A SMT. SAROJINI RAMASWAMI

v.

UNION OF INDIA AND ANR.

AUGUST 27, 1992

B [J.S. VERMA, N.M. KASLIWAL, K. RAMASWAMY, K. JAYACHANDRA REDDY AND S.C. AGRAWAL, JJ.]

Judges (Inquiry) Act, 1968: Sections 3(2), 4(1), (2)(3) and 6(1)(2)(3).

C *Judges (Inquiry) Rules, 1969: Rules 6, 8, 9, 10, 11.*

Supreme Court Judge—Alleged misbehaviour, Financial improprities and irregularities—Enquiry Committee Report of—Submission to Speaker—Judge concerned whether entitled to copy of Report before submission to Speaker—Judge concerned—Whether entitled to opportunity of hearing before D *Parliament—Report of Inquiry Committee—Finding of 'Not guilty'— Effect of—Finding of 'guilty'—Whether open to judicial review—Report of Enquiry Committee—Whether can be equated with sanction given under Section 197 Cr.P.C.—Term of Enquiry Committee—Whether can be extended by Court.*

E *Constitution of India, 1950:*

Articles 121, 124(4)(5).

Supreme Court Judge—Process for removal—Order of removal passed by President—Judicial review of—Whether excluded.

F *Article 136—Tribunal—Test to determine—What is—Inquiry Committee constituted under Judges (Inquiry) Act, 1968—Whether Tribunal.*

Judicial Review—Nature and scope of.

G *Administrative Law—Natural Justice—Violation of—Depends on facts of each case—Violation cannot be examined in isolation.*

Code of Criminal Procedure, 1973: Section 197.

Report of Inquiry Committee constituted under Judges (Inquiry) Act, H *1968—Whether can be equated with sanction given under Section 197 Cr.P.C.*

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Certain allegations of financial improprieties and irregularities were made against Mr. Justice V. Ramaswami in his capacity as the Chief Justice of High Court of Punjab & Haryana prior to his appointment as a Judge of the Supreme Court of India by 108 members of the Ninth Lok Sabha by notice of motion for presenting an address to the President for his removal from office. The Speaker of the Ninth Lok Sabha admitted the motion and constituted a Committee consisting of a sitting Judge of this Court, Chief Justice of the High Court of Bombay and a retired Judge of this Court as a distinguished jurist in terms of Section 3(2) of the Judges (Inquiry) Act, 1968. However, on dissolution of the Ninth Lok Sabha, the Union Government abstained from acting in aid of the decision of the Speaker since it was of the view that the notice of motion as well as the decision of the Speaker to admit the motion and constitute an Inquiry Committee under the provisions of the Act had lapsed with the dissolution of the Lok Sabha.

A body called the "Sub-Committee on Judicial Accountability" represented by a Senior Advocate of this Court as its Convener and the Supreme Court Bar Association filed Writ Petitions in this Court under Article 32 of the Constitution, praying *inter alia* for a direction to the Union of India to take immediate steps to enable the Inquiry Committee to discharge its functions under the Act. By its decision, in *Sub-Committee on judicial Accountability* v. *Union of India & Ors.*, [1991] 4 S.C.C. 699, the majority held (i) that a motion under Section 3(2) of the Act does not lapse upon the dissolution of the House; (ii) that the process for removal of a Judge of the Supreme Court comprises of two stages. The first stage is of investigation and proof in accordance with the Judges (Inquiry) Act, 1968 enacted under Article 124(5) of the Constitution by the Committee constituted by the Speaker acting as a statutory authority under the Act and the second stage commences after allegations of misbehaviour are found proved. In the second stage when motion is moved, bar under Article 121 on discussion in Parliament in respect of the conduct of the Judge is lifted and the process envisaged under Article 124(4) is attracted. The first stage is subject to judicial review, but the second stage is not subject to judicial review, as the process involved being parliamentary process.

Subsequent to the decisions of the Constitution Bench, the Committee constituted by the Speaker under the Act proceeded to inquire into the allegations made against the Judge. On May 10, 1992, the learned Judge

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A addressed a letter to the Presiding Officer of the Committee requesting him to supply a copy of its report before it was forwarded to the Speaker and also requested him to withhold the report by giving reasonable time to peruse and to take appropriate action thereon. The Inquiry Committee replied that since the Supreme Court was seized of the matter in the connected case (Writ Petition 149 of 1992) the committee would abide by any directions that may be given by the Court. Thereafter, the wife of the Judge filed a Writ Peitition in this Court - which was treated in substance as filed by the Judge himself - for a direction to the Committee to supply a copy of the Report of the Committee to the Judge and simultaneously to withhold forwarding of the said Report to the Speaker of the Lok Sabha to enable the Judge to seek redress in a court of law, if required or necessary, against the findings of the Committee in its Report.

It was contended on behalf of the petitioner that (i) as a logical corollary of the decision in *Sub-Committee on Judicial Accountability's case,* the Judge is entitled to be supplied a copy of the Report of the Committee before submission of the Report to the Speaker; (ii) once the Parliamentary part of the process begins and the Speaker moves the motion in the House along with the address to the President for the removal of the Judge, the Judge would be deprived of his constitutional right of seeking judicial review of the statutory part of the process even though that is the foundation for the subsequent Parliamentary part, i.e., Judicial Review to test the legality of the Committee's findings is available either 'now' before the commencement of the Parliamentary Process on submission of the Report to the Speaker or never; (iii) non-supply of Report to the Judge before submission to the Hon'ble Speaker would not only defeat the constitutional right of the Judge but would also violate principles of Natural Justice; (iv) the order of removal made by the President under Article 124(4) being immune from Judicial Review, the Judge must have the opportunity of seeking Judicial Review before commencement of the Parliamentary part of the process for which he should be supplied a copy of the Report before submission to the Speaker; and (v) that the Inquiry Committee is a Tribunal for the purposes of Article 136 of the Constitution and since an appeal would lie in this Court against the findings of the said Committee, the Report of the Committee is required to be furnished to the Judge concerned.

On behalf of the Inquiry Committee it was contended that (i) on completion of enquiry culminating in the recording of the findings in the

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Report, the principle of comity between the constitutional authorities require that the Courts must not interdict the process contemplated by the Act once the findings have been recorded in the report; (ii) the Judge is entitled to opportunity during the Parliamentary process to assail the adverse findings and there are no reasons to assume that the Parliament would not give such an opportunity or that it would not properly consider the objections to the findings raised by the Judge before voting on the motion; and (iii) the Judicial Review of the order of removal may not be excluded.

The Attorney General contended (i) that the Committee is in the nature of a subordinate authority to the Speaker. The Report is like granting of sanction for prosecution of a public servant as contemplated under Section 197 of the Code of Criminal procedure, 1973. Unless the validity of the sanction is questioned at the earliest stage the accused is precluded to assail it at a later stage. On the same analogy the learned Judge is entitled to challenge the adverse findings, if any, recorded in the Report by the Committee before the same is taken for consideration by the Parliament. This can only be done when such Report is made available to the learned Judge for seeking Judicial Review; (ii) the Parliamentary process of removal is not amenable to judicial review. Therefore, before any motion is laid on the floor of each House of Parliament, the learned Judge is entitled to the supply of a copy of the Report and to seek judicial review thereof; and (iii) the right of the learned Judge to challenge the order of removal made by the President under Article 124(4) being doubtful, it is appropriate that in order to avoid defeating his right of seeking judicial review in case of an adverse finding, if any, the learned Judge should be furnished a copy of the Report of the Committee at this stage before it is submitted to the Speaker under Section 4(2) of the Act.

Disposing the petition, this Court,

HELD : (Per Verma J, for himself and K.J. Reddy and S.C. Agrawal, JJ.)

