

9 RMLNLUJ (2017) 159

A Critique of The Judicial Standards and Accountability Bill, 2012

by
Priyanka Majumdar*

INTRODUCTION

"Judges are but men, and are swayed like other men by vehement prejudices. This is corruption in reality, give it whatever other name you please."

—David Dudley Field

Quoting Kadapa District Justice C.V. Nagarjuna Reddy, due to the abuse of power and corruption, "values in the judiciary, from lower courts to Supreme Court are sliding and people are losing faith in the system."¹ In recent years, several allegations of corruption have been made against members of the higher judiciary.² Although the Constitution of India does not lay down provisions enforcing judicial accountability, in light of the mounting doubts cast on the working and conduct of the members of the higher judiciary in the last few decades, the Judicial Standards and Accountability Bill, 2010 was introduced in the Parliament.



Page: 160

The Bill seeks to lay down: (a) judicial standards and accountability for the conduct of the Judges of High Courts and Supreme Court, (b) mechanism for investigation into allegations of misbehaviour or incapacity of Judges, (c) process of removal of Judges, (d) enable minor disciplinary measures to be taken against the Judges, and (e) require the declaration of assets and liabilities of Judges and their spouses and dependent children.³ The Bill also seeks to establish three bodies for carrying out investigation against Judges, viz., the National Judicial Oversight Committee⁴, a Scrutiny Panel and an Investigation Committee (on recommendation of the Scrutiny Panel). The Bill seeks to establish new mechanisms for investigation of individual complaints against Judges for misbehavior or incapacity and their removal, as different from those prescribed under the Judges Inquiry Act, 1968. This Bill, if enacted into a legislation, will have a great bearing on the working and conduct of the members of the higher Judiciary and enable the public to be more vigilant of their rights as well as judicial propriety.

BACKGROUND OF THE BILL

"The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing."

—Caroline Kennedy

The Bill was introduced by the UPA Government in the Lok Sabha on December 1, 2010.⁵ It was passed by the Lok Sabha in March, 2012, following which it underwent changes in the Rajya Sabha due to protests by the judiciary and jurists against some of its provisions.⁶ It lapsed in 2014 owing to the dissolution of the 15th Lok Sabha.⁷ A new framework of the bill is being considered by the Government for introduction as a fresh legislation after incorporating certain amendments.⁸

The present Bill also seeks to overcome the shortcomings in The Judges (Inquiry) Act, 1968 and repeal it as the latter failed to provide mechanism

for dealing with the complaints filed by public against the Judges for their misconduct or incapacity and has not set judicial standards for the Judges to follow.

ANALYSIS OF THE BILL

A. Whether The Constitution Empowers The Parliament To Make Such A Bill? — The Constitutional Scheme

David Souter has stated, “*There is a danger to judicial independence when people have no understanding of how the judiciary fits into the constitutional scheme.*” Considering the objectives of the Bill, the part of the Bill that deals with judicial standards is seemingly unconstitutional, while the other objectives serve the interests of the Constitution because nothing in the Constitution which occurs as supplement to lay down anything regarding judicial standards. The primary source of the Bill is Article 124(5) of the Constitution.⁹ Entries 77 and 78 of List I of the Seventh Schedule provides for matters related to organization, jurisdiction and powers of the Supreme Court and High Courts, but this Bill does not touch upon these matters, thus it may be stated that this Bill is made without legislative competence as such power is not given either under Art. 124(5) or Entries 77 and 78.¹⁰ A question arises as to whether this Bill can be made in exercise of residuary power of Parliament under Entry 97, List I. Making Judges answerable to the President (executive) violates the independence of judiciary. One cannot read something into the residuary powers which is against the constitutional scheme or contrary to the basic structure of the Constitution, i.e., the independence of the judiciary, which is a part of the original identity of the Constitution, and hence, cannot be destroyed by the Parliament making a law by virtue of its residuary powers.

B. Questioning The Ingredients Of Misbehaviour

Prior to this Bill, the very fundamental term in determining the question of removal of Judges, ‘misbehaviour’, was not previously defined; it was a vague expression deliberately left open for interpretation against dynamic circumstances, by the framers of the Constitution. However, there are

certain flaws in the definition of ‘misbehaviour’ in this Bill under Clause 2(j)¹¹.

