

---

CHAPTER VI

IMPEACHMENT OF THE PRESIDENT OF INDIA-

A CRITICAL STUDY

\*\*\*

---

CHAPTER VIIMPEACHMENT OF THE PRESIDENT OF INDIA -  
A CRITICAL STUDY

In this chapter an effort is made to understand the constitutional provisions made for the impeachment of the President. The Constitution of India is a democratic republican Constitution, it does not treat any office including that of President of India to be above the law. Therefore, provisions are made against any misuse of authority by the holder of any office, big or small. It does not mark any difference between the offices laid down under the Constitution. In fact the President as per the Constitution can be regarded as the Chief guardian of the Indian Constitution.

The President is the highest office provided by the Constitution because all executive powers which are very wide " shall be vested in the President<sup>1</sup>. He is enjoined by the Constitution to use his powers " in accordance with the Constitution"<sup>2</sup>. It is not expected that he would use his powers arbitrarily or for his personal ends but it is just possible that he being after all a human being, might

-----  
1. Article 53 (1) of the Constitution of India.

" The Executive Power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution".

2. Ibid.

misuse his powers or use them for personal or party end. It was therefore, thought necessary to provide some checks against such misuse of powers on the part of the President. In fact in this context there have been various controversy reinsect of recent.

The provision for these checks has been made in the form of impeachment. It has been provided in the constitution that if he violates the constitution, he can be impeached and removed from office<sup>3</sup>. The scope of the term 'violation' of the constitution according to Dr. B. R. Ambedkar is very wide and includes, besides others, bribery felony etc<sup>4</sup>. Similar provision for impeachment is also provided in the constitution of the United States of America, where a President can be removed from office on impeachment for, and conviction of 'treason, bribery or other high crimes and misdemeanors'<sup>5</sup>.

Either House of Parliament can start impeachment proceedings. First at least a fourteen days notice in writing signed by atleast one-fourth of the members of the House

-----  
3) Article 56, Ibid.

4) Constituent Assembly Debates Vol. VII.

5) Article II, Sec. IV of U.S.A. Constitution.- Article 2, Section 4 of U.S.A. Constitution states:

"The President, Vice-President and Civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors". Besides this, Article 1, Sec. 3(6) says, "The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on Oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members presented".

should be given to the speaker or the Chairman as the case may be to the effect that the members want to move a resolution for impeaching the President of India.

After the expiry of fourteen days, the resolution is required to be moved in the House concerned. This resolution is required to be passed by a two-third majority of the total membership of the House. If this resolution fails to get the support of at least two-third of the total membership of the House, further proceedings will be dropped so far as the constitution is concerned. If this resolution is passed by the requisite majority in any House of the Parliament it would be sent to the other House for the investigation of the charges levelled in the impeachment resolution. The other House shall either investigate the charges itself or cause the charge to be investigated. The President has <sup>the</sup> right to appear and be represented at such investigation. If after investigation, the other House also passes a resolution by a majority of not less than two-third of its total membership, it shall have the effect of removing the President, from office as from the date, on which this second resolution is passed.<sup>6</sup>

The provisions for impeachment show rather prominently that our President, unlike the British King, is not above the law. There is no constitutional remedy against a British

---

6) Article 61 of the Indian Constitution.

King who is bent upon acting against either the letters or the spirit of the Constitution.

These provisions in the Indian Constitution, like American Constitution are meant to remove a President from office who acts against the Constitution. The impeachment provisions, however, do not prescribe any other punishment for a guilty President except removal from the office; whereas the constitution of United States of America prescribes " Punishment according to law " in addition to removal from the office. The punishment convicted shall be " Liable and subject to indictment, trial; judgement and punishment according to law<sup>7</sup>". In case of Indian President also, it might be possible, if the misconduct of the President is of a serious nature, to start criminal proceedings against him after, he is removed from the office. The constitution is not however, clear and therefore nothing definite can be said on this point nor there has been a situation arisen in which the Indian President has been impeached, followed with punishment.

