



**JUDICIAL  
ACCOUNTABILITY  
AND  
INDEPENDENCE**

**NJA Occasional  
Paper Series No.1**

**JUSTICE S. RAJENDRA BABU**

**National  
Judicial Academy  
Bhopal, India**

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## **NJA OCCASIONAL PAPER SERIES**

Publication of papers, monographs, journals and reports of research findings relevant to judicial administration and delivery of justice, is part of the mandate of the National Judicial Academy. In part fulfilment of this object, the Academy has initiated a series titled "Occasional Papers" under which at least a dozen monographs are proposed to be published annually beginning with 2004.

NJA is happy to begin the series with a Paper on Judicial Accountability by the senior-most Judge of the Supreme Court. It is based on a lecture delivered at the Academy on 8th November, 2003 in the First Advanced Course on Criminal Justice Administration for District & Sessions Judges. Copies of the Code of Conduct adopted by the Supreme Court in 1997 in respect of Declaration of Assets and the Report of the Supreme Court Committee on In-House Procedure for Remedial Action Against Erring Judges (1997) are annexed to make the paper as complete as possible on the subject.

**JANUARY, 2004**

**N.R. Madhava Menon**  
Director, NJA



## JUDICIAL ACCOUNTABILITY AND INDEPENDENCE

Justice S. Rajendra Babu

### Judges' 'SWADHARMA'

The ideal in our mythology is 'Rama' who stood by his "swadharma" even when wooed to return to the palace at Ayodhya after withdrawal of boon given to Kaikeyi on the basis that "Pran Jaye Par Vachan Na Jaye". (keep the word even at cost of life). Though that path is tough, the judges have to adopt it to bear out the oath or 'Pramana Vachana' (swearing) they have taken when entering the Office.

Another instance is : Though Ravana was a king and could covet anything or anybody and get it, went to Sita in the garb of sanyasi and did what a sanyasi should not do. Hence Ravana had to pay a heavy price. So do judges when they wear the robes of Judges, they cannot but be true to it, else they meet with the fate of Ravana. Let judges choose, either the path of Rama which leads to glory or of Ravana ending in destruction.

I may recall, what Dhuryodhana felt when his end was about to come, that his wife Bhanumathi may suffer at the hands of Pandavas as did Draupadi at his hands. But later, realisation comes to him that so long as Yudhisthir is at the helm there will be no injustice. Similarly, even an enemy or opponent must feel that he would get justice at the hands of a Judge and that, by itself, is a true safe guard.

Ordinarily, in seminars, journals and judgements of the courts and also in the print media accountability of judiciary is discussed. But before we start discussion, I would like to raise a few questions (i) To whom the judiciary is accountable? (ii) By whom the account is to be rendered? Is it the Judge against whom allegations are made or is it the judiciary as a whole through the Head of the judiciary? (iii) Who is to enforce the accountability if at all an account has to be rendered? In the Chief Justices' Conference held in December, 1996, 16 Clauses formed part of the Code of Conduct<sup>1</sup> in addition to the declaration of assets by the Judges and an In-house procedure was suggested in the event of any complaint against any judge. But, unfortunately, the sanction for these guidelines is absent. In our constitutional scheme it is not possible to vest the Chief Justice with any control over the puisne Judges with regard to conduct either personal or judicial. In case of breach of any rule of the Code of Conduct, the Chief Justice can choose not to post cases before a particular Judge against whom there are acceptable allegations. It is possible to criticise that decision on the ground that no enquiry was held and the Judge concerned had no opportunity to offer his explanation particularly when the Chief Justice is not vested with any power to decide about the conduct of a Judge. There is no adequate method or machinery to enforce the Code of Conduct. Article 124 provides for appointment of Judges of the Supreme Court and also their removal. Similarly, Article 217 deals with the appointment and removal of Judges of the High Court. In the Judges' Enquiry Act 51 of 1968 provisions are made for investigation into mis-behaviour or incapacity of a Judge. It may be noted that since Judges of the superior courts occupy very high positions, disciplinary proceedings which exist in the case of all other employees cannot be thought of in view of the constitutional protection and only impeachment is permissible. Thus,

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<sup>1</sup> See Annexure to this article

there is no satisfactory procedure to enforce any guidelines and no sanction could be provided for the enforcement of such guidelines.

