



**PARLIAMENT OF INDIA
RAJYA SABHA**

47

**DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE**

FORTY SEVENTH REPORT

ON

THE JUDICIAL STANDARDS AND ACCOUNTABILITY BILL, 2010

**(PRESENTED TO THE RAJYA SABHA ON 30TH AUGUST, 2011)
(LAID ON THE TABLE OF THE LOK SABHA ON 30TH AUGUST, 2011)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
AUGUST, 2011 / BHADRAPADA, 1933 (SAKA)**

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* *To be appended at printing stage.*

COMPOSITION OF THE COMMITTEE

1. Dr. Abhishek Manu Singhvi* — *Chairman*

RAJYA SABHA

2. Shri Balavant *alias* Bal Apte
3. Shri Ram Jethmalani
4. Shri Parimal Nathwani
5. Shri Amar Singh
6. Shri Ram Vilas Paswan
7. Shri O.T. Lepcha
8. Vacant[^]
9. Vacant[@]
10. Vacant[&]

LOK SABHA

11. Shri N.S.V. Chitthan
12. Smt. Deepa Dasmunsi
13. Smt. Jyoti Dhurve
14. Shri D.B. Chandre Gowda
15. Dr. Monazir Hassan
16. Shri Shailendra Kumar
17. Smt. Chandresh Kumari
18. Dr. Kirodi Lal Meena
19. Ms. Meenakshi Natarajan
20. Shri Devji M. Patel
21. Shri Harin Pathak
22. Shri Lalu Prasad
23. Shri S. Semmalai
24. Shri Vijay Bahadur Singh
25. Dr. Prabha Kishor Taviad
26. Shri Manish Tewari
27. Shri R. Thamaraiselvan
28. Adv. P.T. Thomas (Idukki)
29. Vacant[#]
30. Vacant^{\$}
31. Vacant[%]

SECRETARIAT

Shri Deepak Goyal, Joint Secretary
Shri K.P. Singh, Director
Shri K.N. Earendra Kumar, Joint Director
Smt. Niangkhanem Guite, Assistant Director
Smt. Catherine John L., Committee Officer

* Nominated as Chairman of the Committee w.e.f. 26th July, 2011.

[^] Vacancy caused due to passing away of Shri M. Rajasekara Murthy w.e.f. 7th December, 2010.

[@] Vacancy caused due to induction of Smt. Jayanthi Natarajan in the Council of Minister w.e.f. 12th July, 2011.

[&] Vacancy caused due to retirement of Shri Shantaram Naik w.e.f. 28th July, 2011.

[#] Vacancy caused due to resignation of Shri Arjun Munda from Lok Sabha w.e.f. 26th February, 2011.

^{\$} Vacancy caused due to passing away of Shri Bhajan Lal w.e.f. 3rd June, 2011.

[%] Vacancy existing since the constitution of the Committee on 31st August, 2010.

INTRODUCTION

I, the Chairman of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Forty Seventh Report on The Judicial Standards and Accountability Bill, 2010. The Bill seeks to lay down judicial standards and provide for accountability of Judges, and, establish credible and expedient mechanism for investigating into individual complaints for misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation; and for the presentation of an address by Parliament to the President in relation to proceeding for removal of a Judge and for matters connected therewith or incidental thereto.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred* the Bill, as introduced in the Lok Sabha on the 1st December, 2010 and pending therein, to this Committee on the 30th December, 2010 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communiqué to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. Accordingly, a press communiqué was issued in national and local newspapers and dailies, in response to which memoranda containing suggestions were received, from various organizations / individuals / experts, by the Committee.

4. The Committee heard the presentation of the Secretary, Department of Justice, Ministry of Law and Justice on the provisions of the Bill in its meeting held on 2nd February, 2011. The Committee heard the views of experts/NGOs on the Bill on 16th March, 2011. The Committee also heard the views of legal luminaries and experts on the Bill on 6th April, 2011.

5. The Committee heard the views of Shri G. E. Vahanvati, Attorney General of India on 28th April, 2011 and also heard the views of Shri Parag P Tripathi, Additional Solicitor General of India on 1st June, 2011.

* Rajya Sabha Parliamentary Bulletin Part-II (No. 48026) dated the 30th December, 2010.

6. While considering the Bill, the Committee took note of the following documents/information placed before it : -

- (i) Background note on the Bill submitted by the Department of Justice, Ministry of Law and Justice;
- (ii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Department of Justice thereon;
- (iii) Views/suggestions by the institutions, individuals and experts during their personal presentations/hearing before the Committee;
- (iv) Reply furnished by the Department of Justice to the Questionnaire forwarded by the Secretariat.
- (v) Other reference material/ documents related to the Bill.

7. The Committee adopted the Report in its meeting held on the 25th August, 2011.

8. The Committee would also like to thank those who responded to the Committee's Press Communiqué, and appeared before the Committee and thereby enriched the discussions of the Committee through their valuable observations on the Bill.

9. For convenience of reference, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
25th August, 2011

DR. ABHISHEK MANU SINGHVI
Chairman,
Committee on Personnel,
Public Grievances, Law and Justice

REPORT

The Judicial Standards and Accountability Bill, 2010 was introduced* in the Lok Sabha on the 1st December, 2010. It was referred* by the Hon'ble Chairman, Rajya Sabha to the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice Committee on the 30th December, 2010 for examination and report.

2. The Bill seeks to lay down judicial standards and provide for accountability of Judges, and, establish credible and expedient mechanism for investigating into individual complaints for misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation; and for the presentation of an address by Parliament to the President in relation to proceeding for removal of a Judge and for matters connected therewith or incidental thereto.