- (a) Clause 2(j)(vii) provides that wilfully giving false information in the declaration of assets and liabilities shall constitute misbehavior. Thus, question arises as to how it shall be determined that the declaration made by any particular Judge is false and also that such false declaration has been ‘wilfully’ made. It is claimed that such determination would lead to encroachment upon the judicial independence and that in order to uphold the same, the determination of such issues should be left to the Judiciary itself.
- (b) Clause 2(j)(viii) provides that misbehavior is also constituted by wilful suppression of any material fact having bearing on his integrity which might relate to a period before assumption of office. This provision is rightly included in the Bill to take care of instances like Justice Soumitra Sen's case.¹²

C. A Critical Analysis of the ‘Judicial Standards’

- (a) Prohibition on Close Association — how far legitimate?

"Judges of the Supreme Court sit on ivory towers far removed from ordinary men and know nothing about them."

—Jawaharlal Nehru

Clause 3(2)(b) of the Bill provides that no judge shall have close association or close social interaction with individual

 Page: 163


members of the Bar.¹³ The Standing Committee observed that the phrase 'close association' is vague and hence should be deleted, and recommended only the retention of the phrase 'close social interaction' in the Bill. The prohibition on Judges for social interaction places a vague, undefined bar which, to some extent, amounts to irrationally clamping down on their social life. Although for an agreeable reason, the exclusion of social life firstly, might discourage people from joining into judiciary in fear of detachment from social bonds and the consequent misuse of such bonds by any person to prove misbehavior in the name of 'close association'. Secondly, Judges are supposed to make judgements keeping in mind the prevailing socio-economic and politico-cultural scenario of the country, therefore if they are allowed to mingle with people from all different walks of the society, they can get a first-hand experience of the real situation outside the court, resulting in a more pragmatic and rational decision-making.

(b) Denial of right to family life

Similarly, irrational is the provision under Clause 3(2)(d) which prohibits a Judge from permitting any family member, who is a member of the Bar, to use the Judge's residence for his professional work.¹⁴ This amounts to denial of right to family life because in that case, it will cause the Judge to ask all the working members of his family to work from a different place and also prohibit professional communication or correspondence from his residence, almost implying that the Judge is unable to live with his working family members.

(c) The *Uncle Judge Syndrome*

Clause 3(2)(e) is a noble provision which lays that hearing and deciding a matter by a Judge in which any family member, close relative or friend is concerned would

 Page: 164

constitute misbehaviour.¹⁵ This provision takes care of the 'Uncle Judge Syndrome'.¹⁶ The Law Commission observed, "Impartiality and justice is the loser" when "Judges either settle their scores with advocates who have practised with them or have a soft corner for them."¹⁷

(d) Prohibition on expressing political views — A Take on Biasness or Freedom of Speech?

Clause 3(2)(f) prohibits Judges from expressing views on public platforms regarding political or other matters pending or likely to arise before them in future for judicial determination¹⁸, in order to prevent a biased opinion of the Judge at that time. A proviso to this clause states that it will not apply to "views expressed by the judge in his individual capacity on issues of public interest (other than as a Judge) during discussion in private forum or academic forum".

The Committee recommended that this proviso be restructured to clearly articulate the meanings of 'individual capacity', 'private forum', and 'academic forum',¹⁹

(e) Prohibition on unwarranted comments against statutory bodies



Page: 165

Clause 3(2)(g) prohibits Judges from making unwarranted comments against conduct of any Constitutional or statutory authorities while hearing matters pending or likely to arise for judicial determinations.²⁰ For instance, the Supreme Court while questioning the credibility of the Central Bureau of Investigation (CBI) probe into the allocation of coal blocks termed the CBI a "caged parrot" that "speaks in its master's voice".²¹ Such stern observations are imperative to make such authorities and their members responsible, credible and answerable. If such conduct amounts to misbehavior, then the Judges will fear to speak freely and it will greatly stifle the projection of judicial opinions in the pronouncement of Judgments.

(f) No bias based on religion, race, etc.

