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REVIEW DOCUMENT

JUDGES PROTECTION ACT 1985

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JUDGES PROTECTION ACT 1985:

OBJECTIVES

The Judges protection Act, 1985, has been passed to ensure and secure additional protection for the judges and other persons who are acting judicially under the same authority or for any matters connected with it. It aims to protect judges and former judges of the Supreme Courts and the High Courts from any proceedings against them, whether civil or criminal. This Bill protects judges for any act committed by them in the course of their judicial duty and function.

SIGNIFICANCE:

The historical traces of providing judicial protection or immunity to judges of various courts can be confirmed from the era of Justice Lord Edward Coke. He stated that it is necessary to provide judicial immunity to the judges of higher courts as every litigation comprises one winning party and the other losing party. It is the natural human tendency that the losing party would blame the judge for the consequences of the judgement, and the controversy is therefore bound to shame the judges. Such a scandal would also mark a persistent onslaught on the decisions and would harness their independence as well. This would result in the system breakdown of public confidence in the authority of the judiciary. Therefore, with the advancement of time, laws were framed to provide judicial immunity to all the judges of the higher courts to preserve their dignity. In India, the foremost legislative protection or immunity was given to the judges against any civil action in the Judicial Officer Protection Act of 1850 (Act 1850). Consequent to the recommendation, Parliament enacted the Judge (Protection) Act, 1985.

IMPORTANT PROVISIONS:

- **Section 2- Definition of a Judge:**

This section has provided a clear definition of the term 'Judge.' It states that a judge not only includes a person who has been officially or judicially designated as a judge but also every person.

a) who has been entrusted by the law to provide or deliver a definitive judgement in any legal proceeding or a case. It also includes a judgement which becomes final and binding. It, therefore, cannot be appealed against in any court of law or a judgement whose conformity from some other authority would make it definitive.

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred in clause (a).

- **Section 3- Additional Protection to Judges:**

Subsection 1: This section protects the judges from being sued under any proceedings for acts committed by them during the exercise of their judicial duties. The Act might be in the form of an action or word undertaken or spoken by the judge, respectively, in the course of his discharge of the official or judicial duties enshrined on him by the Constitution.

Subsection 2: However, the Central and the State governments hold the capacity to initiate proceedings against a sitting or a former judge of any Superior Court under subsection (2) of the above stated Act, on the production or delivery of material evidence which confirms that judgement was delivered by a judge by taking bribe for the same. Under such circumstances, a judge can be definitely held liable. Such criminal proceedings can also be initiated on the recommendation of the High Court or the President if a judge has committed any illegal act during the discharge of his duties.

- **Section 4- Savings:**

This section upholds the validity and universality of the Judges Protection Act, 1985 by stating that:

The Provision of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for the protection of Judges.

RECENT AMENDMENTS:

No amendments have been made to the Judges Protection Act, 1985 to date (2020).

LOOPHOLES:

- The establishment of the judiciary possesses a strong and authoritative character in India's system of legislation. It owns the trust of its citizens mainly because it is considered neutral and free from any self-serving. Its framework is meant to safeguard the rights of its citizens and to rule freely and fairly. But to utter dismay, judicial oligarchy remains one hidden truth of the judiciary, which reduces the institution to a private club where the self-motivated interests of the judges are protected at the cost of judicial integrity. The judgment of the Courts in the Vishaka Case (1997) and the Veeraswami Case (1991), the Supreme Court held that no criminal case shall be registered under Section 154, Cr.P.C., against a Judge unless the CJI is consulted in the matter and that the government must give due regard to the opinion expressed by the CJI.
- This Act points out towards 'institutional racism.' Institutional racism stems from "unwitting prejudice," "ignorance," or "thoughtlessness" – almost internalized conditions, acted upon without any conscious desire or motivation to oppress or disadvantage anyone
- When an irresponsible judge is found guilty of negligence or recklessness in his decisions, then the judiciary must treat him by the provisions of the law. The Judges Protection Act, 1985, saves such judges by imposing only disciplinary punishment without civil or criminal prosecution. If the facts of a particular situation where a delinquent judge has committed an offence of a serious nature, then it should be mandatory to raise criminal or civil proceedings against such judges.
- Judges Protection Act, 1985, provides additional protection to the judges, which means they can easily escape accountability even if they pass illegal orders. If the Act is repealed by the Parliament and judges are held accountable for every order, trials will be speedier, and error of judgement will be less.

CONCLUSION:

The Judges Protection Act 1985 appears to give blanket protection to the judges concerning Section 3 of the Act when seen from an outward perspective. But an in-depth analysis of the Act proves that the defaulting judges are comprehensively made liable for civil, criminal, and disciplinary action. However, a sanction must be obtained for initiating such a civil or criminal action against the judges.

Till now, there are no cases reported granting sanction for civil/criminal prosecution against a judge for the acts done in discharge of judicial function or otherwise. The situation is only at the stage of enduring whisper and simmering discontentment against corruption in the district judiciary. The vigilance section in some of the High Courts appears to lack effective investigative procedures in respect of anonymous/ pseudonymous/named complaints.

Coming to judicial immunity for judges of the higher judiciary, they are governed by the Constitution of India. Article 124 (4) and Article 218 lays down that judges of the Supreme Court and High Courts shall not be removed from office except by order of the president. This will be passed after an address by each house of Parliament, supported by a majority of the total members of that house and by a majority of not less than two-third members of that house present and voting on the ground of proved misbehaviour or incapacity. (5) Parliament may by law regulate the procedure for the presentation of an address and investigation and proof of misbehaviour or inability of judge mobility.

ABOUT THE AUTHOR



I am Shruti Madhogaria, a second year law student from Himachal Pradesh National Law University, Shimla. This internship has been a wholly different experience from the rest as in this we had to review Bare Acts rather than writing a research paper. It extended my horizon of knowledge with respect to various acts and their amendment. The knowledge gained through this internship would never go waste. I tried to complete the tasks allotted to me with full dedication and hardwork and this was an invaluable experience for me which I would cherish all my life.