## **DIMENSIONS OF JUDICIAL ACCOUNTABILITY**

The notion of accountability permeates public life. It is probably fair to say that at the present time it is an expectation of the citizen that all aspects of Government ought to be accountable. It is probably also fair that the same citizen would expect the Judiciary to be accountable. Yet the reality is that the judicial branch of government has probably been historically and in actuality one of the most accountable areas of government. Judicial accountability is manifested in the following ways - The business of all courts is, except in extraordinary circumstances, conducted in public. Judges resolve disputes under the obligation to publish full reasons for their decisions. Each decision, other than those of the ultimate court of appeal is subject to being appealed. Appeal court criticisms may be published without limitation. Academic lawyers are free to criticise judicial reasoning. Media attend hearings and, in some circumstances, may have a legal right to be heard in relation to closure of the court. Despite these structural guarantees of exposure of the business of the courts to the scrutiny of legal examination and the glare of public scrutiny it is sometimes considered that the judicial branch needs to become more accountable.

Accountability of the judicial branch has been described as legal, public and informal (or professional) accountability. Legal and public accountability takes place through the processes just described. Informal accountability is the obligation which the judicial branch has to discharge. Its functions in the face of observant legal practitioners and fellow judges whose confidence it is essential to

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<sup>2</sup> Mauro Cappelletti - Judicial Review in Contemporary World



maintain by performance to standards recognised by them as professionally high. Professor Cappelletti<sup>2</sup> has described these issues saying "The judicial nonaccountability is a political and a legal nonaccountability and even that with important limitations in case of serious abuses; it is not, however, a societal nonaccountability". Lord Hailsham<sup>3</sup> has put it as "The problem is how to reconcile the divergent and to some extent inconsistent requirements of public accountability, judicial independence and efficiency in the administration of justice".

### **JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY**

The question is never whether there should be judicial accountability but how judicial accountability can be balanced with judicial independence. The two values should be perceived as complementary rather than antithetical. The quality of independence allowed to the judicial branch is also posited on the premise that the person in whom it is vested will behave in an ethical manner in his judicial and personal life. A sense of propriety is expected to accompany the assumption of office to which the independence attaches and attracts the public confidence necessary for continuation of judicial independence. In that sense the independence of judicial office attracts a personal accountability.

Increased reliance on the judicial process has provoked new interest in problems of judicial accountability and liability. The judicial function is inherently free and ideally neutral and that the Judge can, therefore, be the object neither of binding rules of law nor of any form of civil, criminal or disciplinary liability in the exercise of judicial power. The continuing evolution towards the independence of the judiciary is evidence of the power of these underlying

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<sup>3</sup> Lord Hailsham : Constitutionalism and Democracy, Transitions in Contemporary World (Douglas Greenberg Edn. 1993)

concepts.

The independence of the judiciary precludes, however, neither disciplinary surveillance nor civil or criminal liability for abuse of power, because no immunity of function can be absolute. Only the judiciary can control its members and, given the inherent freedom of Judges, the only possible criterion for judicial accountability is that of loyalty to the judicial function, defend as an ideal of free and neutral decision-making. Not everything that counts can be counted. Some results or outcomes are incapable of measurements. They can only be judged in a qualitative manner. Justice, in the sense of fair outcomes arrived at by fair procedures, is, in its essential nature, incapable of measurement. The judgements of courts are part of a broader public discourse by which a society and polity affirms its core values, applies them and adapts them to changing circumstances. This is a governmental function of a similar character to that provided by legislatures but which has no relevant parallel in many other spheres of public administration. It is not possible to measure the success of the courts in terms of crimes not committed, accidents that do not happen, disputes avoided by proper advice on compliance or by well informed drafting. There are other areas of public activity in which success may be measured in part by things that do not occur. Perhaps some areas of public health are of this character. This re-emphasises the proposition that many important results or outcomes cannot be measured at all.

Judges cannot be accountable to the electorate as politicians are accountable. The duties of the judiciary are not owed to the electorate; they are owed to the law, which is there for the peace, order and good government of all the community.