Clause 3(2)(o) provides that no Judge shall have bias in his judicial work or judgments on the basis of religion or race or caste or sex or place of birth.²² A Karnataka High Court Judge, Bhakthavatsala, J., while hearing a matrimonial dispute, told a woman lawyer that she was unfit to argue the matter as she was unmarried.²³ He had also told a domestic abuse victim that it might be okay for the husband to beat a woman if he took good care of her.²⁴ He further observed in another case that girls below 21 years



Page: 166

of age suffer from hormonal imbalance and are incapable of forming rational judgement, and proposed that marrying without parents' approval should render the marriage void or voidable.²⁵ Similarly, Justice A.R. Dave once commented that if he were a dictator, Gita and Mahabharata would have been introduced in Class 1 itself.²⁶ Such religious-biased or sexist comments imperatively calls for such statutory provisions.

D. Disclosure of Assets And Liabilities

Clause 4(2)(b) requires the Supreme Court and High Court Judges to disclose the assets and liabilities of themselves, their spouses and their dependant children within 30 days of assuming office as a Judge,²⁷ which until now was merely voluntary. In 2010, Justice Mishra's disclosure of "two daughters to be married" as liability sparked strong criticism.²⁸ Justice Mishra later clarified that such declaration was made with the intent to save for their wedding, which would be then same if she had a son and, therefore, it must not be misconstrued as gender-biased comment.²⁹ Thus, we see that



Page: 167

statutory requirements have their own implications. In this case, media misinterpreted Justice Mishra's liabilities.

E. Making Judges Accountable To The President and its bearing on Judicial Independence

"All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary."

—Andrew Jackson

The Bill requires every High Court Judge to file annual return of status of assets and liabilities with the Chief Justice of High Court, and every Chief Justice of High Court with the Chief Justice of India³⁰, who in turn is required to file his returns with the President of India.³¹ This makes the CJI answerable to the executive organ. The Standing Committee further recommended that mere obligation to disclose liabilities is not sufficient; an agency must be appointed with the duty to verify the authenticity of such disclosure. If this recommendation is adopted, then it again makes the judiciary answerable to the Judiciary violating independence of judiciary and Judges may be blackmailed by the executive agencies.

F. Who as a 'person' can file a Complaint?

Clause 7 provides that any person can make allegations of misbehavior or incapacity against a Judge.³² The Bill does not define whether person includes juristic persons (company, firm, association, etc.) or natural persons, and whether non-citizens can also raise allegations.

G. Composition of the Scrutiny Panel

Clause 11 provides that a Scrutiny Panel is to be established in the Supreme Court and High Courts, consisting of a former Chief Justice and



Page: 168

two sitting Judges of that court.³³ The Committee recommended that the Scrutiny Panel be made more broad based by enabling the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha to nominate a Member of Parliament from their respective Houses. In addition, the Committee recommended that instead of two sitting Judges of the same Court, the Scrutiny Panel should include two Judges of another Court.

H. In camera proceedings

Clause 12(2) for the scrutiny of complaints by the Scrutiny Panel *in camera*.³⁴ This provision was incorporated in pursuance of the recommendations of the Standing Committee Report to protect the reputation of the Judge, and the researcher considers this provision as a good development.

I. Power of Investigation committee and Scrutiny Panel to regulate their own procedure

Clauses 13 and 30 empower the Scrutiny Panel and the NJOC to regulate their own investigation procedure.³⁵ This amounts to abdication of essential law making power of the Parliament in favour of the Committee and the Panel. Thus, this provision suffers from excessive delegation.

J. Defective Composition of the National Judicial Oversight Committee

Clause 18 provides that the National Judicial Oversight Committee shall consist of a former Chief Justice of India as the Chairperson, a Judge of the Supreme Court, a Chief Justice of the High Court. the Attorney General for India. and an eminent person

appointed by the President.³⁶



Page: 169

(a) Likelihood of bias when Complaint is against the CJI

This clause provides that views of the current CJI shall be ascertained in appointment of the Chairperson of the NJOC, i.e., a retired CJI. Also, the CJI is required to nominate a Supreme Court Judge and a Chief Justice of High Court to the NJOC. In case, the allegations are made against the present CJI, then in such case, it is quite likely that the CJI will nominate only those Judges to the investigation Committee, who might give a decision in his favour. The Bill does not provide a remedial mechanism as to what should be done in such cases.

