

THE NATIONAL JUDICIAL COMMISSION BILL, 2022

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Bill No. LXXXVI of 2022

THE NATIONAL JUDICIAL COMMISSION BILL, 2022

A

BILL

to regulate the procedure to be followed by the National Judicial Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and to lay down judicial standards and provide for accountability of Judges, and establish credible and expedient mechanism for investigating into individual complaints for misbehavior or incapacity of a judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation; and for the presentation of an address by Parliament to the President in relation to proceeding for removal of a Judge and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 **1.** (1) This Act may be called the National Judicial Commission Act, 2022.
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title and commencement.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "assets" includes immovable and movable property;

Explanation.—For the purposes of this clause,—

(i) "immovable property" includes the land and any building or other structure attached to the land or permanently fastened to anything which is attached to the land, and tenancies, lease holds or any other interest in immovable property; 5

(ii) "movable property" includes any other property which is not immovable property as also corporeal and incorporeal property of every description and household goods and personal effects of the value of each item of more than fifty thousand rupees; 10

(b) "Chairman" means the Chairman of the Council of States;

(c) "Chairperson" means the Chairperson of the Commission;

(d) "Commission" means the National Judicial Commission referred to in article 124A of the Constitution; 15

(e) "competent authority" means 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; 20

(f) "High Court" means the High Court in respect of which recommendation for appointment of a Judge is proposed to be made by the Commission;

(g) "incapacity" means physical or mental incapacity which is, or is likely to be, of a permanent character;

(h) "investigation committee" means the investigation committee constituted under section 26; 25

(i) "inquiry" means an inquiry for proof of misbehaviour or incapacity;

(j) "Judge" means a Judge of the Supreme Court or of a High Court and includes the Chief Justice of India and the Chief Justice of a High Court;

(k) "judicial standards" means the values of judicial life specified in section 9, and the Schedule; 30

(l) "liabilities" includes financial guarantees given and all loans raised from any bank, financial institution or any other source;

(m) "Member" means a Member of the Commission and includes its Chairperson;

(n) "misbehaviour" means,— 35

(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 40

(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

5 (vii) willfully 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;

10 (o) "notification" means a notification published in the Official Gazette;

(p) "prescribed" means prescribed by the rules made under this Act;

(q) "regulations" means the regulations made by the Commission under the Constitution of India and this Act;

15 (r) "Scrutiny Panel" means the Complaints Scrutiny Panel constituted under section 16 for the scrutiny of complaints; and

(s) "Speaker" means the Speaker of the House of the People.

CHAPTER II

SELECTION FOR APPOINTMENT OF JUDGES AND THEIR TRANSFER

20 **3.** (1) The Central Government shall, within a period of thirty days from the date of coming into force of this Act, intimate the vacancies existing in the posts of Judges in the Supreme Court and in a High Court to the Commission for making its recommendations to fill up such vacancies. Reference to Commission for filling up of vacancies.

(2) The Central Government shall, six months prior to the date of occurrence of any vacancy by reason of completion of the term of a Judge of the Supreme Court or of a High Court, make a reference to the Commission for making its recommendation to fill up such vacancy.

(3) The Central Government shall, within a period of thirty days from the date of occurrence of any vacancy by reason of death or resignation of a Judge of the Supreme Court or of a High Court, make a reference to the Commission for making its recommendations to fill up such vacancy.

4. (1) The Commission shall recommend for appointment the senior-most Judge of the Supreme Court as the Chief Justice of India if he is considered fit to hold the office: Procedure for selection of Judge of Supreme Court.

Provided that a member of the Commission whose name is being considered for recommendation shall not participate in the meeting.

35 (2) The Commission shall, on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, recommend the name for appointment as a Judge of the Supreme Court from amongst persons who are eligible to be appointed as such under clause (3) of article 124 of the Constitution.

5. (1) The Commission shall recommend for appointment a Judge of a High Court to be the Chief Justice of a High Court on the basis of *inter se* seniority of High Court Judges and ability, merit and any other criteria of suitability as may be specified by regulations. Procedure for selection of Judge of High Court.

(2) The Commission shall seek nomination from the Chief Justice of the concerned High Court for the purpose of recommending for appointment a person to be a Judge of that High Court.

(3) The Commission shall on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, nominate name for appointment as a Judge of a High Court from amongst persons who are eligible to be appointed as such under clause (2) of article 217 of the Constitution and forward such names to the Chief Justice of the concerned High Court for his views. 5

(4) Before making any nomination under sub-section (2) or giving his views under sub-section (3), the Chief Justice of the concerned High Court shall consult two senior-most Judges of that High Court and such other Judges and Bar of that High Court as may be specified by regulations.

