

THE JUDGES (INQUIRY) BILL, 2006

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title and commencement.
2. Definitions.

CHAPTER II

MACHINERY FOR PRELIMINARY INVESTIGATION AND INQUIRY

3. Establishment of National Judicial Council.
4. Composition of the Council to change under certain circumstances.
5. Functions of the National Judicial Council.
6. Council to conduct investigation and inquiry into any act or conduct of any person other than a Judge.
7. Staff of the Council.

CHAPTER III

COMPLAINT PROCEDURE

8. Complaints.
9. Verification and preliminary investigation of complaints by Council.
10. Procedure in respect of inquiries.

CHAPTER IV

REFERENCE PROCEDURE

11. Notice of motion for presenting an address to the President for removal of a Judge.
12. Council to frame charges against the Judge.

CHAPTER V

PROCEDURE FOR INQUIRY IN CASE OF PHYSICAL OR MENTAL INCAPACITY OF A JUDGE

13. Medical examination of the Judge.

CHAPTER VI

PROCEDURE FOR INQUIRY

14. Inquiry to be conducted in camera.
15. Council to have power to regulate its own procedure.
16. Central Government to appoint an advocate to conduct case against the Judge.
17. Power relating to inquiries.

CLAUSES

18. Search and seizure.
19. Change in the composition of the Council.

CHAPTER VII

PROCEDURE AFTER CONCLUSION OF INQUIRY

20. Disposal of complaint and follow up action in complaint procedure.
21. Disposal of reference from the Speaker or Chairman under the reference procedure.
22. Addresses by the Houses.
23. Disqualification of the removed Judge.

CHAPTER VIII

OFFENCES AND PENALTIES

24. Intentional insult or interruption to Council.
25. Power of Council to try certain cases.
26. Punishment for false and vexatious complaints.
27. Confidentiality in complaint procedure.
28. Keeping identity of complainant confidential.
29. Stoppage of assigning judicial work in certain cases.

CHAPTER IX

MISCELLANEOUS

30. Appeal to Supreme Court.
31. No action for contempt to lie in certain cases.
32. Investigation and inquiry by the Council not to affect criminal liability.
33. All records, documents, etc., related to complaint, preliminary investigation and inquiry to be confidential.
34. Protection of action taken in good faith.
35. Proceedings before Council or the Committee to be judicial proceedings.
36. Code of Conduct for Judges.
37. Constitution of Joint Committees of both Houses for making rules.
38. Repeal and saving.

Bill No. 97 of 2006

THE JUDGES (INQUIRY) BILL, 2006

A

BILL

for establishing the National Judicial Council to undertake preliminary investigation and inquire into allegations of misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation, inquiry and proof, and for imposing minor measures; and for the presentation of an address by Parliament to the President and for matters connected therewith.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

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1. (1) This Act may be called the Judges (Inquiry) Act, 2006.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Chairman" means the Chairman of the Council of States;

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(b) "Code of Conduct" means the guidelines issued by the Council under subsection (1) of section 36;

(c) "Committee" means the investigating committee constituted under sub-section (3) of section 9;

(d) "complaint procedure" means a procedure which is initiated by way of complaint to the Council under section 8;

(e) "Council" means the National Judicial Council established under sub-section (1) of section 3 ; 5

(f) "incapacity" means physical or mental incapacity which is or is likely to be of a permanent character;

(g) "inquiry" means inquiry for proof of misbehaviour or incapacity;

(h) "investigation" means preliminary investigation; 10

(i) "Judge" means a Judge of the Supreme Court or of a High Court and includes the Chief Justice of a High Court and also the Chief Justice of India for purposes of the reference procedure but shall not include the Chief Justice of India for purposes of the complaint procedure;

(j) "misbehaviour" means wilful or persistent conduct which brings dishonour or disrepute to the judiciary; or wilful or persistent failure to perform the duties of a Judge; or wilful abuse of judicial office, corruption, lack of integrity; or committing an offence involving moral turpitude; and includes violation of Code of Conduct; 15

(k) "prescribed" means prescribed by rules made under this Act;

(l) "reference procedure" means a procedure which is initiated by way of a motion for removal which is referred by the Speaker or the Chairman under sub-section (2) of section 11; 20

(m) "Speaker" means the Speaker of the House of the People.

