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## "A OVERVIEW OF JUDICIAL STANDARDS & ACCOUNTABILITY BILL 2012"

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### ABSTRACT:

*The Bill states, "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 proceedings for removal of a Judge and for matters connected therewith or incidental thereto." The Judicial Standards and Accountability Bill passed due to dissolution of the 15<sup>th</sup>Lok Sabha in 2014. A consultation was organized by "National Campaign for Peoples' Right to Information (NCPRI), Media Information and Communication Centre of India, Inclusive Media for Change, Commonwealth Human Rights Initiative and the Accountability Initiative" to discuss the pros and cons of the Bill. The following shortcomings were found which are discussed in this paper.*



**KEYWORDS:** judiciary, federal, Separation of powers, Accountability.

### INTRODUCTION:

The focus of the legislation was strictly on judicial ethics and misconduct. It set up a robust system for dealing with complaints from the public about the misconduct or incompetence of judges. It has systems in place to take action against a judge who has been found guilty of misconduct following an inquiry. Furthermore, it made it essential for Judges to disclose their private assets and liabilities. Indian Chief Justice, Law Minister, and eminent legislators and civil society representatives make up the Oversight Committee. The Oversight Committee might then devise its own rules for establishing a state-level equivalent of the federal government's various committees. Section 18 of the Bill predicts a panel of five members of Oversight Committee to scrutinize complaint against a Judge along with the Government, suggesting jurist and eminent members would be a part of the Committee. Section 9 to 16 needs deletion as bill deals with "Complaints Scrutiny Panel" along with Oversight Committee. Also, the Complaints Scrutiny Panel formed at the higher courts comprising of Judges to do preliminary investigation would not be able to function properly.

Complaints are made against Judges which are mostly frivolous. But investigating and reporting such complaints would be an immature act against a Judge.

An in-house camera is required to record proceedings, and a clause of the Bill prohibits the release of complaints materials. The Oversight Committee would be forced to spend far too much time on this issue, at least on the surface. According to the report of the World Bank, the courts in India are

extremely inefficient with an independent judiciary. A functioning judiciary ensures fair and powerful justice against corruption. Courts have millions of cases pending which will take years to clear. There is a shortfall of judicial staff which, the government accepts. Politics, according to the public law, does not adequately explain India's judicial power. Protecting judicial independence, combating corruption, increasing accountability, and improving environmental and human rights protections are just a few of the steps taken by the court to implement good governance. With this new ability to assess the conduct of both federal and state governments, oversight has been greatly broadened. PIL filings have skyrocketed in recent years, to the consternation of the courts. Baxi found that as the court became more visible, more people demanded responsibility for the way it exercised its authority, which fueled the growth of judicial populism.

### 1. Important key points of Bill :

- a. No judge shall run for any office, position, or other position in any club, society, or other organization, save in those groups that are directly related to the practice of law or the court.
- b. There should be no close relationship between judges and members of the bar, particularly in a court where they are judges.
- c. Judges could not allow any member of the family who is a member of the bar to appear in a case that was to be handled by him.
- d. No judge should be involved in a case concerning his own family members.
- e. No judge should allow a member of his family who is a member of the bar to live in his house and utilize the facilities supplied by the Judge.
- f. When a case is being litigated, a judge is not permitted to engage in political discussion or remark on the political problems at hand.

### 2. Declaration of Assets and Liabilities by Judges :

- Every Judge should declare their assets and liabilities as mentioned in the Act.
- A Judge should declare within 30 days counting from the day he takes oath and takes charge of the office furnish the information relating to:
  - His assets of spouse and children and his beneficiaries
- A sitting Judge should submit all the declaration of his assets and liabilities to the authority within 30 days after coming into force.
- In order for a judge to be eligible to serve, he or she must submit an annual financial statement by July 31 of each year..
- The information has to be furnished in the prescribed manner
- The authority keeps the records of the assets and liabilities and other things filed by the Judges.
- The court's authority displays the judges' assets and liabilities on the internet.:
- It may be found on the High Court website where the Judges operate.
- In the website of Supreme Court for the Judge serving there
- The authority keeps the document of Judges for the period as mentioned by the Oversight Committee. (The Judges (Declaration of assets and liabilities) Bill, 2009)

