THE ORIGIN AND SOURCES OF THE JUDICIAL STANDARDS AND ACCOUNTABILITY BILL, 2010

Aditi S. Varghese and Albin G. Thomas*

ABSTRACT

In the wake of a perceptible increase in the number of allegations raised against judges of the higher judiciary, there have been efforts to overhaul the mechanism by which judges are monitored. The most recent of these is the Judicial Standards and Accountability Bill, 2010 which was introduced in the Lok Sabha on 1st December 2010, by M. Veerappa Moily.

The Constituent Assembly limited the power of the legislature to regulate the procedure for removal of a judge under Article 124(5). The current Judges (Inquiry) Act, 1968 reflects that. The Bill intends to repeal the existing Act which lays down the procedure by which judges of the higher judiciary may be removed, and replace that mechanism with a less cumbersome one. In the years since Independence, the process for impeaching a judge has only been invoked once. The impeachment motion against Justice Ramaswami did not receive the required

*Aditi S. Varghese and Albin G. Thomas are fifth-year students at the National Law Institute University, Bhopal. The authors may be reached at aditi.verghese@gmail.com and albin.georgethomas@gmail.com.

majority in the Lok Sabha as the Congress decided to abstain from voting.

Aside from laying down a procedure for the removal of a judge, the Bill makes it mandatory for judges to declare their assets and liabilities. It also lays down legally binding judicial standards.

This paper deals with the theoretical debate between judicial independence and judicial accountability and its applicability in the current situation. It examines the different aspects covered by the Judicial Standards and Accountability Bill and the sources from which they are derived. Understanding the contexts in which the various parts of the Bill were formulated will help shed light on the shape it has taken today and the way in which it will be implemented.

I. INTRODUCTION

The Indian Judiciary has been facing much condemnation, with a number of corruption charges being levied against its judges. The impeachment of Justice Soumitra Sen of the Calcutta High Court and Chief Justice P.D Dinakaran of the Sikkim High Court, accused of corruption during his tenure at the Karnataka High Court, are at various stages. There is a Rs. 23 crore Provident Fund scam in which a retired Supreme Court judge, several sitting and former judges of the Allahabad High Court, as well as those of the subordinate

judiciary are allegedly involved.[1] The key accused turned approver, who was providing links to the investigating authority, died under mysterious circumstances in jail. In an unrelated order given by the Supreme Court on 26th November 2010,[2] Justice MarkandeyKatju and Justice Gyan Sudha Mishra observed that it can be said "that something is rotten in the Allahabad High Court, as this case illustrates".[3]

Consequently, there has been felt a need to bring in legislation to impose a certain standard of accountability on judges. In an attempt to fulfil this need, the Judicial Standards and Accountability Bill, 2010 ("the Bill") was introduced in the Lok Sabha on 1st December 2010, by M. Veerappa Moily, then Minister for Law and Justice.

The Bill purports to be enacted under Article 124(5) of the Constitution, which is reproduced below along with clause (4):

"(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4)."

[1]V. Eshwar Anand, *Corruption in Judiciary: Time for Action*, December 3, 2010, available at http://www.tribuneindia.com/2010/20101203/edit.htm#6 (last visited July 15, 2011).
[2]Raja Khan v. U.P. Sunni Central Waqf Board and Anr.((SC Suppl) 2011 (1) CHN 206: 111 (2011) CLT 522: 2011 (I) OLR (SC) 552: 2011 112 RD 438).
[3](SC Suppl) 2011 (1) CHN 206, 206.

Dr. M.R. Madhavan, a member of the team at PRS Legislative Research,[4] explained the structure of the Bill and the origin of its constituent parts in the following words:

"There are three parts to the Bill - firstly, judges need to declare their assets and liabilities, secondly, it defines certain standards for judges, and thirdly, it provides a process for the removal of judges from office. The third part was provided in a *draft Bill (the Judges Inquiry Bill, 2006) that lapsed, and this Bill has similar provisions with some changes. The first part arose out of a particular Right to Information case and the judgment of the Delhi High Court. The second part, the standards, exists as part of a Supreme Court resolution."*[5]

This paper attempts to look into the propriety of the enactment of the Bill under Article 124(5) of the Constitution and to also cover the draft Judges Inquiry Bill, judgements and Supreme Court resolution that shaped the provisions of the Bill.