## **JUDICIAL FUNCTION AND CRITERIA FOR ASSESSMENT OF PERFORMANCE**

The best way to understand the concept of accountability is to know the role of a Judge and the role of every Judge is to decide the dispute before him. Certainly it is the role to determine the law by which the dispute before it should be decided. But is that all that can be said about a Judge's role? Or are there any criteria for assessing the quality of the work of a Judge? Certainly no such assessment should be based on the aesthetic quality of writing. Nor should the criterion be the number of sources that are cited in the decisions. What are the criteria for judging the Justices who wrote opinions? This question is important for judging the Justices who wrote opinions? This question is important not merely to Judges who want to assess their performance, but to the system as a whole. The answer determines the criteria for developing the law and provides a basis for formulating a system of interpretation of all legal texts. Establishing criteria for judging Judges is particularly important in view of the frequent attempts to dress up political problems in legal garb and place them before the court. In the last few decades we have learnt the hard way that without protection for human rights, there can be no democracy and no justification for democracy. The protection of human rights-the rights of every individual and every minority group-cannot be left only in the hands of the legislature and the executive, which, by their nature, reflect majority opinion. Consequently, the question of the role of judiciary in a democracy arises.

Secondly, in present times democracy faces the emergent threat of terrorism. Passive democracy has transformed into defensive democracy. All of us are concerned that it should not become uncontrollable democracy. As Judges, we are aware of the tension between the need to protect the State and the rights of

the individual. This ever present tension intensifies and becomes more pronounced in times of national emergency. What is the role of the Judges in these special situations?

Thirdly, after the second world war there has been a better understanding of the nature of the judging process itself. Legal realism, positivism, the natural law movement, the legal process movement, critical legal studies, and the movements to integrate other intellectual disciplines into law have provided new tools for understanding the complexity of the judicial role. In my opinion, it is time for what I call an eclectic re-examination of the various theories about the judicial role. This re-examination is timely now as globalization exposes us to ideals and thoughts that transcend national boundaries and legal systems. Such a survey of the democracy after second world war will show the importance of the judiciary in relation to the other branches of the State has increased. People increasingly turn to the judiciary, hoping it can solve pressing social problems. Several questions therefore arise. Is this enhanced judicial status appropriate? Have judges taken on too much power? Has the separation of powers become blurred? Some argue that Judges are too active, while others argue that they are too self-restrained. Such views should be evaluated within the framework of court's role in democracy. A re-examination is, therefore, needed and conclusions must be drawn both about what can be demanded of Judges and what can be expected from the normative frameworks within which they operate.

These questions do not arise in easy cases in which there is only one answer to the legal problem and the Judge has no choice but to choose it. But how are we to decide the hard cases, the cases in which the legal problem has more than one legal answer? These cases reach the court and the court has discretion in resolving them. The question is : Decisions may be legitimate, but how do we know if it is the proper one.

## JUDICIAL ROLE IN CONSTITUTIONAL DEMOCRACY

The pre-conditions for realising the judicial role are (i) independence of the judiciary, (ii) judicial objectivity and (iii) public confidence in the judiciary. Independence of the individual Judge, while of central importance, is itself insufficient. Personal independence must be accompanied by institutional independence. The judiciary, not merely the individual Judge, must be independent. Impartiality means that the Judge treats the parties before him equally, providing them with an equal opportunity to make their respective cases, and is seen to treat the parties so. Impartiality means the Judge has no personal stake in the outcome. Absence of bias is essential to the judicial process. With impartiality comes objectivity. It means making judicial decisions on the basis of considerations that are external to the Judge and that may even conflict with his personal views. The Judge must look for the accepted values of society, even if they are not his values; must express what is regarded as moral and just by the society in which he operates, even if it is not moral and just in his subjective views. A Judge must be capable of looking at himself from the outside and of analysing, criticising and controlling himself. A Judge who thinks that he knows all and that his opinions are right and proper to the exclusion of all else, cannot properly fulfil his role. A Judge is a product of his times living in and shaped by a given society in a given era. The purpose of objectivity is not to rid a Judge of his past, his education, his experience, his belief or his values. Its purpose is to encourage the Judge to make use of all of these personal characteristics to reflect the fundamental values of the society as faithfully as possible.

