2025 INSC 943

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. 699 OF 2025

XXX **... PETITIONER**

VS.

THE UNION OF INDIA & OTHERS **... RESPONDENTS**

J U D G M E N T

DIPANKAR DATTA, J.

PREFACE

1. A deeply anguished Judge of the Allahabad High Court[1] has petitioned this Court for enforcement of his Fundamental Rights under Articles 14 and 21 of the Constitution of India by invoking his Fundamental Right to constitutional remedy guaranteed by Article 32 thereof.

2. Lest any observation made by us denies the petitioner a level playing field in any future proceedings that he might face, we would tread the path cautiously and refer to, very briefly, only the bare facts leading to presentation of this writ petition as well as deal with only such of the several contentions, as urged, to the extent the same are absolutely necessary for our decision.

[1] Petitioner

FACTS

3. Petitioner finds himself in an unsavoury situation. While the Petitioner was a Judge of the Delhi High Court, there was an incident of fire at a store-room in the bungalow premises allotted to him. On the date of the incident, the Petitioner was away from home. In the process of dousing the fire, certain burnt currency notes were discovered in the store-room. Such discovery gave rise to suspicion that the Petitioner may not have followed the universally accepted values of judicial life including those included in the Restatement of Values of Judicial Life dated 31st October, 1997; consequently, his conduct fell for scrutiny. Without wasting time, the "In-house Procedure" devised by the Supreme Court in its Full Court meeting dated 15th December, 1999[2] was set in motion. The Chief Justice of the Delhi High Court[3] *vide* letter dated 21st March, 2025 sought a response from the Petitioner. In his response dated 22nd March, 2025, the Petitioner's defence, *inter alia*, was that no cash was ever placed in the store-room by him or his family members and he strongly denounced the suggestion that the cash belonged to him or his family members. Petitioner also stated that the same must have been planted in the store-room to frame him. However, the Petitioner neither denied the incident of fire nor discovery of the burnt currency notes. Upon receipt of the response, the same was considered. *Inter alia*, on 22nd March, 2025, a three-member Committee[4] was constituted by the Chief Justice of India[5]. A press release of

[2] PROCEDURE
[3] CJ, DHC
[4] COMMITTEE
[5] CJI

even date named the members of the COMMITTEE, and also disclosed that the CJ, DHC was asked not to assign judicial work to the Petitioner. At or about the same time, presumably on the orders of the CJI, certain documents/photographs/video footage linked to the fire incident and discovery of currency notes had been placed in the public domain. On 24th March, 2025, the Collegium of the Supreme Court recommended the Petitioner's repatriation to his parent High Court. Immediately thereafter, the COMMITTEE set out to accomplish the task assigned to it. The fire ravaged store-room was inspected. Versions of several witnesses having some knowledge of and/or relation with the incident of fire/discovery of burnt currency notes were recorded by the COMMITTEE. Petitioner was furnished the versions of the witnesses. Thereafter, he was afforded an opportunity to state his case. An inquiry report[6] dated 3rd May, 2025 of the COMMITTEE followed. On the basis of appreciation of the materials collected in course of the inquiry, the COMMITTEE recorded in the REPORT of having found sufficient substance in the allegations raised in the letter dated 22nd March, 2025 of the CJI. It was recorded by the COMMITTEE that misconduct found proved is serious enough to call for initiation of proceedings for removal of the Petitioner from his office. *Vide* letter dated 4th May, 2025, the CJI gave the Petitioner the option to resign or to seek voluntary retirement within 6th May, 2025, failing which the competent authorities would be intimated to initiate action for removal. Petitioner responded on 6th May, 2025 seeking reconsideration of the letter dated 4th May, 2025 and more time to submit a written representation upon thorough

[6] REPORT

review of the REPORT. At the same time, the Petitioner further expressed his inability to either resign or seek voluntary retirement in the event his prayers for grant of additional time and reconsideration were not allowed. According to the Petitioner, acceptance of such advice could imply acquiescence to a process and outcome that he considered fundamentally unjust. Petitioner also urged that strict confidentiality be maintained by all stakeholders. The prayers, apparently, were not granted and a further press release of 8th May, 2025 came to be issued recording that in terms of the PROCEDURE, the CJI had written to the nation's Hon'ble President and Hon'ble Prime Minister and forwarded the REPORT of the COMMITTEE and the response of the Petitioner dated 6th May, 2025. What exactly were the contents of the CJI's letter is, however, unknown to the Petitioner as well as us.

4. In the prevailing circumstances, the Petitioner presented this writ petition on 17th July, 2025, claiming the following relief from the Court:

   a. Issue an appropriate writ, order or direction declaring Paragraphs 5(b) and 7 of In-House Procedure dated 15.12.1999 to the extent that it enables the In-House Committee to inquire and comment on the existence of 'serious misconduct warranting removal' and the Hon'ble CJI to intimate the same to the Hon'ble President and the Hon'ble Prime Minister for initiating proceedings for removal and other consequential action as being unconstitutional and *ultra vires.*
   b. Issue an appropriate writ, order, or direction declaring the intimation by the Hon'ble CJI to the Hon'ble President and the Hon'ble Prime Minister (as referred to in the Press Release dated 08.05.2025) for initiation of action for removal as being unconstitutional and *ultra vires art 124 and 218* and quash the same.
   c. Issue an appropriate writ, order, or direction to quash and set aside the Final Report dated 03.05.2025 submitted by the Committee, and all consequential actions taken pursuant to the same.
   d. Pass such other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case.

ARGUMENTS FOR THE PETITIONER

5. Mr. Kapil Sibal, learned senior counsel, duly assisted by other senior counsel, advanced arguments at length in support of the writ petition. A brief note of submissions was also placed by Mr. Sibal before the Court, which duly captures the points of challenge and the contentions in support of the relief claimed.

6. Mr. Sibal commenced his arguments by submitting that "it is a matter of moment".

7. According to Mr. Sibal, the Petitioner is aggrieved by the PROCEDURE to the extent it permits the Committee to opine as to whether the misconduct calls for initiation of proceedings for removal. He is also aggrieved because the PROCEDURE permits the CJI to intimate the President and the Prime Minister that the misconduct warrants initiation of proceedings for removal.

8. In course of his arguments, Mr. Sibal outlined what the Petitioner was not challenging. While fairly admitting that the PROCEDURE itself is a valid in-house mechanism contemplated for the purpose of discipline by self-regulation by the higher judiciary, Mr. Sibal laid challenge to paragraphs 5(b) and 7 (ii) thereof on the ground that these are *ultra vires* the Constitution violating Articles 124 and 218 thereof. It was also fairly admitted that even though the COMMITTEE'S remit was to conduct a fact-finding exercise, the subsequent recommendation by the COMMITTEE regarding the necessity to initiate proceedings for removal of a Judge is unconstitutional.

9. Moving ahead, Mr. Sibal accepted that he did not see any wrong in the CJI in advising the Chief Justice of the concerned High Court not to allocate judicial

work to the Judge under probe or the CJI's authority to forward the report of the Committee to the President and the Prime Minister along with intimation of the advice to the Chief Justice of the concerned High Court not to allocate judicial work to the concerned Judge.

10. While, however, confining the constitutional challenge to the validity of paragraphs 5(b) and 7 (ii) of the PROCEDURE, Mr. Sibal contended that Articles 124 and 218 of the Constitution are the only provisions under which a Judge of a High Court may be removed. In exercise of the powers under Article 124(5), the Parliament has enacted the Judges (Inquiry) Act, 1968[7]. He argued that the constitutional provisions read with the Inquiry Act constitute a complete and comprehensive code which occupies the field of the process for removal.

11. Continuing further, Mr. Sibal stressed that the tenure of a High Court Judge is protected by the Constitution, and such a Judge is subject to the Constitution and the Constitution alone. Even Parliament is not permitted to discuss the conduct of any Judge either of the Supreme Court or of the High Courts except when a MOTION for presenting an address is admitted. Hence, any procedure/process for removal, other than that provided for under Article 124, would be unconstitutional. As per the constitutional scheme, removal of a Judge from office is subject to the Judge being found guilty of proved misbehaviour or incapacity in an inquiry conducted under the Inquiry Act; however, the PROCEDURE to the extent it could trigger proceedings for removal,

[7] Inquiry Act, hereafter

without being bound by the constitutional rigours, is liable to be held *ultra vires*.

12. Mr. Sibal further argued that the removal process, set in motion by the PROCEDURE with the Committee being empowered to make recommendation, lacks constitutional sanction or contemplation. As against the safeguards provided in the Inquiry Act, such as framing of charges, presentation of evidence in support of the charge(s), statement of defence, cross-examination of witnesses, strict proof, etc. – all of which are compliant with the overarching mandate of Article 14 – the PROCEDURE contemplates such procedure as may be appropriate in the facts of a case. The PROCEDURE does not obligate the Committee to follow the codified or defined rules of evidence and permits the Committee to adopt such procedure as necessary, potentially leading to holding a Judge guilty, not just of serious misconduct but also calling for his removal. Such process, based only on a preliminary or *prima facie* view, where the Judge is denied the procedural safeguards which are otherwise available in consonance with due process, is wholly arbitrary and violative of Article 14 of the Constitution.

13. The report of the COMMITTEE, Mr. Sibal further contended, could only be used by the CJI to take corrective measures within his domain. It cannot possibly interfere with the process envisaged under Article 124. Separation of powers that is in-built in the Constitution demands that the judicial institution remains clear of the constitutional process undertaken for removal.

14. Finally, Mr. Sibal sought to again impress upon us that the PROCEDURE to the extent it permits the CJI to trigger the initiation of removal process by the

Parliament through his recommendation is bound to have its own impact. Though termed as a recommendation or advice, such recommendation/advice from a high constitutional functionary such as the CJI would clearly be far more than being merely persuasive and is bound to influence the decision making and evaluation process. It would act as a virtual death knell for a Judge, particularly based on a *prima facie* evaluation of the allegations. Such process would also circumvent the constitutionally prescribed mechanisms.