But the intention of the constitution makers is quite clear, in this context, the procedure prescribed in the constitution is such that hardly any President can be removed from office according to these provisions. No occasion has

-----  
7) Article I, Sec.III, U.S.A.Constitution.

so far arisen to take a recourse to impeachment; but there is reason to believe that if and when such an occasion arises, these provisions will be found wanting in many respects. It may also be discovered only then that it is very difficult, if not altogether impossible, to get any President removed from office through the procedure prescribed by the Indian Constitution. It may be noted here that after the failure of the American Congress to impeach President Andrew Johnson in 1868, it was realised that it may not be possible to impeach any President in future and most people now seems to disagree with Henry Jones Ford that it was a "rustend blunderbuss hand again"<sup>8</sup>. The charges levelled against President Richard Nixon in 'Water Gate' issue has contributed to the laying down the course of action against an unwanted President. In Indian context, the difficulties involved in the whole process may prove insurmountable and hence defeat the very purposes being the provisions of impeachment then of removing the President from office.

The difficulties involved in the whole process may be noted as follows:

i) The term " Violation of the Constitution " is very vague<sup>9</sup>. It is by no means clear whether the President

-----  
8) Quoted by Clinton Rossiter the American Presidency, First Indian Edition, 1966, p.30.

9) Constituent Assembly Debates, Vol.VII, p.1075.

is to be impeached for violating the written words of the constitution or also for the constitution or also for violating the well-known conventions of the cabinet system of government. Dr. Ambedkar was rather assertive on this point and held that the President would be impeached for acting against the conventions also. It is however, difficult to agree with Dr. Ambedkar unreservedly not because the President is not expected to follow the conventions but because the so-called conventions of the Cabinet system of the government are always changing and never been definite. Besides compared to U.K., one fails to understand why certain conventions are not established. Political parties may not be in agreement as to what a particular convention means or in what circumstances a particular convention is to be followed. For instance, political parties may and they actually differ as to whether the President is bound to accept each and every advice given by the Cabinet, howsoever unconstitutional and dangerous it may be. In such a situation, the poor President will not always be in a position to know what he should do. As an illustration, it is difficult to find out what the President is expected to do when a Ministry defeated in Lok-Sabha refuses to resign and asks the President to dissolve the Lok-Sabha. It is needless to state the details of such a situation when the Janta Government was defeated, and the President had to face difficult situations. It is constitutional on the part of the President to accept the advice of the defeated ministry

and dissolve the house of the People ? Or is constitutional for the President to turn down the advice of the Ministry ? The constitution, is silent on this point and therefore, what course should be adopted by the President may not be easy, to say. The practice in various countries under the cabinet system of government differ from country to country on this point. Political parties in India do not agree as to what course of action the President should follow in such circumstances until and unless the people and the political parties in the country agree as to the meaning and scope of various conventions, hence it is not possible to include the breach of conventions among the grounds for impeachment.

ii) Impeachment proceedings will not be purely a legal affair, it will definitely involve considerable politics. There would be much difference of opinion between the President and the Cabinet on various issues. In these circumstances a cabinet belonging to a different political party, or parties and having sufficient followers in both Houses of Parliament may try to press the President to adopt undemocratic or even unconstitutional course of actions and failing that, try to "harass by throwing the threat of impeachment on the basis of their majority in Parliament. Then impeachment process shall be reduced to " a Political process, an inquest of office by the 'House' and Council of 'States' acting as legislative bodies".



It can't be named, then, as a "judicial process like the American system, in which House acts as Prosecutor, the senate as jury and Chief Justice as presiding officer"<sup>10</sup>.

iii) The President, having been elected by the members of Parliament and the State Legislative Assemblies will never be a political Sanyasi. Neither the mode of his election keeps out of the politics of the country. In India there may be uniamous election of the President but one cannot say that he has gained the office of the President without the support of a majority political party. If he has a following even slightly a little more than one third in either House of Parliament, he may not be impeached even if he acts against the constitution. If the American President, being a party man, has a following even slightly a little more than one third in House or Senate, he can't be impeached. Andrew Johnson, was impeached by the House of Representatives in March, 1868. The key charge was his alleged viciation of the Tenure Act of 1867 in insisting on his right to remove the faithless Edwin M. Stanton from his position as Secretary of War<sup>11</sup>. It means that in case of India, if the cabinet does't have the required 2/3

- - - - -

10) Ibid: p.p.160.