CHAPTER II

MACHINERY FOR PRELIMINARY INVESTIGATION AND INQUIRY 25

Establishment
of National
Judicial
Council.

3. (1) With effect from such date as the President may, by notification appoint, there shall be established a National Judicial Council.

(2) The National Judicial Council shall consist of the following namely :—

(a) The Chief Justice of India — Chairperson;

(b) Two senior most Judges of the Supreme Court, to be nominated by Chief Justice of India— Members; 30

(c) Two Chief Justices of the High Courts, to be nominated by Chief Justice of India— Members.

Composition
of the Council
to change
under certain
circumstances.

4. (1) Where the Chairperson of the Council recuses himself, then the President shall nominate the next senior most Judge of the Supreme Court as the Chairperson of the Council. 35

(2) Where a Member of the Council recuses himself, then the Chief Justice of India shall nominate the senior most judge of the Supreme Court; or Chief Justice of the High Court, as the case may be, next in seniority as a Member.

(3) Where the allegations are made in a complaint by any person or in a reference by the Speaker or Chairman, as the case may be, against a Judge of the Supreme Court, the Council shall consist of the Chief Justice of India and the four senior most Judges of the Supreme Court to be nominated by the Chief Justice of India. 40

5 (4) Where a reference is received from the Speaker or the Chairman and the allegations are against the Chief Justice of India, then the Chief Justice of India shall not take part in the proceedings of the Council and the President shall nominate the next senior most Judge of the Supreme Court as the Chairperson and also another Judge of the Supreme Court next in the seniority to be the Member of the Council;

(5) The Chairperson or the member of the Council so appointed under sub-sections (1), (2), (3) and (4) shall cease to be such Chairperson or Member thereof on the conclusion of the preliminary investigation and inquiry.

10 5. (1) It shall be the duty of the National Judicial Council to investigate and inquire into any matter involving arising from, or connected with, any allegation of misbehaviour or incapacity against a Judge of the Supreme Court or Judge of a High Court, as the case may be.

Functions of the National Judicial Council.

15 (2) The Council shall investigate and inquire into allegations, of misbehaviour or incapacity, made to it under section 8 or under section 11 against a Judge of the Supreme Court or of a Judge of a High Court as the case may be.

20 (3) Where the allegations are against a Judge who is a Member of the Council, then, notwithstanding anything contained in sub-section (2) of section 3, the Chief Justice of India shall nominate the next senior most Judge of the Supreme Court or the next senior most Chief Justice of a High Court, as the case may be, as a Member for the purposes of investigating or inquiring into the complaint against the said Judge.

6. The Council may also conduct investigation and inquire into any act or conduct of any person other than the Judge concerned in so far as it considers necessary so to do for the purpose of its investigation into any such allegations and shall give such person a reasonable opportunity of being heard and to produce evidence in his defence.

Council to conduct investigation and inquiry into any act or conduct of any person other than a Judge.

25 7. (1) **The Council shall, for the purpose of assisting it in the discharge of its functions (including verification, preliminary investigation and inquiry in respect of allegations) under this Act, appoint a Secretary and such other officers and employees as the President may determine, from time to time, in consultation with the Council.**

Staff of the Council.

30 (2) Without prejudice to the provisions of sub-section (1), the Council may, for the purpose of dealing with any allegation or class of allegations utilise —

(a) the services of any officer or employee or investigating agency of the Central Government or a State Government with the concurrence of that Government; or

(b) the services of any other person or agency.

35 (3) The terms and conditions of service of the officers and employees referred to in sub-section (1) and of the officers, employees, agencies and persons referred to in sub-section (2) (including such special conditions as may be considered necessary for enabling them to act without fear in the discharge of their functions) shall be such as the President may determine, from time to time, in consultation with the Council.

40 (4) In the discharge of their functions under this Act, the officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall be subject to the exclusive administrative control and direction of the Council.

CHAPTER III

COMPLAINT PROCEDURE

Complaints.

8. (1) Any person may make a complaint in writing involving any allegation of misbehaviour or incapacity in respect of a Judge to the Council:

Provided that no such complaint shall be entertained and inquired into with respect to any act or conduct constituting misbehaviour which has taken place before the commencement of this Act: 5

Provided further that no such complaint shall be entertained and inquired into with respect to any act or conduct constituting misbehaviour which has taken place two years prior to the filing of the complaint: 10

Provided also that no complaint shall be entertained and inquired into against a person who has demitted the office of a Judge.