The objectivity required of a Judge is difficult to attain. Even when we look at ourselves from the outside we do so with our own eyes. A Judge does not operate in a vacuum. He is a part of society

and society influences him. He is influenced by the intellectual movements and the legal thinking that prevail. It may be true that the Judge sometimes sits in an ivory tower, but he is nonetheless a contemporary creature. A Judge acts within the limits of a court and lives within a judicial tradition. The same spark of wisdom passes from one generation of Judges to the next. But the legal system limits the scope of the Judge's discretion and even when a Judge is with himself he is within the framework of society, the legal system and judicial tradition.

An essential condition for realising the judicial role is public confidence in the judge. This means confidence in judicial independence, fairness and impartiality. It means public confidence in the ethical standards of the Judge. It means public confidence that Judges are not interested parties to the legal struggle and that they are not fighting for their own power, but to protect the Constitution and democracy. The Judge shall not express his personal views, but rather the fundamental beliefs of the nation.

The need to ensure public confidence does not mean the need to ensure popularity. Public confidence does not mean following popular trends or public opinion polls. Public confidence does not mean accountability to the public in the way that the Executive and the Legislature are accountable. Public confidence means ruling according to the law and according to the Judge's conscience, whatever the attitude of the public may be. Public confidence is ensured by the recognition that the Judge is doing justice within the framework of the law and its provisions. Judges must act inside and outside the court in a manner that preserves public confidence in them. They must understand that the judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity. It is a way of life based on spiritual wealth. It is a way of life that includes an objective and impartial

search for truth. It is not fiat but reason, not mastery but modesty, not strength but compassion, not riches but reputation, not an attempt to please everyone but a firm insistence on values and principles, not surrender to or compromise with interest groups but insistence on upholding the law, not making decisions according to temporary whims, but progressing consistently on the basis of deeply held belief and fundamental values.

Admittedly, judging is a way of life that involves some degree of seclusion, abstention from social and political struggles, restriction on the freedom of expression and the freedom to respond, and a large amount of isolation and internalisation. But judging is emphatically not a way of life that involves a withdrawal from society. There should be no wall between the Judge and the society in which the Judge operates. The Judge is a part of the society.

### **LIMITS OF JUDICIAL POWER**

There are traits that can help the public maintain confidence in its Judges. First, the Judge ought to be aware of his power and his limits. The Judge ought to recognise that his power is limited to realising the proper judicial role. He must learn the limits imposed on him as a Judge. He must know that power should not be abused, and that a Judge cannot obtain everything he wants. Secondly, a Judge must recognise his mistakes. Like all mortals, Judges may commit error. The famous dictum of Justice Jackson<sup>4</sup> is that "*We are not final because we are infallible, we are infallible only because we are final*". If we admit our mistakes as Judges, we strengthen the public confidence in the Judiciary. Thirdly, Judge must display modesty and an absence of arrogance in his writing and thinking. Fourthly, Judge should be honest. If they create new law, they should say so. They should not hide behind the rhetoric that Judges declare what the law is but do not make it. Public confidence in the

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<sup>4</sup> Justice Robert Jackson in *Brown V. Allen* (1953) 344 US 443 at p. 540

judiciary increases when the public is told the truth.

## **LOOKING TO THE FUTURE**

What does the future hold for the relationship among the branches of the State? I assume that the criticisms of unaccountability will continue and since these arguments will not succeed in weakening the judicial commitment to realising its role, they are likely to be directed towards the method of choosing Judges. The pressure to politicise appointments to higher judiciary in democracy is likely to increase. I hope, our democracy will stand up to this pressure and take affirmative measures to reduce the politicisation of the appointment of Judges where it exists. We must distance ourselves from the erroneous view that regards Judges as the representatives of the people and as accountable to the people much like the Legislature is. Judges are not the representatives of the people and it would be a tragedy if they become so. The principle of representation that applies to the Legislature and directly or indirectly to the Executive does not apply to the Judiciary. It is sufficient that the Judiciary reflects the different values that are accepted in society and it should have an accountability that reflects, its independence and its special role in a democracy. A heavy responsibility rests on our shoulders. But even in hard times, we must remain true to ourselves. Sometimes in deciding litigations there may be difficulties. From the legal perspective, the road before the Judges is smooth. We are, however, part of the society. We know its problems. We do not live in an ivory tower, but we live in the life of this country. We are aware of the harsh realities of life in which we are immersed. The fear is that our ruling will prevent us from properly dealing with problems, but we are Judges and we demand that others act according to the law. This is also the demand that we make of ourselves. When we sit at trial, we are on trial.