II. THE STRUCTURE OF THE JUDICIAL STANDARDS AND ACCOUNTABILITY BILL, 2010

The Bill was formulated with an objective to lay down judicial standards, to establish a 'credible and expedient mechanism' to look into complaints against judges of the higher judiciary and to regulate the presentation of an address by Parliament to the President for the removal of a judge. The term 'judicial standards', used here, refers to

[4]PRS Legislative Research is an independent research initiative which works with Members of Parliament to produce legislative and policy research. It is one of the only bodies that tracks new Bills and the working of the Parliament.

[5]MyLaw, *The Judicial Standards and Accountability Bill*, February 26 2011, available at http://www.mylaw.net/Article/The_Judicial_Standards_and_Accountability_Bill/ (last visited June 15, 2011).

those values expounded in Section 3 and in the Schedule to the Bill[6] and will be discussed in further detail in one of the following sections. The term 'misbehaviour' is explained definitively in the Bill and includes 'the wilful breach of judicial standards'[7], while the term 'incapacity' is defined to mean permanent physical or mental incapacity.[8]

The Bill first clarifies the meaning and scope of the term judicial standards under Section 3, read with the Schedule. Chapter III deals with the declaration of assets and liabilities of judges. The Bill then goes on to describe the process by which a complaint may be made against a judge on the grounds of misbehaviour or incapacity and the manner in which such a complaint is dealt with by the Oversight Committee, the Scrutiny Panel, and the investigation committee. The Oversight Committee is composed of a retired Chief Justice of India, a judge of the Supreme Court, the Chief Justice of a High Court, the Attorney General of India and an eminent person nominated by the President.

It is provided that the Oversight Committee shall, if it believes there is proof of misbehaviour or incapacity that warrants the removal of the judge, advise the President that the former be removed and the President makes the reference to the Parliament. Chapter VII lays down the procedure for presenting an address for the removal of a judge. Where the Oversight Committee finds that the alleged misbehaviour is sufficiently proved but does not warrant the removal of the judge, it may issue advisories and warnings. Finally, Chapter VIII deals with offences and penalties and aims to prevent interference in the working of the Oversight Committee, keep complaints confidential, and deter frivolous or vexatious complaints.

[6]Judicial Standards and Accountability Bill (2010), Section 2(h).
[7]Judicial Standards and Accountability Bill (2010), Section 2(j).
[8]Judicial Standards and Accountability Bill (2010), Section 2(d).

III. THE BILL AND ARTICLE 124(5) OF THE CONSTITUTION

The first question raised in this article is the propriety of the enactment under Article 124(5) of the Constitution. In order to answer this question, the scope of the bill must be studied alongside the scope of the power allowed to the Legislature under the relevant constitutional provision.

Article 124 of the Indian Constitution establishes the Supreme Court of India and makes provision for the appointment and removal of Supreme Court judges. Clause (4) lays down that a judge of the Supreme Court can only be removed by impeachment in Parliament, and how impeachment occurs.

For the impeachment of a judge of the Supreme Court or a High Court, the following must be fulfilled. There must be an address by each House of Parliament for the removal of the judge on proof of misbehaviour or incapacity. The address by each House must be 'supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting'.[9] The address must be made to the President in the same session. Article 217 deals with the appointment and sets out the conditions of office of a High Court judge. Proviso (b) to clause (1) states that 'a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court'.

