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Title : Further discussion on the motion for consideration of the Judicial Standards and Accountability Bill, 2010 (Bill Passed).

MR. DEPUTY-SPEAKER: Now we take up item no. 24. Shri Salman Khurshid.

...(Interruptions)

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF MINORITY AFFAIRS (SHRI SALMAN KHURSHEED): Mr. Deputy Speaker, Sir, I am very grateful for the distinguished Members of the House who have given their valued comments and suggestions on this Bill. The Judicial Standards and Accountability Bill is an important step that the Government has taken along with a series of similar measures that we are taking for probity in public life and as far as the Judiciary is concerned, this Bill will give statutory backing to the universally accepted values of judicial life which have been held in the highest esteem. ...(Interruptions)

उपाध्यक्ष महोदय : केवल मंत्री जी की बात रिकार्ड में जाएगी, बाकी किसी सदस्य की बात रिकार्ड में नहीं जाएगी।

(Interruptions) \*

SHRI SALMAN KHURSHEED: Sir, I believe that the essential contours of this Bill are to replace the Judges Inquiry Act and the broad principles that are there in the Judges Inquiry Act are also contained in the contours of this Bill. During the discussion on the Bill in the House on 28<sup>th</sup> December, 2011, many hon. Members have given important suggestions. This Bill has already been considered by the Standing Committee. The important suggestions given by the Standing Committee have been taken on board and amendments have been made to reduce the quantum of punishment to be given for making frivolous complaints. \* (Interruptions)

We will also ensure that maximum independence of the Judiciary is maintained and we will also ensure judicial accountability. The issues that are raised about All India Judicial Services are also addressed in this Bill. ...(Interruptions)

उपाध्यक्ष महोदय : आप स्पीच ले कर दीजिए।

SHRI SALMAN KHURSHEED: Sir, with these words, I may be allowed to lay the rest of my speech and I request the House to pass the Bill.

\*The Judicial Standards & Accountability Bill is an important step which is being taken by the Government for achieving higher standards of probity and for giving statutory backing to the universally accepted values of judicial life. The passage of this Bill shall be a major achievement in establishing systems and procedures which will be far superior and practicable to that provided for in the Judges Enquiry Act. I am certain that public confidence in integrity and impartiality of the higher judiciary will go higher with this Bill as it will enhance the quality by ensuring impeccable conduct in dealings with matters which are not only of public importance but also those having to do with the individuals.

During first discussion on the Bill in the Lok Sabha on 28<sup>th</sup> December, 2011, hon. Members of Parliament Shri D.B. Chandre Gowda, Shri Manish Tiwari, Shri Shailendra Kumar, Shri Vijay Bahadur Singh, Shri Arjun Rai, Shri Kalyan Banerjee, Shri R. Thamaraiselvan, Shri A. Sampath, Shri Pinaki Misra, Shri Chandrakant Khaire, Shri S. Semmali, Dr. Sanjeev Ganesh Naik, Shri Nama Nageswara Rao, Shri Sanjay Singh Chauhan, Shri Ganesh Singh, Kumari Meenakshi Natrajan, Shri Prabodh Panda, Shri Raghuvansh Prasad Singh, Dr. Mirza Mehboob Beg, Shri Narahari Mahato and Shri E.T. Mohammed Basheer have all participated and made important suggestions on the various provisions of the Bill. I will like to touch upon the important issues raised by the hon. Members.

Hon. Member Shri Gowda raised the issue of National Judicial Oversight Committee (NJOC) and for giving them wider constitutional powers including that of taking help from outside for the purpose of getting more information. In this regard, I may draw the kind attention of the hon. Member to the provision of Clause 38 of the Bill where the NJOC 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. I feel that this provision does empower the Oversight Committee to take necessary assistance and therefore, suffices the purpose.

One of the hon. Members has raised another issue that NJOC should be a body where the legislature, the bar and the jurists should be included. After carefully examining this issue, our considered view is that since the impeachment of a Judge is to be decided by the Parliament, the Members of Parliament have not been included in the Oversight Committee. Besides, the NJOC includes an eminent person to be nominated by the President.