### Complaint filling :

- Any person making charges of incapacity or misbehavior on the Judge files a complaint to Oversight Committee.
- The complaints are:
  - I. Filed in the prescribed manner
  - II. Set forth the misbehavior or incapacity which is the main matter
  - III. Verify at the foot of the plaintiff and specify in detail
- The Oversight Committee will scrutinize the matter with Scrutiny Panel.(The Judges (Declaration of assets and liabilities) Bill, 2009)

**SECURITY PANEL :**

- The scrutiny panel also called as "Complaints Scrutiny Panel" are placed in higher Courts to scrutinize the complaints received against a Judge.
- The Supreme Court's Scrutiny Panel includes a former Chief Justice of India and two additional senior Judges.
- the Scrutiny panel in every High Court consist of chief Justice of High Court and other two Judges.
- The Scrutiny Panel, after scrutinizing of the complaint, if satisfied:
- There are sufficient grounds against the Judge and submit a report to the Oversight Committee to make proper inquiry against the Judge
- A report is sent to the Oversight Committee if the complaint is frivolous or vexatious and is not made in good faith, or if the complaints relate to the merit of the judgement.
- The scrutiny of complaints is conducted under the camera.
- The Scrutiny Panel submits a report, to the Oversight Committee within three months.
- The Scrutiny Panel have power to scrutinize the complaints.
- The Scrutiny Panel analyzes the complaints and has civil court jurisdiction for a trial conducted in accordance with the Code of Civil Procedure, 1908 on the following issues::
  - Inquiring into a person's and whereabouts questioning him under oath;
  - Requiring the presentation of any document
  - Receive proof on affidavits
  - Requesting public record from court
  - Consenting to the appointment of an investigatory commission
  - Or any other matter prescribed
- The Chief Justice of India categorize the officers to assist the Scrutiny Panel and discharge the functions
- Judges (Declaration of assets and liabilities) Bill, 2009: If the Scrutiny panel determines that the complaint was frivolous or vexatious and not filed in good faith in an attempt to scandalise the judge, the case is sent to the Oversight Committee.

**3. NATIONAL JUDICIAL OVERSIGHT COMMITTEE**

- A National Judicial Oversight Committee is established by the Central Government..
- The Committee consist of:
  - I. Retired Chief Justice of India as Chairperson
  - II. A Supreme Court Judge selected by CJI as member
  - III. The Chief Justice of High Court as member
  - IV. The Attorney-General for India as "ex-officio" Member
  - V. A senior person selected by the President as member.

**• Provided that:**

- I. Those bringing charges against a Supreme Court Justice who also serves as a member of the Oversight Committee must choose another Judge from the panel and appoint him to take his place.
- II. The Chief Justice of a High Court, who is a member of the Oversight Committee, has been changed by another Chief Justice of a High Court by the CJI.

There are no major changes to the Oversight Committee's proceedings as they continue from where they left off..

- Within three months after receiving a complaint, the Oversight Committee will investigate any alleged misconduct by:
  - I. refers the complaint to the Scrutiny Panel for consideration by a Supreme Court or High Court judge;
  - II. a Judge of a High Court, refer the complaint, to the Scrutiny Panel where he is serving as a Judge, to

scrutinize the matter and report

- The Oversight Committee maintains record of the complaints referred to scrutiny Panel.
- Instead of the Scrutiny Panel, the Oversight Committee investigates a complaint against the Chief Justice of India. (The Judges (Declaration of assets and liabilities) Bill, 2009)