Clause (5) of Article 124 empowers Parliament to regulate by law, (a) 'the procedure for the presentation of an address' and (b) the procedure 'for the investigation and proof of the misbehaviour or

[9]Constitution of India, Article 124(4).

incapacity' of the judge of the Supreme Court. Hence, these are the only two aspects of the process of removal that can be legislated upon. At the same time, the Supreme Court, in *Sub-Committee on Judicial Accountability* v. *Union of India and Ors.*, stated:

"[T]he policy appears to be that the entire stage up to proof of misbehaviour or incapacity, beginning with the initiation of investigation on the allegation being made, is governed by the law enacted under Article 124(5) and in view of the restriction provided in Article 121, that machinery has to be outside the Parliament and not within it and the Parliament comes in the picture only when a finding is reached by that machinery that the alleged misbehaviour or incapacity has been proved."[10]

At present, the laws enacted under this clause are the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969. In 2005, the government formulated the Judicial (Inquiry) Bill and, following the submission of a report by the Law Commission, revised it as the Judicial (Inquiry) Bill, 2006. The revised Bill adopted almost all the suggestions made by the Law Commission.[11] It sought to repeal the 1969 Act and lay down an entirely new procedure for removal. However, the Bill lapsed.

The present Judicial Standards and Accountability Bill borrows much from the 2006 Bill with regard to the removal of judges. However, it goes beyond what is specified in Article 124(5) and indeed, the 2006 Bill itself, in the sense that it also lays down judicial standards and the disclosures that judges have to make. Bearing in mind that Article

[10]1991 (4) SCC 699, 744.

[11]PRS legislative Research, *Legislative Brief – The Judicial Standards and Accountability Bill, 2010*, 2011, available at http://www.prsindia.org/uploads/media/Judicial%20Standard/Final%20Brief%20for%20printing%20-%20Judicial%20Standards%20and%20Accountability%20Bill%202010.pdf (last visited June 15, 2011).

124(5) only allows Parliament to legislate upon the *procedure* to be followed in *two* aspects of the process of impeachment, it may be stated that the framers of the Constitution sought to limit the scope of legislation on this aspect.

IV. DECLARATION OF ASSETS AND LIABILITIES

On 7th May 1997, in a Full Court Meeting of the Supreme Court, it was resolved that every judge would make full disclosure of his assets in the form of real estate or investments. This resolution, however, had no binding effect legally. The Bill, under Chapter III, requires judges to declare their assets and liabilities. This particular aspect of the Bill arose out of a particular Right to Information case[12] and a subsequent judgement of the Delhi High Court.[13] Both the Chief Information Commission ("CIC") order and the Delhi High Court judgement upheld the contention that judges must disclose their assets. On 3rd August 2009, Judges (Declaration of Assets and Liabilities) Bill, 2009 was introduced in the Rajya Sabha, seeking to render such information confidential. The Bill failed, however, and attracted much controversy. The following paragraphs will summarise the key issues involved in the Delhi High Court case.

The applicant on 11th November 2007 made two requests under the Right to Information Act. The first request was to be furnished a copy of the 1997 resolution which required every judge of the Supreme Court and the High Court to declare his or her assets. The second request was for information with respect to the compliance of the said resolution. The Central Public Information Office ("CPIO"), Supreme Court, in response, informed the applicant that a copy of the

[12]Appeal No. CIC/WB/A/2008/00426.
[13]The CPIO, Supreme Court of India v. Subhash Chandra Agrawal and Anr.2009 SCC OnLine Del 2714.

resolution would be provided but the information with respect to the declaration of assets and liabilities of Judges was not held by the Registrar of the Supreme Court and, hence, could not be furnished.[14]

The applicant filed an appeal in which the appellate authority remanded the matter back to the CPIO and observed that the CPIO should disclose the name of the authority holding the information sought and that the information must be disclosed under Section 6(3)[15] of the Right to Information Act.[16] The CPIO rejected the application afresh and requested the applicant to individually apply to designated authorities of the respective High Courts to obtain information regarding declaration of assets by judges.

The applicant then appealed to the CIC. The order passed by the CIC reasoned that since the Supreme Court had been established under the Constitution of India, it was a public authority within the meaning of Section 2(h)[17] of the Right to Information Act. Further, it observed that the Chief Justice of India was a competent authority under

[14]Avijit Mani Tripathi, *Acknowledging Accountability? A comment on Secretary General Supreme Court of India v. Subhash C. Agarwa*l, 189-197 ILI LAW REVIEW (2010).

[15]Section 6(3) states, "Where an application is made to a public authority requesting for an information -
(i) which is held by another public authority; or
(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer."

