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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

‘COMPARATIVE ANALYSIS OF IMPEACHMENT PROCEDURE OF THE PRESIDENT OF INDIA AND THE UNITED STATES’

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Abstract-

In respect to the Presidents of India and USA the indictment and acquittal, impeachment has resurfaced as a major issue in Indian and American constitutional law and politics. We have limited understanding of how removing presidents in the middle of a term affects the direction or quality of a constitutional democracy because there have been so few impeachments in history, presidential or otherwise. By offering a complete explanation of the law and practise of presidential removal in the worldwide context, this paper clarifies the appropriate scope and routes of impeachment.

To assess the influence of impeachment on democracy, we use a large-N empirical analysis of constitutional texts, which is coupled to data on democratic quality in the aftermath of successful and unsuccessful removal attempts. We show that, contrary to assertions impeachment is not well conceived as a weapon for removing criminals or other "guilty individuals" from the presidential seat. Instead, it is frequently and successfully utilized to settle a certain type of political crisis in which the incumbent has lost the majority of popular support. Furthermore, despite widespread worry about the painful and disruptive implications of impeachment, we find no evidence that successful or unsuccessful removals have a negative effect on the quality of life.

INTRODUCTION

A Impeachment- concept

Impeachment in simple terms means the process of removal of the President or state officials from their office in case of an unlawful activity. There are different procedures for the same in

different countries, particularly India and the United States.

Impeachment in India is driven by Article 61¹ of the Indian Constitution which gives the procedure for impeachment of the President of India. As per such provision, the President can be impeached, only on the grounds of ‘violation of the constitution’. However, this leaves a person to incalculable interpretations due to its excessive generalized format.

Article I, Section 2, Clause 5 of the American Constitution² on the other hand enshrines the impeachment process of the President which differs from the one followed in India. According to the said provision, impeachment can be done of the President on the grounds of treason, bribery or other high crimes and misdemeanours.

B Comparative Analysis of Impeachment Procedure

As already mentioned, the grounds on which President can be impeached in the two democracies, it should be understood that in India, such process can be initiated in either House of the Parliament, that is, either House of the People or Council of States whereas in the context of the United States, the process can only be initiated in the House of Representatives³.

In India, such proposal of charges which are ‘violative of the constitution’ shall be initiated in the form of a resolution by not less than 1/4th members of such House. This resolution should be moved after 14 days’ advance notice after which it should be passed by 2/3rd of majority of the total membership of such House. However, in the U.S., if the set of charges is supported by 51% of the members of the House of Representatives, the process of impeachment moves to a trial⁴.

In India, once the resolution is passed by the House, it is sent to the other House for the purpose of investigation. If the President is found guilty, then such resolution should be passed by 2/3rd majority of total membership of the second House and the President stands impeached from his office from the date on which such resolution was passed.

¹ The Constitution of India, 1950, Art. 61.

² U.S. Constitution art I, § 2, cl. 5.

³ The Editors of Encyclopaedia Britannica, January 13, 2021, <https://www.britannica.com/topic/impeachment>

⁴ Indian Polity, Impeachment of US President, <https://www.drishtiiias.com/>.

However, in the United States, the trial begins which is presided over by the Chief Justice of the Supreme Court, the prosecution forms the House members and the Senate acts as the jury. When the trial ends, the Senate vote gives the outcome. If 2/3rd of the Senate finds the President guilty, he stands impeached and the Vice-president takes over the remaining term of his office.

It should be noted that no Indian President has been impeached till date. On the other hand, Andrew Johnson and Bill Clinton were impeached from the President's office in the United States, in 1868 and 1998 respectively⁵.

With respect to USA, in contrast to the restrictive, criminal standard that President Trump, like earlier presidents, promoted, the analysis presents consequentialist grounds for embracing a broader, more political gloss on the famously obscure phrase "high Crimes and Misdemeanors." However, for judges and other officers facing impeachment, a criminal offence standard might be acceptable. A multitiered impeachment threshold, we believe, is reasonable. In contrast to popular belief in the United States, the research demonstrates how other institutions, such as courts, can and do play an important role in enhancing the legitimacy of factual and legal conclusions made during impeachment proceedings. Finally, research implies that impeachment works best when a successful removal triggers swift fresh elections, which can serve as a "hard reboot" for a crisis-ridden political system, as opposed to the US setup.

C Comparative application of impeachment process

The impeachment procedure in India seems to take a political turn as it only stays within the walls of the Legislature when the charges against a public official especially the first citizen of the nation, should ideally be before the court of law.

Therefore, if we apply the impeachment process so followed in the United States to India, it can be observed, that the equivalent for Senate in India is the Council of States, or the Upper House which is chaired by the Vice President. Therefore, if the Vice President acts as a jury, the entire purpose of the Doctrine of Precedence-of having the President who is higher than the Vice President is defeated as the Vice President will give an outcome over the actions of the President⁶.