**ANNEXURE A-1****RESTATEMENT OF VALUES OF JUDICIAL LIFE  
(CODE OF CONDUCT) ADOPTED IN THE CHIEF  
JUSTICES' CONFERENCE IN DECEMBER, 1999**

The Conference of Chief Justices of all High Courts was held on 3rd and 4th December, 1999 in the Supreme Court premises. During the said Conference, the Chief Justices unanimously resolved to adopt the "Restatement of Values of Judicial Life" (Code of Conduct).

WHEREAS by a Resolution passed in the Chief Justices' Conference held at New Delhi on September 18-19 1992, it was resolved that it is desirable to restate the pre-existing and universally accepted norms, guidelines and conventions reflecting the high values of judicial life to be followed by Judges during their tenure of office;

AND WHEREAS the Chief Justice of India was further requested by that Resolution to constitute a Committee for preparing the draft restatement to be circulated to the Chief Justices of the High Courts for discussion with their colleagues, which was duly circulated on 21.11.1993;

AND WHEREAS suggestions have been received from the Chief Justices of the High Courts after discussion with their colleagues;

AND WHEREAS a Committee has been reconstituted by the Chief Justice of India on April 7, 1997, to finalise the 'Restatement of Values of Judicial Life' after taking note of the draft Restatement of Values of Judicial Life prepared by a Committee appointed pursuant to the Resolution passed in the Chief Justices' Conference 1992 and placed before the Chief Justices' Conference in 1993;

AND WHEREAS such a Committee constituted by the Chief Justice of India has prepared a draft restatement after taking into consideration the views received from various High Courts to the draft which was circulated to them;

NOW THEREFORE, on a consideration of the views of the High Courts on the draft, the restatement of the pre-existing and universally accepted norms, guidelines and conventions called the 'RESTATEMENT OF VALUES OF JUDICIAL LIFE' to serve as a guide to be observed by Judges, essential for an independent, strong and respected judiciary, indispensable in the impartial administration of justice, as redrafted, has been considered in the Full Court Meeting of the Supreme Court of India on May 7, 1997 and has been ADOPTED for due observance.

### **RESTATEMENT OF VALUES OF JUDICIAL LIFE**

- (1) Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.
- (2) A Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.
- (3) Close association with individual members of the Bar, particularly those who practise in the same court, shall be eschewed.
- (4) A Judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or

daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.

- (5) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.
- (6) A Judge should practise a degree of aloofness consistent with the dignity of his office.
- (7) A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.
- (8) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.
- (9) A Judge is expected to let his judgements speak for themselves; he shall not give interview to the media.
- (10) A Judge shall not accept gifts or hospitality except from his family, close relations and friends.
- (11) A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.
- (12) A Judge shall not speculate in shares, stocks or the like.
- (13) A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business).

- (14) A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.
- (15) A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf must be got resolved and clarified through the Chief Justice.
- (16) Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

These are only the “Restatement of the Values of Judicial Life” and are not meant to be exhaustive but illustrative of what is expected of a Judge.

## ANNEXURE A-2

**CODE OF CONDUCT : RESOLUTION ADOPTED  
BY THE SUPREME COURT IN RESPECT OF  
DECLARATION OF ASSETS**

The following two Resolutions have been ADOPTED in the Full Court Meeting of the Supreme Court of India on May 7, 1997:

RESOLVED that an in-house procedure should be devised by the Hon'ble Chief Justice of India to take suitable remedial action against Judges who by their acts of omission or commission do not follow the universally accepted values of judicial life including those indicated in the "Restatement of Values of Judicial Life".