1. It cannot be said that the only logical corollary of the decision in *Sub-Committee on Judicial Accountability* is that the concerned Judge has a right to obtain a copy of the Report of the Inquiry Committee before commencement of the parliamentary process to enable him to avail the remedy of judicial review in case the Committee has recorded a finding of 'guilty' agianst the learned Judge. [190 B-C]

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A **1.1. The absence of any obligation in the Committee to furnish a copy of its report to the concerned Judge before submitting it to the Speaker/Chairman under Section 4(2) of the Act is in consonance with the law declared in *Sub-Committee on Judicial Accountability* that the process for removal of the Judge is statutory 'ill the laying of the Report by the Speaker before the Parliament on its submission to him by the Committee in accordance with sub-sections (2) and (3) of Section 4 of the Act. [148-F]**

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Sub-Committee on Judicial Accountability **v.** *Union of India and Ors.*, **[1991] 4 S.C.C. 699, referred to.**

C **1.2. If the supply of a copy of the Report to the Judge by the Committee before its submission to the Speaker was contemplated by the law enacted under Article 124(5) that area would not be left blank in the provisions made in the law while providing elaborately for submission of the report together with its manner, including the number of copies, in Section 4 of the Act and Rule 9 framed thereunder. The absence of such a provision in this law is a deliberate and not an inadvertent omission to emphasise absence of that requirement which also matches the constitutional scheme. [169 D-E]**

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E **2. Every Judge of the Supreme Court and the High Courts on his appointment is irremovable from office during his tenure except in the manner provided in clauses (4) and (5) of Article 124 of the Constitution of India. The law made by the Parliament under Article 124(5), namely, the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969 framed thereunder, is to be read along with Article 124(4) to find out the constitutional scheme adopted in India for the removal of a Judge of the Supreme Court or a High Court. The law so enacted under Article 124(5) provides that any accusation made against a sitting Judge to enable initiation of the process of his removal from office has to be only by not less than the minimum number of Members of Parliament specified in the Act, all other methods being excluded. On initation of the process in the prescribed manner, the Speaker/Chairman is to decide whether the accusation requires investigation. If he chooses not to act on the accusation made in the form of motion by the specified minimum number of Member of Parliament, the matter ends there. On the other hand, if the Speaker/Chairman, on a consideration of the materials available and after consulting such persons as he thinks fit, forms the opinion that a *prima***

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facie case for investigation into the accusation against the Judge is made out, he constitutes a Committee of Judicial functionaries in accordance with Section 3(2) of the Act. [188 E-H, 189-A]

3. The scheme embodied in Section 6 of the Act read with Rule 9 is that where the finding of the Inquiry Committee is of 'not guilty' whether unanimous or by majority of the members of the Inquiry Committee, the entire process of removal of the Judge terminates with that finding giving the quietus to the accusation of misbehaviour by the Judge scotching all rumours and the motion is not even required to be taken up for consideration by the Parliament so that the parliamentary part of the process does not commence in the absence of the condition precedent of a finding of 'guilty' by the Inquiry Committee essential for its commencement. In such a situation, when the finding of 'not guilty' is by majority of the members only, the contrary finding of guilty by the third member is not even to be disclosed to any authority or person including the Parliament since all debate on the conduct of the concerned Judge based on those allegations must end. The provision in Rule 9(6) for non-disclosure of the dissenting opinion of 'guilty' even to the Parliament further indicates that no one including the Members of Parliament who gave the notice of motion under Section 3(1) of the Act to initiate the process of removal have any right in that situation to even scrutinise much less assail the finding of 'not guilty' recorded by the Inquiry Committee even by majority. Section 6(1) of the Act read with Rule 9(6) of the Rules is a clear pointer in this direction.

[146 E-H, 148 A-B]

3.1. The provisions in the Act and the Rules are a strong indication that the constitutional scheme for the removal of a Judge in accordance with clauses (4) and (5) of Article 124 of the Constitution and the parliamentary law enacted under Article 124(5) shuts out all scrutiny even by judicial review where the Inquiry Committee unanimously or even by majority makes a finding that the Judge is 'not guilty' of any misbehaviour. Obviously, the concerned Judge cannot be aggrieved by a finding of 'not guilty' in his favour and in case such finding is not unanimous but by majority, non-disclosure of the dissenting opinion of guilty, as required by Rules 9(6) of the Rules, even to the Parliament, prevents any possible damage to the reputation of the concerned Judge from the dissenting opinion and, therefore, there can be no legitimate grievance to him from the undisclosed dissenting opinion. For this reason, the concerned Judge

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A can have no grievance agianst exclusion of judicial review in that situation. This being the situation in the event of the Committee's Report containing a finding of 'not guilty', there can be no requirement at least in that situation for the Committee to furnish a copy of its report to the concerned Judge before submitting the same to the Speaker/Chairman under Section
B 4(2) of the Act. [147 F-H, 148-D]

3.2. If there be several charges framed against the judge and in respect of some of them the finding is that the Judge is 'guilty' while the finding on the other charges is that the Judge is 'not guilty', then the consequences which would ensue in respect of the finding on each charge
C would depend on its nature. In other words, in respect of a charge of which the Judge is found 'not guilty', the consequences would be those in accordance with Section 6(1) of the Act and Rule 9(6) of the Rules and the process of removal relating to those charges would terminate in the manner indicated without being subject to any further scrutiny or judicial review
D as in the case of a finding of 'not guilty' in respect of all the charges levelled against a Judge. [149 B-D]

4. When the finding in the Committee's Report is that the Judge is 'guilty' of any misbehaviour, then Section 6(2) of the Act mandates that the motion for removal of the Judge shall be taken up for consideration
E by the House together with the Report of the Committee submitted in accordance with Section 4(2) and laid before it under Section 4(3) of the Act. A full consideration on merits including correctness of the finding of 'guilty' made by the Inquiry Committee on the basis of the materials before the Parliament is contemplated during the parliamentary part of the
F process of removal of a Judge. [156 D-E, 157H, 158-A]

4.1. There is no reason why in the Constitutional scheme adopted in India, the concerned Judge should not be given an opportunity when the Parliament takes up for consideration the motion for his removal on a finding of 'guilty' being made by the Committee constituted under the
G Judges (Inquiry) Act, 1968. Such an opportunity is consistent with and is also the requirement of fairness, an essential attribute of procedure for any decision having civil consequences. The precise details of the manner in which such an opportunity is to be given to the concerned Judge may be for the Speaker/Chairman and the Parliament to decide, but there is
H clear mandate in our constitutional scheme that the procedure adopted

for this purpose should be such as would ensure availability to each House of Parliament of the concerned Judge's point of view and comments, if any, on the finding of 'guilty' made in the Committee's report when it takes up for consideration the motion for removal of the Judge, such procedure ensuring fairness to the concerned Judge and being in keeping with the dignity of the high office held by the learned Judge. [162 F-G, 160 A-B]

4.2. It is, therefore, implicit in the constitutional scheme for the removal of a Judge provided in Article 124(4) and the law enacted under Article 124(5) that the Parliament should also have the benefit of the point of view and the comments, if any, of the concerned Judge on the finding of 'guilty' against him recorded by the Inquiry Committee in its Report when the Parliament takes up the motion for removal of the Judge for consideration along with the Inquiry Committee's Report and the other relevant materials made available to it. To enable performance of this exercise and to effectuate the concerned Judge's right to show cause against the finding of 'guilty' made in the report at this stage to the Parliament, it is clear obligation of the Speaker/Chairman to supply a copy of the Inquiry Committee's Report to the concerned Judge while causing it to be laid before the Parliament under Section 4(3) 'as soon as may be' on its submission under Section 4(2). This view also has the advantage of providing the concerned Judge an opportunity during the parliamentary part of the process of removal to place his point of view and offer the comments, if any, on the finding of 'guilty' against him made by the Inquiry Committee for consideration by the Parliament before voting on the motion for removal of the Judge. [158 F-H, 159-A]

4.3. If the constitutional scheme, envisages and provides for an opportunity to the concerned Judge to show cause against his removal from office on the finding of 'guilty' recorded by the Inquiry Committee being placed before the Parliament for its consideration and the Parliament is required to take it into account before it decides to accept the finding of 'guilty' and act on it by adopting the motion of removal by the requisite majority or not to adopt the motion which would terminate the proceedings for removal, it would indicate that the opportunity of this kind in the scheme to show cause is against the inchoate finding of quilty prior to the stage of making the final decision which alone is required to be subject to judicial review. The clear intendment is that in such a situation it is the Parliament which should first consider the question

A without there being any need for judicial review at that stage. This is so because the misbehaviour is *deemed to be proved,* according to Section 6(3) of the Act, only when the Parliament adopts the motion in the manner prescribed. [163 A-D]

B The remedy of judicial review to the concerned Judge is available only when his misbehaviour is 'deemed to be proved' in law and not against the inchoate finding of 'guilty' made by the Inquiry Committee which may or may not be acted upon by the Parliament. Another reason to support this view is that the proceedings for removal of a Judge are required to be concluded at the earliest in public interest and, therefore, no interdiction of the process is C contemplated at the stage of an inchoate finding of 'guilty' by the Inquiry Committee. An opportunity to the concerned Judge at the stage also to show cause against that inchoate finding of 'guilty' fully safeguards his interest without the need for judicial review at that stage, the scope for Parliament's scrutiny of the Committee's finding of guilty being very wide. [163 D-F]

