

# NLIU मंथन

## *Discuss, Debate and Deliberate*

### Summary of Discussion held on 4<sup>th</sup> September, 2013 in Academic Block- I

#### *“The Judicial Standards and Accountability Bill, 2010: Need, Significance and Drawbacks”*

The discussion began by dividing the topic into the following six parts: Need for the Bill, Composition and Nature of Oversight Committee, Confidentiality, Composition of Scrutiny Panel, Details as to Investigation Committee and lastly the Right of the Judges to appeal after his removal.

It was initially pointed out that the present Bill is a welcome step on the part of the legislature because it democratises the judicial system by allowing an aggrieved citizen to file a complaint.<sup>1</sup> The Bill allows an investigation into allegation against a High Court or Supreme Court judge and if found guilty by the Investigation Committee, the Judicial Oversight Committee will recommend the removal of the judge which will make it mandatory on the part of legislature to at least initiate the removal procedure. This would not have been possible in the absence of present provisions. The report of the Investigation Committee as well as the order of the Oversight Committee is accessible under the RTI Act which can be used by RTI Activists, media houses and public spirited persons to create pressure over the legislature to do the required. Moreover, the Bill seeks to create legal obligation on the judges to declare their assets and liabilities.

However, the forum's view over the need and merit of the Bill changed on deep discussion over the complaint redressal mechanism. The most important drawback highlighted in the discussion was the composition of the Judicial Oversight Committee and the Scrutiny Panel which comprises of the sitting judges of the Supreme Court and the High Court. It was pointed out that in the present scenario when the higher judiciary is overburdened with pending cases and is suffering from the shortage of number of judges, filing of number of complaints (as is most likely) will derail the whole justice system. Indeed, it will leave the judges engaged in these functions and hamper their daily routine work. The forum on deep analysis found out that the real effectiveness of the Bill will be very less because the very process for removal of judges by way of special majority resolution is still intact and the Judicial Oversight Committee can make only advisories or give minor reprimand. The requirement of special majority would make the whole process futile as has been the experience since independence. In relation to declaration of assets it was pointed out that merely inclusion of declaration of assets as a legal duty under the Act will not be beneficial for the fact that this misconduct will be looked after by the three-tier complaint mechanism and finally decided by a special majority in the legislature.

In addition to the above drawbacks, the forum highlighted a number of other drawbacks to the Bill. **First**, the Attorney General of the Government is the member of national Oversight Committee and thus his presence will give rise to conflict of interest in a number of cases. **Second**, the term *imminent person* is too vague and it can be used by the Executive to place its own member who may not be an imminent judicial person. In relation to in camera investigation proceedings, the Bill is commendable but the punishment provided for the breach of confidentiality is very less<sup>2</sup> and even fails to include media houses within the ambit of punishment which is a

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<sup>1</sup> Presently the removal of Judges under the Judges Inquiry Act, 1968 lacks mechanism for dealing with complain by an individual against the Judges.

<sup>2</sup> It provides for maximum punish of imprisonment of 1 month or fine of Rs. 500 or both.

major threat to justice through media trials. **Third**, it was also agreed by the forum that laying down of judicial standards by the legislature under the garb of present Bill will hamper the independence of judiciary and will fail to stand the scrutiny of the Supreme Court as it violates the doctrine of separation of power. **Fourth**, the prohibitions imposed under the Bill are not appropriate and liable to be misused, for example, close association with the individual members of the Bar who practise in the same court can often be misused because very often the judges in the High Court are elevated from the Bar and may have close association with the other members of the Bar. **Fifth**, the recent amendment in the Bill restraining the judges from making unwarranted comments against the conduct of constitutional authority will be misused and will make these constitutional authorities immune from the critical comments made by the judiciary over their irregularities and non-functioning. **Sixth**, the Bill is not clear on whether the judge after removal would be eligible to appeal before the Supreme Court against the decision of his removal.

The forum after deliberation on the issues, decided that the Bill will not serve the very purpose for which it is being implemented because of the above drawbacks and needs to be redrafted *in toto*. However, if the government seeks to go forward with the present Bill, following changes ought to be made:

1. The whole three-tier complaint mechanism should be restructured.
2. The term *imminent person* should be replaced with *imminent jurist*.
3. The absolute discretion given to the Chief Justice of India in the appointment of the members of the National Oversight Committee be taken away and the responsibility be placed on a Collegium of three senior most judges of the Supreme Court.
4. In case of breach of confidentiality by the media house, severe punishment should be given with exception for non-voluntary action.
5. The part on declaration of assets should be removed and it should be left upon the Chief Justice of Supreme Court to make it mandatory for the judges to declare their assets. In case where a judge does not perform the specified, he should be barred from further promotions.
6. In relation to the judicial standards, the legislature may lay down the standards in form of guidelines so that the detailed judicial standards are laid down by the Supreme Court itself, thereby respecting the independence of the judiciary.
7. In relation to appeal to Supreme Court after removal, the forum recommends that the decision by the legislature on the removal be final as the view of judiciary has already been taken by way of Oversight Committee.