One of the hon. Members has wanted to know whether after all scrutinies if the matter is sent before the President after a Resolution, it would be further examined by the Supreme Court by way of an appeal or a writ petition. I may like to clarify that no appeal has been expressly provided in the Bill on the matter after the Resolution of Parliament. The Judge to be impeached may avail the benefit of the judicial review under Article 226 and Article 32 of the Constitution which forms part of the basic structure of the Constitution.

One of the hon. Members has raised a concern that Judges cases should be decided carefully on merit and in accordance with legal provisions. In this regard, I may like to assure the members that there is already a corrective mechanism available in the Bill to appeal and provides the Judges remedy of a Judicial Review.

Some of the Members have raised the concern about the quantum of punishment for making frivolous and false complaints being on a high side. This has been taken care of and in the official amendments moved, punishment has been reduced from rigorous imprisonment from five years to simple imprisonment of one year and also with fine which has been reduced from Rs.5 lakh to Rs.50,000. I hope this will address the concerns of the hon. Members.

Regarding powers to take *suo motu* action against a Judge by the Oversight Committee, I would like to state that the complaint procedure has been made very simple. However, the Bill does not prevent the Member of Oversight Committee to make complaints as a member of public.

One of the hon. Members has raised the point that the motion for removal of Judge on grounds of misbehaviour can also be moved in the Parliament. I believe the hon. Member is referring to Clause-47 of the Bill which deals with Investigation into misbehaviour or incapacity of a Judge by Investigation Committee for removal of Judges. This is the original constitutional provision for impeachment of Judge adopted in this Bill and is also provide for under the Judges Inquiry Act, 1968.

Another important issue which was raised during the discussion was that the composition of Investigation Committee should be indicated in the draft Bill itself. This may appear to be desirable. But after examining the issue, it has been felt to give flexibility to the National Judicial Oversight Committee to constitute Investigation Committees depending upon the nature of the complaint.

One of the hon. Members has advised to include Judges from other High Courts to be nominated in the "Complaint Scrutiny Panel" (CSP). In this regard, I may draw his attention to the fact that even in the High Court, the Judgment of single Judge is decided by the Division Bench of the same High Court. As such, no bias is found. Moreover, inclusion of Judges from other High Courts may give rise to practical problems as the High Court Judges are burdened with case overload and travelling to other High Courts for CSP may be time consuming.

While participating in the discussion of the Bill, the hon. Members have also raised two very important issues one is in regard to the appointment of judges and the other is in regard to attracting the best quality of the people to join the judicial service. We are all aware that the current system of selection of judges has been mandated by the Supreme Court in its judgement in the case of All India Judges' Association Vs Union of India (1993). In the existing arrangement, the judiciary has major say in judicial appointments. The Executive endorses the recommendations made by the Collegium both at the level of the High Courts as well as the Supreme Court. This system which deprives the Executive to have a meaningful participation as well as sharing of information in its possession is required to be reformed. This can be achieved only if both the Executive and the Judiciary have a consultation process as well as in which both have an opportunity to participate.

Representations have been received from various quarters in the past to restore the balance between the Executive and the Judiciary in the selection and appointment of judges. There has been a suggestion to set up a National Judicial Commission. In fact, this point has been made by several hon. Members also. Suggestion has also been made for having an All India Judicial Service to attract the best talent both at the level of the district Judges as well as the higher judiciary. I am happy to share that both the suggestions are under consideration of the Government. We are anxious to put in place a system that would ensure that best and brightest are elevated to the bench and in a transparent manner. I must, however, place on record the fact that the judiciary in the country has conducted itself with impeccable dignity and propriety. The idea of these reforms is to ensure that their credibility is not undermined and at the same time the

Constitutional obligation cast on the President for judicial appointment is discharged effectively in which both the Judiciary and the Executive play their part in a spirit of accommodation for each other's point of view. I am not getting into the details of the models which have been recommended in the past. The Government will give due consideration to the views expressed by hon. Members while formulating the proposals in this regard. All these will need to be pursued actively

in case the objective of enforcing Judicial accountability is to be fully realized.\*

MR. DEPUTY-SPEAKER: The question is:

"That the Bill to lay down judicial standards and provide for accountability of judges, and establish credible and expedient mechanism for investigating into individual complaints for misbehaviour 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 taken into consideration."