15. In any case, Mr. Sibal argued, uploading of the photographs/video footage on the website of the Supreme Court together with the REPORT of the COMMITTEE has the effect of convicting the Petitioner even before the procedure under Article 124 has been initiated. Such being the state of affairs, the powers of the CJI cannot extend to making such a recommendation. Hence, paragraphs 5(b) and 7(ii) of the PROCEDURE need to be set aside not only being violative of the constitutional scheme for removal of Judges but also because they deprive the Petitioner of equal protection of the laws, thereby infringing his valuable right under Article 14 of the Constitution.

16. Having completed his address on the constitutional challenge, Mr. Sibal placed reliance on the decisions of this Court in ***Indira Jaising v. Supreme Court of India***[8] and ***Sahara India v. SEBI***[9], to contend that the allegations against the Petitioner and the correspondence exchanged by and between him and the CJI as well as the evidence (photographs/video footage), ought not to have been put in the public domain. By so doing, not only has the good

[8] (2003) 5 SCC 494
[9] (2012) 10 SCC 603

reputation of the Petitioner as a Judge (which he built by years of dedicated work) been tarnished, the public perception based on viewing of such evidence led to an exercise which has held the Petitioner guilty even before an inquiry according to fair procedure could commence and he being afforded the opportunity to raise an effective defence. Highly critical of uploading of the photographs/video footage on the website of this Court, Mr. Sibal contended that the Petitioner's precious right under Article 21 stood abrogated right from the inception.

17. Relying heavily on the decision of the Constitution Bench in ***Sub-Committee on Judicial Accountability v. Union of India***[10], Mr. Sibal argued that the powers of the CJI in case of removal of a High Court Judge stand restricted. It was pointed out that as the CJI has no disciplinary control over Judges of the High Courts, the procedure for removal is not akin to removal of a delinquent employee. The CJI, it was contended, cannot have an authoritative say or partake in the process, which is otherwise the preserve of the Parliament.

18. Referring to the decision in ***C. Ravichandran Iyer v. Justice A.M. Bhattacharjee***[11], Mr. Sibal urged that the observations made therein were only intended to fill the 'yawning gap between proved misbehaviour and bad conduct inconsistent with the high office'. The PROCEDURE, however, reaches far and beyond filling the gap and, in fact, attempts to kick-start the process under Article 124(5), which is the sole prerogative of the Parliament.

[10] (1991) 4 SCC 699
[11] (1995) 5 SCC 457

19. While concluding, Mr. Sibal prayed that paragraphs 5(b) and 7(ii) of the PROCEDURE be declared *ultra vires*. He also prayed for a declaration that none including the Parliament be influenced either by the REPORT of the COMMITTEE or the recommendation/advice of the CJI.

20. We heard Mr. Rohatgi, learned senior counsel assisting Mr. Sibal, submit at the very end that the Petitioner ought to have been given an opportunity of personal hearing by the CJI before making his recommendation/tendering his advice to the President and the Prime Minister. To support such submission, he referred to a similar opportunity that was extended by the then CJI to a Judge of the Calcutta High Court who also went through the same PROCEDURE. Non-grant of such opportunity, according to him, breached principles of equality before law.

PROCEEDINGS BEFORE THE COURT

21. Although the challenge read with the prayers in the writ petition relate to the constitutionality of the PROCEDURE and the legality of the inquiry conducted by the COMMITTEE together with its REPORT, as part of the PROCEDURE, Mr. Sibal rightly did not argue the second point[12] and restricted his arguments on the point of constitutionality.

22. It is placed on record that the Petitioner not having objected to uploading of the photographs/video footage at the first available opportunity and having participated in the inquiry conducted by the COMMITTEE without raising any demur, we posed a query: why should we entertain the writ petition at such

[12] we need not spell out the reasons therefor in the judgment

a belated stage, notwithstanding the challenge laid on the constitutional aspect, particularly when the inquiry had culminated in submission of the REPORT by the COMMITTEE to the CJI who, in turn, had written to the President and the Prime Minister while forwarding the REPORT together with the Petitioner's response?

23. In answer thereto, Mr. Sibal submitted that since a constitutional challenge was being raised by the Petitioner and law being settled that there could be no waiver of a Fundamental Right, the Court may not decline interference and decide the writ petition based on the points argued by him.

24. During the course of hearing, we had also put it across to Mr. Sibal whether the Judges (Protection) Act, 1985[13] would have any application in the instant case. Faced with the Protection Act, Mr. Sibal sought to counter it by submitting two points. First, that no law as is referred to in sub-section (2) of Section 3 - either the Constitution or any statutory enactment - confers such power on the Supreme Court; hence the Protection Act has no application. Secondly, since sub-section (2) of Section 3 includes Central Government/State Government, it would then mean that these authorities could also initiate proceedings for removal of a High Court Judge which would be wholly unconstitutional and could not have been the intention of the Parliament.

25. Upon hearing Mr. Sibal and Mr. Rohatgi, we did not consider it necessary to issue notice to the respondents and reserved judgment.

[13] Protection Act

QUESTIONS

26. Based on Mr. Sibal's arguments as well as the facts on record, the following substantial questions of law arise for an answer:

    I. Should the writ petition be entertained at all having regard to the conduct of the Petitioner?

    II. Does the PROCEDURE have legal sanction?

    III. Is an inquiry and the consequent report in terms of the PROCEDURE (which could be unfavourable to the Judge under probe) a parallel and extra-constitutional mechanism?

    IV. Does paragraph 5(b) of the PROCEDURE foul Article 124 and Article 125 read with Articles 217 and 218 of the Constitution or abrogate any Fundamental Right of a Judge of a High Court?

    V. Did the CJI/the COMMITTEE constituted by the CJI act in terms of the PROCEDURE or in deviation thereof?

    VI. Is the requirement of paragraph 7(ii) of the PROCEDURE obliging the CJI to forward the report of the Committee to the President and the Prime Minister unconstitutional?

ANALYSIS AND FINDINGS WITH REASONS

27. Appreciating the merits of the arguments advanced on behalf of the Petitioner and expressing our opinion ought to be preceded by an examination of the provisions in the Constitution relating to removal of a Judge of a High Court from office, the law in terms whereof inquiry has to be held, the genesis of the PROCEDURE, what this PROCEDURE is all about, the role of the CJI, the nature

of inquiry the PROCEDURE contemplates, what impact does such inquiry have on a Judge of a High Court whose conduct is under probe, and other related issues including the aspect of applicability of the Protection Act. This would also necessarily require us to take note of the precedents in the field which find place in the compilation of judgments handed over by Mr. Sibal. In our view, such an exercise would significantly facilitate and aid answering the above questions effectively and thereby enable us to complete the task at hand appropriately.

CONSTITUTIONAL PROVISIONS AND THE INQUIRY ACT

28. That a Judge of a High Court cannot be removed from office except on the ground of proved misbehaviour or proved incapacity admits of no doubt. The provisions relatable to removal of a Judge of a High Court from office are traceable to Articles 217 and 218 read with Article 124. Clauses (4) and (5) of Article 124 read as follows:

> **124. Establishment and constitution of Supreme Court**
>
> …
>
> (4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.
>
> (5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).
>
> …

29. Articles 217 (to the extent relevant) and 218 provide:

217. Appointment and conditions of the office of a Judge of a High Court

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years:

Provided that—

(a) ***
(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;
(c) ***

(2) ***

(3) ***

218. Application of certain provision relating to Supreme Court to High Courts

The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

30. The law that is referred to in clause (5) of Article 124 is the Inquiry Act.

31. The Constitution itself does not prescribe the procedure for the presentation of an address and for investigation and proof of the misbehaviour or incapacity of a Judge but leaves it for the Parliament to regulate the same by law. In exercise of such powers, as discussed above, the Parliament enacted the Inquiry Act. The Inquiry Act, *inter alia*, provides for constitution of a committee which is to conduct an investigation/inquiry into the allegation of misbehaviour or incapacity levelled against the Judge. The procedure enumerated in the Inquiry Act is in consonance with the principles of natural justice in that, formal charges are framed, the Judge is provided with the supporting material for each charge, opportunity is extended to cross-examine

witnesses as well as to present his defence. The committee has the same powers as that of a civil court under the Code of Civil Procedure, 1908, for summoning and enforcing the attendance of a person, examining a person on oath, requiring discovery and production of documents, receiving evidence on oath, issuing a commission for examination of witnesses or documents, and for all such other matters as may be prescribed. It is imperative to note that if the Judge is not found guilty of any charge(s) by the committee, then the pending MOTION in the House or Houses of Parliament will not be proceeded with. Thus, it marks the end of the proceedings.

32. The process for impeachment of a Judge, however, is very rigid at all levels – starting with a MOTION in the House, followed by an investigation/inquiry conducted by a committee comprising of persons of high calibre, adherence to fair procedure, then the necessity of approval by a majority of the Houses and finally the approval by the President whereafter a Judge can be removed from office by impeachment.

33. These provisions apart, there are two other similarly worded articles in the Constitution which, though not directly related to removal of a Judge of a High Court, impose restrictions on discussions in the Parliament/State Legislatures with respect to the conduct of a Judge of a High Court. They are Articles 121 and 211.

34. Mr. Sibal is right in his contention that apart from proviso (b) of clause (1) of Article 217 and Article 218 read with clauses (4) and (5) of Article 124, there is no other provision in the Constitution relating to removal of a Judge of a High Court from his office. He is also right in contending that Article 121 even

bars the Parliament to discuss the conduct of a Judge of a High Court except in the stated situation. Similar is the restriction imposed by Article 211.