(2) The complaint under sub-section (1) shall —

(a) be in such form as may be prescribed;

(b) set forth particulars of the misbehaviour or incapacity which is the subject matter of allegation; 15

(c) be verified at the foot of the complaint by the complainant and shall specify, by reference to the numbered paragraphs of the complaint, what he verifies of his own knowledge and what he verifies upon information and shall refer to the source of the information; 20

(d) be accompanied by a statement to the effect that the complainant is aware of the fact that if the allegations in the complaint are found to be frivolous or vexatious or not made in good faith he is liable to be punished under section 26.

(3) Notwithstanding anything contained in sub-section (1), the Council may entertain any complaint from any other source. 25

Verification and preliminary investigation of complaints by Council.

9. (1) If the Council is satisfied, after considering the complaint and after making such verification or where necessary, such preliminary investigation as it deems appropriate,—

(a) that the complaint is frivolous or vexatious or is not made in good faith; or

(b) that there are not sufficient grounds for inquiring into the complaint; or

(c) that the complaint relates only to the merits of the judgment or a procedural order, 30

it shall dismiss the complaint after recording its reasons therefor and communicate the same to the complainant.

(2) The procedure for verification or preliminary investigation in respect of a complaint under sub-section (1) shall be such as the Council deems appropriate in the circumstances of the case and in particular, the Council shall call for the comments of the Judge concerned. 35

(3) If the Council considers it expedient so, to do, it may constitute an investigating committee comprising one or more of its members for the purpose of conducting preliminary investigation and for finding whether definite charges are required to be framed for conducting an inquiry into the matter. 40

(4) The Committee shall have all the powers of the Council while conducting such preliminary investigation.

(5) The Committee shall submit its report to the Council for consideration and for taking a final view on the conclusions arrived at by the Committee.

10. (1) If after the verification and preliminary investigation under section 9 in respect of a complaint, the Council proposes to conduct an inquiry, it shall frame definite charges against the Judge on the basis of which the inquiry is proposed to be held.

Procedure in respect of inquiries.

5 (2) Charges framed under sub-section (1) together with the statement of 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 defence within such time as may be specified by the Council.

CHAPTER IV

REFERENCE PROCEDURE

10 11. (1) If a notice is given of a motion for presenting an address to the President praying for removal of a Judge, on the ground of misbehaviour or incapacity signed,—

Notice of motion for presenting an address to the President for removal of a Judge.

(a) in the case of a notice given in the House of the People, by not less than one hundred members of that House;

15 (b) in the case of a notice given in the Council of States, by not less than fifty members of that House,

then the Speaker or, as the case may be, the Chairman may, after consulting such persons, 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.

20 (2) If the motion referred to in sub-section (1) is admitted, the Speaker or the Chairman, as the case may be, shall keep the motion pending and refer the allegations on the basis of which the motion is based to the Council:

25 Provided that where notices of motion referred to in sub-section (1) are given on the same day in both Houses of Parliament, no reference shall be made unless the motion is admitted in both Houses and where such motion has been admitted in both Houses, a reference shall be made jointly by the Speaker and the Chairman:

Provided further that where notices of the motion as aforesaid are given in the Houses of Parliament on different dates, the notice that was given later shall stand rejected.

30 12. (1) On receipt of a reference from the Speaker or the Chairman under sub-section (2) of section 11, the Council shall, notwithstanding anything contained in section 9, frame definite charges against the Judge on the basis of which the inquiry is proposed to be held.

Council to frame charges against the Judge.

(2) Charges framed under sub-section (1) together with the statement of grounds on which each charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified by the Council.

35 CHAPTER V

PROCEDURE FOR INQUIRY IN CASE OF PHYSICAL OR MENTAL INCAPACITY OF A JUDGE

40 13. (1) Where it is alleged that the Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the Council may arrange for the medical examination of the Judge by such Medical Board as may be appointed for the purpose and the Judge shall submit himself to such medical examination within the time specified in this behalf by the Council.

Medical examination of the Judge.

(2) The Medical Board shall undertake such medical examination of the Judge as may be considered necessary and submit a report to the Council stating therein whether the incapacity is such as to render the Judge unfit to continue in office.