3. The Statement of Objects and Reasons, appended to the Bill reads as under:-

"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 to the President. There is, however, no legal provision at present for dealing with complaints filed by the public against Judges of the High Courts and the Supreme Court. The need for a statutory mechanism to address complaints of the public in this regard has been felt to bring greater transparency in the judiciary.

The Full Court meeting of Supreme Court of India on 7 May, 1997 had adopted "the Restatement of Values of Judicial Life". The above Restatement lays down certain judicial standards which are to be followed by the Judges of the Supreme Court

* Published in Gazette of India (Extraordinary) Part-II Section 2 dated the 1st December, 2010.

* Rajya Sabha Parliamentary Bulletin Part-II (No.48026) dated the 30th December, 2010.

and the High Courts. However, this Restatement of Values of Judicial Life does not have any legal authority and cannot be enforced. It is felt that the judicial standards also be made a part of the statute to give it the requisite legal sanction. This measure is also likely to increase public confidence in the judiciary considerably as the Judges would be required to follow the prescribed judicial standards.

There is also no legal provision at present that requires Judges of the Supreme Court and High Courts to declare their assets and liabilities. The Resolution adopted at the Full Court meeting of the Supreme Court of India on 7 May, 1997 requires every Judge to declare his assets within a reasonable time of assuming office and thereafter whenever acquisition of substantial nature is made. The Second Administrative Reforms commission, in its fourth Report on Ethics in Governance, endorsed the above resolution after noting that independence of Judiciary by the citizens and, therefore, the conduct of a judge should be above reproach. In the Writ Petition (C) No. 288/09 filed on behalf of the Hon'ble Supreme Court in the Delhi High Court challenging the order date 6th January, 2009 passed by the Central Information Commission under the Right to Information Act, 2005, it has been asserted on behalf of the Supreme Court that the Judiciary has no objection to the disclosure of assets of Judges provided this is done in a formal manner by an Act of Parliament with adequate safeguards. In this backdrop, it is considered necessary to enact a law in this regard to meet with the larger public interest as well as ensuring and maintaining the independence of the judiciary.

The Judicial Standards the Accountability Bill, 2010 seeks to repeal the Judges (Inquiry) Act, 1968, while retaining its basic feature and aims to achieve all the above objectives of creating a statutory mechanism for enquiring into individual complaints against Judges of the High Court and the Supreme Court and recommending appropriate action, enabling declaration of assets and liabilities of Judges and laying down the judicial standards to be followed by the Judge. All these measures will increase accountability of Judges of the High courts and the Supreme Court thereby further strengthening the independence of the judiciary. The proposed Bill would strengthen the institution of judiciary in India by making it more accountable thereby increasing the confidence of the public in the institution.

4. The Committee heard the Secretary, Department of Justice on the 2nd February, 2011. The Secretary while making presentation before the Committee explained how the Bill seeks to ensure accountability in judiciary while preserving the basic principle of judicial independence.

5. In order to have a broader view on the Bill, the Committee decided to invite views/ suggestions from desirous individuals/ organisations on the Bill. Accordingly, a press release was issued inviting views/suggestions. In response to the press release published in major national and regional newspapers in the country during the first half of January, 2011, a number of representations/ memoranda number of representatives were received.

6. The major points raised in the memoranda are summarized as follows:

- Definition of Misbehaviour needs to be made more inclusive.
- Scope of the definition of the Judicial Standards as provided in the Bill should not be confined only to the restatement of values of judicial life set up in the Chief Justices Conference, 1999.
- The idea of statutorily providing for judicial standards, irrespective of their content, is violative of the independence of the judiciary. Thus, clause 3 of the Bill be deleted for being violative of Judicial Independence.
- Judicial Standards need to be interpreted in a much wider context in accordance with prevalent international best practices.
- The National Judicial Oversight Committee may be assigned the task of laying down the Judicial Standards.
- Definition of Judicial Standards needs to be enlarged as it says very little about the conduct of judges in matters before them in court.
- Membership of the complaint scrutiny panel should not be reserved for the members of the judiciary only.

- The reports of the complaint scrutiny panel should be subject to a review by the Oversight Committee.
- The reports of the complaint scrutiny panel stating that the complaint was frivolous depend only on the concurrence of the Oversight Committee. Rather such reports should be subject to further investigation to prevent the harassment of complainant in case of improper assessment by the scrutiny panel.
- Composition of the National Judicial Oversight Committee should be made more broad based.
- Members of the Legislature and Bar should also have representation in the National Judicial Oversight Committee.
- Experience of the other countries may also be considered while deciding upon the composition of the National Judicial Oversight Committee.
- The National Judicial Oversight Committee should be a permanent and independent body.
- The National Judicial Oversight Committee may be given investigative powers as contained in the Criminal Procedure Code.
- Composition of the Investigation Committee should be clearly mentioned. There should be guidelines for selecting the Members of the Committee.
- Clause 29(4) mandates only for the Investigation Committee to complete the inquiry within the prescribed period without mentioning the period of submission of its report. The clause be extended to cover both inquiry and submission of report based on the inquiry.
- Besides stopping judicial work there should also be stoppage of any promotion or elevation of the Judge during the pendency of

the complaint. These should also be a provision to direct the judge to proceed on leave.

- Irresponsible use of provisions pertaining to making complaints against judges by a disgruntled litigant may endanger the Judicial Independence and may cripple down the entire administration of Justice.
- Clause 9 of the Bill may be amended suitably to check the complaints which seem to emanate from a mere grievance/dissatisfaction with regard to a judgment.
- The punishment proposed in the Bill for frivolous/vexatious complaints should be diluted because such a severe punishment may work as a deterrent and discourage the people from taking initiative against the corrupt judges.
- Prevailing judiciary driven method of appointments of Judges needs to be reviewed as it holds the key to the entire judicial reforms agenda.
- The Bill does not clearly prescribe whether a Judge removed by an order of the President may appeal to the Supreme Court.