35. A reading of the Constituent Assembly debates does not reveal any discussion or debate on any proposed measure, other than removal by the Parliament in the manner constitutionally ordained, if the conduct of a Judge of a High Court amounts to misbehaviour but does not amount to such misbehaviour as would warrant the extreme measure of removal from office. The framers of the Constitution, in their wisdom, possibly might have thought that having regard to the status of a Judge, being a high constitutional functionary in whom the people would repose trust and faith for rendering justice, only such individuals possessing the highest standards of integrity and moral character, apart from legal acumen, would be considered for appointment to the judicial office; yet, should there be an exceptional situation calling for removal of a Judge from office and to ensure that the Constitution is not incomplete without an in-built mechanism for a disciplinary measure, provisions for removal (by impeachment) were incorporated. Indeed, it took Parliament long 18 (eighteen) years after the advent of the Constitution to enact the law wherefor it was empowered by clause (5) of Article 124. It is also noteworthy that the first process of removal of a Judge by impeachment did not see the light of the day till the early nineties of the last century, i.e., almost 4 (four) decades after the people proclaimed India as a sovereign democratic republic[14]. It does suggest that the framers of the Constitution were not amiss in thinking that an exceptional case for disciplining a Judge might seldom arise.

[14] on 26th November, 1949

36. Nonetheless, times have changed and changed drastically. With the process of appointment becoming executive-centric, fissures in the system became apparent; aberrations of Judges started attracting notice. However, possibly because of the cumbersome process that a process for removal by impeachment involves, many a Judge could have escaped unscathed without such aberration being brought in the public domain.

37. There have, however, been certain reported instances since the eighties of the last century of Judges having indulged in (perceived) misbehaviour leading to some of them being disciplined internally by the Chief Justices of the concerned High Courts.

38. Till date, there have been only 4 (four) instances of MOTIONs for removal of a Supreme Court/High Court Judges being admitted by the Parliament and not a single instance of the MOTION being carried through (although one cannot ignore that a couple of Judges strategically resigned prior to culmination of the proceedings).

39. Be that as it may, the Constitution was and is silent with regard to any disciplinary measure, short of removal by impeachment, should there be an aberration or bad conduct by a Judge of a High Court as distinguished from misbehaviour in the discharge of his judicial duties or administrative/non-judicial/official duties.

40. It is worthy of note that six years before the turn of the last century, the Chief Justice of the Bombay High Court was compelled to demit office on the ground of alleged misbehaviour as a sequel to exertion of pressure by the local Bar Council/Bar Associations. A writ petition under Article 32 of the Constitution

presented by a practising advocate changed the legal landscape of the country. The decision on such writ petition, which laid down a precedent and which we propose to consider a little later, has rightly been commented in one of the subsequent decisions of this Court as having sowed the seeds for the PROCEDURE.

THE PROCEDURE - ITS GENESIS AND CONTENTS

41. The PROCEDURE (commonly known as the "In-house Procedure"), which has been developed by the Full Court of the Supreme Court through an administrative resolution, serves as an internal mechanism to deal with complaints of misconduct or incapacity against sitting Judges, both of the High Courts and the Supreme Court.

42. Reading of paragraph 32 of the decision in ***Additional District and Sessions Judge 'X' v. Registrar General, High Court of Madhya Pradesh***[15] provides useful guidance as to how the PROCEDURE came to be devised. It reads:

> "**32.** In furtherance of the directions issued in *C. Ravichandran Iyer case*, this Court constituted a committee comprising of three Judges of this Court, namely, Justices S.C. Agrawal, A.S. Anand (as he then was) and S.P. Bharucha (as he then was), and the then two seniormost Chief Justices of the High Courts i.e. Justices P.S. Misra and D.P. Mohapatra (of the Andhra Pradesh High Court and the Allahabad High Court, respectively), to lay down the 'In-House Procedure', for taking suitable remedial action against Judges, who by their acts of omission or commission, do not follow the accepted values of judicial life, including the ideals expressed by the Supreme Court in the 'Restatement of Values of Judicial Life'. The Committee submitted its report on 31-10-1997. The same was adopted with amendments, in a Full Court Meeting of the Supreme Court of India, on 15-12-1999. In the aforestated report, three sets of procedure for taking such suitable remedial action against Judges were laid down. The first, related to the Judges of the High Courts, the

[15] (2015) 4 SCC 91

second, to the Chief Justices of the High Courts, and the third, to the Judges of the Supreme Court. …".

43. At the outset, the PROCEDURE itself records complaints made against Judges of the High Court and the Supreme Court often being received either by the Chief Justices of the High Courts or the CJI. Such complaints, also made to the President of India, are generally forwarded to the CJI for being looked into. Considering the lack of any constitutional mechanism or otherwise based whereon measures could lawfully be taken when the CJI is seized of such complaints, the Full Court of the Supreme Court by its resolution dated 15th December, 1999 adopted the PROCEDURE.

44. The process under the PROCEDURE begins when a written complaint containing verifiable and specific allegations is received by the CJI or the Chief Justice of a High Court. What actions are required to be taken thereunder if the complaint is found to be of a serious nature have been provided in paragraphs 1 to 3 of the PROCEDURE.

45. Should the matter merit a deeper probe, the CJI would constitute a Committee consisting of two Chief Justices of the High Courts (other than the High Court to which the Judge belongs) and one High Court Judge (paragraph 3), and the Committee so constituted has the liberty to devise its own procedure consistent with the principles of natural justice (paragraph 4). The inquiry, being in the nature of a fact-finding exercise, entitles the Judge under probe to appear and have his say recorded. Since it is not a formal judicial inquiry and given its fact-finding and non-punitive character, examination/cross-examination of witnesses and representation by lawyers are excluded.

46. Upon receipt of the report of inquiry from the Committee, the CJI is empowered to take one of three possible courses of action, depending on the nature and gravity of the findings *qua* the allegations. *Firstly,* if the Committee concludes that the allegations are unfounded or lacking in substance, the CJI may choose to close the matter [paragraph 5(a) read with paragraph 6]. *Secondly,* if the inquiry reveals serious misconduct, the CJI may advise the Judge to resign his office or seek voluntary retirement [paragraph 7(i)]. If the concerned Judge elects not to do so, the CJI shall intimate the President and the Prime Minister that the allegations are serious enough to warrant initiation of proceedings for removal and hence, judicial work has been withdrawn [paragraph 5(b) read with para 7(ii)]. *Thirdly,* where the misconduct is established but it is not so serious as to warrant removal, the CJI may call the Judge concerned and advise him accordingly; the report of the Committee to be placed on record may also be directed [paragraph 5(c) read with paragraph 8].

47. Despite the decision in **Additional District and Sessions Judge 'X'** (supra) at paragraph 47 thereof having delineated the various steps in the PROCEDURE through which the proceedings must pass, we have given a brief overview for our own understanding.

PRECEDENTS

48. Having noted the genesis and the contents of the PROCEDURE, we proceed to consider the precedents that have been cited which directly dealt with proceedings/initiation of proceedings for removal of a Judge of a High Court.

49. The decision of the Constitution Bench of this Court in ***Sub-Committee on Judicial Accountability*** (supra) is, incidentally, the sheet anchor of Mr. Sibal's arguments.

50. At the same time, other decisions of this Court having a material bearing for deciding the question of constitutionality of the PROCEDURE would also necessarily fall for consideration which we propose to consider *in seriatim*.

51. ***Sub-Committee on Judicial Accountability*** (supra) had to consider issues of some importance bearing on the construction of Articles 121 and 124 of the Constitution as well the provisions of the Inquiry Act. The occasion for the controversy raised in the proceedings, the issues arising for decision and the broad contentions raised by the parties are noted in paragraphs 3, 4 and 15, respectively, of the majority judgment authored by Hon'ble B. C. Ray, J. (as His Lordship then was). For the sake of completeness but, at the same time, to maintain brevity, we discern that the main issues arising for decision were (i) what is the legal position and status of a MOTION for the removal of a Judge under a law made pursuant to Article 124(5) of the Constitution? (ii) whether the Doctrine of Lapse would apply to such a MOTION upon the dissolution of the Lok Sabha? (iii) whether the matters arising out of or relating to a MOTION for removal of a Judge in either House of the Parliament are at all justiciable before courts of law? and (iv) whether the Court should decline to exercise jurisdiction as its decision and its writ might become infructuous (in view of the fact that in the ultimate analysis, the final arbiter whether at all any Address is to be presented rests exclusively with the Houses of Parliament and which are wholly outside the purview of the courts)?

52. One of the contentions was Contention F, reading as follows:

> "*Contention F*:— The process of removal by means of a MOTION for address to the President is a political remedy. But the fundamental right to move the Supreme Court for enforcement of fundamental rights take within its sweep the right to access to a court comprising of Judges of sterling and unsullied reputation and integrity which is enforceable. This judicial remedy is independent of the constitutional remedy and that the court has jurisdiction to decide as to its own proper constitution. In exercise of this jurisdiction it should examine the grounds of the alleged misbehaviour and restrain the Judge from judicial functioning."

53. While rejecting the said contention, this Court, *inter alia*, held thus:

> "**111.** The relief of a direction to restrain the Judge from discharging judicial functions cannot be granted. It is the entire Constitutional Scheme including the provisions relating to the process of removal of a Judge which are to be taken into account for the purpose of considering this aspect. It is difficult to accept that there can be any right in anyone running parallel with the Constitutional Scheme for this purpose contained in clauses (4) and (5) of Article 124 read with Article 121. No authority can do what the Constitution by necessary implication forbids. Incidentally, this also throws light on the question of interim relief in such a matter having the result of restraining the Judge from functioning judicially on initiation of the process under the Judges (Inquiry) Act, 1968. The Constitutional Scheme appears to be that unless the alleged misbehaviour or incapacity is 'proved' in accordance with the provisions of the law enacted under Article 124(5) and a MOTION for presenting an address for removal of the Judge on the ground of proved misbehaviour or incapacity is made, because of the restriction contained in Article 121, there cannot be a discussion about the Judge's conduct even in the Parliament which has the substantive power of removal under Article 124(4). If the Constitutional Scheme therefore is that the Judge's conduct cannot be discussed even in the Parliament which is given the substantive power of removal, till the alleged misconduct or incapacity is 'proved' in accordance with the law enacted for this purpose, then it is difficult to accept that any such discussion of the conduct of the Judge or any evaluation or inferences as to its merit is permissible according to law elsewhere except during investigation before the Inquiry Committee constituted under the statute for this purpose. The indication, therefore, is that interim direction of this kind during the stage of inquiry into the alleged misbehaviour or incapacity is not contemplated it being alien to our Constitutional Scheme."
>
> (emphasis laid by Mr. Sibal)

54. Having read what ***Sub-Committee on Judicial Accountability*** (supra) ruled while not accepting Contention F, we proceed to take note of the next relevant decision, i.e., ***C. Ravichandran Iyer*** (supra).