11) Ibid: p.p.30-31.

majority in both Houses of Parliament, it will never be able, to impeach the President how soever unconstitutional his activities may be. This is so because the behaviour of political parties is governed more by political considerations than by a sense of strict constitutional propriety. However arises situation in which the President may act unconstitutionally and may get away with it.

iv) Above all, the President himself is in such a position that he can block the whole impeachment proceedings and render them ineffective. When the notice for impeachment is given, he may not summon a meeting of the House concerned and may even dissolve the Lok-Sabha. It is indeed difficult to, think that the same Lok-Sabha would start the impeachment proceedings; will ever be able to bring it to a successful end. Some time it is held that the President will not dare to stand before the impeachment proceedings and the Parliament will be able to have its own course as prescribed in the Constitutions. It is difficult to agree with this view because how can any one imagine that a President who was so reckless as to have invited the wrath of the Parliament in the from of impeachment proceedings, will overnight become a champion of constitutionalism and honour the provisions of the Constitutions.

Thus the provisions of the impeachment are so defective that they would hardly be of any use when an occasion demanding

their use arises. They are incapable of achieving their object of removing immediately a President who behaves unconstitutionally. Under the provisions of impeachment, as we have seen, it is very difficult almost impossible to impeach a President successfully. Hence, it is rightly held that the power of impeachment is not very important because of the Constitutional position of the President<sup>12</sup>.

Impeachment provisions were provided in the constitution to act as a check on the misuse of enormous powers vested in the President. It was not thought desirable to leave every thing to the good will and sense of patriotism of the incumbent of the Presidential Office. But as we have seen the provisions if impeachment can't serve that purpose because of certain internal weaknesses. Perhaps dominance of majorities have also effected this aspect. Until, these weaknesses are removed, there is a possibility that this process, like its American counter part, would remain like a "rusted blunderbuss"<sup>13</sup>. The provisions stand at present, a President bent upon following an unconstitutional course of action would hardly be checked in his adventures through

---

12) Kagzi, M.C.J. The Constitution of India, Metropolitan, Delhi, 1975, p.37.

13) Op.cited. C. Ressler in 'The American Presidency', p.30.

the present provisions. He can himself block the entire proceedings and then the process will prove itself nothing more than a "more scarecrow"<sup>14</sup>. So it is necessary to remove the defects from the impeachment provisions if we really want to have an effective check on President.

The impeachment provisions should be fool proof in the sense that once the Parliament starts the impeachment proceedings, the President should have nothing to do with Parliament till the completion of the proceedings of impeachments; he should't be in any position to influence as interfere with, the working of the Parliament during this period.

In order to achieve the above objective, the following changes can be suggested in the provisions of impeachment.

- 1) Once a notice of impeachment signed by a majority of total membership of any House of Parliament, is submitted to the Speaker or Vice-President, as the case may be, the President shall have no power to prorogue the meeting of any House of Parliament or dissolve the Lok-Sabha till the impeachment proceedings are completed.
- 2) The Vice-President or the Speaker, as the case may be, shall on receipt of such a notice summon a meeting of the House concerned within 10 days, if the House is not in session and within 48 hours of the receipt of the notice, if the House is already in session.

---

14) Jefferson, Ibid., p.30.

- 3) If the resolution of impeachment passed by 2/3rd majority of the total membership of the House, the same will be sent to the other House for its consideration within 48 hours of its clearance from the House.
- 4) A meeting of the other House shall be convened by its Presiding Officer within 48 hours of the passing of the resolution by one House.
- 5) The other House shall appoint a Committee of its own members elected on the basis of proportional representation to investigate charges against the President who shall have the right to appear and to be represented at such investigation.
- 6) If as a result of the investigation a resolution is passed by a majority of not less than two-third of the total membership of the other House, such a resolution shall have the effect of removing the President from his own office as from the date on which the resolution is so passed.
- 7) No House of Parliament will take more than three months time to complete its work related to the work of impeachment. The term of the Lok-Sabha shall automatically remain extended during this period; if its term is to expire during the proceedings of the impeachment.