(3) If the Judge refuses to undergo medical examination considered necessary by the Medical Board, it shall submit a report to the Council stating therein the examination which the Judge has refused to undergo, and the Council may, on receipt of such report, presume that the Judge suffers from such physical or mental incapacity as is alleged.

(4) If the Judge agrees to undergo medical examination considered necessary by the Medical Board, the said Board may permit him to produce such other medical reports or opinions of experts as the Judge deems it necessary to prove that he does not suffer from any physical or mental incapacity, and thereafter the Medical Board shall submit a report to the Council with its findings based upon the medical examination conducted at the instance of the Board as well as the material produced by the Judge as aforesaid. 5
10

(5) The Council may, after considering the written statement of the Judge, the medical report submitted by the Medical Board and the material submitted by the Judge before the Medical Board, if any, amend the charges framed under sub-section (1) of section 10 or sub-section (1) of section 12, as the case may be, and in such a case, the Judge shall be given a reasonable opportunity of presenting a fresh written statement of defence. 15

CHAPTER VI

PROCEDURE FOR INQUIRY

Inquiry to be conducted in camera.

14. (1) Every such inquiry shall be conducted in camera by the Chairperson and the Members of the Council sitting jointly.

(2) The Council shall hold every such inquiry as expeditiously as possible and in any case complete the inquiry within a period of six months from the date of receipt of the complaint: 20

Provided that the Council, for reasons to be recorded in writing, may complete the inquiry within a further period of six months.

Council to have power to regulate its own procedure.

15. Save as aforesaid, the Council shall have power to regulate its own procedure in making the inquiry and shall give reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence and of being heard in his defence. 25

Central Government to appoint an advocate to conduct case against the Judge.

16. The Central Government may, if requested by the Council, appoint an advocate to conduct the case against the Judge.

Power relating to inquiries.

17. The Council shall, while conducting any preliminary investigation or inquiry, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:— 30
5 of 1908.

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document; 35

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or other documents; and 40

(f) any other matter which may be prescribed.

18. (1) If the Council has reason to believe that any document which, in its opinion, will be useful for, or relevant to, any preliminary investigation or inquiry under this Act, is secreted in any place, it may authorise any officer subordinate to it, or any officer of an investigating agency referred to in sub-section (2) of section 7, to search for and to seize such document.

Search and seizure.

(2) If the Council is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any investigation under this Act and that it would be necessary to retain the document in its custody, it may so retain the said document till the completion of such investigation.

2 of 1974. 10

(3) The provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if, for the word "Magistrate", wherever it occurs, the words "Council or any officer authorised by it" were substituted.

19. After the commencement of proceedings under this Act, if any change in the composition of the Council arises due to elevation of any member as Chief Justice of India or due to elevation of any Chief Justice of a High Court who is a Member as a Judge of the Supreme Court or if any vacancy in the Council arises due to recusal, retirement, resignation or any other cause, the proceedings shall be continued from the stage from which it was pending before such change and the Chief Justice of India shall make such incidental changes as he deems necessary to continue the proceedings.

Change in the composition of the Council

CHAPTER VII

PROCEDURE AFTER CONCLUSION OF INQUIRY

20. (1) If, after inquiry in respect of a complaint, the Council is satisfied that—

Disposal of complaint and follow up action in complaint procedure.

(a) no charges have been proved, it shall dismiss the complaint and no further action shall be taken against the Judge and the Judge and the complainant shall be informed accordingly.

Explanation.— For the purposes of this section and section 21, "proved" means proved beyond reasonable doubt.

(b) all or any of the charges in regard to misbehaviour or incapacity have been proved and the Council is of the opinion that the charges proved do not warrant removal of the Judge, it may impose all or any of the following minor measures, namely:—

(i) issuing advisories;

(ii) issuing warnings;

(iii) withdrawal of judicial work for a limited time including cases already assigned;

(iv) request that the Judge may voluntarily retire;

(v) censure or admonition, public or private.

(2) The minor measure specified in sub-clause (v) of clause (b) of sub-section (1) may be imposed on a Judge notwithstanding the fact that he has demitted office due to superannuation or otherwise.