(5) After receiving views and nomination under sub-sections (2) and (3), the Commission may in compliance of the mandate of clause (1) of article 124C of the Constitution recommend for appointment the person who is found suitable on the basis of ability, merit and any other criteria of suitability as may be specified by regulations. 10

Power of President to require re-consideration.

6. The President shall, on the recommendations made by the Commission, appoint the Chief Justice of India or a Judge of the Supreme Court or, as the case may be, the Chief Justice of a High Court or the Judge of a High Court: 15

Provided that the President may, if considers necessary, require the Commission to reconsider, either generally or otherwise, the recommendation made by it:

Provided further that if the Commission makes recommendation with or without modifications after reconsideration, the President shall make appointment accordingly. 20

Procedure for transfer of Judges.

7. The Commission shall recommend for transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court, as per the procedure specified by regulations.

Procedure to be followed by Commission in discharge of its functions.

8. The Commission shall meet at such time and place as the Chairperson may direct and observe such rules of procedure in regard to the transaction of business at its meetings, as it may specify by regulations. 25

CHAPTER III

JUDICIAL STANDARDS TO BE FOLLOWED BY THE JUDGES

Judicial standards.

9. (1) Every Judge shall continue to practice universally accepted values of judicial life as specified in the Schedule to this Act. 30

(2) In particular, and without prejudice to the generality of the foregoing provision, no Judge shall—

(a) contest the election to any office of a club, society or other association or hold such elective office except in a society or association connected with the law or any court; 35

(b) 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;

(c) permit any member of his immediate family, who is a member of the Bar, to appear before him or associated in any manner with a cause to be dealt with by him; 40

(d) 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;

(e) hear and decide a matter in which a member of his family, or his close relative or a friend is concerned; 45

(f) 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,—

5 (i) the views expressed by a Judge in his individual capacity on issues of public interest 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;

10 (g) 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;

15 (h) give interview, to the media in relation to any of his judgment delivered, or order made, or direction issued, by him, in any case adjudicated by him;

(i) accept gifts or hospitality except from his relatives;

(j) hear and decide a matter in which a company or society or trust in which he holds or any member of his family holds shares or interest, unless he has disclosed his such holding or interest, and no objection to his hearing and deciding the matter is raised;

20

(k) speculate in securities or indulge in insider trading in securities;

(l) engage, directly or indirectly, in trade or business, either by himself or in association with any other person:

25 Provided that the publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business for the purpose of this clause;

(m) seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available or admissible;

(n) hold membership in any organisation that practices invidious discrimination on the basis of religion or race or caste or sex or place of birth;

30 (o) have bias in his judicial work or judgments on the basis of religion or race or caste or sex or place of birth.

Explanation.—For the purposes of this sub-section, "relative" means—

(i) spouse of the Judge;

(ii) brother or sister of the Judge;

35 (iii) brother or sister of the spouse of the Judge;

(iv) brother or sister of either of the parents of the Judge;

(v) any lineal ascendant or descendant of the Judge;

(vi) any lineal ascendant or descendant of the spouse of the Judge;

(vii) nephew or niece;

40 (viii) cousin brother or cousin sister; and

(ix) spouse of the person referred to in clauses (ii) to (viii) .

CHAPTER IV

DECLARATION OF ASSETS AND LIABILITIES BY JUDGES

Declaration of assets and liabilities.

10. (1) Every Judge shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.

(2) 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—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;

(b) his liabilities and that of his spouse and his dependent children. 10

(3) A Judge holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2) to the competent authority within thirty days of the coming into force of this Act.

(4) 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. 15

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished in such form and in such manner, as may be prescribed.

Explanation.—For the purposes of this section, "dependent children" means sons and daughters who have no separate means of earning and are wholly dependent on the Judge for their livelihood. 20

Making available document or information in relation to a declaration of assets and liabilities of Judges on website.

11. The competent authority shall exhibit the document or information in relation to a declaration of assets and liabilities of Judges,—

(a) in the case of Judges and Chief Justices of the High Courts, on the website of the High Court in which such Judges and Chief Justice are serving; 25

(b) in the case of Judges of the Supreme Court and Chief Justice of India, on the website of the Supreme Court.

Maintenance of records.

12. The competent authority shall keep the documents or information forms containing the details of the assets and liabilities and other particulars in relation thereto filed by the Judges in its safe custody for such period as may be decided by the Commission and make available to it, as and when, on demand. 30

CHAPTER V

MAKING OF COMPLAINT

Complaints.

13. Any person making an allegation of misbehaviour or incapacity in respect of a Judge may file a complaint in this regard to the Commission. 35

Manner of making of complaint.

14. The complaint under section 13 shall—

(a) be in such form and filed in such manner as may be prescribed;

(b) set forth particulars of the misbehaviour or incapacity which is the subject matter of allegation; 40

(c) be verified at the foot of the complaint by the complainant and shall specify, by reference to the numbered paragraphs of the complaint, what he verifies of his own knowledge and what he verifies upon information and shall refer to the source of the information.