Dr.K.V.Rao has also felt that the procedure of impeachment provided for in the constitution is defective and should be so amended that it may ensure the removal of a guilty President<sup>15</sup>.

Besides, it may also be suggested that the grounds of impeachment should be clearly specified in the constitution leaving no scope for uncertainty as to the acts of omission and commission which will be treated as violation of the constitution.

American impeachment process, in this regards, is a bit more clear because during the Johnson's trial in 1868, Manager Bingham at the very out-set defined such ambiguous terms like ' high crime ' and 'misdemeanor'. According to him " an impeachable high crime or misdemeanor is one in its nature or consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest and this may consist of a violation of the constitution of law of an official oath or duty by an act committed or omitted or with out violating a positive law, by the abuse of discretionary powers ~~from~~ improper purposes"<sup>16</sup>. And the process was further well established

-----  
15) Rao,K.V.,Parliamentary Democracy in India,1961,IstEd.p.44.

16) Quoted by Edward S.Cosmin, 'The President- Office and Powers, p.p.351-52 (1787-1957).

when Nixon was impeached in the 'Watergate issue'.

Then it may further be pointed out that only removal from office is no punishment for a President who might have committed serious crimes involving the vital interest of the country; or huge amount of money or lives of lakhs of people are effected or involved. It would therefore, be only ~~neat~~ and proper that it should be provided clearly in the Constitution, that, if the President has committed serious crimes, besides violating the constitution, he will be prosecuted in a Court of Law.

A President who has committed crimes must get punishment for them and not merely suffer removal from office. As seen earlier it might be possible even now, on the basis of present provisions to resort to this course of action, but then it would be better if it is clearly provided for in the Constitution.

Since we have not so far faced the difficulties involved in the impeachment provisions we seem to ignore the dangers involved there in. We do not seem to realise and appreciate what harm a President can bring to the country if he is bent upon acting against the constitution and the Parliament fails to impeach him. It would be better to provide against such a contingency, on the basis of the above suggestions before one actually arises, because once such a contingency arises, we may not be able to do much and may have to look at all the ugly developments helplessly.

In this context it is better to know from other countries, and assess the very origins of the impeachment. Impeachment as a quasi-judicial process had its origin in the United Kingdom in the fourteenth century. In England there can be no impeachment of the Crown. Before the development of the concept of Ministerial responsibility, Parliament exercised its control over the actions of the Crown through the power of impeachment. At that time ministers were regarded as servants of the Crown only, having no responsibility to Parliament. Impeachment came to mean a trial of high crown officers including the ministers for misconduct in the discharge of their public duties. The House of Lords heard and determined impeachments brought by the House of Commons. The first record case of impeachment took place in England in 1376 when two Lords and four Commoners were charged with various misconduct in their official duties. The impeachments of Warren Hastings, Governor-General of India and Lord Melvills, in the years 1789 and 1905 respectively were the last two recorded cases of impeachment and in both these cases the dignitaries impeached were acquitted.

In course of time the device of impeachment came to be in England. According to Dicey the cause why the instrument of impeachment for enforcing ministerial responsibility is now almost out of date is partly due to the fact that the ministers are now rarely in a position, where there is even a temptation to commit kind of crimes for which



impeachment is an appropriate remedy and partly that the results aimed at by impeachment could now in many cases be better obtained by proceedings before the court of law.

Under the Weimar Constitution of Germany, the President of the Reich and his ministerial advisers were liable to be removed by impeachment before a High Court of State consisting of the President of the National Supreme Court as Chairman, one judge from each of the three State Superior Administrative Courts, and five members from each House of the National Parliament. This Special High Court of State was a departure from the usual customs of having impeachments heard by the Upper House of Legislature.

The Constitution of India lays down a detailed procedure for impeachment of the President, which is almost identical to that in Ireland.

Article 56 (b) of the Indian Constitution States that " the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in Article 61".