RESOLVED FURTHER THAT every Judge should make a declaration of all his/her assets in the form of real estate or investments (held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her) within a reasonable time of assuming office and in the case of sitting Judges within a reasonable time of adoption of this Resolution and thereafter whenever any acquisition of a substantial nature is made, it shall be disclosed within a reasonable time of assuming office and in the case of sitting Judges within a reasonable time of adoption of this Resolution and thereafter whenever any acquisition of a substantial nature is made, it shall be disclosed within a reasonable time. The declaration so made should be to the Chief Justice of the Court. The Chief Justice should make a similar declaration for the purpose of the record. The declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential.

**ANNEXURE A-3****REPORT OF THE COMMITTEE ON IN-HOUSE  
PROCEDURE FOR REMEDIAL ACTION  
AGAINST JUDGES**

This Committee has been constituted with a view to devise an In-House Procedure for taking suitable remedial action against Judges who, by their acts or omission or commission, do not follow universally accepted values of Judicial life including those included in the Restatement of Values of Judicial Life.

Complaints are often received containing allegations against a Judge pertaining to the discharge of his judicial functions. Sometimes complaints are received with regard to the conduct and behaviour of the Judge outside the court. The complaints are generally made by a party to the proceedings who feels dis-satisfied with the adverse order passed by the Judge or by persons having a personal grudge against the judge. Most of these complaints are found to be false and frivolous. But there may be complaints which cannot be regarded as baseless and may require deeper probe. A complaint casting reflection on the independence and integrity of a Judge is bound to have a prejudicial effect on the image of the higher judiciary of which the Judge is an honoured member. The adoption of the In-House Procedure would enable a complaint against a Judge being dealt with at the appropriate level within the institution. Such a procedure would serve a dual purpose. In the first place, the allegations against a Judge would be examined by his peers and not by an outside agency and thereby the independence of the judiciary would be maintained. Secondly, the awareness that there exists a machinery for examination of complaints against a Judge would preserve the faith of the people in the independence and impartiality of the judicial process. The Committee has approached the task assigned to it in this perspective.

**HIGH COURT JUDGE :**

A complaint against a Judge of a High Court is received either by the Chief Justice of that High Court or by the Chief Justice of India (CJI) directly. Sometimes such a complaint is made to the President of India. The complaints that are received by the President of India are generally forwarded to the CJI. The Committee suggests the adoption of the following procedure for dealing with such complaints :-

- (1) Where the complaint is received against a Judge of a High Court by the Chief Justice of the High Court, he shall examine it. If it is found by him that it is frivolous or directly related to the merits of a substantive decision in a judicial matter or does not involve any serious complaint of misconduct or impropriety, he shall file the complaint and inform the CJI accordingly. If it is found by him that the complaint is of a serious nature involving misconduct or impropriety, he shall ask for the response thereto of the Judge concerned. If on a consideration of the allegations in the complaint in the light of the response of the Judge concerned, the Chief Justice of the High Court is satisfied that no further action is necessary he shall file the complaint and inform the CJI accordingly. If the Chief Justice of the High Court is of the opinion that the allegations contained in the complaint need a deeper probe, he shall forward to the CJI the complaint and the response of the Judge concerned along with his comments.
- (2) When the complaint is received by the CJI directly or it is forwarded to him by the President of India the CJI shall examine it. If it is found by him that it is either frivolous or directly related to the merits of a substantive decision in a judicial matter or does not involve any serious complaint of

misconduct or impropriety, he shall file it. In other cases the complaint shall be sent by the CJI to the Chief Justice of the concerned High Court for his comments. On the receipt of the complaint from the CJI the Chief Justice of the concerned High Court shall ask for the response of the Judge concerned. If on a consideration of the allegations in the complaint in the light of the response of the Judge concerned the Chief Justice of the High Court is satisfied that no further action is necessary or if he is of the opinion that the allegations contained in the complaint need a deeper probe, he shall return the complaint to the CJI along with a statement of the response of the Judge concerned and his comments.