7. The Committee forwarded select memoranda to the Department of Justice for their comments thereon. The list of such memoranda along with the gist of views and suggestions contained therein and the comments of the Department of Justice, thereon is placed at Annexure- B.

8. A Questionnaire on the Bill was also prepared by the Secretariat and forwarded to the Ministry for their replies. The reply to the Questionnaire was furnished by the Ministry on 15th March, 2011 and the same was considered by the Committee.

9. The Committee heard the views/suggestions of following non-governmental organizations/individuals on the provisions of the Bill in its meeting held on the 16th March, 2011.

1. PRS Legislative Research
2. Citizens Rights Association
3. Pre Legislative Briefing Service
4. Campaign for Judicial Accountability and Reform
5. Shri Subash Chandra Agrawal
6. Smt. Indira Unninar
7. Shri Deepak Khosla
8. Shri Dilbagh Singh
9. Shri M.D. Devappa

10. Moreover, the Committee also had discussions with some leading legal luminaries on the Bill namely, Shri K.T.S. Tulsi, Shri Anil B. Divan and Shri Shanti Bhushan Senior Advocates, Supreme Court in its meeting held on 6th April, 2011. The Committee heard the views of the Shri Goolam E. Vahanvati, Attorney General of India and Shri Parag P. Tripathi, Additional Solicitor General of India on the provisions of the Bill in its meetings held on 28th April, 2011 and 1st June, 2011, respectively.

11. The Committee adopted the Report in its meeting held on the _____.

Major Issues Examined by the Committee

Codification of the Judicial Standards

12. The Committee observed that the judicial standards enumerated in the Bill were primarily based on the "the Restatement of Values of Judicial Life" adopted in the Conference of Chief Justices 1999, albeit

with an addition of some new parameters. Such standards were considered vital for the impartial administration of justice and judges were expected to adhere to them. The Attorney General of India while deposing before the Committee emphasized the historical significance of the Bill as it, for the first time, proposed to provide a statutory back-up to judicial standards which hitherto have been subject to the discretion of judges.

12.1. However, during Committee's deliberations, some witnesses termed the said restatement of judicial values outdated and suggested that if defined in such an exhaustive manner, the judicial standards would be a closed domain of judicial ethics having no scope for new progressive standards to be incorporated within its fold. Some witness also argued that, in future, there may be instances where behavior of judges, despite not being in consonance with commonly accepted ethical norms, might not fall in the ambit of judicial standards defined in the Bill.

12.2. The Committee takes note of the views placed before it by the witnesses. The Committee appreciates that this Bill provides statutory backup to the Judicial Standards hitherto having sanction of the Restatement of Values as adopted in the Conference of Chief Justices in 1999. The Committee also appreciates that the Bill incorporates some new parameters essential to ensure judicial accountability. The Committee further observes that the Government should also consider the concerns of the witnesses raised before it. The Committee recommends that Government should remain alert and willing to update the judicial standards as and when required in future.

12.3. During the deliberations some Members drew the attention of the Committee towards growing instances where judges have made unwanted remarks in open Courts against other constitutional/statutory bodies or

persons who were not before them. In this connection, the Committee took note of judicial standard specified in the Para 4 of the schedule to this Bill and clause 3(2)(f) of the proposed Bill. Para 4 of the schedule to this Bill states that "*Judgment should speak for themselves*" and the clause 3(2) (f) of the proposed Bill provides that "*a judge shall not enter into public debate or express his views in public on political matters or matters which are pending or likely to arise for judicial determination by him*".

12.4. The Committee discussed this issue in detail and felt that such instances of unwarranted and uncalled for remarks by the judges are unfortunate and should be avoided. The Chairperson of the Committee observed that "*such unwarranted remarks create tremendous problems for legislature, specific individuals, and senior leaders*".

12.5. In this context, the Committee feels that there is a need to bring such behaviour of judges within the purview of the judicial standards. The Committee feels that Clause 3(2)(f) should be expanded by specifically mentioning that judges should restrain themselves from making unwarranted comments against other constitutional/statutory bodies/institutions/ persons in open Court while hearing cases .

12.6 The Committee also observed that the clause 3(2)b of the Bill provides that no judge shall have close association with individual members of the Bar. **The Committee is of the view that the expression 'close association' is very vague in nature and it may invite varying interpretations. Accordingly, the Committee recommends that the said words may be replaced by the expression 'close social interactions' to avoid unwarranted ambiguity.**

12.7 While deliberating upon the Bill, the Committee felt that that the proviso (i) of the clause 3(2)(f) needs to bring out more clearly

and distinctly what is meant by the term "individual capacity" as the line of distinction between a judge's official capacity and individual capacity is quite thin. Likewise, the Members were of the view that the expressions 'private forum' and 'academic forum' may be defined to bring more clarity in the meaning implied in these expressions.

12.8 The Committee, recommends that the proviso (i) of the clause 3 (2)(f) may be re done so as to provide more clearly the implications of expressions like "individual capacity", "private forum", "academic forum" used therein.

Declaration of Assets

13. Clause 4 of the Bill seeks to make it mandatory for judges to declare their assets and liabilities as well as those of his/her spouse and dependent children. During the deliberations a witness stated that there is no mechanism prescribed in the Bill to scrutinize whether the declaration is proper or not. He also suggested that the bill should specifically mention about a mechanism to regularly scrutinize the declaration made by the judges.

