

Bill No. 136 of 2010

THE JUDICIAL STANDARDS AND ACCOUNTABILITY BILL, 2010

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THE SCHEDULE.

Bill No. 136 of 2010

THE JUDICIAL STANDARDS AND ACCOUNTABILITY BILL, 2010

A

BILL

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.

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Judicial Standards and Accountability Act, 2010.

Short title and commencement.

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

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

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

(a) “assets” includes immovable and movable property; 5

Explanation.—For the purposes of this clause,—

(i) “immovable property” includes the land and any building or other structure attached to the land or permanently fastened to anything which is attached to the land, and tenancies, lease holds or any other interest in immovable property; 10

(ii) “movable property” includes any other property which is not immovable property as also corporeal and incorporeal property of every description and household goods and personal effects of the value of each item of more than fifty thousand rupees;

(b) “Chairman” means the Chairman of the Council of States; 15

(c) “competent authority” means in relation to,—

(i) the Judge of the High Court, the Chief Justice of that High Court;

(ii) the Chief Justice of the High Court, the Chief Justice of India;

(iii) the Judge of the Supreme Court, the Chief Justice of India;

(iv) the Chief Justice of India, the President of India; 20

(d) “incapacity” means physical or mental incapacity which is, or is likely to be, of a permanent character;

(e) “investigation committee” means the investigation committee constituted under section 22;

(f) “inquiry” means an inquiry for proof of misbehaviour or incapacity; 25

(g) “Judge” means a Judge of the Supreme Court or of a High Court and includes the Chief Justice of India and the Chief Justice of a High Court;

(h) “judicial standards” means the values of judicial life specified in section 3, and the Schedule;

(i) “liabilities” includes financial guarantees given and all loans raised from any bank, financial institution or any other source; 30

(j) “misbehaviour” means,—

(i) conduct which brings dishonour or disrepute to the judiciary; or

(ii) wilful or persistent failure to perform the duties of a Judge; or

(iii) wilful abuse of judicial office; or 35

(iv) corruption or lack of integrity which includes delivering judgments for collateral or extraneous reasons, making demands for consideration in cash or kind for giving judgments or any other action on the part of the Judge which has the effect of subverting the administration of justice; or

(v) committing an offence involving moral turpitude; or 40

(vi) failure to furnish the declaration of assets and liabilities in accordance with the provisions of this Act; or

(vii) wilfully giving false information in the declaration of assets and liabilities under this Act; or

(viii) wilful suppression of any material fact, whether such fact relates to a period before assumption of office, which would have bearing on his integrity; or

(ix) wilful breach of judicial standards;

(k) “notification” means a notification published in the Official Gazette;

(l) “Oversight Committee” means the National Judicial Oversight Committee established under section 17;

(m) “prescribed” means prescribed by rules made under this Act;

(n) “Scrutiny Panel” means a panel constituted under sub-section (1) or sub-section (2) of section 11 for the scrutiny of complaints;

(o) “Speaker” means the Speaker of the House of the People.

CHAPTER II

JUDICIAL STANDARDS TO BE FOLLOWED BY JUDGES

3. (1) Every Judge shall continue to practice universally accepted values of judicial life as specified in the Schedule to this Act. Judicial standards.

(2) In particular, and without prejudice to the generality of the foregoing provision, no Judge shall—

(a) contest the election to any office of a club, society or other association or hold such elective office except in a society or association connected with the law or any court;

(b) have close association with individual members of the Bar, particularly with those who practice in the same court in which he is a Judge;

(c) permit any member of his immediate family (including spouse, son, daughter, son-in-law or daughter-in-law or any other close relative), who is a member of the Bar, to appear before him or associated in any manner with a cause to be dealt with by him;

(d) permit any member of his family, who is a member of the Bar, to use the residence in which the Judge actually resides or use other facilities provided to the Judge, for professional work of such member;

(e) hear and decide a matter in which a member of his family, or his close relative or a friend is concerned;

(f) enter into public debate or express his views in public on political matters or on matters which are pending or are likely to arise for judicial determination by him:

Provided that nothing contained in this clause shall apply to,—

(i) the views expressed by a Judge in his individual capacity on issues of public interest (other than as a Judge) during discussion in private forum or academic forum;

(ii) the views expressed by a Judge relating to administration of court or its efficient functioning;

(g) give interview, to the media in relation to any of his judgment delivered, or order made, or direction issued, by him, in any case adjudicated by him;

(h) accept gifts or hospitality except from his relatives;

(i) hear and decide a matter in which a company or society or trust in which he holds or any member of his family holds shares or interest, unless he has disclosed his such holding or interest, and no objection to his hearing and deciding the matter is raised;

(j) speculate in securities or indulge in insider trading in securities;

(k) engage, directly or indirectly, in trade or business, either by himself or in association with any other person: 5

Provided that the publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business for the purpose of this clause;

(l) seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available or admissible; 10

(m) hold membership in any organisation that practices invidious discrimination on the basis of religion or race or caste or sex or place of birth;

(n) have bias in his judicial work or judgments on the basis of religion or race or caste or sex or place of birth.

Explanation.—For the purposes of this sub-section, “relative” means— 15

(i) spouse of the Judge;

(ii) brother or sister of the Judge;

(iii) brother or sister of the spouse of the Judge;

(iv) brother or sister of either of the parents of the Judge;

(v) any lineal ascendant or descendant of the Judge; 20

(vi) any lineal ascendant or descendant of the spouse of the Judge;

(vii) spouse of the person referred to in clauses (ii) to (vi).

CHAPTER III

DECLARATION OF ASSETS AND LIABILITIES BY JUDGES

Declaration of assets and liabilities. 4. (1) Every Judge shall make a declaration of his assets and liabilities in the manner as provided by or under this Act. 25

(2) A Judge shall, within thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries; 30

(b) his liabilities and that of his spouse and his dependent children.

(3) A Judge holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2) to the competent authority within thirty days of the coming into force of this Act. 35

(4) Every Judge shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished in such form and in such manner, as may be prescribed. 40

Explanation.—For the purposes of this section, “dependent children” means sons and daughters who have no separate means of earning and are wholly dependent on the Judge for their livelihood.