- (3) After considering the complaint in the light of the response of the Judge concerned and the comments of the Chief Justice of High Court, the CJI, if he is of the opinion that a deeper probe is required into the allegations contained in the complaint, shall constitute a three member Committee consisting of two Chief Justice of High Courts other than the High Court to which the Judge belongs and one High Court Judge. The said Committee shall hold an inquiry into the allegations contained in the complaint. The inquiry shall be in the nature of fact finding inquiry wherein the Judge concerned would be entitled to appear and have his say. [But it would not be a formal judicial inquiry involving the examination and cross-examination of witnesses and representation by lawyers].
- (4) For conducting the inquiry the Committee shall devise its own procedure consistent with the principles of natural justice.
- (5) After such inquiry the Committee may conclude and report



to the CJI that (a) there is no substance in the allegations contained in the complaint, or (b) there is sufficient substance in the allegations contained in the complaint and the misconduct disclosed is so serious that it calls for initiation of proceedings for removal of the Judge, or (c) there is substance in the allegations contained in the complaint but the misconduct disclosed is not of such a serious nature as to call for initiation of proceedings for removal of the Judge.

A copy of the Report shall be furnished to the Judge concerned by the Committee.

- (6) In a case where the Committee finds that there is no substance in the allegations contained in the complaint, the complaint shall be filed by the CJI.
- (7) If the Committee finds that there is substance in the allegations contained in the complaint and the misconduct disclosed in the allegations is such that it calls for initiation of proceedings for removal of the Judge, the CJI shall adopt the following course :-
  - (i) the Judge concerned should be advised to resign his office or seek voluntary retirement;
  - (ii) In case the Judge expresses his unwillingness to resign or seek voluntary retirement, the Chief Justice of the concerned High Court should be advised by the CJI not to allocate any judicial work to the Judge concerned and the President of India and the Prime Minister shall be intimated that this has been done because allegations against the Judge had been found by the Committee to be so serious as to warrant the initiation of proceedings for removal and the copy

of the report of the Committee may be enclosed.

- (8) If the Committee finds that there is substance in the allegations but the mis-conduct disclosed is not so serious as to call for initiation of proceedings for removal of the Judge, the CJI shall call the Judge concerned and advise him accordingly and may also direct that the report of the Committee be placed on record.

### **CHIEF JUSTICE OF THE HIGH COURT :**

A complaint against the Chief Justice of a High Court is normally received either by the CJI or by the President of India who forwards it to the CJI. On receipt of such a complaint the CJI shall examine it and if it is found by him that it is either frivolous or directly related to the merits of a substantive decision in a judicial matter or does not involve any serious complaint of misconduct or impropriety, he shall file the complaint without any further action. In case it is found by the CJI that the complaint is of a serious nature involving misconduct or impropriety, he shall ask for the response of the Chief Justice concerned about the allegations contained in the complaint. If, on a consideration of the allegations in the light of the response of the Chief Justice concerned, the CJI is satisfied that no further action is necessary he shall file the complaint. If, however, he is of the opinion that the allegations contained in the complaint need a deeper probe, he shall constitute a three member Committee consisting of a Judge of the Supreme Court and two Chief Justices of other High Courts. The Committee shall hold an inquiry on the same pattern as the committee constituted to examine a complaint against a Judge of the High Court and further action in the light of the findings of the Committee shall be taken by the CJI on the same lines.

**JUDGE OF SUPREME COURT :**

If a complaint is received against a Judge of the Supreme Court by the CJI or if such a complaint is forwarded to him by the President of India, the CJI shall first examine it and if it is found by him that it is either frivolous or directly related to the merits of a substantive decision in a judicial matter or does not involve any serious complaint of misconduct or impropriety, he shall file the complaint without any further action. In case it is found by him that the complaint is of a serious nature involving misconduct or impropriety, he shall ask for the response thereto of the Judge concerned. If, on a consideration of the allegations in the light of the response of the Judge concerned, the CJI is satisfied that no further action is necessary he shall file the complaint. If, however, he is of the opinion that the matter needs a deeper probe, he would constitute a Committee consisting of three Judges of the Supreme Court. The said Committee shall hold an inquiry on the same pattern as the committee constituted to examine a complaint against a Judge of a High Court and further action on the same lines in the light of the findings of the Committee shall be taken by the CJI.

The Committee feels that the In-House Procedure suggested herein will allay the misgivings in certain quarters that the members of the higher judiciary are not accountable for their conduct. At the same time, it will also serve as a safeguard for the members of the higher judiciary from being maligned or being subjected to vilification by false and frivolous complaints. The Committee earnestly hopes that the occasions for invoking the In-House Procedure will seldom arise.

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