55. Hon'ble K. Ramaswamy, J. (as His Lordship then was) speaking for the Bench in ***C. Ravichandran Iyer*** (supra), after referring to previous decisions, reaffirmed the importance of the CJI as the head of the institution, when a matter questioning the integrity of a Judge arises, in paragraphs 35 and 36 of the decision. In very clear words, His Lordship suggested an in-house procedure to be followed by the Chief Justices of the High Courts or the CJI, when they are seized of a complaint related to a Judge's conduct. The CJI, upon receipt of information from the Chief Justice of a High Court could take such action as "deemed necessary or warranted". Although, the concerned Judge in this case had demitted office before the judgment was delivered, this Court held that its statements were to be treated as a precedent. Relevant passages from the decision read as follows:

> "**35.** It is true that this Court has neither administrative control over the High Court nor power on the judicial side to enquire into the misbehaviour of a Chief Justice or Judge of a High Court. When the Bar of the High Court concerned reasonably and honestly doubts the conduct of the Chief Justice of that Court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. It is of importance to emphasise here that impeachment is meant to be a drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them. It seems to us that self-regulation by the judiciary is the only method which can be tried and adopted. …
>
> ***
>
> **40.** Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself

about the truth of the imputation made by the Bar Association through its office-bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office-bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.

41. In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India.

42. It would thus be seen that yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non-cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through in-house procedure. This in-house procedure would fill in the constitutional gap and would yield salutary effect. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure.

43. Since the 1st respondent has already demitted the office, we have stated as above so that it would form a precedent for future."

(emphasis ours)

56. After the PROCEDURE was devised in 1999 by the Full Court, acting on the precedent set by ***C. Ravichandran Iyer*** (supra), ***Indira Jaising*** (supra) happened to be the first reported decision that had the occasion to consider whether a report of the Committee, constituted by the CJI in terms of the PROCEDURE, ought or should be placed in the public domain. Answering the question in the negative, what the Court said [speaking through Hon'ble S. Rajendra Babu, J. (as the Chief Justice of India then was)] provides valuable guidance. Relevant passages read as under:

> "**2.** In the Chief Justices' Conference held in December 1999, sixteen clauses formed part of the Code of Conduct in addition to the declaration of assets by the Judges and in-house procedure was suggested in the event of any complaint against any Judge. However, sanction for these guidelines is absent. In our constitutional scheme it is not possible to vest the Chief Justice of India 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 this Court and also their removal. Similarly, Article 217 deals with the appointment and removal of the Judges of the High Court. In the Judges (Inquiry) Act of 1968 provisions are made for investigation into misbehaviour 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.
>
> **3.** The Committee referred to by the petitioner is stated to have been constituted as a part of in-house procedure. A Judge cannot be removed from his office except by impeachment by a majority of the House and a majority of not less than 2/3rds present and voting as provided by Articles 124 and 217 of the Constitution of India. The Judges (Inquiry) Act, 1968 has been enacted providing for the manner of conducting inquiry into the allegation of judicial conduct upon a MOTION of impeachment sponsored by at least hundred Lok Sabha Members or fifty Rajya Sabha Members. The Presiding Officer of the House concerned has the power to constitute a committee consisting of three persons as enumerated therein. No other disciplinary inquiry is envisaged or

contemplated either under the Constitution or under the Act. On account of this lacuna in-house procedure has been adopted for inquiry to be made by the peers of Judges for report to the Hon'ble the Chief Justice of India in case of a complaint against the Chief Justices or Judges of the High Court in order to find out the truth of the imputation made in the complaint and that in-house inquiry is for the purpose of his own information and satisfaction. A report made on such inquiry if given publicity will only lead to more harm than good to the institution as Judges would prefer to face inquiry leading to impeachment. In such a case the only course open to the parties concerned if they have material is to invoke the provisions of Article 124 or Article 217 of the Constitution, as the case may be. It is not appropriate for the petitioner to approach this Court for the relief or direction for release of the report, for what the Chief Justice of India has done is only to get information from peer Judges of those who are accused and the report made to the Chief Justice of India is wholly confidential. The said report is only for the purpose of satisfaction of the Chief Justice of India that such a report has been made. It is purely preliminary in nature, *ad hoc* and not final. If the Chief Justice of India is satisfied that no further action is called for in the matter, the proceeding is closed. If any further action is to be taken as indicated in the in-house procedure itself, the Chief Justice of India may take such further steps as he deems fit. Therefore, in the hierarchy of the courts, the Supreme Court does not have any disciplinary control over the High Court Judges, much less the Chief Justice of India has any disciplinary control over any of the Judges. That position in law is very clear. Thus, the only source or authority by which the Chief Justice of India can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made the subject-matter of a writ petition to disclose a report made to him."

(emphasis ours)

57. This decision was followed by ***P.D. Dinakaran (1) v. Judges Inquiry Committee***[16]. In this case, no part of the PROCEDURE or any step taken in furtherance thereof was under challenge. The challenge in the writ petition under Article 32 of the Constitution was to an order of the Chairman of the Rajya Sabha constituting a three-member committee under Section 3(2) of the Inquiry Act. The principle, *nemo debet esse judex in propria sua causa*, was sought to be invoked and a pointed challenge to the inclusion of a senior

[16] (2011) 8 SCC 380

advocate in the committee in the category of 'jurist' was laid on the ground of bias. The petitioning judge had not approached the Court soon after the committee was constituted; on the contrary, he did so ten months later when he was notified of the charges. Based on such conduct, this Court held:

> "**80.** The issue deserves to be considered from another angle. Admittedly, the petitioner raised the plea of bias only after receiving the notice dated 16-3-2011 which was accompanied by the statement of charges and the lists of documents and witnesses. The petitioner's knowledgeful silence in this regard for a period of almost ten months militates against the bona fides of his objection to the appointment of Respondent 3 as member of the Committee. A person of the petitioner's standing can be presumed to be aware of his right to raise an objection. If the petitioner had the slightest apprehension that Respondent 3 had prejudged his guilt or he was otherwise biased, then, he would have on the first available opportunity objected to his appointment as a member of the Committee. The petitioner could have done so immediately after the publication of the Notification dated 15-1-2010. He could have represented to the Chairman that investigation by a Committee of which Respondent 3 was a member will not be fair and impartial because the former had already presumed him to be guilty.
> **81.** … However, the fact of the matter is that the petitioner never thought that Respondent 3 was prejudiced or ill-disposed against him and this is the reason why he did not raise any objection till April 2011 against the inclusion of Respondent 3 in the Committee. This leads to an irresistible inference that the petitioner had waived his right to object to the appointment of Respondent 3 as member of the Committee. The right available to the petitioner to object to the appointment of Respondent 3 in the Committee was personal to him and it was always open to him to waive the same."

58. Next in line is the decision in ***Additional District and Sessions Judge 'X'*** (supra). Hon'ble J. S. Khehar, J. (as the Chief Justice of India then was), speaking for the Court, went deep into the PROCEDURE and observed that:

> "**35.** It is, therefore, apparent that the seeds of the "In-House Procedure" came to be sown in the judgment rendered by this Court in *C. Ravichandran Iyer case*. It is also apparent, that actions have been initiated under the 'In-House Procedure', which has the approval of the Full Court of the Supreme Court of India. And, based on the aforestated 'In-House Procedure', impeachment proceedings were actually initiated by Parliament under Article 124 of the Constitution of India. There can

therefore be no doubt whatsoever, that in the above situation, the 'In-House Procedure' is firmly in place, and its adoption for dealing with matters expressed by this Court in *C. Ravichandran Iyer case* is now a reality.

36. Despite the above conclusion, it is imperative to take into consideration the observations recorded by this Court in *Indira Jaising* v. *Registrar General, Supreme Court of India* , as under : (SCC pp. 496-97, paras 2-3)

"*……*"

A perusal of the observations made by this Court in the extract reproduced above, reveals that the existence of the 'In-House Procedure' is now an established means for inquiring into allegations levelled against a Judge of a superior court, through his peers. It is a confidential inquiry for institutional credibility under the charge of the Chief Justice of India. And therefore, its affairs are to be kept out of public domain. The proceedings under the above procedure being sensitive, are required to be inaccessible to third parties. And therefore, the prayer seeking the disclosure of the report submitted on the culmination of the 'In-House Procedure' was declined. The object sought to be addressed through the 'In-House Procedure', is to address concerns of institutional integrity. That would, in turn, sustain the confidence of the litigating public, in the efficacy of the judicial process.