5. The competent authority shall exhibit the document or information in relation to a declaration of assets and liabilities of Judges,—
- (a) in the case of Judges and Chief Justices of the High Courts, on the website of the High Court in which such Judges and Chief Justice are serving;
- 5 (b) in the case of Judges of the Supreme Court and Chief Justice of India, on the website of the Supreme Court.
6. The competent authority shall keep the documents or information forms containing the details of the assets and liabilities and other particulars in relation thereto filed by the Judges in its safe custody for such period as may be decided by the Oversight Committee.
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Making available document or information in relation to a declaration of assets and liabilities of Judges on website.

Maintenance of records.

CHAPTER IV

MAKING OF COMPLAINT

7. Any person making an allegation of misbehaviour or incapacity in respect of a Judge may file a complaint in this regard to the Oversight Committee.
- 15 8. The complaint under section 7 shall—
- (a) be in such form and filed in such manner as may be prescribed;
- (b) set forth particulars of the misbehaviour or incapacity which is the subject matter of allegation;
- 20 (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.
9. Save as otherwise provided under this Act, the Oversight Committee shall refer all such complaints to the appropriate Scrutiny Panel constituted under Chapter V for scrutiny.
- 25

Complaints.

Manner of making of complaint.

Reference to Scrutiny Panel.

CHAPTER V

SCRUTINY PANEL

10. There shall be constituted a panel to be called “Complaints Scrutiny Panel” in the Supreme Court and in every High Court to scrutinise the complaints against a Judge received under this Act.
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11. (1) The Scrutiny Panel in the Supreme Court shall consist of a former Chief Justice of India and two Judges of the Supreme Court to be nominated by the Chief Justice of India.
- (2) 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 to be nominated by the Chief Justice of that High Court.
- 35
12. (1) If the Scrutiny Panel, after scrutiny of the complaint referred to it for scrutiny under section 9, and after making scrutiny of the complaint, as it deems appropriate, is satisfied that—
- 40 (a) there are sufficient grounds for proceeding against the Judge, it shall, after recording reasons therefor, submit a report on its findings to the Oversight Committee for making inquiry against the Judge in accordance with the provisions of this Act;

Constitution of Scrutiny Panel.

Composition of Scrutiny Panel.

Functions of Scrutiny Panel.

(b) the complaint is frivolous or vexatious, or, is not made in good faith, or there are not sufficient grounds for inquiring into the complaint, or the complaint relates only to the merits of the judgment or a procedural order, and, then, it shall after recording reasons therefor submit a report on its findings to the Oversight Committee for not proceeding with the complaint and treating the matter as closed. 5

(2) The Scrutiny Panel shall submit its report under clause (a) or clause (b) of sub-section (1), to the Oversight Committee in this behalf within a maximum period of three months from the date of receipt of the complaint from the Oversight Committee.

Procedure of Scrutiny Panel. 13. Save as otherwise provided in this Act, the Scrutiny Panel shall have power to regulate its own procedure in scrutinising the complaints referred to it for scrutiny under section 9. 10

Power relating to scrutiny of complaints. 14. The Scrutiny Panel shall, while scrutinising the complaints forwarded to it for scrutiny under section 9, 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:— 5 of 1908.

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath; 15

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

(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; 20
and

(f) any other matter which may be prescribed.

Provision for officers and other employees for Scrutiny Panel. 15. (1) The Chief Justice of India shall, determine the nature and categories of the officers and other employees required to assist the Scrutiny Panel referred to in sub-section (1) of section 11 in the discharge of its functions and provide the Scrutiny Panel with such officers and other employees as he may think fit. 25

(2) The Chief Justice of the High Court shall, determine the nature and categories of the officers and other employees required to assist the Scrutiny Panel referred to in sub-section (2) of section 11 in the discharge of its functions and provide the Scrutiny Panel with such officers and other employees as he may think fit. 30

Provision regarding frivolous and vexatious complaints. 16. If the Scrutiny Panel is of the opinion that a complaint was filed frivolously or vexatiously or only with a view to scandalise or intimidate a Judge, it may refer the case to the Oversight Committee for further action.

CHAPTER VI

A. NATIONAL JUDICIAL OVERSIGHT COMMITTEE, ITS POWERS AND FUNCTIONS AND PROCEDURE FOR INQUIRY OF COMPLAINTS 35

Establishment of Oversight Committee. 17. **With effect from such date as the Central Government may, by notification, appoint, there shall be established a National Judicial Oversight Committee.**

Composition of Oversight Committee. 18. (1) The National Judicial Oversight Committee shall consist of the following, namely:— 40

(a) a retired Chief Justice of India appointed by the President after ascertaining the views of the Chief Justice of India — Chairperson;

(b) a Judge of the Supreme Court nominated by the Chief Justice of India— Member;

(c) the Chief Justice of a High Court nominated by the Chief Justice of India—
Member *ex officio*;

(d) the Attorney-General for India— *ex officio* Member;

(e) an eminent person nominated by the President—Member:

5 Provided that—

(a) where the allegations are against a Judge of the Supreme Court, who is a
member of the Oversight Committee, then, the Chief Justice of India shall nominate
another Judge of the Supreme Court in his place as a member of that committee; or

10 (b) where the allegations are against the Chief Justice of a High Court, who is a
member of the Oversight Committee, then, the Chief Justice of India shall nominate a
Chief Justice of another High Court in his place as a member of that committee.

(2) After the commencement of the proceedings relating to a complaint against a
Judge,—

15 (a) if any change in the composition of the Oversight Committee arises due to
elevation of a member of the Oversight Committee, as the Chief Justice of India or a
Judge of a Supreme Court, as the case may be; or

(b) if any change arises in the composition of the Oversight Committee due to
refusal or retirement or resignation or any other reason,

20 the proceedings of the Oversight Committee shall continue from the stage from which it was
pending before such change and the Chairperson of the Oversight Committee shall make
such incidental changes, as he deems necessary, to continue the proceedings.

19. The Oversight Committee shall, within three months of the receipt of a complaint
relating to misbehaviour of—

Forwarding of
complaint re-
lating to
misbehaviour to
Scrutiny Panel.

25 (a) an individual Judge of the Supreme Court or Chief Justice of a High Court,
refer the complaint, to the Scrutiny Panel of the Supreme Court to scrutinise and
report thereon;

(b) an individual Judge of a High Court, refer the complaint, to the Scrutiny Panel
of the High Court in which such Judge is acting as such, to scrutinise and report
thereon.

30 **20.** The Oversight Committee shall maintain a record of the complaints referred to the
Scrutiny Panel.

Records of
complaints for-
warded to Scru-
tiny Panel.

21. A complaint against the Chief Justice of India shall not be referred to the Scrutiny
Panel for scrutiny but shall be scrutinised by the Oversight Committee.