(3) If the Council is satisfied that all or any of the charges in regard to misbehaviour or incapacity have been proved and that they are of serious nature warranting his removal, it shall advise the President accordingly.

(4) The President on receipt of advice under sub-section (3) shall cause the findings of the Council along with the accompanying materials to be laid before both Houses of Parliament.

(5) On laying of the advice of the Council along with the accompanying material under sub-section (3), the Government shall move a motion in either House of Parliament for presenting an address to the President praying for the removal of the said Judge.

Disposal of reference from the Speaker or Chairman under the reference procedure.

21. (1) Where the inquiry was initiated under sub-section (2) of section 11 on a reference from the Speaker or the Chairman, as the case may be, then the Council shall forward its report to the Speaker or the Chairman. 57

(2) If the report of the Council contains a finding that all or any of the charges of the misbehaviour or incapacity are not proved, or that any of the charges proved do not warrant removal, then no further steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses of Parliament shall not be proceeded with. 10

(3) If the report of the Council contains a finding that all or any of the charges of misbehaviour or incapacity are proved and a recommendation that the charges proved warrant removal, then the motion referred to in sub-section (1) of section 11, shall together with the report of the Council, be taken up for consideration by the House or the Houses of Parliament in which it is pending. 157

Addresses by the Houses.

22. If the motion referred to in sub-section (5) of section 20 or sub-section (3) of section 21, is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124 of the Constitution 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 express 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. 20

Disqualification of the removed Judge.

23. Where the recommendation of the Council for removal of a Judge is accepted by the Houses and the removal order is passed by the President, the Judge shall be disqualified— 257

(a) for any diplomatic assignment, appointment as an administrator of a Union territory and such other assignment which is required by law to be made by President by warrant under his hand and seal;

(b) for further employment to any office of profit under the Government of India or the Government of a State; 30

(c) to act as an arbitrator in any arbitration proceedings;

(d) to pursue chamber practice.

CHAPTER VIII

OFFENCES AND PENALTIES

Intentional insult or interruption to Council.

24. (1) Whoever intentionally offers any insult, or causes any interruption, to the Council while the Council or any of its Members is making any verification or conducting any preliminary investigation or inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both. 357

(2) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973 shall apply in relation to an offence referred to in sub-section (1) as they apply in relation to an offence referred to in sub-section (2) of the said section, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Council. 40 2 of 1974.

Power of Council to try certain cases.

25. (1) When any such offence as is described in sub-section (1) of section 24 is committed in the view or presence of the Council, the Council may cause the offender to be detained in custody and may at any time on the same day take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause why he 457

2 of 1974. should not be punished under this section try such offender summarily so far as may be in accordance with the procedure specified for summary trials under the Code of Criminal Procedure, 1973 and sentence him to simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both.

5 (2) In every case tried under this section the Council shall record the facts constituting the offence with the statement if any made by the offender as well as the finding and the sentence.

(3) Any person convicted on a trial held under this section may appeal to the Supreme Court.

2 of 1974. 10 (4) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

26. (1) Any person who makes a complaint which is found by the Council to be false or frivolous, vexatious or not in good faith or with an intent to harass the Judge against whom such complaint is filed, shall be punished with simple imprisonment for a term 15 which may extend to one year and also to fine which may extend to twenty-five thousand rupees.

Punishment for false and vexatious complaints.

2 of 1974. 20 (2) When any offence under sub-section (1) is committed, the Council may take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be in accordance with the procedure specified for summary trials under the Code of Criminal Procedure, 1973.

(3) Any person convicted on a trial held under this section may appeal to the Supreme Court.

2 of 1974. 25 (4) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

27. (1) Notwithstanding anything contained in any law for the time being in force, the complainant and every person who participates in the preliminary investigation or inquiry as a witness or as a lawyer or in any other capacity, whether or not he seeks confidentiality about his name, must undertake to the Council that he shall not reveal his 30 own name, the name of the Judge complained against, the contents of the complaint or any of the documents or proceedings to anybody else including the media without the prior written approval of the Council.

Confidentiality in complaint procedure.

35 (2) If any complainant or other person who participates in the preliminary investigation or inquiry as a witness or as a lawyer or in any other capacity contravenes the provisions of sub-section (1), he shall be punishable with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both and the provisions of section 25, so far as may be, shall apply.