[16]The CPIO, Supreme Court of India v. Subhash Chandra Agrawal and Anr.2009 SCC OnLine Del 2714.

[17]Section 2(h) states, "'public authority' means any authority or body or institution of self-government established or constituted -
(a) by or under the Constitution;
(b) by any other law made by Parliament;
(c) by any other law made by State Legislature;
(d) by notification issued or order made by the appropriate Government."

Section 2(e)(ii)[18] of the Act and was empowered to frame rules under Section 28(1)[19] to carry out the provisions of the Act.

On 17th January 2009, the Supreme Court moved the Delhi High Court against the order passed by the Chief Information Commission. The following paragraphs summarise the key issues framed by the High Court and its decision.

The first and second issues dealt with whether the Chief Justice of India ("CJI") was a public authority and whether the CPIO of the Supreme Court of India was different from the office of the CJI and if so, whether the Act covered the office of the CJI**.** The Court held that both the CJI and the office of the CJI would fall within the ambit of "public authority" under the Right to Information Act.

The third issue examined whether asset declaration by Supreme Court judges, pursuant to the 1997 Resolution is "information" under the Right to Information Act, 2005. The Court answered this question too in the affirmative, and decided that the declaration of assets by Supreme Court judges would fall within the meaning of the expression "information" under Section 2(f) of the Act. It went on to hold that the Resolution was meant to be adhered to and so had binding effect.

Having held such asset declarations to be "information", the Court then looked into whether the CJI held them in fiduciary capacity. It was contended that since the Resolution itself called for confidentiality, the CJI held the information in fiduciary capacity. The High Court rejected this argument of the Supreme Court and decided that there existed no such fiduciary relationship. Section 22 of the Act gives it overriding effect over other Acts, such as the Official Secrets

[18]Section 2(e)(ii) states, "'competent authority' means... the Chief Justice of India in the case of the Supreme Court".
[19]Section 28(1) states, "The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act."

Act, and so, the fact that the Resolution provides for confidentiality is of no consequence. Further, there can be no fiduciary relationship as the office of a judge is separate and independent and not inferior to that of the CJI. Hence, an order directing disclosure of the information to the public would not result in the breach of a fiduciary duty.

The fifth question to be examined was whether such information was exempt from disclosure on the ground of Section 8(1)(j)[20] of the Act. The Section elucidates the concept of "personal information" which need not be disclosed unless the CPIO is satisfied that a larger public interest justifies such disclosure. However, the High Court in this case held that the requirements under this Section were inapplicable to the information therein.

The final issue was whether the lack of clarity about the details of asset declaration, as well as the lack of security, rendered asset declarations and their disclosure unworkable. The Court held that such issues were frivolous and the CJI, if he deemed appropriate, could, in consensus with the other Supreme Court Judges, develop a mechanism by which such declarations could be made. The Court made a reference to the United States Judicial Disclosure Responsibility Act, 2007 which had evolved a method for the protection of personal information which might endanger the family member of the judge. It observed that the CJI could also devise such a model if the need arose.

In this judgement, the Court justified the need for the judiciary itself to set high standards of judicial conduct for itself by stating that in

[20]Section 8(1)(j) states, "Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information".

failing to do so it would encourage interference by the Parliament on account of public opinion or political necessity.

In *Central Public Information Officer, Supreme Court of India* v. *Subhash Chandra Agrawal*,[21] a Division Bench of the Supreme Court held that the questions regarding whether the information sought in the original RTI application would interfere with the proper functioning of the judiciary and whether such information was exempted under Section 8(1)(j) of the Right to Information Act were questions requiring the interpretation of the Constitution by a larger bench. It would seem, however, that the current Bill proceeds on the presumption that the Delhi High Court has laid down the correct interpretation of the law.