15. Save as otherwise provided under this Act, the Commission shall refer all such complaints to the appropriate Scrutiny Panel constituted under Chapter VI for scrutiny. Reference to Scrutiny Panel.

CHAPTER VI

COMPLAINTS SCRUTINY PANEL

5 **16.** There shall be constituted a panel to be called "Complaints Scrutiny Panel" in the Supreme Court and in every High Court to scrutinise the complaints against a Judge received under this Act. Constitution of Complaints Scrutiny Panel.

17. (1) 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 Commission. Composition of Scrutiny Panel.

10 **(2)** 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 Commission in consultation with the Chief Justice of that High Court.

18. (1) If the Scrutiny Panel, after scrutiny of the complaint referred to it for scrutiny under section 15, and after making scrutiny of the complaint, as it deems appropriate, is 15 satisfied that— Functions of Scrutiny Panel.

 (a) there are sufficient grounds for proceeding against the Judge, it shall, after recording reasons therefore, submit a report on its findings to the Commission, within three months of receipt of such complaint, for making inquiry against the Judge in accordance with the provisions of this Act;

20 (b) the complaint is frivolous or vexatious, or is not made in good faith, or only with a view to scandalize or intimidate a judge or there are not sufficient grounds for inquiring into the complaint, or the complaint relates only to the merits of the judgment or a procedural order, and, then, it shall after recording reasons therefore submit a report on its findings to the Commission, within three months of receipt of such 25 complaint, for further action in accordance with the provisions of this Act.

(2) The Commission on considering the report of the Scrutiny Panel under clause (b) of sub-section (1) above may treat the matter as closed or if it found that there are sufficient grounds for inquiring into the complaint, reasons recorded, order inquiry against the judge in accordance with the provisions of this Act.

30 **(3)** If the complaint is found frivolous or vexatious or is not made in good faith or only with a view to scandalize or intimidate a judge, the Commission may take further action in accordance with the provisions of this Act.

(4) The scrutiny of complaints under this section by the Scrutiny Panel shall be held in camera.

35 **19.** Save as otherwise provided in this Act, the Scrutiny Panel shall have power to regulate its own procedure in scrutinising the complaints referred to it for scrutiny under section 15. Procedure of Scrutiny Panel.

5 of 1908. **20.** The Scrutiny Panel shall, while scrutinising the complaints forwarded to it for scrutiny under section 15, have all the powers of a civil court trying a suit under the Code 40 of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:— Powers relating to scrutiny of complaints.

 (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

 (b) requiring the discovery and production of any document;

 (c) receiving evidence on affidavits;

45 (d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or other documents;
and

(f) any other matter which may be prescribed.

Provisions for officers and other employees of Scrutiny Panel.

21. (1) The Chief Justice of India shall, determine the nature and categories of the officers and other employees required to assist the Scrutiny Panel referred to in sub-section (1) of section 17 in the discharge of its functions and provide the Scrutiny Panel with such officers and other employees as he may think fit. 5

(2) The Chief Justice of the High Court shall, determine the nature and categories of the officers and other employees required to assist the Scrutiny Panel referred to in sub-section (2) of section 17 in the discharge of its functions and provide the Scrutiny Panel with such officers and other employees as he may think fit. 10

CHAPTER VII

A. POWERS AND FUNCTIONS OF JUDICIAL COMMISSION IN THE MATTER OF INQUIRY OF COMPLAINTS AND PROCEDURE FOR THE SAME

Procedure for complaints received by the Commission.

22. The Commission shall, within three months of the receipt of a complaint relating to misbehaviour of— 15

(a) an individual Judge of the Supreme Court or Chief Justice of a High Court, refer the complaint, to the Scrutiny Panel of the Supreme Court to scrutinise and report thereon;

(b) an individual Judge of a High Court, refer the complaint, to the Scrutiny Panel of the High Court in which such Judge is acting as such, to scrutinise and report thereon. 20

(c) the Chairperson of the Commission, the Commission without the Chairperson shall nominate another judge or a retired Chief Justice of India in his place as a member of the Commission for the limited purpose of the inquiry. 25

(d) a judge of the Supreme Court who is a member of the Commission without that member shall nominate another judge of the Supreme Court in his place as a member of the Commission for the limited purpose of the inquiry.

Records of complaints forwarded to Scrutiny Panel.

23. The Commission shall maintain a record of the complaints referred to the Scrutiny Panel. 30

Procedure for complaints against the Chief Justice of India.

24. A complaint against the Chief Justice of India shall not be referred to the Scrutiny Panel for scrutiny but shall be scrutinised by the Commission, without the Chief Justice of India.

Procedure for proceedings following change in composition of the Commission.

