



Amendments to the Judicial Standards and Accountability Bill 2010

Below is a comparison of the provisions of the Amendments to the Judicial Standards and Accountability Bill, 2010 introduced on December 21, 2011, the original clauses of the Bill, and changes recommended by the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice.

Table 1: Comparison of the Judicial Standards and Accountability Bill 2010 and Standing Committee Recommendations

	Judicial Standards and Accountability Bill, 2010	Standing Committee Recommendations	Amendment
Clause 3(2)	The Bill requires judges to practise universally accepted values of judicial life. Some of these include a prohibition on: (a) close association with individual members of the Bar who practise in the same court as the judge, (b) allowing family members who are members of the Bar to use the judge’s residence for professional work, (c) hearing or deciding matters in which a member of the judge’s family or relative or friend is concerned, (d) entering into public debate on political matters or matters which the judge is likely to decide, and (e) engaging in trade or business and speculation in securities.	The Committee recommended that the judicial standards laid down in the bill include that judges should restrain themselves from making unwarranted comments against other constitutional bodies, statutory bodies, institutions, or persons while hearing cases in court.	The Bill inserts a new clause, 3(2)(fa) in accordance with the Committee recommendation. The new clause reads: no judge shall “make unwarranted comments against conduct of any Constitutional or statutory authority or statutory bodies or statutory institutions or any chairperson or member or officer thereof, or on matters which are pending or likely to arise for judicial determination”.
Clause 3(2)(b)	No judge shall have close association with individual members of the Bar, particularly those who practice in the same court in which he is a judge.	The Committee expressed its opinion that the phrase ‘close association’ is vague, and recommended it be replaced by the phrase ‘close social interactions’.	The Amendment substitutes the phrase “close association or social interaction” for “close association”. The clause now reads: No judge shall “have close association or social interaction with individual members of the Bar, particularly those who practice in the same court in which he is a Judge.”

Clause 3(2)(f)	The Bill bars judges from expressing views in public on political matters or matters which are pending or likely to be decided by the judge. A proviso to this clause states that it will not apply to “views expressed by the judge in his individual capacity on issues of public interest (other than as a Judge) during discussion in private forum or academic forum”.	The Committee recommended that the proviso be redone to clearly articulate the meanings of ‘individual capacity’, ‘private forum’, and ‘academic forum’.	The Amendment inserts the phrase “so as not to affect his functioning as a Judge after “academic forum”. The proviso now states that the bar will not apply to “views expressed by the judge in his individual capacity on issues of public interest (other than as a Judge) during discussion in private forum or academic forum so as not to affect his functioning as a judge”.
Clause 4	The Bill requires judges to make a declaration of assets and liabilities, including those of his spouse and children, within 30 days from taking the oath of office. In addition, the judge must file an annual return of such assets and liabilities every year. The Bill provides for the furnishing of this information on each court’s respective website.	While endorsing the Bill’s requirement for judges to declare their assets, the Committee opined that a mechanism should be included to ensure scrutiny of the declaration. The Committee suggested that this could involve a designated executive agency which may report to the Complaints Scrutiny Panel or Oversight Committee set up under the Bill.	None
Clauses 9, 19	Clauses 9 and 19 provide for reference of complaints received by the Oversight Committee to the appropriate Scrutiny Panel.	The Committee observed that clauses 9 and 19 both provide for reference of a complaint by the Oversight Committee to the Scrutiny Panel. The Committee recommended that these be reviewed for the sake of coherence.	None
Clause 11	The Bill creates a Complaints Scrutiny Panel in the Supreme Court and each High Court to scrutinize complaints against judges. The Scrutiny Panel is to consist of a former Chief Justice and two sitting judges of that court.	The Committee recommended that the Scrutiny Panel be made more broad based by enabling the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha to nominate a Member of Parliament from their respective Houses. In addition, the Committee recommended that instead of two sitting judges of the same Court, the Scrutiny Panel should include two judges of another Court.	None

Clauses 12-14	Clauses 12-14 provide for the scrutiny of complaints against judges by the Scrutiny Panel. Clause 13 of the Bill allows the Scrutiny Panel to regulate its own procedure in scrutinising complaints.	The Bill does not explicitly provide that hearings of the Scrutiny Panel be held <i>in camera</i> . The Committee expressed its opinion that such a provision is required to protect judges from unwarranted defamation. Accordingly, the Committee recommended that the term “in camera” be added in clause 12 or 14 of the Bill.	The Bill has been amended to insert a new clause 12(1A) providing that “the scrutiny of complaints under this section by the Scrutiny Panel shall be held in camera” in accordance with the Committee recommendation.
Clause 18	The Bill establishes a National Judicial Oversight Committee chaired by a retired Chief Justice of India appointed by the President after ascertaining the views of the Chief Justice of India. In addition, other members include: (a) a judge of the Supreme Court nominated by the Chief Justice of India, (b) the Chief Justice of a High Court nominated by the Chief Justice of India, (c) the Attorney General, and (d) an eminent person nominated by the President.	The Committee strongly recommended that the National Judicial Oversight Committee established by the Bill be more broad based. Specifically, the Committee recommended amending clause 18 of the Bill to enable the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha to nominate a Member of Parliament from their respective Houses.	None
Clause 22(2)	The Bill provides for the National Oversight Committee to set up an Investigation Committee to inquire in to complaints against a judge, but does not specify guidelines for its composition.	The Committee recommended that guidelines specifying the composition of the Investigation Committee be included in the Bill.	None
Clause 39	The Bill bans any person participating in the scrutiny or investigation of a complaint against a judge from divulging details of the complaint (such as his own name, name of the judge complained against, contents of the complaint, documents, or proceedings) without the approval of the Oversight Committee.	The Committee felt that the media may also potentially divulge information during investigation or inquiry. The Committee recommended that an explanation be added to ensure that the provision applies to the media as well.	A proviso is added to clause 39 allowing the Oversight Committee to “authorise any person to apprise the media or press in respect of matters relating to complaint, scrutiny, or investigation or inquiry, as the case may be.” The provision would allow media persons to be informed of information. This could allow them to divulge information rather than restrain them from doing so, which would be in contravention of the Committee’s recommendation.

Clause 53(1)	The Bill provides that the punishment for frivolous or vexatious complaints may be up to 5 years rigorous imprisonment and a fine of up to Rs 5 lakh.	The Committee felt that the punishment in the Bill may deter prospective complainants from coming forward. The Committee recommended that punishment be substantially reduced, not exceeding that provided under the Contempt of Court Act. In addition, the Committee recommended that a clause should be added specifically to protect cases of complaints made in ‘good faith’, in line with similar provisions in the Indian Penal Code.	Clause 53(1) is amended to reduce the punishment specified to up to 1 year rigorous imprisonment and a fine up to Rs 1 lakh. A new clause (53)(3) is added to provide that “No suit, prosecution or other legal proceeding shall lie against the complainant under this section in respect of anything which is in good faith done or intended to be done under this Act” in accordance with the recommendation.
Clause 56	The Bill provides that those convicted on a trial held under clause 53 (frivolous or vexatious complaints) may appeal to the Supreme Court.	The Committee felt that the Bill restricts the right of challenge to a single appeal. Specifically, The Committee noted that the normal right of judicial review on jurisdictional grounds under Article 226 of the Constitution and judgment of the Supreme Court in <i>Chandra Kumar vs Union of India</i> is not intended to be circumscribed or eliminated, and cannot be by an Act of Parliament. The Committee recommended that an explanation be inserted to clarify the availability of judicial review on jurisdictional grounds apart from the appeal to the Supreme Court.	None

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