37. It is impermissible to publicly discuss the conduct of a sitting Judge, or to deliberate upon the performance of his duties, and even on/of court behaviour, in public domain. Whilst the 'In-House Procedure' lays down means to determine the efficacy of the allegations levelled, it is now apparent, that the procedure is not toothless, in the sense, that it can lead to impeachment of the Judge concerned under Article 124 of the Constitution of India. … But, that should not be understood to mean, that an individual concerned, who is called upon to subject himself/herself to the contemplated procedure, should be precluded or prevented from seeking judicial redress. It is now well understood, that an individual who subjects himself/herself to the jurisdiction of an authority, cannot turn around to find fault with it at a later juncture. If there is a fault, the same should be corrected, before one accepts to submit to the jurisdiction of the authority concerned. The submission of the petitioner in the present case, to the 'two-Judge Committee', would certainly have had the above effect. We are therefore satisfied to hold, that those who are liable to be affected by the outcome of the 'In-House Procedure', have the right to seek judicial redressal, on account of a perceived irregularity. The irregularity may be on account of the violation of the contemplated procedure, or even because of contemplated bias or prejudice. It may be on account of impropriety. The challenge can extend to all subjects on which judicial review can be sought. The objections raised on behalf of Respondent 3, in respect of the sustainability of the instant petition at the hands of Addl. D & SJ *X*, are therefore wholly untenable. The challenge to the maintainability of the instant writ petition, is accordingly declined.

***

55. In view of the consideration and the findings recorded hereinabove, we may record our general conclusions as under:

55.1. The 'In-House Procedure' framed by this Court, consequent upon the decision rendered in *C. Ravichandran Iyer case* can be adopted to examine allegations levelled against the Judges of the High Courts, Chief Justices of the High Courts and Judges of the Supreme Court of India.

55.2. The investigative process under the 'In-House Procedure' takes into consideration the rights of the complainant, and that of the Judge concerned, by adopting a fair procedure, to determine the veracity of allegations levelled against a sitting Judge. At the same time, it safeguards the integrity of the judicial institution.

55.3. Even though the said procedure should ordinarily be followed in letter and spirit, the Chief Justice of India would have the authority to mould the same, in the facts and circumstances of a given case, to ensure that the investigative process affords safeguards, against favouritism, prejudice or bias.

55.4. In view of the importance of the 'In-House Procedure', it is essential to bring it into public domain. The Registry of the Supreme Court of India, is accordingly directed to place the same on the official website of the Supreme Court of India."

59. It is in the conspectus of the above noted precedents that the contentions urged by the Petitioner would fall for consideration.

OTHER TOPICS

60. Dwelling on a few more topics having relevance and materiality would not be inapt. Hence, we venture to do that now while making our own observations to assist us in accomplishing our task.

ROLE OF THE CJI

61. While the CJI is no doubt *primus inter pares* – first among equals – and also does not exercise powers of superintendence over the High Courts and the Judges of the High Court, nonetheless, the CJI bears a significant moral responsibility as the foremost judicial officer to ensure that the judiciary of the

country functions in a transparent, efficient and constitutionally appropriate manner.

62. Petitioner has challenged the CJI's recommendation for initiation of proceedings for removal (if at all such recommendation has been made, for we do not know what exactly was intimated to the President and the Prime Minister) on the ground that the CJI, under the constitutional scheme, has no authority to make such recommendation and moreover, such opinion would prejudice the Members of the Parliament and violate the spirit of separation of powers.

63. The PROCEDURE contemplates withdrawal of judicial work of the Judge under probe. While forwarding the report of inquiry to the President/the Prime Minister, the CJI does so for indicating why judicial work is not assigned to the Judge, not as to why he should be impeached/removed. Withdrawing judicial work from a Judge is indeed an extreme measure and, therefore, has to be based on sound reasons; hence, the report of inquiry forms the plinth for the President and the Prime Minister to be intimated of such an action. This is an important distinction, not noticed by the Petitioner.

64. Assuming arguendo that the CJI endorsed the findings in the REPORT submitted by the COMMITTEE and did recommend initiation of proceedings against the Petitioner for removal from office, we have no hesitation to say that the CJI is not a mere post office between the COMMITTEE and the President/the Prime Minister that the REPORT is to be forwarded without any remarks/recommendation. The CJI is clearly an important person, if not the most, in the larger scheme of maintaining institutional interest and credibility

to ascertain whether a Judge has indulged in misconduct. As per the PROCEDURE, after receiving a complaint against a Judge or a report from the Chief Justice of the High Court of which he is a Judge, the CJI has to apply his mind to the nature of complaint/report together with supporting materials, if any. If the CJI believes that the matter requires a deeper probe, he is required to constitute a Committee for an in-house inquiry. The report of inquiry may, or may not, find the allegations against the Judge to be serious, so as to call for any measure. However, if it does, the CJI is under an obligation to forward the report to the President and the Prime Minister. We see no justification to hold that in so forwarding, the CJI may not give his own views.

65. Moreover, the President of India is not a stranger to the judicial process. In **K. Veeraswami v. Union of India**[17], the Court noted that:

> "**51.** The President is not an outsider so far as judiciary is concerned. The President appoints the Judges of the High Courts and the Supreme Court in exercise of his executive powers. Clause (1) of Article 217 provides that every Judge of the High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court. Similarly the President appoints the Judges of the Supreme Court. Clause (2) of Article 124 provides that every Judge of the Supreme Court shall be appointed by the President in consultation with such of the Judges of the Supreme Court and of the High Courts as the President may deem necessary for the purpose and in case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted. The President exercises this power with the aid and advise of his Council of Ministers under Article 74 of the Constitution. (*Shamsher Singh* v. *State of Punjab* [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814] and *S.P. Gupta* v. *Union of India* [1981 Supp SCC 87 : AIR 1982 SC 149]). Parliament has no part to play in the matter of appointment of Judges except that the executive is responsible to the Parliament."

[17] (1991) 3 SCC 655

66. We wish to go a bit further in observing that the President is not only not an outsider to the judiciary but also not an outsider to the PROCEDURE itself. In the prefatory paragraphs of the PROCEDURE, as devised by the Full Court, it has been acknowledged that complaints are received by the CJI from the office of the President. Having received such complaints from the President, it is quite but natural that the CJI would not only acknowledge receipt of such complaints but also apply his mind and respond to the same, wherever necessary.

67. Pausing here for a moment, what else is the CJI expected to do, if he is of the view that the matter requires a deeper probe? We hasten to add that where the Committee itself (constituted by the CJI) finds substance in the allegations and the misconduct found is serious enough to call for initiation of proceedings for removal, the CJI does have the authority, in a fit and proper case, to endorse such finding while forwarding the report of inquiry.

68. Next, the argument that the Members of either or both houses of the Parliament could be influenced by the CJI's opinion is not acceptable since the opinion is not forwarded either to the Speaker of the Lok Sabha or to the Chairman of the Rajya Sabha. For arguments sake, even if it is assumed that Members of Parliament have had access to the recommendation/advice of the CJI, if any, nothing much turns on it. The Inquiry Act includes a specific mechanism which has to be statutorily followed before any address for impeachment is made in the House(s). The report of the Committee being preliminary in nature, *ad hoc* and not final, as held in ***Indira Jaising*** (supra), cannot affect the Petitioner in future proceedings unless such report is relied

upon at a future stage of the proceedings/at the inquiry; if relied upon, the Petitioner would be free to exercise his rights as are available in law.

69. At the same time, it needs no emphasis that although the CJI is the head of the institution, he too is not above the law which is supreme; hence, utmost care has to be taken to ensure that any action of the CJI is not in deviation of the PROCEDURE which permits the in-house inquiry to be undertaken.

THE JUDGES (PROTECTION) ACT

70. The relevant provisions of the Protection Act are reproduced hereunder:

> "2. Definition.—In this Act, 'Judge' means not only every person who is officially designated as a Judge, but also every person— (a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or (b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).
> 3. Additional protection to Judges.—
> (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.
> (2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."
>
> (emphasis ours)

71. The Protection Act, we guess, may not have been brought to the notice of this Court in any of the previous decisions considered here by us. Viewed in that light, this decision could be the first of judicial pronouncements by this Court touching Section 3(2) of the Protection Act vis-à-vis the PROCEDURE; hence, we

propose to deal with it in some detail while assigning reasons for our firm opinion on applicability of the Protection Act in the instant case.

72. First, the definition of a Judge in the Protection Act is an expansive one intended to take into its fold anyone empowered by law to give a definitive judgment in a legal proceeding. Therefore, the protection envisaged thereunder applies not only to the Judges appointed under the Constitution (i.e., the Supreme Court and the High Courts) and the Judges recognised by the Constitution (the district Judiciary) but also to judges of various tribunals and quasi-judicial bodies having powers of adjudication across the country.

73. Secondly, Section 3(1) of the Protection Act provides that no Court would entertain any civil or criminal proceeding against a judge acting in his official or judicial duty or function. In the case of **D.C. Saxena (Dr) v. Hon'ble The Chief Justice of India**[18], it was observed that:

> "**57.** ….The protection of Articles 124(4), 121, 211, the Judicial Officers Protection Act, 1850 and the Judges (Protection) Act, 1985 is to ensure independence to the judiciary. Threat to judicial process is a challenge to the authority of the court or the majesty of justice. It would be ex facie contumacious conduct."