*The motion was adopted.*

*...(Interruptions)*

MR. DEPUTY-SPEAKER: The House will now take up clause-by-clause consideration of the Bill

The question is:

"That clause 2 stand part of the Bill."

*The motion was adopted.*

*Clause 2 was added to the Bill.*

### **Clause 3 Judicial Standards**

*Amendments made:*

Page 3, line 23,--

*for* "have close association"

*substitute* "have close association or close social interaction". (3)

Page 3, line 39,--

*after* "academic forum"

*insert* "so as not to affect his functioning as a Judge". (4)

Page 3, *after* line 41, *insert* "â€"

"(fa) 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 determination:". (5)

(Shri Salman Khurshid)[\[s5\]](#)

MADAM SPEAKER: The question is:

"That clause 3, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 3, as amended, was added to the Bill.*

*Clauses 4 to 11 were added to the Bill.*

### **Clause 12<sup>[r6]</sup> Functions of Scrutiny Panel**

*Amendment made<sup>[r7]</sup>:*

Page 6, *after* line 5, *insert* –

"(1A) The scrutiny of complaints under this section by the Scrutiny Panel shall be held in camera.". (6)

(Shri Salman Khurshid<sup>[r8]</sup>)

MR. DEPUTY-SPEAKER: The question is:

"That clause 12, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 12, as amended, was added to the Bill*

*Clauses 13 to 38 were added to the Bill.*

### **Clause 39 Confidentiality of complaint procedure**

*Amendment made<sup>[r9]</sup>:*

Page 10, *after* line 30, *insert* –

"Provided that the Oversight Committee may, if it considers appropriate, authorize 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.". (7)

(Shri <sup>[r10]</sup>Salman Khurshid)

MR. DEPUTY-SPEAKER: The question is:

"That clause 39 as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 39, as amended, was added to the Bill*

*Clauses 40 to 52 were added to the Bill.*

### **Clause 53 Punishment for frivolous and vexatious complaints**

*Amendments made<sup>[r11]</sup>:*

Page 13, line 17 to 19, --

*for* "with rigorous imprisonment for a term which may extend to five years and also to fine which may

extend to five lakh rupees"

*substitute* "with simple imprisonment which may extend to one year and also with fine which may extend to fifty-thousand rupees". (8)

Page 13, *after* line 21, *insert* –

"(3) No suit, prosecution or othr legal proceeding shall lie against the complainant under this section in respect of anything which is in good faith done or intended to be done under this Act.". (9)

(Shri [\[r12\]](#)Salman Khurshid)

MR. DEPUTY-SPEAKER: The question is:

"That clause 53 as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 53, as amended, was added to the Bill*

*Clauses 54 to 59 were added to the Bill.*

*The Schedule was added to the Bill.*

**Clause 1 Short title and commencement**

*Amendment made:*

Page 1, line 4, --  
*for* "2010"  
*substitute* "2012" (2)

(Shri Salman Khurshid)

MR. DEPUTY-SPEAKER: The question is:

"That clause 1 as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 1, as amended, was added to the Bill.*

Enacting Formula

*Amendment made:*

Page 1, line 1, --  
*for* "Sixty-first"  
*substitute* "Sixty-third". (1)

(Shri Salman Khurshid)

MR. DEPUTY-SPEAKER: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

*The motion was adopted.*

*The Enacting formula, as amended, was added to the Bill*

*The Long Title was added to the Bill.*

SHRI SALMAN KHURSHEED: I beg to move:

"That the Bill, as amended, be passed."

MR. DEPUTY-SPEAKER: The question is:

"That the Bill, as amended, be passed."

*The motion was adopted.*

*...(Interruptions)*

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MR. DEPUTY-SPEAKER: Now we will take up 'Zero Hour' matters, Shri Ananth Kumar.