Certain com-
plaints not to
be forwarded to
Scrutiny Panel.

35 **B. CONSTITUTION OF INVESTIGATION COMMITTEE, ITS POWERS AND FUNCTIONS AND PROCEDURE FOR
INVESTIGATION**

40 **22.** (1) The Oversight Committee, shall for the purpose of inquiry for misbehaviour by
a Judge, constitute an investigation committee (by whatever name called) to investigate into
the complaint in respect of which the Scrutiny Panel has recommended in its report under
clause (a) of sub-section (1) of section 12 for making inquiry against the Judge in accordance
with the provisions of this Act.

Investigation by
investigation
committee.

(2) The composition and tenure of the investigation committee shall be such as may be
decided by the Oversight Committee:

Provided that the number of the investigation committees, in no case, at a time, shall
exceed three:

45 Provided further that the Oversight Committee may, having regard to the nature of
misbehaviour of a Judge, may constitute different investigation committees for inquiry into
different complaints.

Powers of Oversight Committee and investigating committee. **23.** The Oversight Committee, shall, for the purpose of proceedings under this Act and the investigation committee, while conducting any investigation under this Chapter, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath; 5

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

(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; 10
and

(f) any other matter which may be prescribed.

Search and seizure by investigation committee. **24.** (1) If the investigation committee has reason to believe that any documents which, in its opinion, will be useful for, or relevant to, any preliminary investigation or inquiry, are secreted in any place, it may authorise any officer subordinate to it, or any officer of an agency referred to in section 25, to search for and to seize such documents. 15

(2) If the investigation committee is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any investigation and that it would be necessary to retain the original document in its custody, it may so retain the said document till the completion of such investigation or retain a copy of such document, as it may deem fit. 20

(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 “investigation committee or any officer authorised by it” were substituted. 25 2 of 1974.

Assistance to investigation committee by Government agencies. **25.** The investigation committee shall be entitled to make a request to the Oversight Committee for assistance to it and the Oversight Committee may invoke its powers in this behalf under section 38 of this Act.

Ex parte investigation. **26.** If a Judge, to whom notice is issued by the investigation committee referred to in section 22, refuses to appear before it or does not co-operate with it in conducting investigation, then, the investigation committee may proceed *ex parte*. 30

Investigation into act or conduct of certain other persons in certain cases. **27.** The investigation committee may cause investigation 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 allegations made against a Judge and shall give such person a reasonable opportunity of being heard and to produce evidence in his defence. 35

Submission of report by investigation committee. **28.** The investigation committee, after completion of the inquiry in respect of a complaint, shall submit its findings to the Oversight Committee.

C. INQUIRY PROCEDURE OF INVESTIGATION COMMITTEE 40

Procedure in inquiries by investigation committee. **29.** (1) The investigation committee shall frame definite charges against the Judge on the basis of which the inquiry is proposed to be held.

(2) Every such inquiry shall be conducted *in camera* by the investigation committee.

(3) 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 45

a reasonable opportunity of presenting a written statement of defence within such time as may be specified by the investigation committee.

5 (4) The investigation committee 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:

Provided that the Oversight Committee, for reasons to be recorded in writing, may extend the period for completion of the inquiry by a further period of six months.

10 30. Save as otherwise provided, the investigation committee 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.

Investigation committee to have power to regulate its own procedure.

31. The Central Government may, if requested by the investigation committee, appoint an advocate to conduct the cases against the Judge.

Central Government to appoint an advocate to conduct cases against Judge.

D. STAFF OF OVERSIGHT COMMITTEE

15 32. (1) The Oversight Committee shall, for the purpose of performing its functions under this Act, appoint a Secretary and such other officers and employees possessing such qualifications, as the President may determine, from time to time, in consultation with the Oversight Committee.

Staff of Oversight Committee.

20 (2) The terms and conditions of service of the Secretary, officers and employees referred to in sub-section (1) shall be such as the President may determine, from time to time, in consultation with the Oversight Committee.

(3) In the discharge of their functions under this Act, the Secretary, the officers and employees referred to in sub-section (1) shall be subject to the administrative control and direction of the Oversight Committee.

25 (4) The Oversight Committee shall provide such number of its officers and other employees to assist the investigation committee as the Oversight Committee considers appropriate having regard to the nature of investigation in a case.

E. PENALTIES ON CONCLUSION OF INQUIRY

30 33. During the pendency of the inquiry by the investigation committee, the Oversight Committee may recommend stoppage of assigning judicial work including cases assigned to the Judge concerned if it appears to the Oversight Committee that it is necessary in the interest of fair and impartial scrutiny of complaints or investigation or inquiry.

Stoppage of assigning judicial work in certain cases.

34. (1) If the Oversight Committee on receipt of the report from the investigation committee is satisfied that—

Procedure on receipt of report of investigation committee.

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

40 (b) all or any of the charges have been proved but the Oversight Committee is of the opinion that the charges proved do not warrant removal of the Judge, it may, by order, issue advisories or warnings.

45 (2) Without prejudice to the provisions contained in sub-section (1), if the Oversight Committee, on receipt of the report from the investigation committee is satisfied that there has been a prima facie commission of any offence under any law for the time being in force by a Judge, it may recommend to the Central Government for prosecution of the Judge in accordance with the law for the time being in force.

(3) In a case where an inquiry or investigation against the Judge has been initiated and such Judge has demitted office during such inquiry or investigation, such inquiry or investigation may be continued if the Oversight Committee is of the opinion that the misbehaviour is serious in nature and requires to be inquired into or investigated and the Oversight Committee may after conclusion of inquiry forward its findings to the Central Government to take further action in the matter under relevant law for the time being in force.

Advice to President for removal of Judge. **35.** If the Oversight Committee is satisfied that all or any of the charges of misbehaviour or incapacity of a Judge have been proved and that they are of serious nature warranting his removal, it shall request the judge to voluntarily resign and if he fails to do so, then, advise the President to proceed for the removal of the Judge and the President shall refer the matter to Parliament.

Filing of complaint against complainant in certain cases. **36.** If the Scrutiny Panel refers a case to the Oversight Committee under section 16, the Oversight Committee shall consider the matter further and if it concurs with the conclusion of the Scrutiny Panel, it may authorise the filing of a criminal complaint against the original complainant before a competent court.

F. OTHER PROVISIONS RELATING TO INQUIRY

Proceedings before Oversight Committee to be judicial proceedings. **37.** All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, and the Oversight 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.