(b) 'Eminent person'— Undefined in the Bill

The Bill fails to specify as to who might be considered as an 'eminent person' for appointment in the NJOC under Clause 18.³⁷ It is very essential to ensure clarity on the choice of the eminent persons and their qualifications for the job, as the phrase "eminent" is too wide in scope and capable of being misused.³⁸ The Committee therefore recommended the replacement of the expression 'eminent person' with 'jurist'.

(c) Over-representation of the Executive authorities in the NJOC

"The judiciary must be strengthened and released from political interference."

—Aung San Suu Kyi

The appointment of the eminent person by the President results in over-representation of the executive in the Committee which might very well affect the independence of the judiciary. Further, we must consider the adverse implications of the appointment of Attorney General into



Page: 170

the NJOC. For instance, if in a particular case representing the government, the Attorney General appears before a Judge against whom investigation is pending before the NJOC, then there is possibility of a quid pro quo wherein that the Attorney General might avail undue advantage of his position in the Committee to procure a favourable judgment in that case from the Judge.

(d) Wide discretion and ambiguity regarding the composition of Investigation Committee

The Bill provides for the National Oversight Committee to set up an Investigation Committee to inquire into complaints against a Judge, but does not specify guidelines for its composition.³⁹ The investigation committee will be set up if the Scrutiny Panel recommends that an inquiry should be carried out to investigate a complaint. The Bill does not specify the qualifications of members of the investigation committee, but leaves this to the wide discretion of the Oversight Committee. The Standing Committee recommended that such guidelines should be included in the Bill.

K. Mere Issuance of Advisory or Warning By the NJOC — A Mockery of the Draconian Process

Clause 34 states that if the charges proved by the Investigation Committee do not warrant removal of the Judge in the opinion of the NJOC, then it may issue either an advisory or warning to such guilty Judge concerned.⁴⁰ If such a long and tedious process ultimately culminates in mere issuance of advisory or warning, then it seems to make a mockery of the entire procedure.



Page: 171

L. Flaws in the Removal procedure of Judges

If any Judge is found guilty by the Investigation Committee, the Judge can be deprived of judicial work for some time as a punishment or, if the allegations are serious, he may be asked to resign but if he fails to resign then the NJOC is empowered to advise the President of India to initiate removal procedure of the Judge, who in turn will refer it to the Parliament.⁴¹ Thus the requirement of 50 members of Lok Sabha and 100 members of the Rajya Sabha for the purpose of removal of Judges, as provided under Clause 47,⁴² does not arise at all. There are two flaws in this context. Firstly, an *honourable escape* is allowed to a corrupt Judge (so to say) by asking him to resign. Secondly, even after a Judge is found guilty by the NJOC, the Government has the discretion whether to refer the matter to the Parliament for impeachment or not. This allows scope for political considerations and bias to play a very fundamental role in determining the outcome of the entire process. The existing mechanism under the Judges Enquiry Act, 1968 is also retained. Thus, now there are two ways of impeachment of a Judge: firstly, the procedure under the present Bill, and secondly, impeachment procedure initiated in Parliament by the requisite number of members of the Lok Sabha and the Rajya Sabha (as retained from the Judges Enquiry Act. Under this Bill, there will be no ad hoc committee, but if the Chairman of the Rajya Sabha or Speaker of the Lok Sabha decides to admit the motion, he/she will also refer the matter to the NJOC because the Bill seeks to establish it as a permanent mechanism to investigate into 'proved misbehavior' or 'incapacity' of Judges.

M. Inadequate quantum of punishment for vexatious complaints against Judges

The Scrutiny Panels shall be established to check into frivolous allegations made by private individuals against the Judges to the National Judicial Oversight Committee. This is to prevent likely incidences of individuals indulging in false allegations against the integrity of the Judge probably because the judgement was not pronounced in his favour. The original Bill provided the punishment for such frivolous or vexatious complaints to be up to 5 years imprisonment and a fine of Rs. 5 lakh. But owing to the



Page: 172

recommendations of the Standing Committee in its Report, the quantum of punishment was substantially reduced to a maximum of 1 year imprisonment and fine up to 50,000 rupees.⁴³ The former punishment appears to be more appropriate because strict punishment is imperative to have a deterrent effect on the complainants so that they desist from making allegations without strong evidence. Instead the Bill could prescribe a punishment of imprisonment of 2 years which might extend to 5 years.