D 4.4. The contrary view would result in a serious anomaly. If the finding of 'guilty' made by the Committee by itself amounts to 'proved misbehaviour' for the purpose of Article 124(4), anomalous situation would arise if the Parliament does not adopt the motion of removal thereafter. In that situation the process would end and, notwithstanding a E finding of 'proved misbehaviour', the Judge cannot be removed from office. Such a piquant situation at the end of the process of removal in spite of a finding of 'proved misbehaviour' could never by contemplated in the scheme and, therefore, a construction which can lead to that absurdity must be eschewed. [164 D-E]

F 4.5. Even though judicial review of the finding of 'guilty' made by the Inquiry Committee may be permissible on limited grounds pertaining only to legality, yet the power of the Parliament would not be so limited while considering the motion for removal inasmuch as the Parliament is empowered to not adopt the motion in spite of the finding of 'guilty' made by G the Committee on a consideration of the entire material before it which enables it to go even into the probative value of the material on which the finding is based and to decide the desirability of adopting the motion in a given case. The Parliament decides by voting on the motion and is not required to give any reasons for its decision if it chooses not to adopt the H motion. [163 G-H, 164-A]

There is no reason to assume that the Parliament would not discharge its obligation in the constitutional scheme with as much responsibility and seriousness as is expected from any other organ of the State or authority involved in the process of removal of a Judge. The nature and extent of power entrusted to the Parliament in this process is a relevant factor to indicate exclusion of judicial review till after the making of the order of removal by the President in case the Parliament adopts the motion by the requisite majority. The finding of 'guilty' made by the Committee is only a recommendation to the Parliament to commence its process and to act on that finding which, at best, is tentative and inchoate at the stage of submission of the Report under Section 4 of the Act. [164 A-C]

4.6. This being so, the remedy of judicial review to the concerned Judge has to be only after the stage of his 'proved misbehaviour' is reached on adoption of the motion by the Parliament which leads inevitably to the order of removal made by the President in accordance with Article 124(4). Resort to judicial review by the concerned Judge between the time of conclusion of the inquiry by the Committee and making of the order of removal by the President would be premature and is unwarranted in the constitutional scheme. This construction while protecting the interest of the concerned Judge gives full effect and due importance to the role of all the high dignitaries involved in the process of removal, there being no reason to doubt that each one of them would be fully alive to the significance of his role and extent of obligation under the constitutional scheme. If, however, any illegality occurs even then, the provision for judicial review at the end of the process permits its correction without interdicting the process in between. [164 F-H, 165-A]

5. Judicial review is the exercise of the courts' inherent power to determine legality of an action and award suitable relief and thereby uphold the rule of law. No further statutory authority is needed for the exercise of this power which is granted by the Constitution of India to the superior courts. [173-F]

5.1. The modern trend is to accept judicial review in certain situations within circumscribed limits even where the entire process is political since the 'political question doctrine', permits this course. In such cases where the entire process is political, judicial review to the extent permissible on conclusion of the political process is not doubted. There appears

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A to be no reason in principle why judicial review at the end of the entire process of removal of a Judge in India, where it is a composite process of which the political process is only a part, can be excluded after conclusion of the entire process including the political process. [184 C-E]

Adam Clayton Powell v. *John W. McCormack,* 23 L.Ed. 2d. 491 : 395
B US 486, referred to.

5.2. Mere parliamentary approval of an action or even a report by an outside authority when without such approval, the action or report is ineffective by itself, does not have the effect of excluding judicial review on
C the permissible grounds. [173-B]

5.3. There is no embargo, in principle or authority, to infer that in the constitutional scheme adopted in India, judicial review of the finding of guilty recorded by the Inquiry Committee during the statutory part of the process is impermissible after that tentative finding matures into
D 'proved misbehaviour' culminating in the order of removal. The argument of 'now or never' does not appeal to the Court and what appears more consistent in the constitutional scheme is that judicial review on permissible grounds is available *not now but at the end of the process after the order of removal,* if that stage is reached. [170 D-E]

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5.4. There is no reason to take the view that an order of removal of a Judge made by the President of India under Article 124(4) of the Constitution is immune from judicial review on permissible grounds to examine the legality of the finding of guilty made by the Inquiry Committee during the statutory process for removal which is the condition precedent
F for commencement of the parliamentary process culminating in the making of order of removal by the President. Judicial Review of the finding of guilty in the Report of the Inquiry Committee constituted under the Judges (Inquiry) Act, 1968 would be permissible on the available grounds of judicial scrutiny after the making of an order of removal by the Presi-
G dent pursuant to adoption of the motion for removal by the Parliament based on the Inquiry Committee's Report. [173 C-G]

5.5. Availability of judicial review to the learned Judge, in case the need arises as a result of the order of removal made by the President, after the making of such an order cannot be doubted in view of the wide powers
H of the Supreme Court of India. [173-E]

5.6. This conclusion adequately protects the right of the concerned Judge, ensures expeditious conclusion of the process once it is commenced in the manner prescribed and accords with the view that the scheme is 'a judicious blend of the political and judicial processes for the removal of Judges, it ensures preservation of the right, interest and dignity of the learned Judge and is commensurate with the dignity of all the institutions and functionaries involved in the process. It also excludes the needless meddling in the process by busy bodies confining the participation in it to the Members of Parliament, the Speaker/Chairman and the Inquiry Committee comprising of high judicial functionaries apart from the concerned Judge, if the allegations permitted to be made only in the prescribed manner justify an inquiry into the conduct of the Judge. [170 E-G]

Keshav Singh, **[1965] 1 S.C.R. 413;** *Sub-Committee on Judicial Accountability* **v.** *Union of India & Ors.,* **[1991] 4 S.C.C. 699;** *S.P. Gupta* **v.** *Union of India,* **[1981] Supp. S.C.C. 87;** *State of Rajasthan* **v.** *Union of India,* **[1978] 1 S.C.R. 1 and** *Union of India & Anr.* **v.** *Raghubir Singh (dead) by Lrs. etc.,* **[1989] 2 S.C.C. 754, referred to.**

Regina **v.** *Boundary Commission for England,* **(1983) 1 Q.B. 600, C.A.;** *Nottinghamshire Country Council and Secretary of State for the Environment, City of Bradfor Metropolitan Council and Secretary of State for the Environment,* **(1986) 1 A.C. 240;** *Regina* **v.** *Her Majesty's Treasury, Ex parte Smedley,* **(1986) 1 Q.B. 657, C.A.;** *Adam Clayton Powell* **v.** *John W. McCormack* **23 L. Ed. 2d. 491;** *Salleh Abas* **v.** *Abdul Hamid,* **1988 L.R.C. 25;** *Baker* **v.** *Carr,* **369 U.S. 186 : 7 L Ed. 2d. 663 (1962) and** *Powell* **v.** *McCormack,* **395 US 486;23 L Ed. 2d. 491 (1969), referred to.**

Halsted L. Ritter **v.** *The United States,* **84 C. Cls. 293, distinguished.**

H.W.R. Wade, *Administrative Law,* **6th Edition; Reoul Berger,** *Impeachment : The Constitutional Problems* **(1973) Willis,** *Constitutional Law of the United States (1936),* **referred to.**

Deniel A. Rezneck, *"Is Judicial Review of* **Impeachment Coming", 60 American Bar Association Journal 681 (1974); Miachel J. Gerhadt,** *"The Constitutional Limits to impeachment and its alternatives" 68 Texas Law Review, 1 (1989),* **referred to.**

6. One of the considerations which has weighed with the Court for

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A holding a statutory authority to be a tribunal under Article 136 is finality or conclusiveness and the binding nature of the determination by such authority. [166-H, 167-A]

6.1. The determination by the Committee that the Judge is 'not guilty' of misbehaviour, is alone final as it terminates the proceeding. However, B in that case there is no scope for judicial review of the finding of 'not guilty' made by the Committee. This aspect negates the character of tribunal for this reason alone. In the other situation when the Committee's determination is that the Judge is 'guilty' of misbehaviour, that finding is inchoate which may or may not be acted upon by the Parliament. Finding of 'guilty' C made by the Committee being subject to acceptance by the Parliament, is not final and is, therefore, not conclusive. If the Committee has to be regarded as a tribunal under Article 136, it would serve no useful purpose and would also lead to the anamolous result that the Committee is to be treated as a tribunal if it finds that the Judge is not guilty of any misbehaviour but it is not to be treated as a tribunal if it finds that the Judge D is guilty of any misbehaviour. The character of the Committee as a tribunal cannot depend on the findings that are ultimately recorded by it. [168 C-F]

6.2. In effect, the Report of the Inquiry Committee containing a finding that the Judge is guilty of misbehaviour is in the nature of recom- E mendation for his removal which may or may not be acted upon by the Parliament while considering the motion for removal according to the procedure laid down in the constitution for removal of a superior Judge, which is the only manner of curtailing the fixed tenure of the Judge. The misbehaviour of the Judge is 'deemed to be proved' according to Section 6(3) of the Act only when the motion is adopted by the Parliament and not F otherwise. The finding of 'guilty' made by the Committee does not by itself bring about that result. An essential test of the determinative nature of the finding, an attribute of the tribunal is lacking. The test of the absence of any dispute or lis between two adversaries also negatives the contention that the Committee is a tribunal for the purpose Article 136.