25. After the commencement of the proceedings relating to a complaint against a judge, if any change arises in the composition of the Commission due to retirement, resignation or elevation or any other reason, the proceedings of the Commission shall continue from the stage from which it was pending before such change and the Chairperson of the Commission shall make such incidental changes, as he deems necessary, to continue the proceedings. 35

B. CONSTITUTION OF INVESTIGATION COMMITTEE, ITS POWERS AND FUNCTIONS AND PROCEDURE FOR INVESTIGATION 40

Investigation by investigation committee.

26. (1) The Commission, 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 Commission found necessary under sub-sections (c) and (d) of section 22 or section 24 or the Scrutiny Panel has recommended in its report under 45

clause (a) of sub-section (1) of section 18 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 Commission:

5 Provided that the number of the investigation committees, in no case, at a time, shall exceed three:

Provided further that the Commission may, having regard to the nature of misbehaviour of a Judge, may constitute different investigation committees for inquiry into different complaints.

10 **27.** The Commission, shall, for the purpose of proceedings under this Act and the investigation committee, while conducting any investigation under this Chapter, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:— Powers of the Commission and investigation committee.

15 (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

20 (e) issuing commissions for the examination of witnesses or other documents; and

(f) any other matter which may be prescribed.

28. (1) If the investigation committee has reason to believe that any documents which, in its opinion, will be useful for, or relevant to, any preliminary investigation or inquiry, are secreted in any place, it may authorise any officer subordinate to it, or any officer of an agency referred to in section 42, to search for and to seize such documents. Search and seizure by investigation committee.

(2) If the investigation committee is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any investigation and that it would be necessary to retain the original document in its custody, it may so retain the said document till the completion of such investigation or retain a copy of such document, as it may deem fit.

5 of 1908. (3) The provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if, for the word "Magistrate", wherever it occurs, the words "investigation committee or any officer authorised by it" were substituted.

29. The investigation committee shall be entitled to make a request to the Commission for assistance to it and the Commission may invoke its powers in this behalf under section 42 of this Act. Assistance to investigation committee by Government agency.

40 **30.** If a Judge, to whom notice is issued by the investigation committee referred to in section 26, refuses to appear before it or does not co-operate with it in conducting investigation, then, the investigation committee may proceed *ex parte*. Ex parte investigation.

45 **31.** The investigation committee may cause investigation into any act or conduct of any person, other than the Judge concerned, in so far as it considers necessary so to do for the purpose of its investigation into any allegations made against a Judge and shall give such person a reasonable opportunity of being heard and to produce evidence in his defence. Investigation into act or conduct of certain other persons in certain cases.

Submission of report by investigation committee.

32. The investigation committee, after completion of the inquiry in respect of a complaint, shall submit its findings to the Commission.

C. INQUIRY PROCEDURE OF INVESTIGATION COMMITTEE

Procedure in inquiries by investigation committee.

33. (1) The investigation committee shall frame definite charges against the Judge on the basis of which the inquiry is proposed to be held. 5

(2) Every such inquiry shall be conducted in camera by the investigation committee.

(3) The charges framed under sub-section (1) together with the statement of grounds on which each such charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified by the investigation committee. 10

(4) The investigation committee shall hold every such inquiry as expeditiously as possible and in any case complete the inquiry within a period of six months from the date of receipt of the complaint:

Provided that the Commission shall complete the inquiry by a further period of six months. 15

Investigation committee to have power to regulate its own procedure.

34. Save as otherwise provided, 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.

Central Government to appoint an advocate to conduct cases against judge.

35. The Central Government may, if requested by the investigation committee, appoint 20 an advocate to conduct the cases against the judge.

D. STAFF OF COMMISSION

Staff of the Commission.

36. (1) The Commission shall, for the purpose of performing its functions under this Act, appoint a Secretary and such other officers, staffs and employees possessing such qualifications, as specified by regulations from time to time. 25

(2) The terms and conditions of service of the Secretary, officers, staffs and employees referred to in sub-section (1) shall be as specified by regulations from time to time.

(3) The Commission shall provide such number of its officers and other employees to assist the investigation committee as the Commission considers appropriate having regard to the nature of investigation in a case. 30

E. PENALTIES ON CONCLUSION OF INQUIRY

Stoppage of assigning work in certain cases.

37. During the pendency of the inquiry by the investigation committee, the Commission may recommend stoppage of assigning judicial work including cases assigned to the Judge concerned if it appears to the Commission that it is necessary in the interest of fair and impartial scrutiny of complaints or investigation or inquiry. 35

Procedure on receipt of report of investigation committee.

38. (1) If the Commission on receipt of the report from the investigation committee is satisfied that—

(a) no charges have been proved, it shall dismiss the complaint and matter be closed and no further action shall be taken against the Judge and the complainant shall be informed accordingly; 40

(b) all or any of the charges have been proved but the Commission is of the opinion that the charges proved do not warrant removal of the Judge, it may, by order, issue advisories or warnings.

