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JUDGES INQUIRY ACT, 1968

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JUDGES (INQUIRY) ACT 1968:

SIGNIFICANCE:

"Ironically, the Higher Judiciary has powers of control over every organ under the Constitution, but there exists no effective method of disciplining its members." This problem necessitated the introduction of an Act by which the illegal actions or decisions of the members of the Judiciary could be effectively scrutinized.

The procedure by which the judges of Supreme Court and the High Court could be removed is contained in Article 124(4) of the Constitution of India, read with proviso (b) to Art. 124(2) and proviso (b) to Art. 217 (1). According to this provision, judges of both the Courts can be removed by way of the address of the Houses of Parliament to the President on the grounds of 'proved misbehaviour or incapacity'. To bring a more stringent provision for the same, the Judges (Inquiry) Bill, 1964 was formulated. It laid down for the removal of judges in the similar manner as prescribed by Article 124(5), and the Bill was subsequently sent to the Joint Committee of both the Houses for discussion and recommendations.

The committee comprised of distinguished members of the Parliament, Sri C.K. Daphtary and the Attorney General, Sri M.C. Setalvad, former Attorney General. After an elaborate discussion, the committee gave its report on 13th May 1966. The recommendations and suggestions of the Committee were duly adhered to and accordingly the Judges (Inquiry) Act, 1968. This Act enumerated the procedure for investigation and proof of misbehaviour and incapacity of Judges of the Supreme Court (including the Chief Justice of India), the Chief Justices and Judges of the High Courts.

OBJECTIVES:

The Judges (Inquiry) Act, 1968 was enacted in pursuance of the provisions of Article 124(5) of the Constitution. The primary aim of this Act is to control the system of investigation and proof involved in determining the misbehaviour and incapacity of a Judge. This Act extends to the Judges of Supreme Court as well as of High Court. This Act also provides for the presentation of an address by Parliament to the President and for matters connected in

addition to that praying for the removal of the Judge. This act mandates the removal of any Judge only after the President passes an order for the same. This Act strives to uphold judicial and legal independence in the Country along with providing the right direction for lucidity and accountability in the legal framework, which consists of Judges as its head. The Judges Inquiry Act outlines the procedure for the removal of judges who have been found guilty of any alleged misbehaviour or incapacity. This Act maintains a balance between judicial independence and judicial accountability. This Act ensures that the power of the Judges cannot be allowed to be absolute as accountability and transparency are the very essences of democracy.

IMPORTANT PROVISIONS:

The Judges Act 1968 consists of seven sections.

- **Section 3: INVESTIGATION ON MISCONDUCT AND INEFFICIENCY OF JUDGES**

This section provides for the procedure for the investigation on misconduct and inefficiency of Judges. The process involves the following steps:

I) Firstly a notice favouring the motion is addressed to the President for the removal of the Judge which is to be duly signed.

a) by at least one hundred members of the Lok Sabha if notice is given in the said House.

b) by at least fifty members of the Council, if notice is given in the said House, Then Speaker, or the Chairperson, after "consulting such person as he thinks fit," and after reviewing the evidence either permits the motion or reject the same.

II. If the procedure contained in the subsection 1 is admitted, then the Speaker or the Chairperson keeps the motion on stand by and institutes a fast investigation committee for investigating relevant grounds on which a Judge could be impeached. The Committee comprising of three individuals who are:

a) Chief Justice or other one Judges of the Supreme Court, Judge of the Supreme Court/ High Court and also comprises Chief Justice of High Court and Chief Justice of India, Chairperson of the Council of the states

b) Chief Justices of any High Courts, and

c) one who is in the opinion of the "Speaker or, the Chairperson, a distinguished jurist."

III. The Committee proceed to frame the charges on the Judge based on the information gathered throughout the investigation.

IV. All the charges along with "Statement of the allegations" have to be communicated to the Judge and he has to be given some time to write a reasonable "Statement of Defense"

V. The Committee arranges for the medical examination of the Judges if it is found through the investigations that a Judge is rendered incapable of discharging his duties efficiently due to his deteriorated mental or physical capability. This Act as a ground for the Judges to deny the allegations imposed on them; therefore, a medical examination in this regard becomes necessary.

VI. The Judge must present himself before the medical board for conducting the examination, After this, a medical report is submitted by the Board which contains the information regarding the incapacity stated by the Judge and as to whether the stated incapacity renders him unfit to continue the office.

VII. If the Judge refuses to go through medical examination organized by the Medical Board, then the Board submits a report to the Committee stating the reasons of refusal, and the Committee shall assume thathe/she suffers from such mental/ physical incapacity.

VIII. The Committee, after considering the written statement of the Judge and the medical report may amend the allegations framed and under such situation, the Judge is given an opportunity to present a fresh written statement on his defence.

IX. The Central Government on the request of Speaker or the Chairperson can appoint a lawyer to carry forward a case against the Judge.

- **Section 4: REPORT OF THE COMMITTEE**

Section 4 provides the way a committee deals with the report of investigation:

I. The Committee is empowered to control the procedures involved in the investigation. After the investigation, the accused Judge is provided with an opportunity for cross-examination of witnesses, evidence and being heard of his defence.