G [169 A-B, 168 G-H]

6.3. Keeping in view the provisions of the Act and the Rules and specially the fact that certain finding recorded by a member of the Committee is not required to be disclosed in the given circumstances and the finding recorded by the Committee holding that the Judge is guilty of any H misbehaviour is not final and conclusive, it is legally not permissible to

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hold that the Committee is a tribunal under Article 136 of the Constitution. [169 F-G] A

Jaswant Sugar Mills Ltd. **v.** *Lakshmichand & Ors.,* **[1963] Supp. 1 S.C.R. 242;** *Workmen of Meenakshi Mills Ltd.* **v.** *Meenakshi Mills Ltd. & Anr.,* **JT (1992) 3 S.C. 446 and** *Dev Singh & Ors.* **v.** *Registrar, Punjab & Haryana High Court & Ors.,* **[1987] 2 S.C.R. 1005, relied on.** B

The Bharat Bank Ltd. **v.** *Employees of the Bharat Bank Ltd.,* **[1950] S.C.R. 459;** *Durga Shankar Mehta* **v.** *Thakur Raghuraj Singh & Ors.,* **[1955] 1 S.C.R. 267 and** *Indo-China Steam Navigation Co. Ltd.* **v.** *Jasjit Singh,* **[1964] 6 S.C.R. 594, referred to.** C

Per Kasliwal, J. (Concurring)

1. There is no provision in the Act or the Rules for the supply of copy to concerned Judge by the Inquiry Committee before sending the Report to the Speaker for laying down the Report before the Parliament. In the D **scheme of the Act and the Rules and the Constitution, no direction can be given to the Inquiry Committee to furnish the Report to the Judge for seeking judicial review at the stage when the investigation is already complete. [199-D, 205-E]**

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2. The right of judicial review is not a right emerging under any principle of natural justice. It cannot be equated with the rule of audi alteram partem. The right of judicial review is itself a right available only on limited permissible grounds. The right of seeking a judicial review depends on the facts of each individual case and will depend on several F **factors which would be necessary to be examined before the particular order or action is put under challenge. There cannot be any demand of judicial review as an abstract proposition of law on the premise of violation of any principle of natural justice. No direction as such can be sought on the basis that if the copy of the Report is not supplied before sending the same to the Speaker, the learned Judge would be left with no remedy of** G **judicial review at a later stage. There is neither any violation of any principle of natural justice nor violation of any constitutional or statutory provision in not affording a copy of the Inquiry Report before sending the same to the Speaker. [203 B-E]**

2.1. This Court cannot give any mandamus to any authority unless H

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A it can be shown that such authority is acting in violation of any provisions of the statute or constitutional obligation. Thus, even if it may be considered that the Committee is performing a statutory function amenable to the jurisdiction of this Court in judicial review, it must be shown that it is acting in violation of any rule or law. In the present case the Inquiry
B Committee is rather performing its legal duty and fulfilling the statutory obligation of sending the report to the Speaker and as such no mandamus or direction can be given to delay or put any hindrance in such lawful action on the part of the Committee. [203 F-G]

3. The right of the hearing to the concerned Judge in the present
C scheme of law can only arise before two authorities. One before the Inquiry Committee and the other before the Parliament. So far as the opportunity of hearing before the Inqruiry Committee is concerned, the provisions clearly show that full opportunity of hearing is given to the Judge in respect of contesting the charges framed against him as well as cross-examining any witness and leading any evidence in defence.
D [201-E, 202 A-B]

3.1. It is no doubt correct that Parliament is free to adopt its own procedure while considering the motion, but that alone cannot be considered as a ground for seeking judicial review against the report of the
E Committee. The question of not giving any opportunity of hearing before any action is taken against the learned Judge by the Parliament can only arise after any decision is taken against the Judge by the Parliament. No argument based on the violation of principle of natural justice can be considered on the assumption that the Parliament may adopt a procedure which may be in violation of principles of natural justice. Thus, if a direction
F is being sought for supplying a copy of the report on the ground of assumed violation of any principle of natural justice by the Parliament, there is no justification and it would be pre-judging the issue and predicating a remedy without laying any foundation or basis for such relief. [202 C-F]

4. The entire constitutional scheme in this matter shows that the
G Parliament had complete confidence in the independence and dignity of judiciary. The Inquiry has been left to the Inquiry Committee composed of high judicial functionaries alone. In case of such Committee giving a finding of not guilty, the same has been considered as final and giving a quietus and no further discussion on the motion has been made permis-
H sible. It is only in case of finding of guilty recorded by the Inquiry

Committee that the motion is required to be taken up for further consideration. In this kind of case in the larger public interest including the independence of the judiciary itself any delay after the recording of such finding of guilty, if any by the Inquiry Committee and to permit such report being challenged by way of judicial review at this stage would not be proper. The matter after recording, if any, a finding of guilty against the concerned Judge by the Inquiry Committee should be left for further consideration by the Parliament. [205 G-H, 206-A]

5. The finding of guilty recorded by the Committee on the charges is not conclusive and final and the Parliament can still hold that the charges levelled against the concerned Judge did not amount to misbehaviour and may decide not to adopt the motion. On the other hand, if in the course of judicial review this Court approves or affirms such findings recorded by the Inquiry Committee being a decision of this Court shall be binding on the Parliament. In that case, it would not be possible for the Parliament to take a different view and this would be an extra constitutional interference in the framework of the scheme. In another case during the course of judicial review this Court may come to the conclusion of quashing the entire proceedings conducted by the Inquiry Committee and require it to hold a fresh inquiry. [204 C-D]

6. The life and existence of the Inquiry Committee is co-terminus with the period of 3 months as laid down in Rule 9(2)(c) of the Rules or till the Speaker extends the time for sufficient cause under the the proviso to the aforesaid Rule. After this period is over, the Committee ceases to function and neither this Court nor any other Court can extend this period in the exercise of judicial review of the findings of the Inquiry Committee. The period of 3 months has been fixed in the statutory rules itself and the Speaker alone has been authorised to extend such period for sufficient cause. This Court cannot extend such period nor give any direction to the Speaker to do so, and any attempt of remanding the matter for fresh inquiry or to keep the matter pending till the concerned Judge decides to challenge the report by way of judicial review or to keep the matter pending for decision under the exercise of judicial review beyond the aforesaid period is not permissible and cannot be done in an indirect manner which cannot be done directly. This Court has no power to extend the life of the Inquiry Committee by judicial fiat in the teeth of the express provisions of the statutory rules. [204 E-H, 205-A]

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A **7. So far as the stage after the conclusion of the proceedings in the Parliament are concerned, the remedy of judicial review is always available which, of course, will depend on the facts and circumstances of the case emerging then and subject to recognised permissible grounds of judicial review. [205 E-F]**

B **8. The powers, duties and functions of the Inquiry Committee constituted under the provisions of the Act and composed of high judicial functionaries which records its finding after giving an opportunity to the concerned Judge on the basis of the oral and documentary evidence cannot be compared or equated with the sanction accorded by an executive** C **authority under Section 197 of the Code of Criminal Procedure in respect of a public servant. [204 A-B]**

9. In *Sub-Committee on Judicial Accountability's* case the controversy raised in the present case was not in issue and the Court in that case was concerned with the stage of entertaining the motion by the Speaker for D **consideration of the House and the fate of such motion upon the dissolution of the Lok Sabha. [200 D-E]**