Article 61 of the Constitution deals with the procedure for impeachment of the President. Article 61 runs thus:

- 1) When a President is to be impeached for violation of the constitution the charge shall be preferred by either House of Parliament.

- 2) No such charge shall be preferred unless:
  - a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days, notice in writing signed by not less than one-fourth of the total number of members of the House has been given to their intention to move the resolution, and;
  - b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.
- 3) When a charge has been so preferred by either House of Parliament the other shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.
- 4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his Office as from the date on which the resolution is so passed".

A careful analysis of Article 61 shows the grounds of impeachment of the President are not clear. The only impeachable offence of the Indian President is "violation of the constitution". Now, a question naturally arises does it mean violation of the letter of the constitution or the spirit of the Constitution ? Besides this, what constitutes a violation of the Constitution will depend entirely upon the House of Parliament. And we may assume here that Parliament may take a political view of the entire situation and regard as violation of the constitution a particular action of the President which may not, from judicial standpoint, be regarded as such. The U.S.A. constitution makes the charges of impeachment more specific, viz: "treason, bribery, and other high crimes and misdemeanours".

In India the sole power of investigating the charge of impeachment is not vested in the Upper House. Like the Irish constitution, the constitution of India provides that either House of Parliament may prefer the charge against the President for violation of the constitution before the other House which shall then either investigate the charge itself or cause the charge to be investigated. Article 61 tells nothing more. Thereafter the proviso to Article 361 states:

" The conduct of the President may be brought under review by any court, tribunal, or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61".

Now the constitution is also vague about the terms "Court, tribunal or body" as laid down in Article 361. Does the term "Court" indicate the Supreme Court of India or the High Courts ? The term "tribunal" is not also clear. The term body, is more or less vague. We may here assumed that the Constitution leaves it entirely in the hands of the House of Parliament to decide the nature and functions of the investigating authority, if it does not investigate the charge itself.

The constitution of India makes the State legislative assemblies significant associates in the election of the President but they have no voice in removing the President. The working of the Indian Constitution since its commencement reveals that the President is not the head of the Union Government but he has an extremely important role in relation to the states.

Dr. Amal Roy observes " It is, of course, true that the makers had not sufficiently clear idea of the crucial relationship of the President with the states. This is why, it did not occur to them that the association of the

states with the impeachment process is necessary in cases relating to President in Centre State relationships. The Constitution should be amended to secure even this.

The Constitution of India provides for a cumbersome procedure for the impeachment of the President. Now a question naturally arises whether there will arise any such contingency when the President may be hauled up before the Court of Parliament. The President of India possesses a wide range of powers in the executive and legislative fields, besides the emergency powers. Although the Constitution of India is the longest written constitution in the world it has not clearly laid down whether the President will exercise these powers with or without advice of the ministers. Since the inception of the Constitution the Presidents are acting as the nominal head of the executive like the British Monarch. But it can be argued that due to a number of anomalies in some of the provisions of the Constitution dealing with presidential powers, the President, if he be an ambitious and designing person may, taking advantage of the Constitutional anomalies, violate the Constitution. It is natural that a person vested with such enormous powers may misuse them. The elaborate machinery for the impeachment of the President has been provided in the constitution only as a safeguard against the remotest possibility of misuse of these powers by the President.

From the above discussion, an effort is made in this chapter to look forward the problems of 'Impeachment' under the Indian Constitution, though the situation has not arisen in Indian context nevertheless there have been problems felt of recent regarding the role of the President in times of crises, and besides the time has reached its peak to examine various aspects, including impeachment of the highest office laid down in the Indian Constitution.

-000-

Reference Readings:

- 1) H.M.Seervai- Constitutional Law of India.
- 2) M.V.Pylee - Constitutional Government in India.
- 3) Amal Roy - Tension Areas in India's Federal System.
- 4) Hood Phillips - Constitutional & Administrative Law.
- 5) Dicey - Introduction to the Study of the Law of the Constitution.
- 6) M.Mansergh - The Irish Free State: Its Government and Politics.
- 7) Murno - The Governments of Europe.

-000-