V. JUDICIAL STANDARDS

In a Full Court meeting on 7th May, 1997, the judges of the Supreme Court adopted a charter titled "The Restatement of Values of Judicial Life". Though not an exhaustive or binding document, it was meant to serve as a guide to judicial conduct. The very term 'restatement' was meant to suggest that these standards and values were pre-existing and universally accepted. On 3rd and 4th December, 1999, a conference of Chief Justices of all High Courts was held, during which it was resolved to adopt the Restatement as a code of conduct illustrative of what was expected of a judge of the higher judiciary.[22]

The Statement of Objects and Reasons of the Bill includes as an objective, the incorporation of these judicial standards in a binding

[21]2010(12) SCALE 496.

[22]Law Resource India, *Restatement of Values of Judicial Life, 2010*, available at http://indialawyers.wordpress.com/2009/09/02/%E2%80%9Crestatement-of-values-of-judicial-life-code-of-conduct-adopted-in-the-chief-justices%E2%80%99-conference-in-december-1999/ (last visited July 10, 2011).

piece of legislation.[23] Chapter II of the Bill, 'Judicial standards to be followed by Judges', consists of Section 3, subsection (1) of which states that Judges are to adopt and observe the judicial values listed in the Schedule. Subsection (2) of Section 3 lays down more specifically acts which depart from the behaviour expected of a judge.

With some minor alterations, the Schedule and Section 3(2) together reproduce the standards agreed to by the judges in the Restatement. They provide that a judge shall not contest in an election to the office of an association, closely associate with members of the bar, have any member of his family who is a member of the bar argue before him or use his residence for professional purposes, hear a matter with which a family member or friend is concerned, enter into public debates regarding political matters or cases before him or give interviews to the media regarding his decisions, accept gifts or hospitality from anyone other than relatives, speculate in securities, engage in trade or business, hold membership in an organisation that discriminates on the basis of religion, race, caste, sex or place of birth, or be biased in his judicial work on any of these grounds.

The Bill makes certain provisions slightly more stringent. For instance, the Restatement prohibited a judge from accepting 'gifts or hospitality except from his family, close relations and friends', while the Bill, under Section 3(2)(h), limits the exception to just his relatives. Aside from the prohibition of speculation in securities mentioned in the Restatement, the Bill goes further, quite unnecessarily, to prohibit insider trading. The Bill did not reiterate the limitation in the Restatement which said that a judge should not seek contributions or associate himself with the raising of funds.

In order to appreciate the standards set out in the Bill, it would be useful to compare them with those accepted internationally. The

[23]Judicial Standards and Accountability Bill (2010), Statement of Objects and Reasons, para2.

United Nations Office on Drugs and Crime's Centre for International Crime Prevention, under the Global Programme against Corruption, organised a meeting amongst senior judges of eight African and Asian countries, with the purpose of formulating a plan to strengthen judicial institutions and procedures. This group came to be known as the Judicial Group on Strengthening Judicial Integrity or the Judicial Integrity Group.[24]

The Judicial Integrity Group held its second meeting between 24th and 26th February 2001 in Bangalore, during which it formulated and agreed to the Bangalore Draft Code on Judicial Conduct. However, since it had been formulated primarily by members of the common law tradition, over the following twenty months, the Bangalore Draft was widely circulated and discussed in a variety of forums of both common and civil law jurisdictions.[25]

On 25th and 26th November 2002, at a Round-Table Meeting of Chief Justices held at The Hague, revisions were made to the Bangalore Draft, resulting in the Bangalore Principles of Judicial Conduct.[26] The Principles were brought to the notice of UN member states and organs by the United Nations Commission on Human Rights in April 2003.[27] They listed the six values (1) independence, (2) impartiality, (3) integrity, (4) propriety, (5) equality, and (6) competence and diligence – and went on to state in more detail the way in which they were to be

[24]United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention, Global Programme Against Corruption Conferences, *CICP-6 - Report of the First Meeting of the Judicial Group on Strengthening Judicial Integrity, Vienna, 2000*, available at http://www.unodc.org/pdf/crime/gpacpublications/cicp6.pdf (July 10, 2011).

[25]The Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct, 2007*, available at http://www.coe.int/t/dghl/cooperation/ccje/textes/BangalorePrinciplesComment.PDF (last visited July 10, 2011).

