

Standing Committee Report Summary

The Judges (Inquiry) Bill, 2006

- The Standing Committee on Personnel, Public Grievances, Law and Justice submitted its 21st Report on 'The Judges (Inquiry) Bill, 2006' on August 17, 2007. The Chairperson was Dr E.M. Sudarsana Natchiappan.
- The Committee recommends that the Bill be passed after the suggestions have been incorporated. There are two dissent notes to the report by Shri Ram Jethmalani and Shri Virendra Bhatia. Both notes reject the Bill on various grounds. Both also recommend provisions that need to be incorporated in case the government wants to introduce a Bill on the issue.
- The Bill seeks to establish a National Judicial Council (NJC) to conduct inquiries into allegations of incapacity or misbehaviour by High Court and Supreme Court judges and impose minor measures. The Committee states that this infringes on the exclusive right of Parliament to impeach judges and observes that the powers of Parliament to impeach a judge cannot be diluted or shifted to any other institution. It also suggests that the term "minor measures" be replaced with "appropriate measures".
- The NJC proposed in the Bill shall be composed of the Chief Justice of India and certain number of Supreme Court judges and High Court Chief Justices to investigate judges. The Committee observes that this is not in consonance with the principle of accountability and recommends that the composition be widened to include representation from the Executive, Parliament and the Bar.
- Presently, a judge can be removed if 100 MPs of the Lok Sabha or 50 MPs of the Rajya Sabha move a motion in Parliament. If the Speaker/Chairman admits the motion, a Committee is formed to investigate the judge. The judge can be removed if the report of the Committee is adopted by both houses of Parliament. The Bill allows the NJC to investigate complaints against a judge submitted by any person or from other sources.
- The Standing Committee feels that both procedures for complaints should be reconciled and a mechanism be created which would scrutinise the complaints received from both sources and decide whether they should be further investigated by the NJC. It also observes that since the NJC shall be investigating complaints from MPs too, it will effectively extinguish the right of Parliament to participate in the proceedings for the removal of a judge. Thus it recommends that an Empowered Committee be created in between the complainants and the NJC.
- The Bill states that a judge may appeal to the Supreme Court against his removal or against any minor measure imposed upon him. The Committee is not in favour of the provision for appeal against the President's order of removal. It also does not support an appeal process in case of minor measures because judges should not be treated as ordinary government servants.
- The Constitution states that judges of the Supreme Court have to be appointed by the President after consultation with such judges of the Supreme Court and the High Court as he may deem necessary. In 1993, the Court interpreted these provisions in such a way that the process of appointment of the judges is initiated by the Chief Justice through a collegium consisting of himself and four of the senior most judges of the Court. The recommendation of the collegium is binding on the President. He has the discretion of not appointing a person but if the collegium reiterates its recommendation, he is bound to accept it.
- The Committee feels that after the 1993 judgement the role of the executive in appointment of judges has almost been abolished. It recommends that both executive and judiciary should be involved in the process of appointment, with the executive having primacy. It also suggests that the Empowered Committee and the NJC can make the final recommendation instead of the collegium.
- The Committee suggests that in case a judge does not comply with the minor measures imposed by the NJC, it should be treated as non-ethical on the part of the judge and the NJC should recommend such a case for impeachment proceedings.
- The Committee recommends that there should be reservation for SC/ST/OBCs in the judiciary. It also recommends that the Chief Justice of India should be included in the ambit of the Act.

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