Sub-Committee on Judicial Accountability **v.** *Union of India & Ors.*, **[1991] 4 S.C.C. 699, explained.**

E *Per K. Ramaswamy, J. (Dissenting)*

1. The Judge is entitled to the supply of a copy of the report and the Committee being a high statutory one, the Court can, keeping the status of the Committee in view, make a request to supply the copy of the Report F **to the learned Judge. Its concomitant would be that the learned Judge needs time to reflect upon to take a decision and action thereon. Necessarily, the Committee is to be requested to withhold submission of its report for a reasonable time. [224 D-F]**

G **2. The legislature itself has made a distinction between the consequences that would flow from recording a finding of guilt or exoneration and the former is subject to political process, together with the contra finding of third member but in the latter case it is conclusive. As held in *Sub-Committee on Judicial Accountability's* case, no further steps based thereon should be taken up for consideration. In other words, it is immune** H **from attack from any quarter whatsoever, when even the Parliament itself**

was prohibited to go into that question. [216 D-F] A

2.1. By operation of Section 6(1), if the report of the Committee contains a finding that the Judge is not guilty of misbehaviour or does not suffer from any incapacity, then no further steps should be taken in either House of the Parliament in relation to the report and there is legislative mandamus that the motion pending in either House of the Parliament shall not be proceeded with. In other words the motion stands lapsed. The result also is envisaged in Rule 9(4). Thus the finding of 'not guilty', in other words, 'exoneration' from the alleged misbehaviour or incapacity by majority of the members is treated to be conclusive and should be kept secret and by necessary implication it excluded judicial review. The reason is obvious that the finding of a high judicial body, a final arbiter, must be respected; should receive finality and should not be tinkered with. Equally disclosure of even the minority view would affect not only the reputation of the Judge but the non-disclosure would also ward off collateral attack from any quarter or liability to be questioned by any third party. Neither the members of the Parliament, nor anybody have locus or right to participate and lead evidence against the Judge at the investigation done by the Committee. As a necessary corollary no-one is entitled to impugne the correctness of the findings of 'not guilty' recorded by the Committee, absolving the Judge from the charge. [214 G-H, 215-A, 216 B-D] B C D E

2.2. Thus, if the Committee makes, an unanimous or per majority, finding that the learned Judge is 'not guilty' of misbehaviour, the finding receives quietus and is conclusive. The political process pursuant to pending motion should not be proceeded with and should stand lapsed. The minority finding of 'guilt' should remain secret and none be entitled to, either access to the report of exoneration or to assail the correctness of the finding of not guilty recorded by the Committee. The need to supply the report is obviated. [223-D] F

On the other hand if the Committee either unanimously or per majority makes a finding of 'guilty of the proved misbehaviour' only that part should be laid on the floor of each House of the Parliament in terms of the Act and the Rules along with the minority views of 'not guilty' and the political process for removal of the Judge would start. That report is adverse to the learned Judge. Without knowing what the contents of the report are; the reasoning in support of the findings of proved mis- G H

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A behaviour or other illegalities in the process of adjudication, a party cannot be foreclosed from legal remedy. Without supply of the material, the foundation of legal injury, the Judge cannot adequately and effectively plead, prove and disabuse the incorrectness of the finding etc. May be the learned Judge opts to avail the remedy on the floor of the House of
B Parliament. But the non-supply of the report would trench into offending the principles of natural justice. It is anathema to judicial process. The secrecy of the report of minority member's finding of 'guilt' is to protect the Judge but when the finding of guilt adversely affects the Judge, it cannot be denied on the plea of secrecy. Therefore, the learned Judge is entitled to a copy of the report. [223 E-F, 224 A-D]

C

3. Every right carries with it the corollary remedy to redress the injury. Indisputably and as a fact in fairness, Judge is entitled to judicial review. The arena of controversy is, whether before the Parliament had taken up the motion for consideration or after the President passed an
D order of removal under Article 124(4). That stage would set only if and when the learned Judge has chosen to seek judicial review. That would arise only when he has been supplied with a copy of the report.

[223-G, 224-A]

Tun Dato Haji Mohanad Sallah Bin Abus v. *Tam Sri Dato,* 1988
E L.R.C. 25; *Powell* v. *McComack,* [1937] 395 U.S. 486; *Halsted L. Ritter* v. *U.S.,* 84 Court of Claims 293 and *Ritter* v. *U.S.,* 300 U.S. 663, referred to.

Raoul Berger, *Impeachment : The Constitutional Problems,* (1973); Black on *Impeachment;* Lawrence Tribe, *American Constitutional Law,* 1988 2nd Edn.; Emanucts, *Constitutional Law,* 1991-92, referred to.

F

S.A. De Smith, "Tenure of Office by Colonial Judges" *16 Modern Law Review 502* (1974); Daniel A. Rezneck, "Is Judicial Review of Impeachment Comings" *60 American Bar Association Journal,* 681 (1974); Miachel J. Gerhadt, "The Constitutional Limits to Impeachment and its Alternatives"
G *68 Texas Law Review* 1 (1989), referred to.

4. In substance the investigation and proof of misbehaviour or incapacity of a Judge under Article 124(5) read with the Act and the Rules; the address by each House of Parliament supported by the requisite majority and removal of a Judge by the President is akin to a disciplinary
H measure to resuscitate and infuse needed judicial conduct and fervidity by

assertion of the supremacy of law that the Judge too will be subject to law. The Judge occupies a Constitutional office. Article 124(5) devised an amalgam of judicial and political porcess to remove an erring Judge or Judge suffering from incapacity. The report submitted by the Committee to the Speaker with the finding that the alleged misbehaviour is proved and the Judge is found guilty of the proved misbehaviour, constitutes fresh material. In a quasi-Judicial matter, if the delinquent is being deprived of knowledge of the material against him, though the same was made available to the punishing authority in the matter of reachings its conclusion it is violative of the rules of natural justice. The Legislature, however, can exclude operation of these principles expressly or impliedly but in the absence of any much exclusion, principles of natural justice will have to be followed. The finding of guilt of misbehaviour or incapacity, with which the Judge is suffering from, would visit with civil consequences of loss of reputation in the society apart from forfeiture of office. It is now settled law that the principles of natural justice are an integral part of constitutional scheme of just and fair procedure envisaged under Article 14 of the Constitution. [221 F-G, 222 G-H, 223 A-C]

Union of India v. *H.C. Goel,* [1964] 4 S.C.R. 718; *Union of India & Ors.* v. *Mohd. Ramzan Khan,* [1991] 1 S.C.C. 588; *Mazharul Islam Hashmi* v. *State of U.P. & Anr.,* [1979] 4 S.C.C. 537 and *Mohinder Singh Gill & Anr.* v. *The Chief Election Commissioner New Delhi & Ors.,* [1978] 2 S.C.R. 272, relied on.

5. All the trappings of the court need not necessarily be present in a particular case to bring the authority as a Tribunal but the essantial postulate must be that it must be the creature of the statute and the State should delegate its inherent power of judicial review to the Tribunal; all or some of the trappings of a court may or may not be present in a given case. The Tribunal should adjudicate the dispute between the parties before it, after giving reasonable opportunity to the parties, consistent with the principles of fair play and natural justice. It is not necessary that proprio vigore it is enforceable. The mere fact that it is subject to further orders does not take away the effect of the decision or findings recorded thereunder. [220 D-E]

5.1. The Committee has been empowered to adjudicate on the proof or disproof of the charges in accordance with the evidence legally adduced

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A **after hearing the Judge and the Advocate. The Committee has no other function except to adjudicate upon the dispute of 'the proved guilt or not guilty'. By operation of Rule 6 the Committee, may on consideration of the evidence and applying the standard of 'proof beyond reasonable doubt', make a finding that the misbehaviour or incapacity has been proved or**
B **disproved. The finding of guilt alone is subject to political process. Thus the Inquiry Committee is a high judicial body or authority. [221 C-D]**

Indo-China Steam Navigation Co. Ltd. **v.** *Jasjit Singh, Addl. Collector of Custom & Ors.,* **[1964] 6 S.C.R. 594;** *The Bharat Bank Ltd., Delhi* **v.** *Employees of the Bharat Bank Ltd., Delhi,* **[1950] S.C.R. 495;** *Associated*
C *Cement Co. Ltd.* **v.** *P.N. Sharma & Anr.,* **[1965] 2 S.C.R. 366;** *Durga Shankar Mahta* **v.** *Thakur Raghuraj Singh and Ors.,* **[1955] 1 S.C.R. 267 and** *Dev Singh & Ors.* **v.** *Registrar, Punjab & Haryana High Court & Ors.,* **[1987] 2 S.C.R. 1005, referred to.**

6. The moment the report was signed by the Committee, it did not,
D ***ipso facto,*** **become the document of the Parliament but when the Speaker/Chairman or both, as the case may be, caused the report to be laid on the floor of each House of Parliament together with the evidence and the motion in the manner prescribed in Rule 16, it becomes the document of the Parliament. Until then the Speaker/Chairman holds the**
E **document in his statutory capacity under the Act. [218 A-B]**

ORIGINAL JURISDICTION : Writ Petition (Civil) No. 514 of 1992.

