BLOGS

Process of Removal of Judges in India

Indrasish Majumder · 06 Nov 2024

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Introduction

This article provides a comprehensive exploration of the constitutional and legislative mechanisms involved in the process of removal of a judge. A judge may be removed from office through a motion adopted by parliament on grounds of 'proven misbehaviour or incapacity'.

The removal of a judge in India is anchored in the constitutional provisions of **Article 124** (for Supreme Court judges) and **Article 218** (for high court judges). Although the term "impeachment" is informally used, the Constitution emphasizes the necessity for a motion passed by both houses of parliament for the removal to proceed.

Process of Removal of Judges

The Judges Inquiry Act, 1968

To operationalize the constitutional framework, **the detailed procedural aspects are enshrined in the Judges Inquiry Act of 1968**. This legislative instrument outlines a structured series of steps that must be meticulously followed to ensure fairness and transparency in the removal process.

The initiation of the removal process under the act **begins with the submission of a notice to the speaker or chairman of either house of parliament**. Notably, 50 Rajya Sabha members or a minimum of 100 Lok Sabha members must sign the notice. The speaker or chairman, upon receiving the notice, undertakes a thorough examination, consulting relevant individuals and material, before making the significant decision to admit or refuse the motion.

Constitution of Investigative Committee

If the motion is admitted, the speaker or chairman proceeds to constitute a three-member committee tasked with investigating the allegations. This committee holds significant weight, comprising a Supreme Court judge, the chief justice of a high court, and a distinguished jurist. Charges are framed based on the complaint, and a detailed copy is provided to the judge in question, affording them the opportunity to present a written defence.

Investigation and Report Submission

The investigative committee diligently carries out its fact-finding mission. Upon conclusion, a detailed report is submitted to the speaker or chairman. This report becomes a pivotal document, especially if it records findings of misbehaviour or incapacity. The report commences the next phase of the process, involving parliamentary consideration and debate on the removal motion.

Parliamentary Approval

For the removal motion to progress, it must secure approval from each house of parliament. The criteria are stringent, requiring a majority of the total membership of the house and, more importantly, a majority of at least two-thirds of the members present and voting.

Presidential Order

Upon successful adoption of the removal motion in both houses, it is then forwarded to the president. The president, as the final arbiter in this process, issues the official order for the removal of the judge, provided the motion meets the requisite majority criteria.

Impeachment Proceedings Initiated Against Indian SC or HC Judges in History

The impeachment of judges in India, as delineated in Articles 124(4) and 124(5) of the Constitution and Article 218 for High Court judges, follows a systematic process involving a presidential order subsequent to a parliamentary address. This intricate procedure demands a special majority in both Houses of Parliament.

In **1993, V. Ramaswami J. became the first judge to undergo impeachment proceedings**. Despite the initiation of a motion in the Lok Sabha, it fell short of securing the necessary two-thirds majority, setting a precedent for the challenges involved in the impeachment process.

The year 2011 saw **Soumitra Sen. J. of the Calcutta High Court resign** following the Rajya Sabha's passage of an impeachment motion against him. Sen became the first judge to be impeached by the Upper House, specifically for misconduct.

In July 2011, P.D. Dinakaran J., Chief Justice of the Sikkim High Court, **resigned amidst serious allegations of corruption**. His case stands out as impeachment proceedings were impending, with the Rajya Sabha Chairman setting up a judicial panel to investigate the allegations.

In 2015, **58 members of the Rajya Sabha initiated an impeachment** notice against J.B. Pardiwala J of the Gujarat High Court. The grounds for this action were Pardiwala's perceived "objectionable remarks on the issue of reservation.

The year 2018 witnessed a significant development when opposition parties drafted a **proposal for an impeachment motion against Chief Justice of India, Dipak Misra**. The allegations included corruption, land grabs, and abuse of judicial office, highlighting the heightened scrutiny at the highest echelons of the judiciary.

Conclusion

The process of removal of judges in India is not a hasty or arbitrary one. It unfolds through a meticulous series of steps, from the initiation of proceedings to parliamentary approval, culminating in a presidential order. This comprehensive framework ensures due diligence and adherence to constitutional principles in safeguarding the integrity of the judiciary.