40 28. The Council may, at the request of a complainant, direct that the complainant be accorded such protection as it deems appropriate, including but not limited to, keeping his identity confidential from every body and also the Judge against whom the complaint is made.

Keeping identity of complainant confidential.

45 29. During the pendency of the preliminary investigation or inquiry or address by the Houses to the President, the Council may recommend stoppage of assigning judicial work including cases assigned to the Judge concerned if it appears to the Council that it is necessary in the interest of fair and impartial preliminary investigation and inquiry.

Stoppage of assigning judicial work in certain cases.

CHAPTER IX

MISCELLANEOUS

Appeal to
Supreme
Court.

30. A Judge aggrieved by—

(i) an order of removal passed by the President; or

(ii) a final order passed by the Council imposing one or other "minor measure" 50
on the basis of a complaint;

may, notwithstanding anything contained in any other law for the time being in force, prefer an appeal to the Supreme Court,

No action for
contempt to
lie in certain
cases.

31. After the commencement of preliminary investigation under this Act, no action for contempt of court shall lie or shall be proceeded with in respect of the allegations, which are 10
the subject matter of the investigation or inquiry.

Investigation
and inquiry by
the Council
not to affect
criminal
liability.

32. Any preliminary investigation or inquiry pending before the Council will not affect the criminal liability in respect of such allegations.

All records,
documents,
etc., related
to complaint,
preliminary
investigation
and inquiry
to be
confidential.

33. Notwithstanding anything contained in any other law for the time being in force (including the Right to Information Act, 2005 or similar laws in force), all papers, documents, 22 of 2005.
and records of proceedings related to a complaint, preliminary investigation and inquiry shall be confidential and shall not be disclosed by any person in any proceeding except as directed by the Council.

Protection of
action taken in
good faith.

34. No suit, prosecution or other legal proceeding shall lie against the Council or against any official or employee, agency or person engaged by the Council for the purpose 20
of conducting preliminary investigation or inquiry, in respect of anything which is in good faith done or intended to be done.

Proceedings
before
Council or the
committee
to be judicial
proceedings.

35. The Council and the committee shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding 2 of 1974.
before the Council and the committee shall be deemed to be a judicial proceeding within the 25
meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. 45 of 1860.

Code of
Conduct for
Judges.

36. (1) The Council shall, in the interests of administration of justice, issue from time to time, a Code of Conduct containing guidelines for the conduct and behaviour of Judges.

(2) Till the Code of Conduct referred to in sub-section (1) is issued, "The Restatement 30
of Values of Judicial Life adopted by the Chief Justices' Conference of India, 1999", shall be the Code of Conduct for the purposes of this Act.

(3) The Code of Conduct issued under sub-section (1) may, *inter alia*, provide that every Judge at the time of appointment as a Judge of the Supreme Court or of the High Court and thereafter shall annually give intimation of his assets and liabilities to the Chief Justice 35
of India or the Chief Justice of the High Court, as the case may be.

(4) The Code of Conduct shall be published in the Official Gazette and the Council shall in the like manner amend the said Code from time to time.

Constitution
of Joint
Committees of
both Houses for
making rules.

37. (1) There shall be constituted a Joint Committee of both Houses of Parliament in accordance with the provisions hereinafter contained for the purpose of making rules to 40
carry out the purposes of this Act.

(2) The Joint Committee shall consist of fifteen members of whom ten shall be nominated by the Speaker and five shall be nominated by the Chairman.

(3) The Joint Committee shall elect its own Chairman and shall have power to regulate, its own procedure.

5 (4) Without prejudice to the generality of the provisions of sub-section (1), the Joint Committee may make rules to provide for the following among other matters, namely:—

(a) the manner of transmission of a motion adopted in one House to the other House of Parliament;

10 (b) the manner of presentation of an address to the President for the removal of a Judge;

(c) the facilities which may be accorded to the Judge for defending himself;

(d) any other matter which has to be, or may be, provided for by rules or in respect of which provision is, in the opinion of the Joint Committee, necessary.

15 (5) Any rules made under this section shall not take effect until they are approved and confirmed both by the Speaker and the Chairman and are published in the Official Gazette, and such publication of the rules shall be conclusive proof that they have been duly made.

51 of 1968. 38. (1) The Judges (Inquiry) Act, 1968 is hereby repealed.