(Under Article 32 of the Constitution of India).

F Kapil Sibal and Ranjit Kumar for the Petitioner.

G. Ramaswami, Attorney General, D.N. Dwivedi, Addl. Solicitor General (N.P.), F.S. Nariman, Ms. A. Subhashni, P.H. Parekh, Raju Ramachandran, Subhash Chandra Sharma, Sunil Dogra and A.M. Khanwilkar for the Respondents.

G

The Judgment of the Court was delivered by

VERMA, J. The person entitled to seek judicial review and the stage at which it is available against the findings of the Inquiry Committee constituted under Section 3(2) of the Judges (Inquiry) Act, 1968
H (hereinafter referred to as 'the Act') in accordance with the law declared

in *Sub-Committee on Judicial Accountablity* v. *Union of India and Others,* [1991] 4 SCC 699- is the question for decision in this writ petition. According to the petitioner, the remedy of judicial review is available to the concerned Judge against the finding, if any, by the Inquiry Committee that the learned Judge is 'guilty' of misbehaviour only prior to submission of the report of the Committee to the Speaker in accordance with Section 4(2) of the Act or latest till it is laid before the Parliament as required by Section 4(3) of the Act, but not thereafter. Accordingly, the petitioner claims that a copy of the report should be furnished to the concerned Judge before it is submitted to the Speaker, to preserve the right of the Judge to seek judicial review of the finding of 'guilty', if any, in the report. The merit of this submission is considered herein.

The petitioner is the wife of Mr. Justice V. Ramaswami, a sittting Judge of the Supreme Court of India. In this writ petition under Article 32 of the Constitution of India, certain constitutional issues have been raised which are to be decided on the construction of Article 124 of the Constitution of India and the Judges (Inquiry) Act, 1968 read with the Judges (Inquiry) Rules, 1969 framed thereunder, in the background of the law declared in *Sub-Committee on Judicial Accountability* v. *Union of India and Others,* [1991] 4 SCC 699. In essence, this petition is a sequel to that earlier decision rendered in the context of the proceedings for removal of Mr. Justice V. Ramaswami from the office of a Judge of the Supreme Court of India.

Certain allegations of financial improprieties and irregularities were made against Mr. Justice V. Ramaswami in his capacity as the Chief Justice of the High Court of Punjab & Haryana prior to his appointment in October 1989 as a Judge of the Supreme Court of India by 108 members of the Ninth Lok Sabha by a notice of motion for presenting an address to the President for the removal from office of Mr. Justice V. Ramaswami. On March 12, 1991, the motion was admitted by the Speaker of the Ninth Lok Sabha who also proceeded to constitute a Committee consisting of Mr. Justice P.B. Sawant, a sitting Judge of this Court, Mr. Justice P.D. Desai, Chief Justice of the High Court of Bombay and Mr. Justice O. Chinappa Reddy, a retired Judge of this Court as a distinguished jurist in terms of Section 3(2) of the Judges (Inquiry) Act, 1968. On dissolution of the Ninth Lok Sabha, the Union Government was of the view that the notice of motion given by 108 members of the Ninth Lok Sabha for presenting an address to the President for removal of the learned Judge as well as the

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A decision of the Speaker of the Ninth Lok Sabha to admit the motion and constitute a Committee under the provisions of the Act had lapsed with the dissolution of the Ninth Lok Sabha. Accordingly, the Union Government abstained from acting in aid of the decision of the Speaker to notify that the services of the two sitting Judges on the Committee would be B treated as 'actual service' within the meaning of para 11(b)(i) of Part D of the Second Schedule to the Constitution to enable them to function as members of the Committee. Important constitutional issues as to the status of a motion for the removal of a Judge under the Act made pursuant to Article 124 (5) of the Constitution and applicability of the doctrine of lapse to such a motion upon the dissolution of the Lok Sabha together with the C connected questions including the justiciability thereof in a court of law arose in these rather unfortunate circumstances.

A body called the "Sub-Committee on Judicial Accountability" represented by a Senior Advocate of this Court as its Convener filed Writ Petition D No. 491 of 1991 and the Supreme Court Bar Association filed Writ Petition No. 541 of 1991 in this Court under Article 32 of the Constitution. The common prayers in both the petitions were for a direction to the Union of India to take immediate steps to enable the Inquiry Committee to discharge its functions under the Act; and to restrain the Judge concerned Mr. Justice V. Ramaswami from performing Judicial functions and exercising judicial E powers during the pendency of the proceedings before the Committee. The decision rendered therein by a Constitution Bench is *Sub-Committee on Judicial Accountability* v. *Union of India and Ors.*, [1991] 4 SCC 699.

The Constitution Bench by a majority of 4:1 held that a motion under F Section 3(2) of the Act does not lapse upon the dissolution of the House. The majority opinion concluded as under:

> "All that is necessary to do is to declare the correct constitutional position. No specific writ or direction need issue to any authority. Having regard to the nature of the G subject matter and the purpose it is ultimately intended to serve all that is necessary is to declare the legal and constitutional position and leave the different organs of the State to consider matters falling within the orbit of their respective jurisdiction and powers. ...." (para 123 at H p. 762)

The controversy before the Constitution Bench in those matters was so decided and Writ Petition Nos. 491 and 541 of 1991 were disposed of by the appropriate declarations of the law as contained in the judgment.

After declaration of the legal and constitutional position in this behalf on the points in controversy in the above decision, the Union of India took the necessary steps to act in aid of the decision of the Speaker of the Ninth Lok Sabha and the requisite notification was also issued in respect of the two sitting Judges of the Committee as required by para 11(b)(i) of Part D of the Second Schedule to the Constitution of India.

The Committee constituted by the Speaker under the Act then proceeded to inquire into the allegations made against the Judge concerned Mr. Justice V. Ramaswami and, as intimated at the hearing of this petition, the Committee has completed the Inquiry and also prepared its Report for being submitted to the Speaker of the Lok Sabha as required by Section 4(2) of the Act.

The learned Judge Mr. Justice V. Ramaswami sent a letter dated May 10, 1992 to Mr. Justice P.B. Sawant, Presiding Officer of the Inquiry Committee, requesting that a copy of the report of the Committee be forwarded to him giving him sufficient time to seek redress in a court of law, if required or necessary, as a result of the findings of the Committee. He was sent a reply by the Secretary to the Committee by letter dated May 15, 1992. These letters are collectively marked Annexure I to the petition. They are reproduced as under:

"JUSTICE V. RAMASWAMI

JUDGE, SUPREME COURT
2, Teenmurthi Marg
New Delhi- 110011

May 10, 1992

Hon'ble Mr. Justice P.B. Sawant
Presiding Officer
Committee Appointed under the
Judges (Inquiry) Act, 1968
433 Parliament House Annexe
New Delhi-110001.

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Sir,

I am informed that the Committee is resuming its sittings for further examination of witnesses on May 11, 1992. My counsel Shri Ranjit Kumar, who was present in court during the course of the hearing in Writ Petition No. 149 of 1992 in the Supreme Court of India, learnt that only 5 or 6 witnesses remain to be examined and that thereafter the matter will be fixed for arguments. As the Committee will be sitting from May 11, 1992 onwards, presumably the entire process will be completed during the period when the Hon'ble Supreme Court is closed for summer vacation. My advocate also learned that the Hon'ble Speaker has extended the date for the Committee to furnish its report under the Judges (Inquiry) Act, 1968 till July 31, 1992. I, therefore, assume that prior to that date the report will be furnished to the Hon'ble Speaker. The Hon'ble Supreme Court in its judgement on *Sub-Committee on Judicial Accountability* v. *Union of India & Ors.*, [1991] 4 SCC 699 has held that the Committee under the Judges (Inquiry) Act, 1968 is a statutory committee and from the time it commences its proceedings till its report is placed before Parliament, its proceedings are deemed to be outside Parliament and, therefore, subject to judicial review.