[26]*Id.*

[27]United Nations Commission on Human Rights, *Resolution 2003/43 – 'Independence and Impartiality of Judiciary, Jurors and Assessors and the Independence of Lawyers'* (April 23, 2003).

applied and implemented. The standards set out under the Bill fall clearly within these categories.

Having dealt with the origin and substance of the judicial standards incorporated in the Bill, the consequences of breaching them may be considered. The term 'misbehaviour' is defined under Section 2 of the Bill to include the breach of any of the judicial standards, and a complaint may be made by any person under Section 7 of the Act against a judge on the ground of misbehaviour to the Oversight Committee. After the statutorily required investigation, the Oversight Committee may decide as to whether the procedure for the removal of the judge should be initiated, there should only be advisories or warnings issued, or the complaint does not merit being proceeded with. A reference for the removal of a judge on the ground of misbehaviour may also arise from the Parliament itself.

Internationally, it is an accepted principle that not every departure from accepted judicial standards should result in disciplinary action. The Judicial Integrity Group, in their Commentary on the Bangalore Principles of Judicial Conduct reinforced this principle in the following words.

"Not every failure of a judge to conform to the principles will amount to misconduct (or misbehaviour). Whether disciplinary action is, or is not, appropriate may depend on other factors, such as the seriousness of the transgression, whether or not there is a pattern of improper activity, and on the effect of the improper activity on others and on the judicial system as a whole".[28]

This principle has been taken into account by virtue of the fact that the Oversight Committee may decide that, though the misbehaviour complained of is proved, removal of the judge is not warranted. The Committee may issue advisories or warnings instead, as it thinks fit.

[28] *Supra* note 24.

VI. PROCESS FOR THE REMOVAL OF A JUDGE

A. The English Concept of Impeachment

In England, it used to be that two categories of persons could be impeached: public servants who held political office and those who enjoyed public office during good behaviour. Once ministers were made accountable to the House of Commons, however, their removal by the unwieldy process of impeachment was no longer necessary.[29] A judge must remain independent and so his tenure cannot be at the pleasure of the Crown; it must be during good behaviour. He can only be removed by impeachment in the event of proved misconduct.[30] An address originating in the House of Commons must be made to the Crown for removal and the judge has the right to be heard and to judicial procedure.

As explained early on in the article, the revised Judges (Inquiry) Bill, 2006 aimed to replace the archaic Judges (Inquiry) Act, 1968 and the procedure prescribed therein for the removal of judges. It addressed (a) the procedure of making a complaint against a judge, (b) the persons who should be appointed to conduct the inquiry, and (c) whether the impeachment by the Parliament should be open to appeal. Certain aspects of the procedure for the removal of a judge will now be discussed, along with the relevant provisions of the 2006 Bill and the current one, in order to understand just how much of the former was incorporated in the latter.

[29]E. C. S. WADE & G. GODFREY PHILLIPS, CONSTITUTIONAL LAW- AN OUTLINE OF THE LAW AND PRACTICE OF THE CONSTITUTION 226 (Longmans, Green and Co. 4thed.) (1951).

[30]2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA – A CRITICAL COMMENTARY 2024 (Universal Law Publishing Co. Pvt. Ltd. 4thed.) (1993).

B. The Complaint Procedure

The current Bill, under Chapter IV, makes provision for anyone to submit a complaint against a judge on the grounds of misbehaviour or incapacity to the Oversight Committee,[31] which refers complaints regarding misbehaviour to the relevant Scrutiny Panel.[32] The process can also be initiated through the reference procedure under Section 47 by a motion in either House of Parliament, signed by not less than a hundred members in the Lok Sabha or by not less than fifty members in the Rajya Sabha. If it is admitted by the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha, it is referred to the Oversight Committee for further inquiry.

It is interesting to note that neither the Constitution nor the 1968 Act make provision for the complaint route. It was first introduced by the 2005 version of the Judges (Inquiry) Bill, alongside the reference procedure. In that version, complaints could be made to a Judicial Council which could scrutinise them before initiating an investigation.

