casualty, which has resulted from the acceptance of resignation, has been the deprivation of a just result from the proceedings. Charges against the judge came and went, without consequential result. In impeachment proceedings of a judge of constitutional court, the nation reasonably expects a logical conclusion to the proceedings.⁴⁸ Tactical subversion of the proceedings in the garb of technical ground of submission of resignation of the condemner amounts to a fraud on the people of this country.⁴⁹

A thread of reasoning justifies logic. Constitution of India enshrines within it a logical norm which has been placed in that exemplary document with a purpose. The purpose which it serves⁵⁰ cannot be subjugated to the whims and fancies of the legislature. This not only defies reasoning, but is also against the constitutional mandate. Removal of judges by way of forced resignation is not what is

⁴⁷Deborah L Rhode, *Conflicts of Commitment: Legal Ethics in Impeachment Context*, STANFORD LAW REVIEW, Vol. 52, No. 2 269-351 (2000).

⁴⁸Jeffrey M. Shaman, *Judicial Ethics*, 2 GEO. J. LEGAL ETHICS 1 (1988-1989). A judge holds a dignified place in society and his conduct is subject to high standards of professional and personal conducts.

⁴⁹Arthur J. Goldberg, *The Question of Impeachment*, 1 HASTINGS CONST. L.Q. 5 (1974). We must not, if the circumstances warrant, abjure the use of the sanction the Framers provided. But precisely because the stakes are so high for all of us, we must assure that the impeachment process is, in fact, a fair and principled one, legitimate in the eyes of the people..

⁵⁰Jack E. Frankel, *Judicial Discipline and Removal*, 44 TEX. L. REV. 1117 (1965-1966). The purpose of a procedure for the discipline and removal of judges is to provide a workable system for taking remedial action when a judge, through fault or disability, fails to execute properly the duties of office. The ultimate sanction of the procedure, invoked when a judge is not fit to retain office, is the termination of his tenure..

prescribed in the Constitution of India. Removal by way of impeachment is the route for reinstating the trust of common man in the higher judiciary. That being the case, Justice Soumitra Sen deserves either exoneration or punishment. The purpose which impeachment serves lies in analyzing the direct and indirect repercussions on the public interest.⁵¹ National welfare, by removal of judges, is the paramount duty of the legislature and to abstain from the same appears to be a betrayal from the fundamental tenets of the Constitution. The elusive quest for “justice for all” remains unanswered by the course adopted by the Indian Parliament. Either the judiciary or the legislature has to take the task of filling this hiatus and the authors hope that someday “we the people” will be able to see “justice for all”.

⁵¹William L. Burnell, *Judicial Impeachment*, HEINONLINE 1 W. ST. U. C. L. L. REV. 1 (1972-1973).