Power to call for assistance. **38.** The Oversight Committee shall be entitled to take assistance of such officers of the Central Government or State Government or any agency thereof or authority as it deems fit.

Confidentiality in complaint procedure. **39.** Notwithstanding anything contained in any other law for the time being in force, the complainant and every person who participates in the scrutiny or investigation or inquiry as a witness or as a legal practitioner or in any other capacity, whether or not he seeks confidentiality about his name, shall undertake to the Oversight Committee or Scrutiny Panel or investigation committee that he shall not reveal his 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 Oversight Committee.

Keeping identity of complainant confidential. **40.** The Oversight Committee or the Scrutiny Panel or investigation committee may, at the request of a complainant, direct that the complainant be accorded such protection, as it deems appropriate, including keeping his identity confidential, from every body and also the Judge against whom the complaint is made.

No action for contempt to lie in certain cases. **41.** After the commencement of scrutiny of complaints under this Act, no action for contempt of court shall lie or shall be proceeded with in respect of the allegations, which are the subject matter of the investigation or inquiry.

Investigation and Inquiry by Oversight Committee not to affect criminal liability. **42.** Any scrutiny, investigation or inquiry pending before the Scrutiny Panel or investigation committee or Oversight Committee shall not affect the criminal liability in respect of such allegations which are the subject matter of the investigation or inquiry.

All records, documents, etc., related to complaint, scrutiny, investigation and inquiry to be confidential. **43.** Notwithstanding anything contained in the Right to Information Act, 2005 or any other law for the time being in force, all papers, documents 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 Oversight Committee:

Provided that the findings of the investigation committee and the orders passed by the Oversight Committee under clause (b) of sub-section (1) of section 34 shall be made public.

44. No suit, prosecution or other legal proceeding shall lie against the Chairperson or any member of the Oversight Committee, Scrutiny Panel, investigation committee or against any officer or employee, agency or person engaged by such committees or panel for the purpose of conducting scrutiny or investigation or inquiry in respect of anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Protection of action taken in good faith.

CHAPTER VII

PROCEDURE FOR PRESENTATION OF AN ADDRESS FOR REMOVAL OF A JUDGE

45. The President, on receipt of advice under section 35, shall cause the findings of the Oversight Committee along with the accompanying materials to be laid before both Houses of Parliament.

Laying of advice of Oversight Committee before Parliament.

46. On laying of the advice of the Oversight Committee along with the accompanying material, the Central Government may move a motion in either House of Parliament for taking up the said advice for consideration by the House.

Motion for removal of a Judge.

47. (1). Notwithstanding anything contained in section 45 or section 46, if notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,—

Investigation into misbehaviour or incapacity of Judge by investigation committee for removal of Judges.

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

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

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

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case may be, the Chairman shall keep the motion pending and the matter shall be referred to the Oversight Committee for constitution of an investigation committee under section 22.

(3) The Oversight Committee, after receipt of reference under sub-section (2), constitute an investigation committee under section 22 and the investigation committee shall conduct an inquiry in accordance with the provisions contained under Chapter VI and submit its report to the Oversight Committee for being submitted to the Speaker or Chairman, as the case may be, for consideration.

(4) Where it is alleged that a Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the investigation committee may arrange for the medical examination of the Judge by such Medical Board as may be appointed for the purpose by the Speaker or, as the case may be, the Chairman.

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

(6) If the Judge refuses to undergo medical examination considered necessary by the Medical Board, the Board shall submit a report to the investigation committee stating therein the examination which the Judge has refused to undergo, and the investigation committee may, on receipt of such report, presume that the Judge suffers from such physical or mental incapacity as is alleged in the motion referred to in sub-section (1).

Consideration of report and procedure for presentation of an address for removal of Judge.

48. (1) If the report of the investigation committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, 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.

(2) If the report of the investigation committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in section 46 shall together with the report of the investigation committee, be taken up for consideration by the House or the Houses of Parliament in which it is pending.

(3) If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124 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 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.

Power of Joint Committee to make rules.

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

(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.

(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;

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

(c) the travelling and other allowances payable to the members of the Committee and the witnesses who may be required to attend such Committee;

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

(e) 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.

(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.

CHAPTER VIII

OFFENCES AND PENALTIES

Intentional insult or interruption to Oversight Committee.

50. (1) Whoever intentionally insults, or causes any interruption, to the Scrutiny Panel or investigation committee or Oversight Committee while the Oversight Committee or Scrutiny Panel or investigation committee or any of their members is doing scrutiny or conducting any 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.

(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 199, 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 Oversight Committee.

5 **51.** If any complainant or other person, who participates in the scrutiny or investigation or inquiry as a witness or as a lawyer or in any other capacity, contravenes the provisions of section 39 or section 40 or section 43, shall be liable for punishment 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. Penalty for violation of confidentiality in complaint procedure.

10 **52.** When any such offence as is described in sub-section (1) of section 50 is committed, in the view, or, in the presence, of the Oversight Committee, then the said Oversight Committee, 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 as to why he 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. Power of Oversight Committee to try certain cases.

15 **53.** (1) Any person who makes a complaint which is found, after following the procedure under this Act to be frivolous or vexatious or made with an intent to scandalise or intimidate the Judge against whom such complaint is filed, shall be punishable with rigorous imprisonment for a term which may extend to five years and also to fine which may extend to five lakh rupees. Punishment for frivolous and vexatious complaints.

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

25 **54.** (1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Offences by Companies.

30 Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch or unit nominated by the company as responsible shall be liable for contravention in respect of such establishment, branch or unit:

35 Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

40 (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

45 **55.** (1) Where an offence under this Act has been committed by a society or trust, every person who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Offences by societies or trusts.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary, trustee or other officer of the society or trust, such director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 5 10

Explanation.—For the purpose of this section,—

(a) “society” means any body corporate registered under the Societies Registration Act, 1860 and, “trust” means any body registered under the Indian Trusts Act, 1882; 21 of 1860. 2 of 1882.

(b) “director”, in relation to a society or trust, means a member of its governing board other than an *ex officio* member representing the interests of the Central or State Government or the appropriate statutory authority. 15

Appeal to Supreme Court.

56. Any person convicted on a trial held under sub-section (1) of section 53 may, notwithstanding anything contained in any other law for the time being in force, appeal, within sixty days of order of such conviction, to the Supreme Court. 20

Power of Central Government to make rules.