13.1. The Committee endorses that the Bill makes the declaration of assets a statutory responsibility for the judges. The Committee also acknowledges that the clause is in consonance with the people's "right to know" and would facilitate greater transparency in judiciary. The Committee taking note of the suggestion that has come before it is of the view that the Government should include a mechanism to ensure that scrutiny of the declaration of assets is possible and implementable. Such a mechanism may involve any designated executive agency and can be made to report to either the Complaints Scrutiny Panel or the Oversight Committee.

National Judicial Oversight Committee:

(a) Composition of the Committee

14. The composition and nature of the Oversight Committee was one of the main debated issues during the deliberations of the Committee on the Bill. The witnesses that appeared before the Committee and Members of the Committee expressed serious reservation over the proposed composition of this body. A Member of the Committee raised his concerns as under:

".....In the composition of the Judicial Oversight Committee, almost all the Members are nominated by the Chief Justice of India. That is also a very serious issue. The President can nominate only one person. Almost all other persons are nominated by the Chief Justice of India".....

14.1. There was a common feeling among the Members that proposed composition of the body is biased in favor of judiciary and it needs to be made more representative and broad based. There was a suggestion to have in it a representative from Legislature. Some witnesses who appeared before the Committee suggested to include atleast one member from the Bar in the Oversight Committee.

14.2 Members of the Committee also raised concerns that proposed composition of the National judicial Oversight Committee also restricts the power of Parliament in a sense as it provides for no role for the Members of Parliament in contrast to the Judges Inquiry Act 1968 in which the power to constitute an inquiry committee lies in Speaker of Lok Sabha or the Chairman, Rajya Sabha.

14.3. The Committee noted that that the approach of the Government is hardly any different from that of Judges (Inquiry) Bill, 2006 which provided for a similar mechanism in the name of National Judicial

Council, having sole representation from the judiciary. The Committee in its 21st report (para 23.9) on that Bill *inter alia* observed as under:

“..... the Chief Justice of India is the Chairperson of the Council and other members of the Council are two senior most Judges of the Supreme Court and two Chief Justices of the High Courts to be nominated by the Chief Justice of India. The Committee is of the considered opinion that either the National Judicial Council should be made broad based by including non-judicial Members representing Parliament, and Executive or another additional body be created with representation from Judiciary, Executive, Parliament and Bar to work in co-ordination with the National Judicial Council.”

14.4. The Committee, however, notes a small improvement in the constitution of the present NJOC i.e., it has Attorney General Of India as one of the member. But it does not have a representation from legislature. When asked, the Department of Justice in its written reply to the questionnaire of the Committee mentioned that inclusion of a Member of Parliament was not proposed in the Bill as it was felt that ultimately Parliament is the deciding authority.

14.5. The explanation of Department of Justice is not acceptable to the Committee. The Committee is of the opinion that Parliament's responsibility as a deciding authority in the impeachment process does not prohibit it having a role in the National Judicial Oversight Committee which is the very first stage where the fate of a complaint against a judge is to be decided. Further, in its opinion, the screening level is as important as the final stage, when impeachment process commences. The Committee, accordingly, recommends amendment of clause 18 of the Bill so as to enable the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha to nominate, respectively, one

Member of Parliament from each House, having legal expertise and high standing in the legal arena to the Oversight Committee.

(b) Independence of the Oversight Committee

15. Independence of Committee was another important issue which invited considerable debate during deliberations in the Committee. Most of the witnesses that appeared before the Committee were in favor of making the Oversight Committee an independent and a full time body. Some witnesses expressed their apprehension over the independent functioning of the Oversight Committee as in their view this Committee was neither independent of the Government nor of the judiciary. They were apprehensive about how the impartiality would be maintained as a complaint against a judge is to be examined by sitting judges who are his/her colleagues.

15.1 Instead, the witnesses emphasized the need of making the Committee a full time body independent of both the judiciary and the Government. A witness suggested an alternative procedure for selecting the members of the Judicial Oversight Committee. He placed his views as follows:

“.....We have said that let the Chairman be selected by a committee of all the Judges of the Supreme Court; let a second member be selected by a committee of the Chief Justices of the High Courts; let the third member be selected by the Union Cabinet; let the fourth member be selected by a committee of Leaders of Opposition in both the Houses of Parliament, the Chairman of the Rajya Sabha and the Speaker of Lok Sabha; let the fifth member be selected by a committee of NHRC Chairman, Chief Election Commissioner, Comptroller and Auditor General, etc. So, this way, you have five different committees selecting five

members who will be full time members, not ex-officio members”.

15.2. Another witness raised the concern that sitting judges who are members of the Oversight Committee would be busy with enough judicial work. In that case, if they have to enquire into complaints against some other Judge, it would take a lot of time. It is also possible that the Oversight Committee would not even be able to easily meet.

15.3 Having gone through the material placed before it, the views expressed by the experts and in-house discussion amongst the Members, the Committee strongly recommends for a broad based and independent National Judicial Oversight Committee. The Committee insists that all the three organs of the Government namely executive, judiciary and legislature have to be represented in that Committee. The Committee hopes that such a balanced body would ensure the independent and transparent functioning of the Committee and also brace people's faith in redressal of complaints against the erring judges. The Committee, reiterates, that the expansion suggested by it in para 14.5 above should be read contextually into this paragraph also.

Complaint Scrutiny Panel

16. The Bill provides that the Complaint Scrutiny Panel in the Supreme Court shall consist of a former Chief Justice of India and two judges of the Supreme Court nominated by the Chief Justice of India and in every High Court the Scrutiny Panel shall consist of a former Chief Justice of that High Court and two Judges of that High Court to be nominated by the Chief Justice of that High Court to scrutinize the complaints against a judge received under this Act.