(2) Without prejudice to the provisions contained in sub-section (1), if the Commission, on receipt of the report from the investigation committee is satisfied that there has been a *prima facie* commission of any offence under any law for the time being in force by a Judge, it may recommend to the Central Government for prosecution of the Judge in accordance with the law for the time being in force.

(3) In a case where an inquiry or investigation against the Judge has been initiated and such Judge has demitted office during such inquiry or investigation, such inquiry or investigation may be continued if the Commission is of the opinion that the misbehaviour is serious in nature and requires to be inquired into or investigated and the Commission may after conclusion of inquiry forward its findings to the Central Government to take further action in the matter under relevant law for the time being in force.

39. If the Commission is satisfied that all or any of the charges of misbehavior 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.

Advice of President for removal of judge.

40. If the Scrutiny Panel refers a case to the Commission under sub-section (b) of section 18, the Commission shall consider the matter further and if it concurs with the conclusion of the Scrutiny Panel, it may authorise the filing of a criminal complaint against the original complainant before a competent court.

Filing of complaints against complainant in certain cases.

F. OTHER PROVISIONS RELATING TO INQUIRY

41. All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Proceedings before the Commission to be judicial proceedings.

42. The Commission shall be entitled to take assistance of such officers of the Central Government or State Government or any agency thereof or authority as it deems fit.

Power to call for assistance.

43. Notwithstanding anything contained in any other law for the time being in force, the complainant and every person who participates in the scrutiny or investigation or inquiry as a witness or as a legal practitioner or in any other capacity, whether or not he seeks confidentiality about his name, shall undertake to the Commission or Scrutiny Panel or investigation committee that he shall not reveal his own name, the name of the Judge complained against, the contents of the complaint or any of the documents or proceedings to anybody else including the media without the prior written approval of the Commission:

Confidentiality in complaint procedure.

Provided that the Commission may, if it considers appropriate, authorise any person to apprise the media or press in respect of matters relating to complaint, scrutiny or investigation or inquiry, as the case may be.

44. The Commission or the Scrutiny Panel or investigation committee may, at the request of a complainant, direct that the complainant be accorded such protection, as it deems appropriate, including keeping his identity confidential, from everybody and also the Judge against whom the complaint is made.

Keeping identity of complainant confidential.

45. After the commencement of scrutiny of complaints under this Act, no action for contempt of court shall lie or shall be proceeded with in respect of the allegations, which are the subject matter of the investigation or inquiry.

No action for contempt to lie in certain cases.

46. Any scrutiny, investigation or inquiry pending before the Scrutiny Panel or investigation committee or Commission shall not affect the criminal liability in respect of such allegations which are the subject matter of the investigation or inquiry.

Investigation and enquiry by the Commission not to affect criminal liability.

All records, documents etc. related to complaint, scrutiny, investigation and enquiry to be confidential.

Protection of action taken in good faith.

Laying of advice of Commission the before Parliament.

Motion for removal of a Judge.

Investigation into misbehaviour or incapacity of Judge by investigation committee for removal of Judges.

47. Notwithstanding anything contained in the Right to Information Act, 2005 or any other law for the time being in force, all papers, documents and records of proceedings related to a complaint, preliminary investigation and inquiry shall be confidential and shall not be disclosed by any person in any proceeding except as directed by the Commission:

22 of 2005.

Provided that the findings of the investigation committee and the orders passed by the Commission under clause (b) of sub-section (1) of section 38 shall be made public.

48. No suit, prosecution or other legal proceeding shall lie against the Chairperson or any member of the Commission, Scrutiny Panel, investigation committee or against any officer or employee, agency or person engaged by such committees or panel for the purpose of conducting scrutiny or investigation or inquiry in respect of anything which is in good faith done or intended to be done under this Act or the rules made there under.

CHAPTER VIII

PROCEDURE FOR PRESENTATION OF AN ADDRESS FOR REMOVAL OF A JUDGE

49. The President, on receipt of advice under section 39, shall cause the findings of the Commission along with the accompanying materials to be laid before both Houses of Parliament.

50. On laying of the advice of the Commission along with the accompanying material, the Central Government may move a motion in either House of Parliament for taking up the said advice for consideration by the House.

51. Notwithstanding anything contained in section 49 or section 50, if a 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

(c) Council, then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him, either admit the motion or refuse to admit the same.

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case may be, the Chairman shall keep the motion pending and the matter shall be referred to the Commission for constitution of an investigation committee under section 26.

(3) The Commission, after receipt of reference under sub-section (2), constitute an investigation committee under section 26 and the investigation committee shall conduct an inquiry in accordance with the provisions contained under Chapter VII and submit its report to the Commission for being submitted to the Speaker or Chairman, as the case may be, for consideration.