The 2006 Bill allows any person to make a complaint involving an allegation of misconduct against a judge, to the NJC. The complaint has to be filed within two years from the date of the alleged infringement. If the complaint is found to be frivolous or not made in good faith, the complainant could be punished with up to one year imprisonment and a fine up to Rs. 25,000. The NJC could also choose to entertain a complaint from any other source.

[31]Judicial Standards and Accountability Bill (2010), §7. The Oversight Committee is established under Section 17.

[32]The relevant Scrutiny Panel is the Scrutiny Panel of the Supreme Court in the case of a complaint against a judge of the Supreme Court or a Chief Justice of a High Court and the Scrutiny Panel of the High Court in the case of one against a High Court judge.

C. The Composition of the Supervisory Body

Under the 1968 Act, there is a three member Committee that investigates the matter, comprising of a judge of the Supreme Court, the Chief Justice of one of the High Courts, and a distinguished jurist. Under the 2005 version of the Judges (Inquiry) Bill there was a five member Judicial Council made up of the Chief Justice of the Supreme Court, two senior Supreme Court judges and two High Court Chief Justices. The Law Commission, in its report on the Judges (Inquiry) Bill, 2005, stated that it was an internationally accepted norm for judges to be monitored by senior members of the judiciary[33] but stated that the composition of the Council would need to be modified depending on which court the judge to be investigated belonged to.

The 2006 Bill, taking into account these considerations, sought to establish a National Judicial Council ("NJC") to be comprised of the Chief Justice of India, two Supreme Court judges and two High Court Chief Justices in the case of allegations against High Court judges and the Chief Justice of India and four Supreme Court judges in the case of investigations regarding Supreme Court judges.

As mentioned earlier, the 195th Law Commission Report argued that the investigation committee should solely be comprised of judges. It gave examples of the United States, United Kingdom, Australia and so on, where the inquiry committee consists of judges only.

Moreover, the Siracusa Principles, 1981, also known as the Draft Principles on the Independence of Judiciary, lay down that any disciplinary proceeding involving the judiciary must be before a court or a board comprised of members from the judiciary. The Beijing Statement of Principles of Independence of Judiciary, 1995, and the Latimer House Principles and Guidelines for the Commonwealth,

[33]Law Commission of India, *195th Report on the Judges (Inquiry) Bill, 2005* 10 (January 2006).

1998 also advocate the concept of judges being appointed in matters regarding oversight of judicial misconduct.

However, in the current Bill, this principle has been slightly compromised as there are two non-judicial members in the five-member Oversight Committee – the Attorney General and an eminent person nominated by the President. Further, this composition is not flexible in the way that of the NJC in the 2006 Bill was.

D. Investigation

Under the 2006 Bill, the NJC was to constitute an investigative committee comprising one or more of its members to conduct a preliminary investigation to determine sufficient grounds to frame charges.

Under the current Bill, after examining the complaint, the Scrutiny Panel must submit a report within three months to the Oversight Committee stating either that the complaint contains sufficient cause for proceeding against the judge and an inquiry should be made, or that the complaint is frivolous and should not be proceeded with. A complaint against the Chief Justice of India is not referred to the Scrutiny Panel, but dealt with directly by the Oversight Committee.

The Oversight Committee constitutes an investigation committee in order to investigate those complaints which the Scrutiny Panel considers it should. This committee must submit its report within six months. Where the Oversight Committee finds that the judge has, on the face of it, committed an offence, it may recommend that the Central Government prosecute him.[34] Where it deems the removal of the judge necessary, it must request the judge to vacate office voluntarily and in the event of his failure to do so, it must advise the President, who refers the matter to Parliament.

[34]Judicial Standards and Accountability Bill (2010), §34(2).

E. Minor Measures

Where the Oversight Committee, on the examination of the investigation committee's report, finds that the charges proved do not warrant the removal of the judge, it may 'issue advisories or warnings'.[35]

In *C. RavichandranIyer* v. *Justice A.M. Bhattacharjee,*[36] it was held by the Supreme Court that an in-house judicial mechanism could impose minor measures on errant judges where the need arose. The Law Commission, in its 195th Report gave instances of minor measures used in other jurisdictions as including '(i) issuing advisories, (ii) request for retirement, (iii) stoppage of assignment of judicial work for a limited time, (iv) warning, and (v) censure or admonition (public or private)'.[37]

In the 2006 Bill, the NJC had the power to recommend removal or take minor measures in the event of allegations being proved. During the preliminary investigation, the NJC could recommend the stoppage of judicial work to the concerned judge.