As the Committee is required to render its findings in respect of the various charges framed against me, I would like to be supplied a copy of the report well in time to entitle me to challenge the same by filing appropriate proceedings, in the event any findings are rendered against me. A reading of the Constitution Bench's judgment would suggest that such an opportunity would be available to me, since the Committee functions as a Tribunal outside Parliament. I, therefore, do not expect the Committee to render infructuous this valuable Constitutional right, in the event its report is adverse to me, by submitting it in haste to the Hon'ble Speaker, who might place it before Parliament when in session.

Recourse to such a procedure would not only be in violation of my Constitutional right to receive the report but would be violative of natural justice, since I would, in that situation, be pre-empted from challenging the report in an appropriate forum.

I am writing to you well in advance so that upon completion of the report, a copy is forwarded to me forthwith and sufficient time is granted to me to seek redress in a court of law, if required or necessary. Naturally, you would, therefore, in forwarding a copy of the report to me, withhold the forwarding of the said report to the Hon'ble Speaker, simultaneously. I, therefore, expect that you would be responding to this request of mine very soon, since any delay in this regard would be extremely prejudicial to my interests and would tend to defeat even the limit right granted to me by the judgement of the Hon'ble Supreme Court. Kindly respond to this request of mine within a couple of days of your receiving this letter.

Thanking you,

Yours sincerely,

Sd/-
(V. Ramaswami)"

"COMMITTEE APPOINTED UNDER
THE JUDGES (INQUIRY) ACT, 1968

433, Parliament House Annexe
New Delhi-110001

No. 17/17-CB-II/91 May 15, 1992

From:

S.C. Gupta,
Secretary

A To

Hon'ble Mr. Justice V. Ramaswami,
Judge, Supreme Court of India,
2, Teen Murti Marg,
New Delhi - 110011.

B

Sir,

With reference to your letter dated 10th May, 1992 addressed to the Presiding Officer, I am to inform you that counsel for the Committee brought your letter to the attention of the Constitution Bench which is now seized of the matter, during the hearing on 14th May, 1992 in Writ Petition No. 149 of 1992, stating that the Committee will abide by any directions that may be given in this regard by their Lordships in the said case.

C

D

Yours faithfully,

Sd/- S.C. Gupta
SECRETARY"

E The petitioner, Smt. Sarojini Ramaswami wife of Mr. Justice V. Ramaswami, has filed this writ petition on July 6, 1992 after receipt of the letter dated May 15, 1992 by Mr. Justice V. Ramaswami from the Secretary to the Committee, impleading the Union of India and the Committee appointed under the Act as the respondents. The relief sought in this writ F petition is for a direction to the Committee to supply a copy of the Report of the Committee to Mr. Justice V. Ramaswami and to withhold forwarding of the said Report to the Speaker of the Lok Sabha simultaneously to enable Mr. Justice V. Ramaswami to seek redress in a court of law, if required or necessary, against the findings of the Committee in its Report. This relief is sought on the basis of the decision of the Constitution Bench G reported in [1991] 4 SCC 699 that the entire proceedings of the Committee are statutory in nature and, therefore, subject to judicial review.

When the matter came up for hearing before us first on July 21, 1992, we indicated to Shri Kapil Sibal, senior counsel for the petitioner that even H though the petitioner's right for the relief claimed in this petition is

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founded on her status as wife of the learned Judge and the right flowing to her through her husband, yet Mr. Justice V. Ramaswami had not been impleaded as a party and it was also not indicated that the writ petition was for and on behalf of the learned Judge so as to bind the learned Judge himself to the decision in this petition. We also pointed out that the exact position of the learned Judge has to be made clear to us before we proceed to consider and decide this writ petition on merits. Shri Kapil Sibal indicated that the learned Judge Mr. Justice V. Ramaswami would be bound by the decision herein and he also undertook to file a writing to that effect. We accordingly adjourned the matter to the next day, July 22, 1992 for this purpose. The proceedings of July 21, 1992 are as under :

> "Shri Kapil Sibal, learned senior counsel appears for the petitioner. In response to our query whether Mr. Justice V. Ramaswami would be bound by the adjudication made in this petition wherein his wife is the petitioner, Shri Sibal submitted that he will obtain written instructions to this effect from the learned Judge, Mr. Justice V. Ramaswami and file the same in the Court by tomorrow morning.
>
> The matter will be taken up tomorrow, the 22nd July, 1992."

On July 22, 1992, Shri Ranjit Kumar, the counsel instructing Shri Kapil Sibal, senior counsel for the petitioner filed in the Court a letter addressed by him to Mr. Justice V. Ramaswami with the endorsement of the learned Judge at the foot thereof. The same is reproduced as under:-

"RANJIT KUMAR
Advocate

xxx xxx

July 21, 1992.

SUB: WRIT PETITION (C) NO. 514 OF 1992
MRS. SAROJINI RAMASWAMI v. UNION OF INDIA & ORS.

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Dear Sir,

When Writ Petition (Civil) No. 514/1992 was taken up today, the Hon'ble Judges comprising the Bench wanted to be informed of your stand in respect of the binding nature of the adjudication in the event the petition was taken up for hearing and judgment rendered thereon.

Shri Kapil Sibal, Senior Advocate, appearing on behalf of the petitioner in this Writ Petition informed the learned Judges that as the right of Mrs. Ramaswami to move this Hon'ble Court directly flowed from your right to continue to hold office as a Judge of this Hon'ble Court, you would naturally be bound by the adjudication rendered in respect of the reliefs sought in Writ Petition No. 514 of 1992. Please confirm if Mr. Sibal has rightly conveyed to the Hon'ble Judges your position in this regard.

Thanking you,

Yours faithfully,

Sd/-
(Ranjit Kumar)

Hon'ble Mr. Justice V. Ramaswami
2, Teen Murti Marg,
New Delhi.

The statement made by Mr. Sibal correctly reflects my position.

Sd/- V. Ramaswami
21.7.1992"

On production of the above letter of Shri Ranjit Kumar, bearing thereon the endorsement of acceptance by Mr. Justice V. Ramaswami in his own hand, we made an order to this effect which is contained in the proceedings dated July 22, 1992 as under:

"Mr. Ranjit Kumar, learned counsel for the petitioner

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has filed a letter dated July 21, 1992 addressed by him to Mr. Justice V. Ramaswami bearing the endorsement of Mr. Justice V. Ramaswami at the foot of it accepting as correct the position mentioned in that letter. Mr. Kapil Sibal, learned senior counsel for the petitioner adds that in view of this stand taken by Mr. Justice V. Ramaswami *the position is that this writ petition is in substance by the learned Judge himself filed through his wife* who is shown as the petitioner."

(emphasis supplied)

The result, therefore, is that this writ petition is in substance by the learned Judge Mr. Justice V. Ramaswami himself filed through his wife, the petitioner Smt. Sarojini Ramaswami for the relief claimed herein on behalf of her husband Mr. Justice V. Ramaswami. This writ petition is treated accordingly for the purpose of deciding the points raised herein.

In addition to issuing notice to the respondents, namely, the Union of India and the Inquiry Committee appointed under Section 3(2) of the Act, we also requested the learned Attorney General to appear and assist the Court in his capacity as the Attorney General of India. We have heard Shri Kapil Sibal for the petitioner, Shri F.S. Nariman for the Inquiry Committee and the Attorney General Shri G. Ramaswamy.

Before proceeding to consider the arguments advanced by these learned counsel, we consider it appropriate to make a brief reference to Writ Petition (Civil) No. 149 of 1992 *Shri Krishna Swami* v. *Union of India & Ors.*, which had been filed earlier and of which reference is made in this writ petition as well as in the correspondence between Mr. Justice V. Ramaswami and the Committee.