IMPACT OF THE BILL

This Bill, if enacted into a legislation, will have a great bearing on the working and conduct of the members of the higher Judiciary and enable the public to be more vigilant of their rights as well as judicial propriety.

The Bill suffers from several defects. One such major defect which endangers judicial independence is making the judiciary accountable to the Executive. The provisions in the Bill prohibiting Judges to express political views⁴⁴ or make unwarranted comments against conduct of any Constitutional or statutory authorities,⁴⁵ although have been inserted with good intention, nevertheless, impose a special restriction upon the Judges and curtail their freedom of speech & expression. The over-representation of the executive authorities in the NJOC also calls attention to the possibility of bias in the investigation against Judges. The fact that 'eminent person' has been left undefined might allow the President to appoint any person of his choice who might not essentially be unbiased towards that particular Judge in question. Besides, ambiguity and discretion lurk upon the composition of Investigation Committee. There are also flaws in the removal procedure of Judges as the power to initiate impeachment by 100 members of Lok Sabha and 50 members of Rajya Sabha theoretically comes in the hands of one person. Further, mere issuance of advisory or warning by the NJOC renders the whole process inane. The Bill prescribes lenient punishment for vexatious complaints against Judges which might cause Judges being dragged to accusations and investigations more frequently.

Although it has several defects, this Bill was imperative considering the present status of rising complaints and allegations against Judges. It is a take on the *Uncle Judge Syndrome*, which requires to be seriously eliminated. As a preventive measure against judicial corruption, it enables the



disclosure of the assets and liabilities of the Judges and his dependant family. The Bill also considers bias in judicial work or judgments based on religion, race, caste, sex, place of birth to be misbehaviour. Such provisions are bound to have far-reaching impact. While empowering ordinary citizens to file complaint against misbehaviour of Judges, it also prevents unwarranted damage to judges' repute. Furthermore, the various statutory bodies under this Bill ensure that Judges do not indulge in any unfair activities which corrode public confidence in the Judiciary.

CONCLUSION AND SUGGESTIONS

"There are checks and balances and broad separation of powers under the Constitution. Each organ of the State, i.e. the legislature, the executive and the judiciary, must have respect for the others and not encroach into each other's domain."

—P. Sathasivam

The Judiciary, which till now has been looked upon as the strongest pillar of Indian democracy, has been beset with unprecedented problems. This Bill has the potential to undermine judicial independence. If this Bill is implemented it might strangle the judicial independence as most of the displeased litigants would then seek remedy by filing allegations against the Judges. However, the need for this Bill cannot be shrugged off on the defence of judicial independence alone. The current situation demands changes in the existing judicial system. The legitimacy of the judiciary ultimately flows from public support, which cannot be maintained without transparency in the judicial appointment process as against the present system of

appointment involving undisclosed criteria of selection.

In view of the shortcomings in the Bill, it is recommended that mere obligation for Judges to disclose assets and liabilities is not sufficient; an agency must be appointed with the duty to verify the authenticity of such disclosure. In addition, instead of two sitting Judges of the same Court, the Scrutiny Panel should include two Judges of another Court. It is also essential to ensure clarity on the choice of the eminent persons and their qualifications for the job, as the phrase "eminent" is too wide in scope and capable of being misused⁴⁶ and should therefore be replaced with 'jurist'. The Bill should specify the qualifications of members of the investigation committee to avoid exercise of undue discretion by the Oversight Committee. The selection of the eminent persons is to be made by a committee comprising of the CJI, the Prime Minister and the leader of the



Page: 174

opposition, as laid down in *T.S.R. Subramaniam v. Union of India*.⁴⁷ The presence of the opposition leader in the selection of the eminent persons would ensure that an 'eminent person' of political connections does not get selected. Although a unanimous selection process seems to be ideal, several past occurrences have revealed stark differences of opinion between the ruling and opposition parties. Thus, the role of the Chief Justice in the selection process is critical as he must ensure that the selected eminent person is beyond reproach and has no such political slant.