(4) Where it is alleged that a Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the investigation committee may arrange for the medical examination of the Judge by such Medical Board as may be appointed for the purpose by the Speaker or, as the case may be, the Chairman.

(5) The Medical Board shall undertake such medical examination of the Judge as may be considered necessary and submit a report to the investigation committee stating therein whether the incapacity is such as to render the Judge unfit to continue in office.

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(6) If the Judge refuses to undergo medical examination considered necessary by the Medical Board, the Board shall submit a report to the investigation committee stating therein the examination which the Judge has refused to undergo, and the investigation committee may, on receipt of such report, presume that the Judge suffers from such physical or mental incapacity as is alleged in the motion referred to in sub-section (1) .

5 **52.** (1) If the report of the investigation committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, then, no further steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses of Parliament shall not be proceeded with.

10 (2) If the report of the investigation committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in section 50 shall together with the report of the investigation committee, be taken up for consideration by the House or the Houses of Parliament in which it is pending.

(3) If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124 or, as the case may be, in accordance with that clause read with article 218 of the Constitution, then, the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the prescribed manner to the President by each House of Parliament in the same session in which the motion has been adopted.

20 **53.** (1) There shall be constituted a Joint Committee of both Houses of Parliament in accordance with the provisions hereinafter contained for the purpose of making rules to carry out the purposes of this Chapter.

(2) The Joint Committee shall consist of fifteen members of whom ten shall be nominated by the Speaker and five shall be nominated by the Chairman.

25 (3) The Joint Committee shall elect its own Chairman and shall have power to regulate its own procedure.

(4) Without prejudice to the generality of the provisions of sub-section (1), the Joint Committee may make rules to provide for the following, among other matters, namely:—

30 (a) the manner of transmission of a motion adopted in one House to the other House of Parliament;

(b) the manner of presentation of an address to the President for the removal of a Judge;

(c) the travelling and other allowances payable to the members of the Committee and the witnesses who may be required to attend meetings of such Committee;

35 (d) the facilities which may be accorded to the Judge for defending himself;

(e) any other matter which has to be, or may be, provided for by rules or in respect of which provision is, in the opinion of the Joint Committee, necessary.

(5) Any rules made under this section shall not take effect until they are approved and confirmed both by the Speaker and the Chairman and are published in the Official Gazette, and such publication of the rules shall be conclusive proof that they have been duly made.

CHAPTER IX

OFFENCES AND PENALTIES

45 **54.** (1) Whoever intentionally insults, or causes any interruption, to the Scrutiny Panel or investigation committee or Commission while the Commission or Scrutiny Panel or investigation committee or any of their members is doing scrutiny or conducting any

Consideration of report and procedure for presentation of an address for removal of Judge.

Power of Joint Committee to make rules.

Intentional insult or interruption to the Commission.

investigation or inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973 shall apply in relation to an offence referred to in sub-section (1) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Commission. 2 of 1974.

Penalty for violation of confidentiality in complaint procedure.

55. If any complainant or other person, who participates in the scrutiny or investigation or inquiry as a witness or as a lawyer or in any other capacity, contravenes the provisions of section 43 or section 44 or section 47, shall be liable for punishment with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. 10

Power of the Commission to try certain cases.

56. When any such offence as is described in sub-section (1) of section 54 is committed, in the view, or, in the presence, of the Commission, then the said Commission, may cause the offender to be detained in custody and may at any time on the same day take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause as to why he should not be punished under this section, try such offender summarily so far as may be in accordance with the procedure specified for summary trials under the Code of Criminal Procedure, 1973, and sentence him to simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. 15 20 2 of 1974.

Punishment for frivolous and vexatious complaints.

57. (1) 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. 25

(2) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973. 2 of 1974.

(3) No suit, prosecution or other legal proceeding shall lie against the complaint under this section in respect of anything which is in good faith done or intended to be done under this Act. 30

Offences by companies.

58. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: 35

Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch or unit nominated by the company as responsible shall be liable for contravention in respect of such establishment, branch or unit:

Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. 40

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 45 50

Explanation.—For the purpose of this section,—

50

(a) " company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

5 **59. (1)** Where an offence under this Act has been committed by a society or trust, every person who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Offences by societies or trusts.

10 Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

15 (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary, trustee or other officer of the society or trust, such director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

20 (a) "society" means anybody corporate registered under the Societies Registration Act, 1860 and, "trust" means anybody registered under the Indian Trusts Act, 1882;

25 (b) "director", in relation to a society or trust, means a member of its governing board other than an ex officio member representing the interests of the Central or State Government or the appropriate statutory authority.

60. Any person convicted on a trial held under sub-section (1) of section 57 may, notwithstanding anything contained in any other law for the time being in force, appeal, within sixty days of order of such conviction, to the Supreme Court. Appeal to Supreme Court.