Repeal and saving.

51 of 1968. (2) Notwithstanding the repeal of the Judges (Inquiry) Act, 1968 the rules made by the Joint Committee under section 7 of the said Act shall continue to be in force till new rules are
20 made by the Committee under this Act.

STATEMENT OF OBJECTS AND REASONS

A suitable legislative framework is the need of the hour for empowering a judicial forum to deal with complaints against Judges of the Supreme Court and High Courts. On the basis of the recommendations made in the 195th Report of the Law Commission of India on the Judges (Inquiry) Bill, 2005, the Bill, namely the Judges (Inquiry) Bill, 2006 has been prepared.

2. It may be recalled that the Judges (Inquiry) Act, 1968 was enacted with a view to lay down a procedure for removal for proved misbehaviour or incapacity of Judges of the High Courts and the Supreme Court by way of address of the Houses of Parliament by the President. The Law Commission of India in its 195th Report has examined the issue of judicial accountability in the light of the law laid down by the Supreme Court in its various judgments, which relate to the interpretation of articles 121, 124 and 217 of the Constitution.

3. The Bill, namely, the Judges (Inquiry) Bill, 2006 is based on the premise that judicial independence is one of the basic fundamentals of the Constitution. Judicial independence and judicial accountability are inseparable. Thus, there is an urgent need of a legislation for establishing a National Judicial Council to look into the allegations of misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court, as the case may be, and to regulate the procedure for such investigation, inquiry and proof in a complaint procedure in addition to the earlier "reference procedure" as contained in the Judges (Inquiry) Act, 1968. In a complaint procedure, a complaint can be made by any person to the Judicial Council against Judges of the Supreme Court (except the Chief Justice of India), Chief Justices and Judges of High Courts. The Judges (Inquiry) Bill, 2006, *inter alia*, seeks to empower the National Judicial Council for imposing minor measures also. The Bill also seeks to repeal the Judges (Inquiry) Act, 1968.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 30th November, 2006.

H.R. BHARDWAJ.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. K. 11015/2/2006-US.II, dated the 11th December, 2006 from Shri H.R. Bhardwaj, Minister of Law and Justice to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Judges (Inquiry) Bill, 2006, has recommended under article 117(1) of the Constitution of India, the introduction of the Bill in Lok Sabha.

Notes on Clauses

Clause 2 is the definition clause and it defines for the purposes of certainty in the interpretation of the legislation "Code of Conduct" as the guidelines issued by the Council under sub-section (1) of section 36, "complaint procedure" as a procedure that is initiated by way of complaint; "incapacity" as "physical or mental incapacity" that is likely to be of a permanent character; "inquiry" as inquiry for proof of misbehavior or incapacity; "misbehavior" as wilful or persistent conduct which brings dishonour or disrepute to the judiciary, or wilful or persistent failure to perform the duties of a Judge or wilful abuse of judicial office, corruption, lack of integrity, moral turpitude and includes violation of Code of Conduct; and "reference procedure" as procedure which is initiated by way of a motion for removal which is referred by the Speaker or the Chairman under sub-section (2) of section 11.

Clause 3 provides for establishment of National Judicial Council consisting of (a) the Chief Justice of India – Chairperson; (b) two senior-most Judges of the Supreme Court to be nominated by the Chief Justice of India – Members; and (c) two Chief Justices of the High Courts to be nominated by the Chief Justice of India – Members.

Clause 4 provides for composition of the Council to change in certain circumstances when the allegations are against the Chief Justice of India, he shall not take part in the proceedings of the Council. Where allegations are against the member of the Council or they recuse themselves. The President in the case of the Chief Justice of India and the Chief Justice of India in case of Members shall nominate another member for the purpose of investigation and inquiry.

Clause 5 provides for functions of the Council to investigate and inquire into the allegation of misbehaviour or incapacity against the Judge of the Supreme Court or Judge of a High Court.

Clause 6 provides for the Council to conduct the investigation and inquiry into any act or conduct of any person other than a Judge in so far as the Council considers it necessary.

Clause 7 provides for appointment of officers and employees of the Council for the purposes of discharge of its functions and to fix their terms and conditions of service. It also provides for the utilisation of the services of any officer or employee of the Government or any other agency.