16.1 It was noted that on the issue of the membership of the complaint scrutiny panel, the Bill makes no provision for the representation of the non-judicial Members. The witnesses raised serious concerns over such composition which makes the CSP totally a judges affair. The views expressed by the legal experts who appeared before the Committee were critical of such a composition. Most of them were in favor of making CSP more broad based having non judicial members. A witness appeared before the committee placed his views as under:

".....Unfortunately, this Scrutiny Panel does not have a provision for a public man or the Advocate General. I wish even it was also a little more broad-based. At the moment, the proposal is that the Scrutiny Panel of the Supreme Court will consist of a former Chief Justice of India, two Judges of the Supreme Court, nominated by the Chief Justice. So, it becomes all judges' affair. I don't know if it is feasible. I would request you to consider the possibility of associating, at least, one public person. Similarly, the High Court level Scrutiny Panel is consisting only of a former Chief Justice of a High Court and two Judges of the High Court. There is no one else who is a member of that Committee"....

16.2. In reply to the questionnaire of the Committee, the Department of Justice clarified that such a provision would ensure the judicial independence and judges would be in a better position to understand the allegations from judges' perspective.

16.3. The Committee notes that under the present Bill, the complaint against a judge would be scrutinized by his colleagues only. Further, the CSP forms the pivot of the mechanism proposed in the Bill as it is only on the report on the CSP, the Oversight Committee will proceed

or not proceed with the complaint. Also, the power to declare a complaint as frivolous or vexatious are vested in this panel.

16.4. The Committee feels that it would not be prudent to reserve the membership of CSP only for member of the judiciary merely in name of preserving judicial independence. Rather the principal of judicial independence needs to be balanced with the ideal of judicial accountability. The Committee, therefore, recommends that the Government should include the non-judicial members in the CSP so as to enhance the credibility of such an important body in the eyes of the people. The Committee further recommends to Government to consider expansion of the CSP in the same manner as suggested by it in respect of the Oversight Committee in para 14.5 above.

16.5 Further, Clause 11(2) of the Bill states that the Scrutiny panel in every High Court shall consist of a former Chief Justice of that High Court and two Judges of that High Court. The Committee feels that such a provision in the Bill undermines the aspect of impartiality in the inquiry process as allegations of corruption against a judge would be scrutinized by his/her own colleagues. The Committee is of the view that in place of two judges of that High Court, the CSP should include judges from another High Court so as to ensure the element of impartiality in the inquiry process. The Committee therefore recommends that the expression "two judges of that High Court" should be replaced by "two judges of another High Court."

16.6 The Committee also takes note of Clauses 9 and 19 which provide for reference of a complaint by the Oversight Committee to the Complaint Scrutiny Panel. The Committee feels that both these clauses deal with a common situation and therefore it would be appropriate to review the relevance of Clause 9 in its existing format under chapter IV for the sake of better coherence.

16.7 The Committee also noted that the Bill does not provide for in camera proceedings in investigation under CSP. The Committee feels that making such arrangements is necessary to protect the judge concerned from unwarranted defamation at this initial stage of investigation. In view of this, the Committee recommends that the word "in camera" should be added appropriately either in Clause 12 or 14 of the Bill to ensure the element of the confidentiality in the proceedings of the CSP.

Investigation Committee

17. Clause 22 of the Bill provides for an Investigation Committee to be constituted by the Oversight Committee for the purpose of inquiry into misbehaviour by a judge. The Investigation Committee would investigate the complaint in respect of which the Complaint Scrutiny Panel has recommended in its Report for making inquiry against the judge. Further, clause 29 of the Bill lays down an elaborated inquiry procedure to be adopted by the Investigation Committee.

17.1 The Committee was told that the Bill does not mention about who would be the Member of the Investigation Committee nor does it provide for any such selection procedure to be prescribed by rules. During the deliberations of the Committee, some witnesses and a few Members made a case for making the Investigation Committee a permanent body so as to strengthen the proposed mechanism for investigating into individual complaints against the judges.

17.2. The Committee is unhappy in so far as the provisions of the Bill relating to the constitution and composition of the Investigation Committee are concerned. The Committee is constrained to note that the Bill provides no guidelines for the Oversight Committee in the matter of the constitution of the Investigation Committee. The Committee impresses upon the Government to indicate the

constitution of the Investigation Committee in the Bill itself for the sake of objectivity and uniformity and to prevent uncertainty or the exercise of unnecessary discretion.

Confidentiality in Complaint Procedure

17.3. Clause 39 of the Bill provides that every person who participates in the scrutiny or investigation or inquiry as a witness or as a legal practitioner or in any other capacity shall undertake to the Oversight Committee or Scrutiny Panel or investigation that he shall not reveal his own name, the name of the judge complained against, the contents of the complaint or any of the document or proceedings to any of the documents or proceedings to anybody else including the media without the prior written approval of the Oversight Committee.

17.4 The Committee, while deliberating upon the Bill, felt that the scope of this clause should be widened to ensure the accountability of the media in relation to the divulgence of the information while complaints are under investigation. The Committee apprehends that besides the persons mentioned in the clause, media may also be a source of the divulgence of information at various stages of investigation/inquiry. The Committee, therefore, recommends that an explanation may be added suitably to ensure that the prohibition prescribed applies to the Media also.