57. (1) The Central Government may make rules, in consultation with the Chief Justice of India, to carry out the provisions of this Act (other than the provisions contained under Chapter VII).

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for all or any of the following matters, namely:— 25

(a) the form and manner in which, information is to be furnished or, annual return to be filed, under section 4;

(b) the form and manner in which complaint shall be filed under section 8;

(c) other matters in respect of which the Scrutiny Panel shall, for the purpose of scrutiny of complaint, have powers of a civil court under section 14; 30

(d) other matters in respect of which the Oversight Committee shall, for the purpose of inquiry or investigation of complaint have powers of a civil court under clause (f) of section 23;

(e) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules. 35

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 40

Power to remove difficulties.

58. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, after consultation with the Chief Justice of India, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty: 45

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

51 of 1968. 5 **59.** (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 (hereinafter referred to as the repealed Act) the rules made by the Joint Committee under section 7 of the repealed Act shall continue to be in force until rules are framed under section 49 of this Act.

10 (3) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any order or notice made or issued or any inquiry initiated under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken or initiated under the corresponding provisions of this Act.

10 of 1897. 15 (4) The mention of particular matters in sub-sections (2) and (3) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

THE SCHEDULE

[See section 3(1)]

JUDICIAL STANDARDS

1. Norms, including punctuality and commitment to work, guidelines and conventions essential for the conduct and behaviour of Judges, being pre-requisite for an independent, strong and respected judiciary, having integrity and detachment and impartial administration of justice as reflected in the Restatement of Values already adopted by the Conference of Chief Justices held in 1999 shall be practised by every Judge.
2. All times be conscious that he is under the public gaze and not do any act or omission which is unbecoming of the high office he occupies and the public esteem in which that office is held.
3. A degree of aloofness consistent with the dignity of his office shall be practised by every Judge.
4. Judgments should speak for themselves.

STATEMENT OF OBJECTS AND REASONS

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.

2. 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 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.

3. 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 is inextricably linked with judicial ethics and any conduct on the part of a Judge which demonstrates lack of integrity and dignity will undermine the trust reposed in the 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 dated 6 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.

4. The Judicial Standards and Accountability Bill, 2010 seeks to repeal the Judges (Inquiry) Act, 1968, while retaining its basic features and aims to achieve all the above objectives of creating a statutory mechanism for enquiring into individual complaints against Judges of the High Courts 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 Judges. All these measures will increase accountability of Judges of the High Courts and the Supreme Court thereby further strengthening the independence of the judiciary.

5. 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.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 10th November, 2010.

M. VEERAPPA MOILY.

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

[Copy of letter No. K.11015/5/2009-US.II dated the 16th November, 2010 from Dr. M. Veerappa Moily, Minister of Law and Justice to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Judicial Standards and Accountability Bill, 2010 has recommended the introduction and consideration of the Bill under article 117(1) and (3) of the Constitution.

Notes on clauses

Clause 2. This clause defines certain expressions used in the proposed legislation, which, *inter alia*, include the expressions “assets”, “immovable property”, “movable property”, “competent authority”, “incapacity”, “investigation committee”, “inquiry”, “judicial standards”, “liabilities” and “misbehaviour”, etc.

Clause 3. This clause specifies the judicial standards. It provides that every Judge shall continue to practice universally accepted values of judicial life as specified in the Schedule to the proposed legislation. The judicial standards, *inter alia*, include that no Judge shall—(a) contest the election to any office of a club, society or other association or hold such elective office except in a society or association connected with the law or any court; (b) have close association with individual members of the Bar, particularly with those who practice in the same court in which he is a Judge; (c) permit any member of his immediate family (including spouse, son, daughter, son-in-law or daughter-in-law or any other close relative), who is a member of the Bar, to appear before him or associated in any manner with a cause to be dealt with by him; (d) permit any member of his family, who is a member of the Bar, to use the residence in which the Judge actually resides or use other facilities provided to the Judge, for professional work of such member; (e) hear and decide a matter in which a member of his family, or his close relative or a friend is concerned; (f) enter into public debate or express his views in public on political matters or on matters which are pending or are likely to arise for judicial determination by him, etc. It further defines the term “relative” for the purposes of this clause.

Clause 4. This clause makes provision for declaration of assets and liabilities by Judges. It provides that every Judge shall make a declaration of his assets and liabilities in the manner as provided by or under the proposed legislation.

It further provides that a Judge shall, within thirty days, from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries and his liabilities and that of his spouse and his dependent children.

It also provides that every Judge shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as on the 31st March of that year in the form and manner as may be provided in the rules.

Clause 5. This clause provides for making available document or information in relation to a declaration of assets and liabilities of Judges on website. It provides that the competent authority shall exhibit the document or information in relation to a declaration of assets and liabilities of Judges in the case of Judges and Chief Justices of the High Courts, on the website of the High Court in which such Judges and Chief Justice are serving; and in the case of Judges of the Supreme Court and Chief Justice of India, on the website of the Supreme Court.

Clause 6. This clause makes provision for maintenance of records. It provides that the competent authority shall keep the documents or information forms containing the details of the assets and liabilities and other particulars in relation thereto filed by the Judges in its safe custody for such period as may be decided by the Oversight Committee.

Clause 7. This clause makes provisions relating to complaints. It provides that any person making an allegation of misbehaviour or incapacity in respect of a Judge may file a complaint in this regard to the Oversight Committee.

Clause 8. This clause makes provision for manner of making of complaint. It provides that the complaint under clause 7 shall be filed in form and manner as may be provided in the rules made in this behalf. It further provides that the complaints should set forth particulars of the misbehaviour or incapacity which is the subject matter of allegation and 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.

Clause 9. This clause makes provision for reference to Scrutiny Panel. It provides that the Oversight Committee shall refer all such complaints to the appropriate Scrutiny Panel constituted under Chapter V for scrutiny.

Clause 10. This clause provides for the constitution of the Scrutiny Panel. It provides that there shall be constituted a panel to be called “Complaints Scrutiny Panel” in the Supreme Court and in every High Court to scrutinise the complaints against a Judge received under the proposed legislation.

Clause 11. This clause provides for the composition of the Scrutiny Panel. It provides that the Scrutiny Panel in the Supreme Court shall consist of a former Chief Justice of India and two Judges of the Supreme Court to be 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.