74. While referring to the Statement of Objects and Reasons of the Protection Act, this Court in **State of Rajasthan v. Prakash Chand**[19] noticed its object and purport as follows:

> "**35.** Even under the Judges (Protection) Act, 1985 immunity has been given to judicial officers in relation to judicial work done by them as well as for the judicial orders made by them. The Statement of Objects and Reasons for introducing the Bill in relation to the 1985 Act which reads thus is instructive:

[18] (1996) 5 SCC 216
[19] (1998) 1 SCC 1

> 'Judiciary is one of the main pillars of parliamentary democracy as envisaged by the Constitution. It is essential to provide for all immunities necessary to enable Judges to act fearlessly and impartially in the discharge of their judicial duties. It will be difficult for the Judges to function if their actions in court are made subject to legal proceedings, either civil or criminal.' …"

75. A similar sentiment was noticed in the Constitution Bench decision in **Supreme Court Advocates-on-Record Assn. v. Union of India**[20] wherein it was observed:

> "**724.** Similarly, Section 3 of the Judges (Protection) Act, 1985 provides, inter alia, that no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. This is in addition to the protection given by Section 77 of the Penal Code, 1860…"

76. Indeed, Section 3(1) is subject to Section 3(2) and does not expressly prohibit a departmental proceeding or otherwise but bars entertainment and continuance of civil or criminal proceedings against a Judge as defined in Section 2 for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

77. Section 3(2) starts with a non-obstante clause with reference to Section 3(1) and *inter alia* specifically ordains that the authorities mentioned therein are not denuded of the power to initiate civil, criminal, or departmental proceedings or otherwise against any Judge as long as the law in force allows them to do so. We place sufficient emphasis on the word "otherwise" as

[20] (2016) 5 SCC 1

present in Section 3(2). The PROCEDURE having provisions for an in-house inquiry, with which we are concerned, is admittedly not akin to any inquiry connected with a departmental proceeding since it lacks the bearings of a true, valid and legal departmental proceeding. It is a proceeding akin to a preliminary fact-finding inquiry intended to serve a specific purpose. However, the PROCEDURE contemplating a fact-finding inquiry can and does very well fit in the mould of the word "otherwise". It is a cardinal principle that no word in a statute is superfluous. We need not burden our judgment with referring to precedents on this point.

78. We have noted the response of Mr. Sibal earlier that no law exists conferring power on the Supreme Court to initiate proceedings against a Judge of a High Court.

79. Attractive though at first blush, and accepting that a Judge cannot be removed from office except in the manner ordained by the Constitution, this submission of Mr. Sibal fails to take note of the legal position flowing from Article 141 of the Constitution. As noted in the decisions starting with ***C. Ravichandran Iyer*** (supra), the "In-house Procedure" proposes to fill the gap in the constitutional mechanism and the ground realties present. Paragraph 43 of the decision quoted above provides the guiding light for this purpose. Parliament has saved the Supreme Court's authority to initiate such proceedings and take such action as it thinks fit, provided there is a law for the time being in force in that regard by enacting sub-section (2) of Section 3; and, the law declared by the Court in ***C. Ravichandran Iyer*** (supra) is what bridges the breach.

80. Moreover, the 1999 Full Court resolution has been framed on the basis of this decision; therefore, there is full legal sanction to the PROCEDURE when read in the light of guidance provided by Article 141 of the Constitution.

81. It was also submitted that if we propose to interpret the Protection Act as conferring power to proceed against a Judge of a High Court, then the Central Government/State Government would also be able to initiate proceedings for such removal. While respectfully disagreeing with Mr. Sibal, we have no hesitation to hold that inclusion of the Central Government or the State Government or such other authority in sub-section (2) of Section 3 is for the simple reason that 'Judge', as defined in the Protection Act, is not limited to the Judges of the Supreme Court and/or the High Court but also includes judges conducting judicial and quasi-judicial proceedings in the Tribunals and quasi-judicial bodies, thereby ensuring that the protection granted under the Protection Act encompasses all such individuals having authority to exercise judicial power under the law.

82. In our considered opinion, the Protection Act does not offend the constitutional scheme present; and, being in addition to the extant provisions, does not affect the Supreme Court's authority to take such action, as deemed fit, against a Judge of a High Court who is alleged to have indulged in misconduct in terms of the PROCEDURE.

83. In interpreting the Protection Act, we are once again reminded of the "yawning gap" in the procedure as noticed in ***C. Ravichandran Iyer*** (supra), on 'who' sets the ball rolling. If we were to accept the contention of Mr. Sibal, the Supreme Court and the CJI would be powerless to initiate any action even on

the face of allegations of gross misconduct against a sitting Judge of a High Court which cannot be the legislative intention. To address the growing concern of incidents of misconduct, the PROCEDURE has been craftily designed to discipline Judges internally for such misconduct that is sufficient to tarnish the dignity of his office as well as the institution to which he belongs. The recognition that self-imposed ethical norms are integral to the judiciary's credibility, forms the cornerstone of the non-statutory but wholly legal internal procedure for maintaining discipline and, by extension, integrity of the institution. On this construction, we hold that the CJI's discretion as to whether, where and when to act, mindful of the substance in the complaints received, would obviously be a regulated discretion; but, once the ball is set rolling by the CJI, it must end with his recommendation/advice to the President and the Prime Minister depending on what the Committee records as its findings.

84. It does not require any emphasis that judicial officers in every rank, and more specifically, the Judges in the higher echelons of the Judiciary owe huge obligation to the people of this country. No Judge, either of the Supreme Court or the High Courts, being above the law, acting in the discharge of his judicial or administrative/non-judicial or official duties in a manner attracting a possible complaint of not abiding by the Restatement of Values of Judicial Life (widely regarded now as the Code of Conduct for Judges of the Supreme Court and the High Courts) has to be shunned. Frivolous complaints being lodged by disgruntled litigants, lawyers and others, though cannot be avoided, the path of probity also can never be abandoned by a Judge. Any thought of there

being absence of disciplinary measure other than removal by impeachment (which has never fructified over the years despite occasions calling for it) and therefore escaping unscathed despite committing a misbehaviour or indulging in bad conduct/misconduct, is what is normal, should be eschewed. With the advancement in science and technology and all other spheres of work, it is quite possible to bring to the CJI's notice how a particular Judge might have conducted himself inappropriately calling for strict action. Withdrawal of judicial work from a Judge is an extreme measure that the PROCEDURE expressly permits. There are other measures too, which could be explored if Judges are found to deviate from the Code of Conduct. The Judges should, therefore, act cautiously and exercise their discretion wisely, to evade creation of a situation where initiating action becomes imperative. The judiciary in India is characterised by judicial independence; however, judicial independence signifies flexibility of judicial thought and the freedom to adjudicate without external and internal pressure, and not unfettered liberty to act as one might wish. Just as judicial independence is fundamental, so too is judicial accountability; compromising one compromises the other.

85. Given that the only formal mechanism for addressing judicial misbehaviour under the Constitution is impeachment by Parliament, it must be remembered that not all misbehaviour of Judges necessarily rise to the level of "proved misbehaviour" attracting Articles 217 and 218 read with clauses (4) and (5) of Article 124. The Constitution's silence on cases that do not rise to the level of proven misbehaviour creates a significant structural vulnerability, which has since been addressed by the PROCEDURE. The PROCEDURE acts as a check on

Judges' unbridled freedom of action and thereby seeks to prevent outcomes that could be harmful or unjust. Under the present set-up, impeaching the PROCEDURE or any part thereof may itself be viewed as unreasonable and unjustified. Expressing our imprimatur of the PROCEDURE, we close our discussion on the Protection Act without spilling further ink on this issue.

THE NATURE OF INQUIRY UNDER THE PROCEDURE

86. We wish to now dwell on the nature of inquiry that the PROCEDURE contemplates.

87. The inquiry that is part of the PROCEDURE is designed to be a fact-finding inquiry as distinguished from a guilt-finding inquiry; and it is, therefore, akin to a preliminary inquiry that precedes regular disciplinary proceedings against a delinquent employee.

88. To repeat, ***Indira Jaisingh*** (supra) terms the report of the in-house inquiry as preliminary in nature, *ad-hoc* and not final.

89. Once the CJI constitutes the Committee, it is required to hold an inquiry into the allegations contained in the complaint in the manner that the PROCEDURE ordains. The Committee does have some leeway to devise its own procedure consistent with the principles of natural justice. Though the Committee is not required to extend opportunity of cross-examination of the persons who come before it for giving their versions or opportunity to the Judge under probe to be represented by a lawyer, the Judge must be called upon to appear and given opportunity to have his say recorded. After concluding the 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 mis-conduct disclosed is not of such a serious nature as to call for initiation of proceedings for removal of the Judge.

90. Given its very nature, the Committee by preparing its report and recording its findings, effectively assists the CJI in arriving at a conclusion as regards the proposed action in a given case based thereon.

91. Admittedly, this is a case falling within the second situation where the COMMITTEE has recorded an opinion that there is sufficient substance in the allegations contained in the letter of the CJI and the misconduct disclosed is so serious that it calls for initiation of proceedings for removal of the Petitioner.

92. Insofar as the purpose that a preliminary enquiry seeks to serve, there are multiple decisions of this Court on the point. A Constitution Bench in **Champaklal Chimanlal Shah v. Union of India**[21] observed that a preliminary enquiry is usually held to determine whether a *prima facie* case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. In **Narayan Dattatraya Ramteerthakhar v. State of Maharashtra**[22], it has been held that a preliminary inquiry has nothing to do with the inquiry conducted after the issue of charge-sheet; once regular inquiry is held under the rules, the preliminary inquiry loses its importance and whether the preliminary

[21] AIR 1964 SC 1854
[22] (1997) 1 SCC 299

inquiry was held strictly in accordance with law or by observing principles of natural justice remains of no consequence. **Nirmala J. Jhala v. State of Gujarat**[23] is one other decision where this Court categorically observed that the material collected in a preliminary inquiry has no relevance once a regular inquiry has started and no material obtained during such preliminary enquiry can be used against the delinquent employee, if such employee had no occasion to cross-examine the concerned witnesses. All these decisions are authorities on the point that generally, in the sphere of disciplinary proceedings against delinquent officers/employees, the concept of a preliminary inquiry contrasted with an inquiry, which is part of a disciplinary/ departmental enquiry, is different. The raison d'être of a preliminary enquiry is to determine whether a full-fledged inquiry is at all needed based on the materials collected in course thereof.