Punishment for Frivolous and Vexatious Complaints

18. The Committee observed strong discontentment among the stake holders who submitted their views in writing and also those who appeared before the Committee, over the quantum of punishment prescribed in the Bill to penalize for frivolous/ vexatious complaints. A witness expressed his discontentment as:

"With this kind of provision, even the perfectly genuine complaints will not be made. It says that if the complaint is found to be frivolous or vexatious, he will be sent to jail for five years. To my mind this is very draconian. It should be removed. If somebody makes a totally frivolous or vexatious complaint and if he publicises it, he will be liable for defamation. If his complaint is frivolous, this Oversight Committee will throw it into the waste....."

18.1 Referring to the Judges Inquiry Bill, 2006, a Member of the Committee also opined that the penalty prescribed in the present Bill is too high. In his own words *"the penalty significantly exceeds as compared to the one in the Judges Inquire Bill, 2006. In that Bill it was only one year penalty"*.

18.2 Another suggestion made by a witness on this issue was that the prescribed penalty in this clause should not exceed the penalties prescribed for contempt of court. The witness was of the view that the punishment should be confined up to six months imprisonment only. He elaborated his point as under:

"...the punishment, prescribed in this Bill, is much higher than that in the Contempt of Courts Act, which is six months imprisonment and fine of Rs 2,000. It is also higher than that proposed in the 2006 Bill and the Law Commission's 195th Report which was one year imprisonment and a find of Rs.25,000..."

18.3 The Committee took note of the concerns raised by the witnesses and Members. This issue was discussed in detail in the Committee's interaction with the Attorney General of India. Replying to the question of a Member over this issue, the Attorney General of India defended the provision for punishment in case of frivolous or vexatious complaints. He made the case in favor of the provision in the following words:

".....This provision has been kept so that the Judges should feel that they will not be exposed to frivolous complaints. The provision does not say that punishment shall be five years. It may extend to five years depending on the nature of the complaint. And if a complaint is found to be vexatious then a five years sentence may be imposed. The provision is necessary for the purpose of having a deterrent action against frivolous complaints because there are a lot of disgruntled litigants who are constantly litigating and complaining.....".

18.4 The Department of Justice, in its reply to the questionnaire of the Committee on the Bill, also defended the provision saying the provision is to protect judges from frivolous and vexatious complaints/allegations filed by some disgruntled elements.

18.5 An apprehension was raised by a Member on the likely damage to the administration of justice, if the complaints against judges are made irresponsibly by disgruntled litigants. The Member emphasized the need to examine the issue with an administrative perspective. He stated:

".....is not there an apprehension, leave aside whatever apprehensions the judges may have about their independence, a concern which the Government has, that this may cripple the entire administration of justice in the long run? Is not the process going to bring about a paralysis in the administration of justice because given the fact that every decision, at every level, a High Court or the Supreme Court, is always in favor of somebody or hurts somebody..."

18.6 The Committee took note of the apprehensions raised in relation to the frivolous complaints causing threat to the very process of dispensation of justice. The Committee acknowledged the need to check the

complaints seemingly emanating from the dissatisfaction of litigants related to a judgment so as to preserve the judicial independence. Some Members of the Committee were of the view that the Oversight Committee should be given the task to scrutinize such complaints so as to prevent them from causing unwarranted pressure on the administration of the judicial system.

18.7. A Member of the Committee suggested that the Bill should specifically provide that if complaints are proved to be frivolous or vexatious but found to be made in good faith, the same should be protected. Such cases should not attract the punishment envisaged for vexatious/frivolous complaints. He was also of the view that the term 'good faith' needs to be interpreted as 'with due care and caution and a sense of responsibility' in line with Section 79 of the Indian Penal Code.

18.8. The Committee endorses the rationale of making a provision for punishment for making frivolous or vexatious complaints. The Committee, however, expresses its reservation over the prescribed quantum of punishment both in terms of imprisonment which is up to 5 years and fine which is up to 5 lakh rupees. The severe punishment prescribed in the Bill may deter the prospective complainants from coming forward and defeat the very rationale of the Bill. In view of this, the Committee recommends that Government should substantially dilute the quantum of the punishment so as not to discourage people from taking initiatives against the misbehaviour of a judge. In any case it should not exceed the punishment provided under the Contempt of Court Act. The Government may also consider specifically providing in the Bill a proviso to protect those complainants from punishment/penalty who for some genuine reasons fail to prove their complaints. The Committee, accordingly, recommends that the Bill should specifically provide for protection in case of complaints made 'in good faith' in

line with the defence of good faith available under the Indian Penal Code.

Appeal against punishment under Clause 53

18.9. Clause 56 of the Bill provides that appeal from a person convicted on a trial held under the clause 53(1) shall be directly to the Supreme Court. **The Committee while discussing this clause felt that the existing provisions of the Bill were curtailing the right of challenge of the complainant to one only. The Committee feels that the complainant's normal right of judicial review on jurisdictional grounds both under article 226 of the Indian Constitution and under the apex Court judgement in *Chandra Kumar vs Union of India and others* is not intended to be circumscribed or eliminated, as indeed it cannot be by a mere Act of Parliament. Hence, while maintaining appellate recourse to the apex Court as already provided, a small Explanations may suitably clarify the availability of judicial review on jurisdictional grounds apart from the apex Court appeal.**

Method of appointment of Judges

19. The method of appointment of judges in the higher judiciary was the issue which was raised in almost all the meetings of the Committee while deliberating upon the Bill although this matter is not a part of the present Bill. Be it the Members of the Committee or the witnesses, all were unanimously in favour of replacing the present judiciary driven collegium system of appointment of judges. It was categorically opined by the witnesses and Members that present Bill is just a primary remedial step while the real cure lies in reforming the prevailing process of appointment of judges in the higher judiciary.