Clause 12. This clause specifies the functions of the Scrutiny Panel. It provides that if the Scrutiny Panel, after scrutiny of the complaint referred to it for scrutiny under clause 9, and after making scrutiny of the complaint, as it deems appropriate, is satisfied that there are sufficient grounds for proceeding against the Judge, it shall, after recording reasons therefor, submit a report on its findings to the Oversight Committee for making inquiry against the Judge in accordance with the provisions of this Act; and if the complaint is frivolous or vexatious, or, is not made in good faith, or there are not sufficient grounds for inquiring into the complaint, or the complaint relates only to the merits of the judgment or a procedural order, then, it shall after recording reasons therefor submit a report on its findings to the Oversight Committee for not proceeding with the complaint and treating the matter as closed.

It further provides that the Scrutiny Panel shall submit its report to the Oversight Committee within a maximum period of three months from the date of receipt of the complaint from the Oversight Committee.

Clause 13. This clause provides the procedure of the Scrutiny Panel. It provides that save as otherwise provided in the proposed legislation, the Scrutiny Panel shall have power to regulate its own procedure in scrutinising the complaints.

Clause 14. This clause vests power of civil court in the Scrutiny Panel in respect of scrutinising the complaints forwarded to it which include the powers of summoning and enforcing the attendance of any person from any part of India and examining him on oath; requiring the discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office; and issuing commissions for the examination of witnesses or other documents.

Clause 15. This clause makes provisions for officers and other employees for the Scrutiny Panel. This clause provides that the Chief Justice of India shall determine the nature and categories of the officers and other employees required to assist the Scrutiny Panel in the discharge of its functions and provide the Scrutiny Panel with such officers and other employees as he may think fit.

It further provides that the Chief Justice of the High Court shall determine the nature and categories of the officers and other employees required to assist the Scrutiny Panel in the discharge of its functions and provide the Scrutiny Panel with such officers and other employees as he may think fit.

Clause 16. This clause makes provision regarding frivolous and vexatious complaints. It provides that if the Scrutiny Panel is of the opinion that a complaint was filed frivolously or vexatiously or only with a view to scandalise or intimidate a Judge, it may refer the case to the Oversight Committee for further action.

Clause 17. – This clause provides that the Central Government may, by notification, establish a National Judicial Oversight Committee with effect from such date as it may decide.

Clause 18. – This clause provides for the composition of the Oversight Committee. It provides that the National Judicial Oversight Committee shall consist of a retired Chief Justice of India appointed by the President after ascertaining the view of the Chief Justice of India as its Chairperson; and a Judge of the Supreme Court and the Chief Justice of a High Court, to be nominated by the Chief Justice of India and; the Attorney General for India an, *ex officio* member and an eminent person to be nominated by the President as its Member.

It further provides that where the allegations are against a Judge of the Supreme Court, who is a member of the Oversight Committee, then, the Chief Justice of India shall nominate another Judge of the Supreme Court in his place as a member of that committee and in case where the allegations are against the Chief Justice of a High Court, who is a member of the Oversight Committee, then, the Chief Justice of India shall nominate a Chief Justice of another High Court in his place as member of that committee.

It also provides that after the commencement of the proceedings relating to a complaint against a Judge if any change in the composition of the Oversight Committee arises due to elevation of a member of the Oversight Committee, as the Chief Justice of India or a Judge of a Supreme Court, as the case may be; or if any change arises in the composition of the Oversight Committee due to refusal or retirement or resignation or any other reason, then, the proceedings of the Oversight Committee shall continue from the stage from which it was pending before such change and the Chairperson of the Oversight Committee shall make such incidental changes, as he deems necessary, to continue the proceedings.

Clause 19. – This clause provides for procedure of forwarding of complaint relating to misbehaviour to Scrutiny Panel. It provides that the Oversight Committee shall, within three months of the receipt of a complaint relating to misbehaviour of an individual Judge of the Supreme Court or Chief Justice of a High Court, refer the complaint, to the Scrutiny Panel of the Supreme Court to scrutinise and report thereon; and in the case of complaint of misbehaviour of an individual Judge of a High Court, refer the complaint, to the Scrutiny Panel of the High Court in which such Judge is acting as such, to scrutinise and report thereon.

Clause 20. – This clause makes provision for maintenance of records of complaints forwarded to Scrutiny Panel. It provides that the Oversight Committee shall maintain a record of the complaints referred to the Scrutiny Panel.

Clause 21. – This clause provides that a complaint against the Chief Justice of India shall not be referred to the Scrutiny Panel for scrutiny but shall be scrutinised by the Oversight Committee.

Clause 22. – This clause makes provision for investigation by an investigation committee. It provides that the Oversight Committee constitute an investigation committee to investigate into the complaint in respect of which the Scrutiny Panel has recommended in its report for making inquiry against the Judge in accordance with the provisions of the proposed legislation.

It further provides that the composition and tenure of the investigation committee shall be such as may be decided by the Oversight Committee and different investigation committees may be constituted for inquiry into different complaints.

Clause 23. – This clause vests power of civil court in the Oversight Committee and the investigation committee in respect of investigation of the complaints forwarded to them which include the powers of summoning and enforcing the attendance of any person from any part of India and examining him on oath; requiring the discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof

from any court or office; and issuing commissions for the examination of witnesses or other documents.

Clause 24. This clause empowers the investigation committee with the power of search and seizure. It provides that if it has reason to believe that any documents which, in its opinion, will be useful for, or relevant to, any preliminary investigation or inquiry, are secreted in any place, it may authorise any officer subordinate to it, or any officer of an agency referred to in clause 25, to search for and to seize such documents.

It further provides that the provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this clause 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 "investigation committee or any officer authorised by it" were substituted.

Clause 25. This clause empowers the investigation committee to make a request to the Oversight Committee for providing assistance to it and the Oversight Committee on such request may invoke its powers in this behalf under clause 38 of the proposed legislation.

Clause 26. This clause empowers the investigation committee to proceed *ex parte* if a Judge, to whom notice is issued by the investigation committee referred to in clause 22, refuses to appear before it or does not co-operate with it in conducting investigation.

Clause 27. This clause empowers the investigation committee to cause investigation into any act or conduct of any person after giving such person a reasonable opportunity of being heard and to produce evidence in his defence if it considers necessary so to do for the purpose of its investigation into any allegations made against a Judge.

Clause 28. This clause provides that the investigation committee, after completion of the inquiry in respect of a complaint, shall submit its findings to the Oversight Committee.