II. At the end of the investigation, Committee submits his report mentioning the charges respectively, and their observation on the whole case with explanations.

III. After this, the report of the Committee is submitted to both the houses of the Parliament by the speaker or the chairman.

- **Section 5: POWERS OF THE COMMITTEE**

The committee enjoys certain similar powers of a civil court as in a suit under the Code of Civil Procedure, 1908. The detailed powers enjoyed by the committee for undertaking the investigation are as follows:

- a) Summoning and enforcing any individual to attend the proceedings for examining him on oath
- b) Require the discovery and production of documents
- c) Acquiring evidence on oath
- d) Issuing commissions for the examination of witnesses or documents
- e) Such other matters as prescribed

- **Section 6: CONSIDERING THE REPORT AND PROCEDURE TO REMOVE A JUDGE**

Section 6 provides for the consideration of the Report and refers to the procedure for presentation of an address for the removal of a Judge.

I. If the report of the Committee contains that the judge is not guilty of misconduct and do not suffer incapacity, then no further steps are taken by the houses of Parliament and the motion stops.

II. If the report of the Committee contains that the Judge is guilty of any misconduct or suffers from incapacity, then the motion together with the report of the Committee are considered by the houses of Parliament in which pending and the case would proceed.

III. If the motion adopted are according to the provisions of Article 124, or Article 218 of the Constitution, then the misconduct or incapacity of the Judge is deemed to be proved, and the address for the removal of the Judge is presented to the President in the prescribed manner.

- **Section 7: POWER TO MAKE RULES**

Section 7 enables the making of rules by a Joint Committee of both the Houses.

I. It provides for constituting a joint committee of the Parliament for framing rules which are necessary for the administration of the act.

II. The Joint committee must comprise of 15 members. Out of 15 members, 10 would be nominated by the Speaker and the other five members are to be nominated by the Chairperson.

III. A Chairperson would be nominated by the Joint Committee who would be responsible for regulating its procedures.

IV. Without any bias to the generality of the provisions, the Joint Committee may make rules to provide for:

- a) The way of transmission of the motion from one House to another of the Parliament.
- b) The presentation of a report to the President requesting the removal of Judge.
- c) The commuting and other daily expenses payable to the Committee and the witnesses who attend the Committee.
- d) The facilities rendered to the Judge for his defence.
- e) Any other matter which is essential in the opinion of the Joint Committee. Any rules will not be effective until approved and confirmed by the Speaker, or the Chairperson and are published in the Official publications should have proper evidence.

RECENT AMENDMENTS:

No amendments have been made to the Judges(Inquiry) Act, 1968 till date. However, many Bills have been proposed by certain committees to bring certain changes in the present Act. One of such important Bills is The Judges (Inquiry) Bill, 2006. This Bill recommended establishing the National Judicial Council to undertake preliminary investigation and inquire into allegations of misconduct or incapacity of a Judge of the Supreme Court or a High Court and to regulate the procedure for such investigation, inquiry .

The second which was proposed was the Judges (Declaration of Assets & liabilities) Bill 2009. This bill "provides for the declaration of assets and liabilities by the Judges".

LOOPHOLES:

There are some major loopholes in the Judges(Inquiry) Act 1968, which need to be amended to strike a balance between judicial independence and judicial accountability.

- The existing parliamentary procedure for the removal of Judges as provided by the Judges(Inquiry) Act, 1968 is found to be cumbersome, time-consuming and elaborate.
- The procedure mentioned in the Judges(Inquiry) Act, 1968 makes the judges vulnerable to a political system of voting. This means that the Judges may or may not get impeached even though a three bench Judge Committee has already held him guilty for the same.
- Due to this political system of voting a guilty judge could be set free due to the irrational process of political voting,
- The entire process involved in the removal of the Judges could harm the independence of the Judges. Judges might be harassed and exposed to shame and guilt just on the will of a party having a majority in the Parliament. The impending motion of impeachment might expose Judges to such vulnerabilities.
- The words 'misbehaviour' or 'incapacity' have neither been defined nor clarified in the Constitution, which leads to certain ambiguities in the interpretation of this Act.

CONCLUSION:

A Judge charged with misconduct amounting to "misbehaviour" may choose to appear at all before the Inquiry Committee; the Committee may then proceed with the inquiry (under Rule 8 of the 1969 Rules) in the absence of the Judge. But once the Judge expresses his intention to participate in the Inquiry proceedings (as in the present case) by asking for the time, seeking adjournments, filing a written statement of defence and engaging Advocates to appear and argue the case on his behalf, the Judge (mainly because he is in the position of a Judge) has a duty to cooperate in the inquiry and to remain present for questioning (not necessarily on oath) whether by Advocates appointed to assist the Committee or by the Inquiry Committee itself. This in no way detracts from the duty of the Inquiry Committee to

hold him guilty of the definite charges framed only if such charges are proved beyond a reasonable doubt, by oral and documentary evidence brought onrecord.

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.