19.1 A Member of the Committee made very serious remark in these words:

".....I think, what needs to be dealt with is, really, the appointment process because it is out of the appointment process that the entire question of integrity, probity, following, what are called, accepted norms of conduct would really emanate. So, this Bill, actually, places the cart before the horse. Till the time you really do not deal with the process of appointment and you allow the scheme of the Constitution, which has been upset by the Advocates-on-Record I, the Advocates-on-Record II, the Presidential Reference judgments, I think this would be an exercise in complete futility....."

19.2 It was a common feeling among the Members of the Committee that the present system of appointment of judges was opaque and ineffective and thus has taken away the faith of the people in the institution of judiciary.

19.3 The Committee has repeatedly emphasized on this issue in its earlier reports but the Government is yet to make a beginning in this regard. In its recently presented report on the Constitution 114th (Amendment) Bill, 2010, the Committee emphasized the need to review the procedure for appointment of the judges in the higher judiciary and also to put in place some mechanism so as to optimize the output in their performance. It was also indicated in that Report that to attain this objective the Government may consider creation of a National Judicial Commission having representation from the judiciary, executive, Bar and the Parliament.

20. As far as the present Bill is concerned, the Committee feels that the Bill deserves appreciation for prescribing an elaborate procedure for investigating into individual complaint for misbehavior or incapacity of judges. It also deserves appreciation as it empowers the common man to expose the misbehavior of judges. It is clearly an initiative in the right direction and endeavours to strike a reasonable

balance between the demands of accountability and of judicial independence.

21. However, the Committee finds some serious shortcomings in the mechanism proposed in the Bill as pointed out in foregoing paras. Such shortcomings need to be rectified in order to enhance the efficacy of the Bill and to realize the right to know.

22. The Committee was also of the considered and unanimous opinion that for the various bodies created under this Bill, the Government will see that its appointees are as broad based as possible, including in particular appointment of SC/ST/OBC/minority sections and other weaker sections as feasible.

23. The Committee also unequivocally feels that the present Bill deals only partially with the problem and the main systematic lacunae remain unaddressed. The most significant lacuna relates to the present method of appointment of judges in the higher judiciary. The Committee is of the considered opinion that the present Bill is bound to end up with limited success because of the piecemeal nature of the proposed legislation, despite the genuineness of its objectives. The issue of judges' appointment, therefore, needs to be addressed comprehensively, though separately, at the earliest because without it the efficacy of this Bill is seriously impaired.

24. The Committee is of the view that the Government has to move beyond an incremental approach and give urgent and due thought to a holistic legislation encompassing the appointment process and other related matters to ensure judicial accountability for improved administration of justice.

RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE AT A GLANCE

1. The Committee takes note of the views placed before it by the witnesses. The Committee appreciates that this Bill provides statutory backup to the Judicial Standards hitherto having sanction of the Restatement of Values as adopted in the Conference of Chief Justices in 1999. The Committee also appreciates that the Bill incorporates some new parameters essential to ensure judicial accountability. The Committee further observes that the Government should also consider the concerns of the witnesses raised before it. The Committee recommends that Government should remain alert and willing to update the judicial standards as and when required in future. [Para 12.2]

2. In this context, the Committee feels that there is a need to bring such behaviour of judges within the purview of the judicial standards. The Committee feels that Clause 3(2)(f) should be expanded by specifically mentioning that judges should restrain themselves from making unwarranted comments against other constitutional/statutory bodies/institutions/ persons in open Court while hearing cases . [Para 12.5]

3. The Committee also observed that the clause 3(2)b of the Bill provides that no judge shall have close association with individual members of the Bar. The Committee is of the view that the expression 'close association' is very vague in nature and it may invite varying interpretations. Accordingly, the Committee recommends that the said words may be replaced by the expression 'close social interactions' to avoid unwarranted ambiguity. [Para 12.6]

4. While deliberating upon the Bill, the Committee felt that that the proviso (i) of the clause 3(2)(f) needs to bring out more clearly

and distinctly what is meant by the term "individual capacity" as the line of distinction between a judge's official capacity and individual capacity is quite thin. Likewise, the Members were of the view that the expressions 'private forum' and 'academic forum' may be defined to bring more clarity in the meaning implied in these expressions. [Para 12.7]

5. The Committee, recommends that the proviso (i) of the clause 3 (2)(f) may be re done so as to provide more clearly the implications of expressions like "individual capacity", "private forum", "academic forum" used therein. [Para 12.8]

6. The Committee endorses that the Bill makes the declaration of assets a statutory responsibility for the judges. The Committee also acknowledges that the clause is in consonance with the people's "right to know" and would facilitate greater transparency in judiciary. The Committee taking note of the suggestion that has come before it is of the view that the Government should include a mechanism to ensure that scrutiny of the declaration of assets is possible and implementable. Such a mechanism may involve any designated executive agency and can be made to report to either the Complaints Scrutiny Panel or the Oversight Committee. [Para 13.1]

7. The explanation of Department of Justice is not acceptable to the Committee. The Committee is of the opinion that Parliament's responsibility as a deciding authority in the impeachment process does not prohibit it having a role in the National Judicial Oversight Committee which is the very first stage where the fate of a complaint against a judge is to be decided. Further, in its opinion, the screening level is as important as the final stage, when impeachment process commences. The Committee, accordingly, recommends amendment of clause 18 of the Bill so as to enable the Speaker of the Lok Sabha

and the Chairman of the Rajya Sabha to nominate, respectively, one Member of Parliament from each House, having legal expertise and high standing in the legal arena to the Oversight Committee. [Para 14.5]