93. That the "In-house Procedure" is not toothless and may very well trigger initiation of proceedings in the Parliament for removal is acknowledged in ***Additional District and Sessions Judge 'X'*** (supra); however, no action for removal can be taken merely on the basis of the Committee's report since the Inquiry Act contemplates a full-fledged inquiry against the concerned Judge. To that extent, the report of the Committee may not carry much weight. Even though the report might record that there is sufficient substance in the allegations, the Inquiry Act does not debar the Judge charged with misbehaviour to raise an effective defence by presenting such evidence as are admissible and relevant once the evidence of the witnesses supporting the

[23] (2013) 4 SCC 301

charge are recorded. Needless to say, if any reliance is placed by the Committee under the Inquiry Act upon the report of the Committee prepared under the PROCEDURE, the Judge charged has a right to be informed whereupon it shall be open to him to raise such points as to non-reliability/non-acceptability thereof as are available in law. All rights of a Judge charged with misbehaviour have, necessarily to be traced to the Inquiry Act as well as rules of fair play so as to facilitate a fair, reasonable and adequate opportunity of hearing. Nonetheless, the lack of opportunity of a fair hearing in the PROCEDURE cannot prejudice the concerned Judge given the nature of the inquiry.

94. In line with the previous decisions, we have no hesitation to hold that the nature of inquiry in the instant case is preliminary, *ad-hoc* and not final as well as not violative of any principle of natural justice.

WHY IS THE DECISION IN SUB-COMMITTEE ON JUDICIAL ACCOUNTABILITY (SUPRA) NOT APPLICABLE?

95. Reliance placed by Mr. Sibal on the decision in ***Sub-Committee on Judicial Accountability*** (supra) is, in our considered view, misplaced. That decision is distinguishable both on facts and on law for the following reasons:

First, the issue which arose in such case was materially different from the one in the present case. The questions which were required to be answered by this Court in the said decision have been noted earlier in paragraph 51 (supra). Anything and everything said in a decision, while answering the questions

which might arise, do not form a precedent. It is settled law that a decision is an authority for what it decides. What is of the essence in a decision is its ratio and not every observation found therein, nor what logically follows from every observation made in the decision.

Secondly, the Constitution is not a static document. Constitutional Courts are obligated to interpret the Constitution in the light of evolving standards and institutional needs. The decision in ***C. Ravichandran Iyer*** (supra) marked a turning point by recognising the necessity of an "In-house Procedure" to address complaints against Judges. The decision in ***Sub-Committee on Judicial Accountability*** (supra), rendered years earlier, could not have envisioned the framework developed in ***C. Ravichandran Iyer*** (supra) simply because of the nature of problem that the latter had to solve.

Thirdly, ***C. Ravichandran Iyer*** (supra), while being one amongst few authoritative pronouncements by this Court acknowledging the primacy of the CJI in preserving the institutional integrity of the judiciary, categorically held that the CJI may take preliminary steps when credible allegations arise, without encroaching upon the domain of the Parliament under Article 124(4). The role assigned to the CJI in this context is entirely distinct and was never under contemplation in ***Sub-Committee on Judicial Accountability*** (supra).

Fourthly, in ***C. Ravichandran Iyer*** (supra), though the concerned judge had tendered his resignation and demitted office before the judgment was pronounced, the Court nonetheless proceeded to lay down the legal

foundation for an in-house mechanism and setting it as a precedent for all future cases. The Court's stance makes it evident that ***Sub-Committee on Judicial Accountability*** (supra) is not applicable to the issue of "In-house Procedure".

Fifthly, the Protection Act did not exercise the consideration of the Court in ***Sub-Committee on Judicial Accountability*** (supra).

Sixthly and finally, the evolution of the law post ***C. Ravichandran Iyer*** (supra) has seen consistent affirmation of the in-house mechanism of discipline by self-regulation by this Court. The PROCEDURE has since received judicial endorsement in at least three subsequent decisions.

96. The scope of the present matter, to a discerning eye, goes beyond the principles laid down in ***Sub-Committee on Judicial Accountability*** (supra), which did not have the occasion to address the permissibility or validity of an in-house mechanism. In any event, we do not see any observation in ***Sub-Committee on Judicial Accountability*** (supra) made by the Court precluding the judiciary from instituting internal, non-punitive mechanisms for the purpose of fact-finding and disciplinary introspection by self-regulation. The constitutional silence on internal mechanisms, in our opinion, cannot be seen as a prohibition but rather it provided a space for responsible judicial innovation which has stood the test of time.

97. For all the foregoing reasons, the ruling in ***Sub-Committee on Judicial Accountability*** (supra) cannot be read as a limitation upon the constitutional

powers and responsibilities of the CJI, particularly in matters concerning internal judicial discipline and the preservation of institutional integrity.

98. Mr. Sibal's contention relying on ***Sub-Committee on Judicial Accountability*** (supra) is, thus, rejected.

ANSWERS

99. Resting on the observations/findings given above, our endeavour to answer the questions is rendered easy.

ANSWER TO QUESTION (I)

100. The question of entertainability of the writ petition assumes importance, keeping the conduct of the Petitioner in perspective as distinguished from a waiver of his rights. It has been noted that not only did the Petitioner not object to the photographs/video footage being uploaded, he participated in the inquiry without demur. In his representation dated 6th May, 2025 addressed to the CJI too, there was no whisper of the PROCEDURE fouling any constitutional provision. Challenge to the constitutionality of paragraph 5(b) and paragraph 7 (ii) of the PROCEDURE has been raised in this writ petition only after the CJI had written to the President and the Prime Minister, while enclosing therewith copy of the REPORT of the COMMITTEE together with the Petitioner's response dated 6th May, 2025, as required by the PROCEDURE.

101. We had repeatedly asked Mr. Sibal as to why the Petitioner waited to invoke the writ jurisdiction. Why did the Petitioner not object to the photographs/video footage being uploaded? Should the Petitioner not have approached the Court earlier without submitting to the jurisdiction of the

Committee? Once the Petitioner submitted to the jurisdiction, is it not to be presumed that he did so expecting a favourable outcome and the writ petition came to be filed only when the outcome was not palatable to him? Having regard to the caution sounded in paragraph 37 of ***Additional District and Sessions Judge 'X'*** (supra), was it not incumbent for the Petitioner to point out any perceived fault or flaw in the PROCEDURE before submitting to the jurisdiction of the COMMITTEE? In view of **P.D. Dinakaran (1)** (supra), does the Petitioner pass the test of acting *bona fide*?

102. **P.D. Dinakaran (1)** (supra) emphasised that the petitioning judge should not have waited for 10 months to approach the Court when he had objection regarding inclusion of a member in the committee as a jurist. Mr. Sibal's argument that there cannot be a waiver of a Fundamental Right is unexceptionable. However, what was said in paragraph 81 of the decision is important. The Petitioner can well be held disentitled to relief based on his tardy conduct but not, perhaps, on the ground of waiver.

103. Mr. Sibal was, however, heard to submit that if the Petitioner had approached it earlier, the Court could well have declined interference on the ground that the writ jurisdiction may be invoked if at all the report of inquiry were adverse to his interest.

104. We do not consider this answer worthy of acceptance. There are umpteen decisions of this Court ruling that when the *vires* of a provision is under challenge in a writ petition, it forms one of the four exceptions to the self-imposed restraint, propounded by decisions of this Court, of not entertaining a writ petition because an alternative remedy is available to the petitioner.

Then again, there are good number of decisions of this Court to the effect that challenge in a writ petition to a show-cause notice for stalling inquiries or investigative processes is not to be entertained unless the Court is satisfied that the notice is *non-est* for total lack of jurisdiction of the notice issuing authority to inquire into/investigate facts. This Court, in criminal matters, even entertains challenges to criminal proceedings after police reports (charge-sheets) have been filed and interfered in fit and proper cases. There does hardly exist any strait-jacket formula that the Courts would be loath to interfere or refuse to entertain a writ petition since the proceedings are yet to draw to a conclusion. Every case coming before the Court for adjudication would necessarily depend on its own facts and the nature of challenge, i.e., whether challenge to the *vires* of a provision has been raised on *prima facie* strong grounds or whether a total lack of jurisdiction is shown to exist in the notice issuing authority even to inquire into or investigate facts; and, there can be no rule of universal application that the Courts must invariably decline interference for no better reason than that the proceedings, out of which the challenge stems, are pending. It was, therefore, not open to the Petitioner to believe that the Court would have refused to entertain the writ petition had he approached earlier, which made him wait.

105. Uploading of the photographs/video footage, according to the Petitioner, caused him immense harm. Not only did it lower his reputation, he was convicted in the public eye without even a preliminary inquiry. It could be so. However, what baffles us is the conduct of the Petitioner to acquiesce to such uploading, participate in the inquiry without demur, and to question such

uploading only after the COMMITTEE submitted its report to the CJI recording that there was sufficient substance in the allegations. The argument of Mr. Sibal that such uploading has had the effect of vitiating the enquiry is untenable. Though uploading of incriminating evidence available against a Judge under probe in the public domain is not a step which the PROCEDURE requires and while such uploading may not be considered to be proper, it is indeed a *fait accompli*. No benefit can be claimed because of such uploading of the incriminating evidence at this stage, once in a duly constituted inquiry findings have been recorded as regards the failures/omissions of the Petitioner to abide by the Restatement of Values of Judicial Life.

106. Even otherwise, inquiry had been initiated against the Petitioner in terms of the PROCEDURE which itself has been affirmed by this Court multiple times before. If indeed any fault were found in the PROCEDURE and questions were to be raised, the Petitioner ought not to have waited for completion of the fact-finding inquiry set in motion by the CJI.

107. The conduct of the Petitioner, therefore, does not inspire much confidence for us to entertain the writ petition.

108. We could have closed the writ petition based on our observation as above. However, we do not wish to tread the easy route but would rest our conclusions based on the answers to the other questions too.

ANSWER TO QUESTIONS (II) AND (III)

109. These questions being related, are taken up for consideration together.

110. Mr. Sibal has referred to the decision in ***Indira Jaising*** (supra) to urge that the only source or authority of the CJI to exercise the power of ordering an

inquiry is moral and ethical. According to him, the PROCEDURE has no legal sanction.