Clause 8 provides the procedure for making a complaint involving allegations of misbehaviour or incapacity in respect of a Judge. It also provides for the particulars to be given in such complaint.

Clause 9 provides the procedure for verification and preliminary investigation of the complaints. It also provides for the dismissal of frivolous and vexatious complaints.

Clause 10 lays down the procedure in respect of inquiry and framing of charges and written statement of defence.

Clause 11 deals with procedure of reference by the Speaker or Chairman as the case may be to the Council and provides the method of notice of motion for presenting an address to the President for removal of a Judge.

Clause 12 requires the Council on receipt of a reference from the Speaker or Chairman to frame definite charges against the Judge for holding inquiry.

Clause 13 provides for the procedure for inquiry in case of physical or mental incapacity of a Judge and it lays down the method for medical examination of the Judge in such cases.

Clause 14 provides for the procedure for inquiry and requires such inquiry to be conducted in camera.

Clause 15 empowers the Council to regulate its own procedures in making the inquiry in accordance with the principle of natural justice to give reasonable opportunity to the Judge of cross-examining the witnesses adducing the evidence and of being heard in his defence.

Clause 16 provides for the Central Government to appoint an advocate to conduct the cases against the Judge.

Clause 17 provides that the Council shall, while conducting any preliminary investigation or inquiry, has all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908.

Clause 18 provides for search and seizure of any documents that, in the opinion of the Council, would be useful for, or relevant to any preliminary investigation or inquiry.

Clause 19 provides for change in the composition of the Council due to elevation of any member as Chief Justice of India or due to elevation of any Chief Justice of the High Court as a Judge of the Supreme Court or in case any vacancy in the Council arises due to retirement or resignation of a member of the Council.

Clause 20 provides for the disposal of complaint and follow up action in complaint procedure after conclusion of inquiry.

Clause 21 provides for disposal of reference from the Speaker or the Chairman under the reference procedure.

Clause 22 provides for the address to the President for the removal of the Judge by Parliament.

Clause 23 provides for disqualification of the removed Judge for any diplomatic assignment, employment under the Government of India or the Government of a State, or to act as an arbitrator in any arbitration proceeding and also in respect of chamber practice.

Clause 24 provides that intentional insult or interruption to the Council shall be an

Clause 32 provides that any preliminary investigation or inquiry pending before the Council will not affect the criminal liability in respect of such allegations.

Clause 33 provides that all records and documents related to complaint, preliminary investigation and inquiry, shall be confidential, irrespective of anything contained in any other law, for the time being in force, including the Right to Information Act, 2005.

Clause 34 provides that no suit, prosecution or other legal proceedings shall lie against the Council or any official or person engaged by the Council for conducting preliminary investigation or inquiry, in respect of anything that is done in good faith.

Clause 35 provides that proceedings before the Council and the Committee shall be the judicial proceedings for the purposes of section 195 of the Code of Criminal Procedure, 1973 and sections 193, 196 and 228 of the Indian Penal Code.

Clause 36 provides for the Council to lay down a code of conduct for the Judges of the Supreme Court or of the High Courts.

Clause 37 provides for the constitution of Joint Committees of both Houses of Parliament for making rules.

Clause 38 provides for the repeal for the Judges (Inquiry) Act, 1968.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for establishment of National Judicial Council comprising of Chief Justice of India as the Chairperson and Judges of the Supreme Court and the Chief Justices of High Courts as members.

Clause 7 of the Bill provides for appointment of a Secretary and such other officers and employees as the President may determine from time to time in consultation with the Council.

Clause 16 of the Bill empowers the Central Government if requested by the Council to appoint an advocate to conduct the case against the Judge.

At this stage, it is not possible to give an estimate of expenditure involved (recurring and non-recurring). However, the expenditure would be met from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 37(4) empowers the Joint Committee of both the Houses of Parliament to frame rules for providing the form in which a complaint under sub-section (1) of section 8 may be made.

Clause 22 provides for the manner of presentation of address to the President for the removal of a Judge.

The matters in which rules may be made are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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for establishing the National Judicial Council to undertake preliminary investigation and inquire into allegations of misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation, inquiry and proof, and for imposing minor measures; and for the presentation of an address by Parliament to the President and for matters connected therewith.

(Shri H.R. Bhardwaj, Minister of Law and Justice)