8. Having gone through the material placed before it, the views expressed by the experts and in-house discussion amongst the Members, the Committee strongly recommends for a broad based and independent National Judicial Oversight Committee. The Committee insists that all the three organs of the Government namely executive, judiciary and legislature have to be represented in that Committee. The Committee hopes that such a balanced body would ensure the independent and transparent functioning of the Committee and also brace people's faith in redressal of complaints against the erring judges. The Committee, reiterates, that the expansion suggested by it in para 14.5 above should be read contextually into this paragraph also. [Para 15.3]

9. The Committee notes that under the present Bill, the complaint against a judge would be scrutinized by his colleagues only. Further, the CSP forms the pivot of the mechanism proposed in the Bill as it is only on the report on the CSP, the Oversight Committee will proceed or not proceed with the complaint. Also, the power to declare a complaint as frivolous or vexatious are vested in this panel. [Para 16.3]

10. The Committee feels that it would not be prudent to reserve the membership of CSP only for member of the judiciary merely in name of preserving judicial independence. Rather the principal of judicial independence needs to be balanced with the ideal of judicial accountability. The Committee, therefore, recommends that the Government should include the non-judicial members in the CSP so

as to enhance the credibility of such an important body in the eyes of the people. The Committee further recommends to Government to consider expansion of the CSP in the same manner as suggested by it in respect of the Oversight Committee in para 14.5 above. [Para 16.4]

11. Further, Clause 11(2) of the Bill states that the Scrutiny panel in every High Court shall consist of a former Chief Justice of that High Court and two Judges of that High Court. The Committee feels that such a provision in the Bill undermines the aspect of impartiality in the inquiry process as allegations of corruption against a judge would be scrutinized by his/her own colleagues. The Committee is of the view that in place of two judges of that High Court, the CSP should include judges from another High Court so as to ensure the element of impartiality in the inquiry process. The Committee therefore recommends that the expression "two judges of that High Court" should be replaced by "two judges of another High Court." [Para 16.5]

12. The Committee also takes note of Clauses 9 and 19 which provide for reference of a complaint by the Oversight Committee to the Complaint Scrutiny Panel. The Committee feels that both these clauses deal with a common situation and therefore it would be appropriate to review the relevance of Clause 9 in its existing format under chapter IV for the sake of better coherence. [Para 16.6]

13. The Committee also noted that the Bill does not provide for in camera proceedings in investigation under CSP. The Committee feels that making such arrangements is necessary to protect the judge concerned from unwarranted defamation at this initial stage of investigation. In view of this, the Committee recommends that the word "in camera" should be added appropriately either in Clause 12

or 14 of the Bill to ensure the element of the confidentiality in the proceedings of the CSP. [Para 16.7]

14. The Committee is unhappy in so far as the provisions of the Bill relating to the constitution and composition of the Investigation Committee are concerned. The Committee is constrained to note that the Bill provides no guidelines for the Oversight Committee in the matter of the constitution of the Investigation Committee. The Committee impresses upon the Government to indicate the constitution of the Investigation Committee in the Bill itself for the sake of objectivity and uniformity and to prevent uncertainty or the exercise of unnecessary discretion. [Para 17.2]

15. The Committee, while deliberating upon the Bill, felt that the scope of this clause should be widened to ensure the accountability of the media in relation to the divulgence of the information while complaints are under investigation. The Committee apprehends that besides the persons mentioned in the clause, media may also be a source of the divulgence of information at various stages of investigation/inquiry. The Committee, therefore, recommends that an explanation may be added suitably to ensure that the prohibition prescribed applies to the Media also. [Para 17.4]

16. The Committee endorses the rationale of making a provision for punishment for making frivolous or vexatious complaints. The Committee, however, expresses its reservation over the prescribed quantum of punishment both in terms of imprisonment which is up to 5 years and fine which is up to 5 lakh rupees. The severe punishment prescribed in the Bill may deter the prospective complainants from coming forward and defeat the very rationale of the Bill. In view of this, the Committee recommends that Government should substantially dilute the quantum of the

punishment so as not to discourage people from taking initiatives against the misbehaviour of a judge. In any case it should not exceed the punishment provided under the Contempt of Court Act. The Government may also consider specifically providing in the Bill a proviso to protect those complainants from punishment/penalty who for some genuine reasons fail to prove their complaints. The Committee, accordingly, recommends that the Bill should specifically provide for protection in case of complaints made 'in good faith' in line with the defence of good faith available under the Indian Penal Code. [Para 18.8]

17. Clause 56 of the Bill provides that appeal from a person convicted on a trial held under the clause 53(1) shall be directly to the Supreme Court. The Committee while discussing this clause felt that the existing provisions of the Bill were curtailing the right of challenge of the complainant to one only. The Committee feels that the complainant's normal right of judicial review on jurisdictional grounds both under article 226 of the Indian Constitution and under the apex Court judgement in *Chandra Kumar vs Union of India and others* is not intended to be circumscribed or eliminated, as indeed it cannot be by a mere Act of Parliament. Hence, while maintaining appellate recourse to the apex Court as already provided, a small Explanations may suitably clarify the availability of judicial review on jurisdictional grounds apart from the apex Court appeal. [Para 18.9]

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19. However, the Committee finds some serious shortcomings in the mechanism proposed in the Bill as pointed out in foregoing paras. Such shortcomings need to be rectified in order to enhance the efficacy of the Bill and to realize the right to know. [Para 21]

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22. The Committee is of the view that the Government has to move beyond an incremental approach and give urgent and due thought to a holistic legislation encompassing the appointment process and other related matters to ensure judicial accountability for improved administration of justice. [Para 24]

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