30 **61. (1)** The Central Government may make rules, to carry out the provisions of this Act, other than the provisions contained under Chapter VIII. Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for all or any of the following matters, namely:—

(a) the form and manner in which, information is to be furnished or, annual return to be filed, under section 10;

35 (b) the form and manner in which complaint shall be filed under section 14;

(c) other matters in respect of which the Scrutiny Panel shall, for the purpose of scrutiny of complaint, have powers of a civil court under section 20;

40 (d) other matters in respect of which the Commission shall, for the purpose of inquiry or investigation of complaint have powers of a civil court under clause (f) of section 27;

(e) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

45 (3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule

should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

62. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, after consultation with the Commission, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty: 5

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament. 10

Power of the Commission to make regulations.

63. (1) The Commission may, by notification in the Official Gazette, make regulations consistent with the Constitution of India, this Act, and the rules made thereunder, to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:— 15

(a) the criteria of suitability with respect to appointment of a Judge of the Supreme Court under article 124C of the Constitution and sub-section (2) of section 4 of this Act;

(b) other procedure and conditions for selection and appointment of a Judge of the Supreme Court under article 124C of the Constitution; 20

(c) the criteria of suitability with respect to appointment of a Judge of the High Court under Article 124C of the Constitution and sub-section (3) of section 5 of this Act;

(d) other Judges who may be consulted with the Chief Justice and manner and mode of consultation with the bar under article 124C of the Constitution and sub-section (4) of section 5 of this Act; 25

(e) the manner of eliciting views of the Governor and the Chief Minister under clause (b) of article 124B of the Constitution;

(f) other procedure and conditions for selection and appointment of a Judge of the High Court under article 124B and 124C of the Constitution and sub-section (3) of section 5 of this Act; 30

(g) the procedure for transfer of Chief Justices and other Judges from one High Court to any other High Court under clause (c) of article 124B and clause (2) of article 124C of the Constitution; 35

(h) the procedure to be followed by the Commission in the discharge of its functions under clause (2) of article 124C of the Constitution;

(i) the rules of procedure in regard to the transaction of business at the meetings of Commission, including the quorum at its meeting under clause (2) of article 124C of the Constitution and section 8 of this Act; 40

(j) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Repeal and savings.

64. (1) The Judges (Inquiry) Act 1968, and National Judicial Appointments Commission Act, 2014 are hereby repealed. 51 of 1968. 40 of 2014.

(2) Notwithstanding the repeal of the Judges (Inquiry) Act, 1968 (hereinafter referred to as the repealed Act) the rules made by the Joint Committee under section 7 of the repealed Act shall continue to be in force until rules are framed under section 53 of this Act. 45

(3) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any order or notice made or issued or any inquiry initiated under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken or initiated under the corresponding provisions of this Act.

10 of 1897 (4) The mention of particular matters in sub-sections (2) and (3) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

THE SCHEDULE

[See section 9(1)]

JUDICIAL STANDARDS

1. Norms, including punctuality and commitment to work, guidelines and conventions essential for the conduct and behaviour of Judges, being pre-requisite for an independent, strong and respected judiciary, having integrity and detachment and impartial administration of justice as reflected in the Restatement of Values already adopted by the Conference of Chief Justices held in 1999 shall be practiced by every Judge.

2. All times be conscious that he is under the public gaze and not do any act or omission which is unbecoming of the high office he occupies and the public esteem in which that office is held.

3. A degree of aloofness consistent with the dignity of his office shall be practiced by every Judge.

4. Judgments should speak for themselves.

STATEMENT OF OBJECTS AND REASONS

The Judges of the Supreme Court are appointed under clause (2) of article 124 and the Judges of the High Courts are appointed under clause (1) of article 217 of the Constitution, by the President. The *Ad-hoc* Judges and retired Judges for the Supreme Court are appointed under clause (1) of article 127 and article 128 of the Constitution respectively. The appointment of additional Judges and acting Judges for the High Court is made under article 224 and the appointment of retired Judges for sittings of the High Courts is made under article 224A of the Constitution. The transfer of Judges from one High Court to another High Court is made by the President after consultation with the Chief Justice of India under clause (1) of article 222 of the Constitution. The inquiry for misbehavior, misconduct and misdemeanor of Judges is conducted under the Judges (Inquiry) Act 1968.

2. The Supreme Court in the matter of the Supreme Court Advocates-on-Record Association Vs. Union of India in the year 1993, and in its Advisory Opinion in the year 1998 in the Third Judges case, had interpreted clause (2) of article 124 and clause (1) of article 217 of the Constitution with respect to the meaning of "consultation" as "concurrence". Consequently, a Memorandum of Procedure for appointment of Judges to the Supreme Court and High Courts was formulated, and is being followed for appointment.