#### 4. Constitution of investigation committee: its power and functions

- The Oversight Committee establishes an investigation committee to investigate the Scrutiny panel's complaints against the Judge.
- Oversight Committee decides the composition and tenure of the investigating committee.
- If the number of investigating committee are more than the Oversight committee employ different investigating committee for different complaints
- The Oversight Committee and the investigation committee have all the powers of a civil court for trials under the Code of Civil Procedure, 1908 have the following matters:
  - a. Enforcing anyone from anywhere in India and examining under oath
  - b. Requiring the presentation of any document
  - c. Receive proof on affidavits
  - d. Requesting public record from court
  - e. Issuing commission to investigate witness or documents
- Committee members feel that if an authorised official were to look for the document, they could find it.
- Original papers will be retained by the investigating committee until the inquiry is complete if it is satisfied that the seized documents represent evidence for the investigation.
- The phrases "investigation committee or any official authorised by it" have been substituted for "magistrate" in the Code of Criminal Procedure, 1973.
- The investigation committee requests the Oversight Committee for assistance where Oversight Committee invoke its powers.
- If a Judge, refuses to appear before the investigation committee and does not cooperate with investigation, the investigation committee proceeds as "ex parte."
- People other than the judge are given the chance to provide evidence in their defence to the inquiry committee, which investigates their actions and conduct.
- The investigation committee after the completion of the inquiry submits its report to the Oversight Committee. (The Judges (Declaration of assets and liabilities) Bill, 2009)

#### 6. INQUIRY PROCEDURE FOR INVESTIGATING COMMITTEE:

- (1) The Committee drafts charges against the Judge who will be the subject of an investigation.
- (2) The inquiry is conducted under camera by the investigation committee
- (3) Charges outlined in the statement of grounds are delivered to the judge, who has a limited amount of time to submit a "written statement of defence."
- (4) The investigation committee completes the inquiry within a period of six months  
The inquiry might be extended by another six months if the Committee for Recording Oversight can do so.

As part of its investigation, the investigation committee has authority over its procedures and allows the judge to cross-examine witnesses and present evidence.

- It's the duty of the federal government to take on the judge's legal defence. (The Judges (Declaration of assets and liabilities) Bill, 2009)

## CONCLUSION

Honorable Mr. Justice S. H. Kapadia, chief justice of India said, "When we talk about ethics, the judges normally comment upon ethics among politicians, students and professors and others. But I would say that for judge too, ethics, not only constitutional morality but even ethical morality, should be the base "

"These days we (judges) are telling everyone what they should do but who is to tell us? We have talk of enforcing the rule of law, but does not exempt and even exonerate us from following it.

### Code of Ethics of a Judge

**Judicial decision to be honest:** the judge's life is full of public confidence in their role in society ;the judicial decision is to be honest and fair. No judicial decision is honest unless it is decided in response to an honest opinion formed in the matrix of the judge 's proficient of law and fact. Nevertheless the perception of a judge may be wrong. But a wrong decision honestly made does not make that decision dishonest. A decision becomes dishonest if not decided on judicial conviction of fairness, honest and neutrality.

**No man can be judge in his own cause:** The principle not applies only to the cause where the judge is an actual party to a case, but also applies to a case in which he has interest. A judge should not adjudicate in a case if he has got interest therein. Judges must remain impartial and should be also known by all people to be impartial.

**Administer Justice:** Judges must not fear to administer justice. "*flat justitia, ruat caelum*" That is "let justice be done though heaven fall" should be followed as motto by a judge.

**Equal opportunity:** Parties to the dispute be treated equally and accordance with the principles of law and equity. A judge does not belong to any person or section or division or group. A judge should not have any concern with personalities who are parties to the case but only with merits. "it is essential to the proper administration of justice that every party should have equal opportunity of being heard, so that he may put forward his own views and support them by argument and answer the views put forward by his opponents".<sup>42</sup>

**Maintenance of distance from relatives:** Since judging is not a profession but a way of life, the judge must keep distance himself from the parties to the dispute and their lawyers during the conduct of trial. Now a days the growth of a new caste in legal profession who thrive not by intellectuals or professional capabilities but by utilizing their close connection with the judges. The growth of this suspicious trend can be checked if practicing lawyers and sitting judges avoid meeting frequently in private.

**Too much of activity and participation in social functions be avoided:** The Supreme Court in *Rampratap Sharma Vs. Dayanand* issued a note of caution to the effect that it is proper for a judge not to accept any invitation and hospitality of any business or commercial organization or of any political party or of any club or organization.