Clause 29. This clause lays down the procedure in inquiries by the investigation committee. It provides that the investigation committee shall frame definite charges against the Judge on the basis of which the inquiry is proposed to be held and every such inquiry shall be conducted *in camera*.

It further provides that the charges framed and 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 investigation committee.

It also provides that the investigation committee shall complete the inquiry within a period of six months from the date of receipt of the complaint and the Oversight Committee may after recording the reasons in writing extend the period for completion of the inquiry by a further period of six months.

Clause 30. This clause provides that the investigation committee 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.

Clause 31. This clause provides that if it is requested by the investigation committee, then, the Central Government may appoint an advocate to conduct the cases against the Judge.

Clause 32. This clause makes provision for staff of the Oversight Committee. It provides that the Oversight Committee shall appoint a Secretary and such other officers and employees possessing such qualifications, as the President may determine, from time to time, in consultation with the Oversight Committee.

It further provides that the terms and conditions of service of the Secretary, officers and employees of the Oversight Committee shall be such as the President may determine, from time to time, in consultation with the Oversight Committee. The Secretary, officers and other employees shall be under control and direction of the Oversight Committee.

It also provides that the Oversight Committee shall provide such number of its officers and other employees to assist the investigation committee as the Oversight Committee considers appropriate having regard to the nature of investigation in a case.

Clause 33. This clause empowers the Oversight Committee, if it considers it necessary in the interest of fair and impartial scrutiny of complaints or investigation or inquiry, to recommend stoppage of assigning judicial work including cases assigned to the Judge concerned during the pendency of the inquiry by the investigation committee.

Clause 34. This clause empowers the Oversight Committee to dismiss the complaint or impose minor penalties. It provides that if the Oversight Committee on receipt of the report from the investigation committee is satisfied that no charges have been proved, it shall dismiss the complaint and matter be closed and no further action shall be taken against the Judge and the complainant shall be informed accordingly. It further provides that if all or any of the charges have been proved but the Oversight Committee is of the opinion that the charges proved do not warrant removal of the Judge, it may, by order, issue advisories or warnings.

It further provides that if the Oversight Committee, on receipt of the report from the investigation committee is satisfied that there has been a *prima facie* commission of any offence under any law for the time being in force by a Judge, it may recommend to the Central Government for prosecution of the Judge in accordance with the law for the time being in force.

It also provides that the inquiry or investigation may be continued against the Judge even if such Judge has demitted office, if the Oversight Committee is of the opinion that the misbehaviour is serious in nature and requires to be inquired into or investigated and the Oversight Committee may after conclusion of inquiry forward its findings to the Central Government to take further action in the matter under relevant law for the time being in force.

Clause 35. This clause makes provision for advice to President for removal of Judge. It provides that if the Oversight Committee is satisfied that all or any of the charges of misbehaviour or incapacity of a Judge have been proved and that they are of serious nature warranting his removal, it shall request the Judge to voluntarily resign and if he fails to do so, then advise the President accordingly who shall refer the matter to Parliament.

Clause 36. This clause provides that if the Scrutiny Panel refers a case to the Oversight Committee under clause 16 relating to complaints which was filed frivolously or vexatiously or only with a view to scandalise or intimidate a Judge, the Oversight Committee shall consider the matter and if it concurs with the conclusion of the Scrutiny Panel, it may authorise the filing of a criminal complaint against the original complainant before a competent court.

Clause 37. This clause makes provision to deem all proceedings under the proposed legislation to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, and the Oversight 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.

Clause 38. This clause empowers the Oversight Committee to take assistance of such officers of the Central Government or State Government or any agency thereof or authority as it deems fit.

Clause 39. This clause makes provision as regard to confidentiality in complaint procedure. It provides that notwithstanding anything contained in any other law for the time being in force, the complainant and every person who participates in the scrutiny or investigation or inquiry as a witness or as a legal practitioner or in any other capacity,

whether or not he seeks confidentiality about his name, shall undertake to the Oversight Committee or Scrutiny Panel or investigation committee that he shall not reveal his 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 Oversight Committee.

Clause 40. This clause provides for keeping identity of complainant confidential. It provides that the Oversight Committee or the Scrutiny Panel or investigation committee may, at the request of a complainant, direct that the complainant be accorded such protection, as it deems appropriate, including keeping his identity confidential, from every body and also the Judge against whom the complaint is made.

Clause 41. This clause provides that after the commencement of scrutiny of complaint no action for contempt of court shall lie or shall be proceeded with in respect of the allegations, which are the subject matter of the investigation or inquiry.

Clause 42. This clause provides that any scrutiny, investigation or inquiry pending before the Scrutiny Panel or investigation committee or Oversight Committee shall not affect the criminal liability in respect of such allegations which are the subject matter of the investigation or inquiry.

Clause 43. This clause make overriding provision with reference to confidentiality of informations. It provides that notwithstanding anything contained in the Right to Information Act, 2005 or any other law for the time being in force, all papers, documents 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 Oversight Committee. However, the findings of the investigation committee and the orders passed by the Oversight Committee under clause (b) of sub-clause (1) of clause 34 relating to action taken on receipt of the report from the investigation committee shall be made public.

Clause 44. This clause provides for protection of action taken in good faith. It provides that no suit, prosecution or other legal proceeding shall lie against the Chairperson or any member of the Oversight Committee, Scrutiny Panel, investigation committee or against any officer or employee, agency or person engaged by such committees or panel for the purpose of conducting scrutiny or investigation or inquiry in respect of anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Clause 45. This clause provides for laying of advice of Oversight Committee before Parliament. It provides that the President, on receipt of advice under clause 35, shall cause the findings of the Oversight Committee along with the accompanying materials to be laid before both the Houses of Parliament.

Clause 46. This clause provides for motion for removal of a Judge. It provides that on laying of the advice of the Oversight Committee along with the accompanying material, the Central Government may move a motion in either House of Parliament for taking up the said advice for consideration by the House.

Clause 47. This clause makes provision of investigation into misbehaviour or incapacity of Judge by investigation committee for removal of Judges. It provides that if notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed in the case of a notice given in the House of the People, by not less than one hundred members of that House; and in the case of a notice given in the Council of States, by not less than fifty members of that Council, then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, 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.

It further provides that if the motion is admitted, the Speaker or, as the case may be, the Chairman shall keep the motion pending and the matter shall be referred to the Oversight Committee for constitution of an investigation committee under clause 22 and thereafter the

Oversight Committee shall constitute an investigation committee which shall conduct an inquiry in accordance with the provisions contained in Chapter VI and submit its report to the Oversight Committee for being submitted to the Speaker or Chairman, as the case may be, for consideration.