Although ensuring accountability shall be the driving principle, impartiality and independence must be given equal weightage. In essence, proper balance between these competing principles shall be maintained in a way best suited to the Indian constitutional backdrop. The above discussed lacunas in the Bill shall be taken into consideration so that the citizens of India can triumph at the enactment of an Act which does not corrode the independence of the Judiciary, rather strengthens its image of sanctity and integrity before India and the world.

* Assistant Professor (Law), Symbiosis Law School, Pune. <priya_majumdar93@yahoo.in>

¹ People Losing Confidence in Judicial System: Legal Experts, ZEE NEWS (Mar. 29, 2013) http://zeenews.india.com/news/nation/people-losing-confidence-in-judicial-system-legal-experts_838590.html (last visited March 25, 2017).

² CBI Gets Chief Justice Nod to Probe Nirmal Yadav Case, THE HINDUSTAN TIMES, <http://www.hindustantimes.com/CBI-gets-chief-justice-nod-to-probe-Nirmal-Yadav-case/Article1-594984.aspx> (last visited March 26, 2017).

Justice Soumitra Sen to Be Impeached for Misusing Public Funds, THE TIMES OF INDIA, <http://timesofindia.indiatimes.com/india/Justice-Soumitra-Sen-to-be-impeached-formisusing-public-funds/articleshow/6900744.cms>. (last visited March 26, 2017).

Two Judges Caught in Corruption Case; Sent to Judicial Custody, THE HINDUSTAN TIMES (Sep 13, 2015) <http://www.hindustantimes.com/india/two-judges-caught-in-corruption-case-sent-to-judicial-custody/story-8BNWRaBTLkOAdayNRGS6aO.html> (last visited March 26, 2017).

50% Of Higher Judiciary Corrupt, Says Ex-SC Judge Markandey Katju, THE HINDUSTAN TIMES (Sep 28, 2015) <http://www.hindustantimes.com/punjab/50-of-higher-judiciary-corrupt-says-ex-sc-judge-markandey-katju/story-Hfu8Ru8o9YfoGOjloboytN.html> (last visited March 26, 2017).

³ Anirudh Burman & Vivake Prasad, *Legislative Brief — The Judicial Standards and Accountability Bill, 2010*, PRS LEGISLATIVE RESEARCH (Mar. 18, 2011). <http://www.prsindia.org/uploads/media/Judicial%20Standard/Final%20Brief%20for%20printing%20-%20Judicial%20Standards%20and%20Accountability%20Bill%202010.pdf> (last visited March 25, 2017).

⁴ Hereinafter referred to as NJOC.

⁵ *Supra* note 3.

⁶ Govt. reworks bill on judges' accountability, THE INDIAN EXPRESS (July 17, 2016) <http://indianexpress.com/article/india/india-news-india/govt-reworks-bill-on-judges-accountability-2918999/> (last visited March 25, 2017).

⁷ *Supra* note 3.

⁸ *Supra* note 6.

⁹ Article 124(5) lays down: The 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).

¹⁰ Entry 77 provides: Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

Entry 78 provides: Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

¹¹ According to Clause 2(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 (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 (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.

¹² Justice Sen was held guilty of misappropriation of public funds worth Rs. 32 lakh he received in his capacity as receiver appointed by the High Court of Calcutta and misrepresenting facts with regard to it. A three-judge inquiry committee had established Sen's misconduct in depositing the money in his personal account. Sen retained the money even after being appointed as the High Court judge. Ahead of the impeachment motion against him in the Lok Sabha on 5 & 6 September 2011, he resigned on 1 September 2011.

Allegations Against Justice Soumitra Sen: Inquiry Committee Report, THE PRS BLOG (Dec. 10, 2010) <http://ptersindia.org/theprsblog/?tag=justice-soumitra-sen> (last visited March 26, 2017).

¹³ Clause 3(2)(b) provides that "in particular, and without prejudice to the generality of the foregoing provision, no Judge shall have close association or close social interaction with individual members of the Bar, particularly with those who practice in the same court in which he is a Judge."

¹⁴ Clause 3(2)(d) provides that "no Judge shall 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."

¹⁵ Clause 3(2)(e) provides that "no Judge shall hear and decide a matter in which a member of his family, or his close relative or a friend is concerned."