F. The Right to Appeal

The 2006 Bill sought to give a judge the right to appeal to the Supreme Court in case of any minor penalty imposed by the NJC. A right was also given to a judge to appeal against a removal order by the President pursuant to an impeachment motion by Parliament.

These rights to appeal are not provided in the current Bill. The Standing Committee, in its report, went so far as to say that the right to appeal against an order for removal was 'uncalled for' since such an order was the result of due process and resolution in Parliament, it

[35]Judicial Standards and Accountability Bill (2010), §34(1)(b).
[36]1995 (5) SCC 457.
[37]*Supra* note 32, at 7.

was against a constitutional authority and there was a finality to the President's order.[38] It went on to explain that an appeal against a decision to impose minor measures was unnecessary since the courts already had the power of judicial review and so provision for statutory appeal was not necessary. It also asserted that judges should not be treated as ordinary citizens.

In *Mrs. Sarojini Ramaswami* v. *Union of India and Ors*.,[39] it was held that the order of the President for the removal of a judge was subject to judicial review on the ground of illegality, but that there could be no right to judicial review granted to the judge at any stage before that.

VII. CONCLUSION

The Bill, in specifically laying down judicial standards and then defining misconduct to include the breach of judicial standards, clearly goes beyond the scope of Article 124(5) which provides that Parliament is to lay down the *procedure* to be followed during investigation and the address to the President for removal. Hence, while judicial standards are dealt with separately in the Bill, they are used to expand the definition of the term 'misbehaviour' in the Bill, proof of which may result in measures being taken. It seems the framers of the Bill have used the norms agreed to by the judges in 1997 for a purpose divorced from that with which they were formulated.

The members of the Constituent Assembly, in their discussions on the issue of the removal of judges, make it clear that they felt the process

[38]Department Related Parliamentary Standing Committee On Personnel, Public Grievances, Law And Justice, *Twenty First Report on The Judges (Inquiry) Bill, 2006* 25 (August 2007).
[39]AIR 1992 SC 2219: JT 1992 (5) SC 1: 1992 (2) SCALE 257.

would be invoked in the rarest of the rare cases, and, at the very least, did not foresee it to occur in their lifetimes. They believed that the independence of the judiciary was too crucial an ideal to be compromised by making the removal of a judge easily achieved. When it came to establishing a procedure under the 1969 Act, the Joint Committee adopted a protective attitude, wanting to avoid at all costs, executive interference.

However, what resulted was a process with a loophole which allowed political manipulation, clearly displayed in the case of Justice V. Ramaswami. With the impeachment of Justice Soumitra Sen underway,[40] the process against Justice Dinakaran initiated, and allegations against other judges being brought to light, it is perhaps necessary to acknowledge that judicial accountability must weigh in on the debate to a greater degree. The declaration of assets by judges goes a long way in this regard, and has clearly found favour as a norm even amongst judges.

Viewed clinically, and isolated from the current situation the Indian judiciary finds itself in, the current Bill does not adhere to the vision of the Constituent Assembly or the letter of the Constitution. However, taking into account the present need to inspire confidence in the judiciary, it is argued that the original stand is not adequate. The principle that the judiciary must be monitored by in-house mechanisms remains ideal in theory. In the words of Justice S. Ravindra Bhat:

"The current debate is a sign of a healthy nation. This debate on the Constitution involves great and fundamental issues. Most of the time, we reel under the pressure of precedents. We look to the history of the time of framing and to the intervening history of interpretation. But

[40]At the time this paper was submitted, the Rajya Sabha had passed the motion for his removal and the motion was to be raised before the Lok Sabha on September 5-6, 2011.

the ultimate question must be, what do the words of the text mean in our time?"[41]

[41]Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agrawal, 2010 (12) SCALE 496, para 14.