3. Independence of judiciary is a basic feature and part of basic structure of the Constitution of India, as declared by the Hon'ble Supreme Court. Transparency and accountability in the matter of appointment of the judges of the High Courts and Supreme Court is very much linked to this concept. It is widely accepted that the prevailing collegium system needs to be revisited in this regard.

4. Accordingly, the Constitution (Ninety Ninth Amendment) Act, 2014 was enacted added by section to amend the relevant provisions of the Constitution and for setting up a National Judicial Appointments Commission. The Act inserted new articles 124A, 124B and 124C after article 124 of the Constitution to provide for the composition and the functions of the proposed National Judicial Appointments Commission. The National Judicial Appointments Commission Act, 2014 (Act No. 40 Of 2014) was also enacted *inter alia* regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers etc. However, these Acts were held to be unconstitutional by the Hon'ble Supreme court of India in the judgment in Supreme Court Advocates-on-Record Advocates Association Vs. Union of India (2016) .

5. After review of the relevant constitutional provisions, the pronouncements of the Supreme Court and consultations with eminent Jurists, it is felt that a new broad based National Judicial Commission should be established for making recommendations for appointment of Judges of the Supreme Court and High Courts. The said Commission would provide a meaningful role for the judiciary and all other important stakeholders including the Bar to present their view points and make the participants accountable, while also introducing transparency in the selection process. The Commission shall have independent and autonomy under the constitution and comprehensive powers for selection of judges to the High Courts and Supreme Court, transfer of judges of the High Courts and inquiry for misbehavior, misconduct and such misdemeanor of the judges.

6. The Constitution (Amendment) Bill, 2022 set to be introduced in the Parliament along with the instant Bill, enables amendment of relevant provisions of the Constitution and for setting up a National Judicial Commission with comprehensive powers and in the light of judgment in Supreme Court Advocates-on-Record Advocates Association Vs. Union of India.

7. The present Bill, namely the National Judicial Commission Bill, 2022 *inter alia* provides for the time frame to initiate the process of filling up of vacancies in the Supreme

Court and High Courts and the procedure for selection of Chief Justice of India, Chief Justice of High Courts and Judges of the Supreme Court and High Courts. It further provides that the President may, if necessary, require the Commission to reconsider the recommendation. However, if the Commission makes unanimous recommendations on such reconsideration, then the President shall make the appointment accordingly.

8. Further, this Bill provides that the National Judicial Commission may make regulations *inter alia* specifying the criteria of suitability with respect to the appointment of Judges of the Supreme Court and High Courts, the procedure and conditions for selection and appointment of Judge of the Supreme Court and High Court, the procedure for transfer of Judges from one High Court to another High Court and the procedure to be followed by the Commission in the discharge of its functions. It also provides for detailed mechanism for inquiry into misbehavior, misconduct and such misdemeanor of the judges. It further provides for consequential repeal of the Judges (Inquiry) Act, 1968 and National Judicial Appointments Commission Act, 2014.

9. The Bill, thereby seeks to regulate the procedure to be followed by the National Judicial Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and to lay down judicial standards and provide for accountability of Judges, and establish credible and expedient mechanism for investigating into individual complaints for misbehavior or incapacity of a judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation; and for the presentation of an address by Parliament to the President in relation to proceeding for removal of a Judge and for matters connected therewith or incidental thereto. It facilitates to broad base the appointment of Judges in the Supreme Court and High Courts, enables participation of judiciary and other important stakeholders and ensures greater transparency, accountability and objectivity in the appointment of the Judges in the Supreme Court and High Courts, transfer of the judges of High Courts and better administration of justice.

Hence, this Bill.

BIKASH RANJAN BHATTACHARYYA

FINANCIAL MEMORANDUM

Clause 36 of the Bill *inter alia* provides for appointment of the Secretary and other officers, staff and employees of the National Judicial Appointments Commission. Clause 53 of the Bill *inter alia* provides for payment of travelling and other allowances payable to the Members of the Joint Committee of the Houses of Parliament constituted to make rules and witnesses who may be required to attend meetings of such committee.

2. Therefore, the Bill, if enacted, would involve expenditure from the Consolidated Fund of India. It is, therefore, not possible to ascertain the expenditure so involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 61 of the Bill *inter alia* empowers the Central Government to make rules, to carry out the provisions of the proposed legislation. Clause 63 of the Bill confers power upon the National Judicial Commission to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act. The matters in respect of which the rules and regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

A

BILL

to regulate the procedure to be followed by the National Judicial Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and to lay down judicial standards and provide for accountability of Judges, and establish credible and expedient mechanism for investigating into individual complaints for misbehavior or incapacity of a judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation; and for the presentation of an address by Parliament to the President in relation to proceeding for removal of a Judge and for matters connected therewith or incidental thereto..

(Shri Bikash Ranjan Bhattacharyya, M.P.)