It also provides that where it is alleged that a Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the investigation committee may arrange for the medical examination of the Judge by such Medical Board to be appointed for the purpose by the Speaker or, as the case may be, the Chairman and the Medical Board shall undertake medical examination of the Judge and submit a report to the investigation committee stating therein whether the incapacity is such as to render the Judge unfit to continue in office.

It also provides that if the Judge refuses to undergo medical examination, the Medical Board shall submit a report to the investigation committee stating therein the examination which the Judge has refused to undergo, and the investigation committee may, on receipt of such report, presume that the Judge suffers from such physical or mental incapacity as is alleged in the motion.

Clause 48. This clause makes provision for consideration of report and procedure for presentation of an address for removal of Judge. It provides that if the report of the investigation committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, 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. It further provides that if the report of the investigation committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in clause 46 shall together with the report of the investigation committee, be taken up for consideration by the House or the Houses of Parliament in which it is pending.

It further provides that if the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124 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 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.

Clause 49. This clause empowers the Joint Committee to make rules. It provides that a Joint Committee of both Houses of Parliament shall be constituted in accordance with the provisions hereinafter contained for the purpose of making rules to carry out the purposes of this Chapter. It further provides that 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 and the Joint Committee shall elect its own Chairman and shall have power to regulate its own procedure.

It also specifies the matter for which the Joint Committee may make rules. It also provides that any rule made under this clause 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.

Clause 50. This clause provides punishment for intentional insult or interruption to the Oversight Committee. It provides that whoever intentionally insults, or causes any interruption, to the Scrutiny Panel or investigation committee or Oversight Committee while the Oversight Committee or Scrutiny Panel or investigation committee or any of their members is doing scrutiny or conducting any investigation or inquiry under the proposed legislation, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

It further provides that the provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973 shall apply in relation to an offence under this clause 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 Oversight Committee.

Clause 51. This clause provides for penalty for violation of confidentiality in complaint procedure. It provides that if any complainant or other person, who participates in the scrutiny or investigation or inquiry as a witness or as a legal practitioner or in any other capacity, contravenes the provisions of clause 39 or clause 40 or clause 43, shall be liable for punishment 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.

Clause 52. This clause makes provision relating to power of the Oversight Committee to try certain cases. It provides that when any offence as is described in sub-clause (1) of clause 50 is committed, in the view, or, in the presence, of the Oversight Committee, then said Oversight Committee, 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, try such offender summarily 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.

Clause 53. This clause provides for punishment for false and vexatious complaints. It provides that any person who makes a complaint which is found to be frivolous or vexatious or made with an intent to scandalise or intimidate the Judge against whom such complaint is filed, shall be punishable with rigorous imprisonment for a term which may extend to five years and also to fine which may extend to five lakh rupees.

It further provides that the provisions of this clause shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

Clause 54. This clause contains provisions relating to offences by companies. It provides that where any offence under the proposed legislation has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. It further provides that if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, he shall not be liable to any punishment provided in the proposed legislation.

It also provides that where any offence has been committed by company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Clause 55. This clause contains provision relating to offences by societies or trusts. It provides that where an offence under the proposed legislation is committed by a society or trust, every person who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. It further provides that if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, then, such person shall not be liable to any punishment provided in the proposed legislation.

It also provides that where any offence under the proposed legislation is committed by a society or trust and it is proved that the offence has been committed with the consent or

connivance of, or is attributable to, any neglect on the part of any director, manager, secretary, trustee or other officer of the society or trust, such director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Clause 56.— This clause provides for appeal to Supreme Court. It provides that any person convicted on a trial held under sub-clause (1) of clause 53 may appeal to the Supreme Court within a period of sixty days from the date of order of such conviction.

Clause 57.— This clause empowers the Central Government to make rules, in consultation with the Chief Justice of India, by notification in the Official Gazette, for carrying out the provisions of the proposed legislation (other than provisions contained under Chapter VII). It further specifies the matters for which the Central Government may make rules. It also provides that every rule made by the Central Government shall be laid before each House of Parliament.

Clause 58.— This clause makes provisions for removal of difficulties. It provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may, after consultation with the Chief Justice of India, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of the proposed legislation as may appear to it to be necessary for removing the difficulty. It further provides that such order shall be made within a period of two years from the commencement of the proposed legislation. It also provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 59.— This clause provides for repeal of the Judges (Inquiry) Act, 1968. It further provides that notwithstanding the repeal of the Judges (Inquiry) Act, 1968, the rules made by the Joint Committee under section 7 of the repealed Act shall continue to be in force until rules are framed under section 49 of the proposed legislation. It also provides that notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the proposed legislation. It also provides that the matters mentioned in sub-clauses (2) and (3) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

Schedule appended to the proposed legislation specifies the Judicial Standards to be practised by all Judges.

FINANCIAL MEMORANDUM

Clause 17 of the Bill provides for establishment of National Judicial Oversight Committee comprising of a retired Chief Justice of India as the Chairperson, a Judge of the Supreme Court and the Chief Justice of a High Court to be nominated by the Chief Justice of India and the Attorney-General for India and an eminent person to be nominated by the President as members.

Clause 31 of the Bill empowers the Central Government, if requested by the investigation committee, to appoint an advocate to conduct the cases against the Judge.

Clause 32 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 Oversight Committee.

The expenditure on account of the aforesaid provisions would be negligible. At this stage, it is not practicable to make an estimate of expenditure likely to be involved in the financial year 2010-2011, both recurring and non-recurring. However, the expenditure would be met from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 57 of the Bill empowers the Central Government to make rules, in consultation with the Chief Justice of India, to carry out the provisions of the proposed legislation.

2. Sub-clause (2) of clause 57 specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include: (i) the form in which the information relating to assets and liabilities is to be furnished by Judges and the form for filing annual return by Judges regarding their assets and liabilities, (ii) the form and manner in which a complaint is to be filed, (iii) other matters in respect of which the Scrutiny Panel and the Oversight Committee shall have powers of a civil court, and (iv) any other matter which is required to be or may be prescribed for the purposes of the proposed legislation.

3. The rules made by the Central Government are to be laid before each House of Parliament.

4. The matters in respect of which rules may be made in accordance with the aforesaid provisions of the Bill are matters of procedure and detail 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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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.

(Shri M. Veerappa Moily, Minister of Law and Justice.)