⁵ Trump impeachment: What happens to impeached presidents? January 13, <https://www.bbc.com/news/world-us-canada-50813276>.

⁶ V.N. Srivastava, THE PRESIDENT OF INDIA IMPEACHMENT, Vol. 41, No. 1, The Indian Journal of Political

Hence such application itself tends to go against the constitution of the country and thereby implies that the investigation should remain in the hands of the Legislature.

There are however several lacunas in the impeachment process of India which needs to be addressed especially when compared to the process so followed in the United States.

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I. SUGGESTIONS AND CONCLUSION

Although the President's Impeachment Procedure in the United States and India both draw the basic concept of impeachment from the United Kingdom, they are procedurally and substantively distinct. In India, impeachment results in the President's removal from office, unlike in the United States, impeachment is seen as an indictment. It's the first step on the road to deportation, with Conviction coming next.

The term "constitutional infraction" is broader than "treason, bribery, grave crimes, and misdemeanours," and it includes the latter. In *Nixon v. United States*¹⁸, the US Supreme Court decided that the Senate had sole authority to try all impeachments, and that such a trial involves a political question that is not justiciable or reviewable in any court of law¹⁹. In *Baker v. Carr*⁷, the Court determined that:

"A conflict is non-justiciable if it concerns a political subject and there is "a textually evident constitutional commitment of the problem to a coordinate political department; or a lack of judicially discoverable and manageable rules for resolving it..."

In the *Nixon* case, the Court went on to say that "political question doctrine is essentially a function of the separation of powers" and that judicial institutions owe a certain amount of respect to the Political Department, so impeachment, as a political question, cannot be reviewed by a Court of Law. In India, no question concerning this premise has ever been brought before

Science, December 1980, <http://www.jstor.org.library-christuniversity.remotexs.in/stable/pdf/>.

⁷ 369 U. S. 186 (1962); MANU/USSC/0170/1962

a court of law, owing to the fact that no Indian President has ever been impeached. Article 361 (1) of the Constitution states that any Court, Body, or Tribunal may investigate a president's behaviour if it has been nominated or designated by either House of Parliament for the purpose of investigating a charge under Article 61. As a result, both Houses of Parliament have been given the authority to select or designate any Court, Tribunal, or entity to investigate and review the President's conduct.

The President in the United States who undergoes investigation for impeachment retains all authorities unless their conviction⁸. Such situation is similar in India as well. Hence, in order to add effectiveness to the whole purpose of impeachment that is to prevent further damage to the nation, certain suggestions can be put forward.

Firstly, the office of the President should be handed over to the Vice President until the investigation is completed.

Secondly, a written notice of impeachment shall be signed by the majority of the members of the House so initiating the resolution and the House should be in Session without being summoned by the President, and such Session shall begin with immediate effect only for the purpose of dealing such impeachment.

Thirdly, the Session shall sit on a continuous basis till the impeachment is sorted out and since the President remains suspended till such investigation, he cannot exercise his power to dissolve the Session. Once the House passes the resolution, the other House shall sit for the second round of investigation with an immediate effect, ensuring the continuity of the Session.

And most importantly, the House shall appoint a committee which shall be constituted by its own members who shall be elected on a proportional basis and it shall be chaired by the Chief Justice of India to ensure that such matter is presided and investigated by the judicial body and therefore the President stands impeached if the resolution is passed by 2/3rd majority of the said House⁹.

⁸ Lyle Denniston, Though impeached, president retains all powers of office Constitution says authority remains unless Senate convicts; IMPEACHMENT OF THE PRESIDENT, December 21, 1988; <https://www.baltimoresun.com/news/bs-xpm-1998-12-21-1998355024-story.html>.

⁹ V.N. Srivastava, THE PRESIDENT OF INDIA IMPEACHMENT, Vol. 41, No. 1, The Indian Journal of Political Science, December 1980.

The entire purpose of the said suggested procedure for impeachment of the President of India is to ensure speedy remedy for the benefit of the nation and its security.

To conclude, the impeachment procedures differ in both the jurisdictions to a considerable level. The grounds for impeachment so given under both the jurisdictions are also different. In India, the president may only be impeached for “violation of the Constitution” whereas in the U.S. treason, bribery, high crimes and misdemeanors are grounds on which the US president can be impeached and convicted. The phrase “violation of the Constitution” is broader than “treason, bribery, high crimes and misdemeanors” and encompasses within itself the latter. Nevertheless, it is a remedy provided under their respective Constitutions to address serious cases of professional misconduct on part of a public official of high post. It is expected that this remedy be used in good faith and for upholding the cardinal commands of Constitution.

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