111. We are of the firm opinion that the argument is unacceptable for twin reasons, based on two key tenets.

112. The first reasoning rests on the rulings of this Court in the decisions noted above affirming the PROCEDURE, with which we are *ad idem*. Significantly, ***C. Ravichandran Iyer*** (supra) in express terms made it abundantly clear that the yawning gap between proved misbehaviour and bad conduct inconsistent with the high office of a Judge of a High Court could be disciplined by self-regulation through "In-house Procedure" which, in turn, while filling up the constitutional gap, would yield salutary effect. Even though the respondent Judge had demitted office as the Chief Justice, but noting the absence of legal sanction to such procedure, the Court ruling is a revelation that its statements should form a precedent for the future. Once the dicta in ***C. Ravichandran Iyer*** (supra) constitutes a precedent, it is law declared under Article 141 of the Constitution. It is judicial legislation that emerged because of the vacuum in the field of disciplining a Judge who shows signs of delinquency. ***Additional District and Sessions Judge 'X'*** (supra) traced the history of the PROCEDURE and stamped its approval. Merely because in ***Indira Jaising*** (supra) the source of authority was held to be moral and ethical would not assist the Petitioner. We unhesitatingly hold that might have originated as moral and ethical authority gradually transformed into legal authority of the CJI in view of ***C. Ravichandran Iyer*** (supra).

113. There is one other compelling reason for us to hold that the PROCEDURE could be seen as having a legal sanction. Sub-section (2) of Section 3 of the Protection Act has been noticed by us, above. Although sub-section (1) of Section 3 extends protection to Judges and restrains courts from entertaining and continuing proceedings – civil or criminal – in respect of any act, thing or word committed, done or spoken by a Judge when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function, the same is subject to sub-section (2). In terms thereof, a person who is or was a Judge is not immune from proceedings being initiated by the Central Government or the State Government or the Supreme Court or any High Court or any other authority, as the case may be, under any law for the time being in force. The action that could lawfully be taken against anyone, who is or was a Judge, might be civil, criminal, departmental proceedings or otherwise; but, such an action, has to be at the instance of the named authority only if it is conferred with such authority by law.

114. That the PROCEDURE has its roots in the law declared by this Court under Article 141 of the Constitution admits of no doubt. Accordingly, we hold that 'law for the time being in force' in sub-section (2) of Section 3 of the Protection Act would include law laid down by this Court and that the term 'otherwise' read in conjunction with 'such action', appearing in the said sub-section, is wide enough to encompass measures that the PROCEDURE contemplates.

115. The contention that the PROCEDURE lacks legal sanction must, accordingly, fail.

116. Having held so, we are inclined to the view that it is not the law that once the Committee constituted by the CJI records in its report that the conduct of the

Judge under probe warrants initiation of proceedings for his removal and the CJI, in turn, upon accepting such report furnishes the same together with his recommendation, if any, to the President and the Prime Minister, that would invariably in all cases result in initiation of proceedings under Article 124(4) and (5) of the Constitution (for Supreme Court Judges) and Articles 217 and 218 read with Article 124 (for High Court Judges) and the inquiry under the Inquiry Act. Report or no report, recommendation or no recommendation, whatever is the case, the Parliament's power to initiate proceedings for removal of a Judge for alleged misbehaviour or incapacity remains unfettered. Even though there could be a case where good grounds for initiation of proceedings do exist, the Parliament may in its wisdom elect not to go ahead to initiate proceedings for removal. Contrarily, even if it is reported by the Committee under the PROCEDURE that there exists any of the two situations [para 5(a) or 5(c)] and the CJI, accepting such report, does not make any recommendation, nothing prevents the Parliament to initiate proceedings for removal if for reasons aliunde it considers necessary so to do. Notably, if the Parliament, despite strong indication of a Judge either having indulged in misbehaviour or suffering from incapacity, does not initiate any proceedings for removal, no proceeding in a judicial forum would perhaps lie for activating the Parliament to have such Judge removed from office. The power, competence, authority and jurisdiction of the Parliament to decide what is in the best interests of the nation is left untrammelled by the PROCEDURE; hence, it is fallacious to argue that the PROCEDURE is a parallel and extra-constitutional mechanism for removal of a Judge.

117. Yet again, the in-house inquiry or its report forming part of the PROCEDURE in itself does not lead to removal of a Judge, unlike the constitutionally ordained procedure. Thus, the in-house inquiry is not a removal mechanism in the first place, much less an extra-constitutional mechanism. We reiterate that "a stitch in time saves nine".

118. Questions (II) and (III), thus, stand answered.

ANSWER TO QUESTION (IV)

119. More than once, we have observed above how the PROCEDURE found its way into the system. The PROCEDURE having been discussed and affirmed in multiple precedents since ***C. Ravichandran Iyer*** (supra) and we having expressed our agreement therewith, the argument that para 5(b) contravenes the constitutional scheme for removal of Judges by taking recourse to Article 124 is unsustainable. Our observations, while dealing with the relevant topics, do provide ample reasons why the PROCEDURE or the inquiry contemplated thereunder has not been considered to be in violation of any provision of the Constitution, much less Articles 14 and 21 of the Constitution. The procedure that has been laid down in the PROCEDURE is fair and just which does not compromise judicial independence either, a basic feature of our Constitution. A judge by his conduct of being fair and just is supposed to earn for himself as well as the judiciary the trust and respect of the members of the bar as well as the litigants and all other stakeholders. If a complaint of misconduct committed by a Judge is received and if at an inquiry conducted under the PROCEDURE the allegations against such a Judge are found to have sufficient substance, he cannot claim any immunity - either by citing abrogation of his

Fundamental Rights or breach of the constitutional scheme for removal of a Judge by initiating proceedings for impeachment - that his conduct is not open to be commented upon by the Committee or even by the CJI.

120. We see no reason to hold that para 5(b) of the PROCEDURE in any manner transgresses or is in conflict with any constitutional provision.

ANSWER TO QUESTION (V)

121. We have noticed each and every stage through which the proceedings against the Petitioner have passed. Right from the constitution of the COMMITTEE till intimations were given to the President and the Prime Minister by the CJI - we have neither been shown nor is it a fact proved that either the CJI constituted COMMITTEE or the CJI acted in any manner in deviation of the PROCEDURE, except when the photographs/video footage were uploaded on the website of the Supreme Court. We wish to observe here that placing incriminating evidence available against a Judge under probe in the public domain is not a measure provided in the PROCEDURE, either expressly or by implication. **Indira Jaising** (supra) holds in clear terms that the inquiry under the PROCEDURE is for the information and satisfaction of the CJI and the report of inquiry is confidential and, therefore, such report cannot be made public. That being the clear position, we are inclined to hold the entire process under the PROCEDURE too as confidential having ascertainment of truth as one of its objectives. The demands of being fair and transparent, in such cases, have to yield to the confidential nature of the process. Thus, uploading of the photographs/video footage on the website of this Court cannot be viewed as a necessary requirement of the "In-house Procedure" and, thus, approved. But, then

again, nothing really turns on the uploading of the photographs/video footage since the Petitioner, as observed above, did not have any grievance in relation thereto which is obvious from his failure to question such uploading at an appropriate time thereby allowing a situation to grow where the Court is faced with a *fait accompli*. Even in this writ petition, no relief is claimed in respect of such uploading.

122. Now that nothing is pending at the end of the Supreme Court and/or the CJI, the Petitioner may exercise his rights in accordance with law as and when an appropriate occasion arises.

Answer to Question (VI)

123. The CJI, as the leader of the judiciary, apart from his various other duties owes a duty to the people of the country to keep the justice delivery system pure, clean and unpolluted. It is unreasonable to even think that despite an incident of the present nature, the CJI would wait for the Parliament to take action. As observed before, it is up to the Parliament whether or not to activate Article 124. Left to him, the CJI upon being informed of a Judge's remissness does have the authority – moral, ethical and legal – to take such necessary action as is warranted to keep institutional integrity intact. Any adverse impact on the credibility of the institution could prove dear. It is keeping in view such concerns and the legal position of the President being the ultimate appointing authority of Judges and the Prime Minister being the head of the Council of Ministers, upon whose aid and advice the President acts under our

Constitution, coupled with receipt of complaints from the office of the President that we find the provision in paragraph 7(ii) of the PROCEDURE requiring the CJI to write to the President and the Prime Minister along with the report of the Committee to be quite in order, legal and valid. We repat, the office of the CJI is not to be regarded as a post office that the report should only be routed through the CJI without his observations.

124. We say again, we are unaware like the Petitioner of what the CJI remarked while forwarding the REPORT of the COMMITTEE and the Petitioner's response dated 6th May, 2025 to the President and the Prime Minister. However, if indeed, the CJI has reiterated the finding of the Committee as contained in the REPORT and recommended initiation of proceedings for removal of the Petitioner from office, such a recommendation cannot be impeached on any valid and legal ground. Notwithstanding that the recommendation of the CJI carries much weight, one has to realize that the intimation given by the CJI, under the PROCEDURE, is for the eyes of the President and the Prime Minister alone and not anyone else.

125. Therefore, we see no reason to hold paragraph 7(ii) of the PROCEDURE as infringing either any provision of the Constitution or the concept of separation of powers.

126. Before we conclude, one other contention is left to be dealt with which was advanced by Mr. Rohatgi. It could be true that the then CJI granted an opportunity of hearing to the Judge of the Calcutta High Court under probe. However, it must be realised that it was a step going beyond the PROCEDURE. Here, the CJI has scrupulously followed the PROCEDURE which does not

envisage a hearing to be given to the Judge under probe after he has expressed his inability to resign or voluntarily retire. Even though a hearing 'could have been given', it cannot be equated with 'should have been given' in the absence of any such express obligation in the PROCEDURE. The contention, thus, fails to impress us.

CONCLUSION

127. For the foregoing reasons, no interference is called for. The writ petition stands dismissed.

.....J.
(DIPANKAR DATTA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
AUGUST 07, 2025.