¹⁶ The Law Commission of India in their 230th Report has mentioned the matter of appointment of 'Uncle Judges' in the High Courts, wherein it is said that the Judges, whose kith and kin are practicing in a High Court, should not be appointed in the same High Court. Under the Constitutional Provision, Chief Justice can recommend judges from the Bar to be appointed as the judge of the High Court. In this situation, kith and kin of those appointed as judges and practicing in the High Court is likely. With a view to correct the situation, judicial standards are being prescribed for the judges in the Judicial Standards and Accountability Bill, 2012 which has been passed by Lok Sabha already.

Uncle Judges Syndrome, PRESS INFORMATION BUREAU, Government of India, Ministry of Law & Justice (Nov. 22, 2012), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=89251> (last visited March 26, 2017).

¹⁷ Justice Cannot Be Relative, THE HINDU, (Dec. 03, 2010), <http://www.thehindu.com/opinion/editorial/Justice-cannot-be-relative/article15577891.ece> (last visited March 26, 2017).

¹⁸ Clause 3(2)(f) provides that "no Judge shall 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 so as not to affect his functioning as a Judge; (ii) the views expressed by a Judge relating to administration of court or its efficient functioning.”

¹⁹ Vivake Prasad, *Standing Committee Report Summary — The Judicial Standards and Accountability Bill, 2010*, PRS LEGISLATIVE RESEARCH (Oct. 3, 2011). <http://www.prsindia.org/administrator/uploads/media/Judicial%20Standard/SCR%20summary-The%20Judicial%20Standards%20and%20Accountability%20Bill,%202010.pdf> (last visited March 25, 2017).

²⁰ Clause 3(2)(g) provides that “no Judge shall make unwarranted comments against conduct of any Constitutional or statutory authority or statutory bodies or statutory institutions or any chairperson or member or officer thereof, in general, or at the time of hearing matters pending or likely to arise for judicial determinations.”

²¹ CBI A Caged Parrot Speaking In Its Master's Voice: SC, THE HINDU (May 09, 2013) <http://www.thehindu.com/todays-paper/tp-in-school/cbi-a-caged-parrot-speaking-in-its-masters-voice-sc/article4697433.ece> (last visited March 27, 2017).

²² Clause 3(2)(o) provides that “no Judge shall have bias in his judicial work or judgments on the basis of religion or race or caste or sex or place of birth.”

²³ “Family matters should be argued only by married people, not spinsters. You should only watch. Marriage is not like a public transport system. You better get married and you will get very good experience to argue such cases.”

K'taka HC Judge Spouts Another Gem on Hormonal Imbalance and Love Marriages, KRACKTIVIST (Sep. 06, 2012) <https://kractivist.wordpress.com/2012/09/06/ktaka-hc-judge-spouts-another-gem-on-hormonal-imbalance-and-love-marraiges/> (last visited March 27, 2017).

See also Family Court Matters Taken Away From Justice Bhakthavatsala #Justice #Victory, PRESS TRUST OF INDIA (Sep. 08, 2012) <https://kractivist.wordpress.com/2012/09/08/family-court-matters-taken-away-from-justice-bhakthavatsala-justice-victory/> (last visited March 27, 2017).

²⁴ “Women suffer in all marriages. You are married with two children and know what it means to suffer as a woman... Your husband is doing good business. He will take care of you. Why are you still talking about his beatings,” Justice Bhakthavatsala had asked.

K'taka HC Judge Spouts Another Gem On Hormonal Imbalance And Love Marriages, KRACKTIVIST (Sep. 06, 2012) <https://kractivist.wordpress.com/2012/09/06/ktaka-hc-judge-spouts-another-gem-on-hormonal-imbalance-and-love-marraiges/> (last visited March 27, 2017).

²⁵ Justice Bhakthavatsala observed: “In our opinion, girls below the age of 21 years are not capable of forming a rational judgement as to suitability of the boy, who is in love...we suggest that in the case of love affair of a girl, who is below the age of 21 years, there shall be a condition that the parents of the girl should approve the marriage, otherwise such marriages should be declared void or voidable”.

Ibid.

²⁶ Justice Dave said, “...Had I been the dictator of India, I would have introduced Gita and Mahabharata in class one...”

If I Were Dictator, I Would Introduce Gita in Class 1, says SC judge, INDIA TODAY (Aug. 2, 2014), <http://indiatoday.intoday.in/story/bhagwad-gita-dictator-supreme-court-justice-ar-dave-children/1/375317.html> (last visited March 27, 2017).

²⁷ Clause 4(2)(b) lays down 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 his liabilities and that of his spouse and his dependent children.

²⁸ The SC's official website in its assets of sitting judges column gives Justice Mishra's declaration where she lists “two daughters to be married” against the liabilities column.

SC Woman Judge Lists Daughters As ‘Liabilities’, THE ECONOMIC TIMES (Dec. 29, 2010), <http://economictimes.indiatimes.com/news/politics-and-nation/sc-woman-judge-lists-daughters-as-liabilities/articleshow/7182031.cms> (last visited March 28, 2017).

²⁹ Justice Mishra said, “Declaration of my financial liabilities regarding my unmarried children comes from my intent to save and make provisions for their weddings. This can't be misconstrued as treating my children as liabilities.

The mere mention of daughters should not lead anyone to bring issues of gender bias and treatment of daughters as liabilities. If I had sons instead of daughters, and had made a similar declaration, would gender discrimination and treating sons as a liability provided some fodder for discussion?"

Nagendar Sharma, *Daughters My Biggest Assets, Not Liability, Says SC Judge*, HINDUSTAN TIMES (Jan 05, 2011), <http://www.hindustantimes.com/delhi/daughters-my-biggest-assets-not-liability-says-sc-judge/story-yAfpKE4BcSZSIqTJaVSpN.html> (last visited March 28, 2017).

³⁰ Hereinafter referred to as the CJI.

³¹ Clause 4(4) lays down 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 referred to in sub-section (2), as on the 31st March of that year."

Clause 2(c) states that competent authority 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.

³² Clause 7 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."

³³ Clause 11 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. 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."

³⁴ Clause 12(2) lays down that "the scrutiny of complaints under this section by the Scrutiny Panel shall be held in camera.

³⁵ Clause 13 provides that "the Scrutiny Panel shall have power to regulate its own procedure in scrutinising the complaints referred to it for scrutiny under section 9."

Clause 30 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."

³⁶ Clause 18(1) provides that "the National Judicial Oversight Committee shall consist of the following, namely:— (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; (d) the Attorney-General for India— ex officio Member; (e) an eminent person nominated by the President—Member.

The Proviso to Clause 18 lays down 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 (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."

³⁷ *Supra* note 36.

³⁸ Mukul Mudgal, *Who's Eminent?* THE INDIAN EXPRESS (Oct. 11, 2014). <http://indianexpress.com/article/opinion/columns/whos-eminent/> (last visited March 28, 2017).

³⁹ Clause 22 lays down that "(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. (2) The composition and tenure of the investigation committee shall be such as may be decided by the Oversight Committee."

⁴⁰ Clause 34(1)(b) states that "If the Oversight Committee on receipt of the report from the investigation committee is satisfied that 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.

⁴¹ Clause 35 states 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 to proceed for the removal of the Judge and the President shall refer the matter to Parliament."

⁴² Clause 47 states that "if notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed, — (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."

⁴³ Clause 53 provides that "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 simple imprisonment which may extend to one year and also with fine which may extend to fifty thousand rupees."

⁴⁴ Clause 3(2)(f).

⁴⁵ Clause 3(2)(g).

⁴⁶ *Supra* note 38.

⁴⁷ In *T.S.R. Subramanian v. Union of India*, (2013) 15 SCC 732 : (2013) 11 SCR 991, the Supreme Court observed with regard to Constitution of the Central Civil Services Authority: "As this authority would be performing the above mentioned crucial tasks, it would be necessary to ensure its independence by giving it a statutory backing and stipulating that it should be headed by an eminent person with experience of public affairs to be appointed by the prime minister in consultation with the leader of the opposition in the Lok Sabha." (Explanation: where the leader of the opposition in the Lok Sabha has not been recognised as such, the leader of the single-largest group in the opposition in the Lok Sabha shall be deemed to be the leader of the opposition).

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.