Writ Petition No. 149 of 1992 was filed in the Court by M. Krishna Swami, a member of the Tenth Lok Sabha for several reliefs specified therein. Those reliefs relate to the aforesaid Inquiry by the Committee appointed under the Act to investigate into the allegations made against Mr. Justice V. Ramaswami. The petitioner therein M. Krishna Swami claiming to be a person interested as a member of the Tenth Lok Sabha as well as an advocate of Madras Known to Mr. Justice V. Ramaswami for long alleged certain illegalities in the procedure adopted by the Committee prejudicial to the

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A learned Judge Mr. Justice V. Ramaswami and on the basis, apart from seeking reconsideration of the decision in *Sub-Committee on Judicial Accountability,* also sought quashing of the charges framed by the Committee and a declaration that the proceedings of the Committee are null and void. That writ petition was listed initially before a Division Bench comprising of three learned Judges which referred the writ petition for hearing by a larger Bench. This is how Writ Petition No. 149 of 1992 came up for hearing before this Bench. On 6.5.1992, during consideration of the question of maintainability of that writ petition in the absence of Mr. Justice V. Ramaswami as a party, Shri Kapil Sibal, senior counsel appearing for the petitioner in that writ petition also took time to make an application for impleading Mr. Justice V. Ramaswami as a party in that petition. However, on 7.5.1992, Shri Kapil Sibal stated that the petitioner therein did not want to implead Mr. Justice V. Ramaswami as a party and he had decided to pursue that writ petition as framed. Accordingly, that writ petition was heard on the question of its maintainability for grant of the reliefs claimed therein without impleading the learned Judge Mr. Justice V. Ramaswami, who would undoubtedly be directly affected by the decision on merits of the questions raised therein. We are disposing of Writ Petition No. 149 of 1992 also separately on the definite stand taken by the petitioner therein of pursuing that petition declining to implead Mr. Justice V. Ramaswami in spite of opportunity given for the purpose. The present Writ Petition No. 514 of 1992 by Smt. Sarojini Ramaswami came to be filed thereafter in these circumstances on conclusion of the Inquiry by the Committee constituted under the Act.

The main point for decision in this writ petition - Writ Petition No. 154 of 1992 - is : Whether as a result of the decision in *Sub-Committee on Judicial Accountability,* Mr. Justice V. Ramaswami is entitled to be supplied a copy of the report of the Committee containing its findings before submission of that report to the Speaker of the Lok Sabha in accordance with Section 4(2) of the Act of enable him to challenge the adverse findings, if any, against him at this stage in a court of law? The submission of Shri Kapil Sibal, learned Senior counself for the petitioner is that this right of Mr. Justice V. Ramaswami is a logical corollary of the decision is *Sub-Committee on Judicial Accountability* wherein it has been held that the process upto submission of the report to the Speaker and it being laid before the House for its consideration is statutory subject to judicial review. The further submission of learned counsel is that the contrary view would result in depriving the learned Judge of his right to challenge the adverse

finding of 'guilty', if any, once the parliamentary part of the process commences. He submitted that the order of removal thereafter would be immune from challenge being the culmination of the parliamentary process and, therefore, the learned Judge would be denied his constitutional right of seeking judicial review of the statutory part of the process even though that is the foundation for the subsequent parliamentary part. Shri Sibal urged that the order of removal made by the President as a result of this process being in effect the culmination of the parliamentary process would be immune from judicial review and, therefore, unless the learned Judge has the opportunity of seeking judicial review before commencement of the parliamentary part of the process, his constitutional right, notwithstanding any illegality in the procedure culminating in the adverse findings of the Committee, would be defeated in spite of the declaration of law made in the earlier decision. Finally, Shri Sibal modified this part of the argument slightly to contend that even assuming the order of removal made by the President under Article 124(4) be not immune from judicial review on permissible grounds of illegality, which according to learned counsel is extremely doubtful, great prejudice would be caused to the learned Judge by postponement of the stage of judicial review till after the making of the order of removal under Article 124(4) if the illegality attaches to the finding of 'guilty' in the report of the Committee. In short, according to Shri Kapil Sibal, judicial review to test the legality of the Committee's findings is available either 'now' before commencement of the parliamentary process on submission of the report to the Speaker under Section 4(2) of the Act 'or never'. This, according to Shri Sibal, is the reason for directing the Committee, a statutory authority, to furnish a copy of its report to the learned Judge before submitting the report to the Speaker in accordance with Section 4(2) of the Act. The question, therefore, is : Whether the basic premise on which the argument is based, namely, judicial review 'now or never' is correct or the law is that - judicial review on permissible grounds is not now but only later in case an order of removal is made by the President under Article 124(4) of the Constitution? Is it that the challenge permissible in the constitutional scheme is actually to the order of removal made by the President under Article 124(4) based on the composite process of removal comprising of the initial statutory part which provides the condition precedent for, and the parliamentary part of the process thereafter?

Shri F.S. Nariman, learned senior counsel appearing on behalf of the

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A Committee did not dispute the right of the learned Judge of seek judicial review of the statutory part of the process as declared in the earlier decision on permissible grounds of judicial review, but he urged that on completion of the Inquiry culminating in recording of the findings in the report. The principle of comity between the constitutional authorities
B requires that the courts must not interdict the process contemplated by the Act once the findings have been recorded in the report; and judicial review to the extent permissible must be only in the event an order of removal is made by the President under Article 124(4) of the Constitution if the Parliament chooses to act on the adverse finding of 'guilty', if any, in the Committee's report by adopting the motion of removal as prescribed. Shri
C Nariman submitted that the learned Judge is entitled to an opportunity during the parliamentary process to assail the adverse findings and thereby facilitate the Parliament to consider the matter properly while discussing the motion on receipt of the Committee's report, as was the procedure adopted during the impeachment of Justice Angelo Vasta in Australia
D where the procedure is entirely parliamentary. Shri Nariman added that there is no reason to assume that the Parliament would not give such an opportunity to the learned Judge or that it would not properly consider the objections to the findings raised by the learned Judge before voting on the motion; and in case those objections are accepted and the motion fails, the proceedings would end in favour of the learned Judge without any need
E for him to seek redress by judicial review. Shri Nariman further submitted that even though he could not make a definite submission that the ultimate order of removal, if any, would be subject to judicial review, yet he was unable to find any clear limitation, in principle or authority, on the power of judicial review against an order of removal by the President under
F Article 124(4) of the Constitution on the permissible grounds of illegality on which alone the learned Judge can assail the adverse findings of the Committee at this stage, assuming he has a right to do so, before commencement of the parliamentary process.

G The learned Attorney General, to begin with, adopted fully the arguments of Shri Kapil Sibal and supported the petitioner's case. However, the final stand of the learned Attorney General was modified wherein he submitted that the right of the learned Judge to challenge the order of removal made by the President under Article 124(4) being doubtful, it is appropriate that in order to avoid defeating his right of seeking judicial review in case of an
H adverse finding, if any, the learned Judge should be furnished a copy of the

report of the Committee at this stage before it is submitted to the Speaker under Section 4(2) of the Act. The learned Attorney General entirely agreed with Shri F.S. Nariman that in the event of an adverse finding by the Committee, the learned Judge would be entitled to an opportunity during the parliamentary process to assail the finding against him and thereby facilitate the Parliament to consider the motion properly.

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From the rival submissions, as summarised above, it is clear that in case the learned Judge would have the right to seek judicial review in the event an order of removal is made against him under Article 124(4) of the Constitution, and the permissible grounds of judicial review whatever they be at this stage, would remain unimpaired then, the main reason for requiring a copy of the Report of the Committee to be furnished now before commencement of the parliamentary process would disappear. In such a situation, the only other question would be : Whether there is any added prejudice by deferment of the exercise of that right till after the making of the order of removal, if any? This further question would arise only if the constitutional scheme envisages the remedy of judicial review to the learned Judge now as well as at the end. If it is held that the constitutional scheme envisages and permits a challenge by the concerned Judge to the adverse finding of 'guilty' recorded in the report of the Committee only if, and when, the order of removal is made by the President under Article 124(4) of the Constitution and not earlier, it being contemplated that during the parliamentary process the concerned Judge would be given an opportunity for the purpose to enable the Parliament to take into account the objections, if any, of the concerned Judge to the adverse findings against him before voting on the motion for removal of the Judge, then any interdiction by the Court at an intermediate stage would be excluded in a matter of this kind where expedition and early conclusion of the process is of utmost public importance. The scheme then would be that in case of an adverse finding of 'guilty' by the Committee, the Parliament gives an opportunity to the concerned Judge to show cause against his removal on the basis of the adverse findings and takes that into consideration for voting on the motion so that if it accepts the objections of the concerned Judge, the motion would not be passed and the matter would rest there. The learned Judge would not then be required to seek redress in the court of law to challenge the statutory part of the process preceding the parliamentary process.

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A If, however, the motion is passed, notwithstanding the objections to the findings raised by the concerned Judge, leading to the order of removal being made by the President under Article 124(4) of the Constitution, then alone there is occasion for the concerned Judge to assail the adverse finding of 'guilty' and the statutory process preceding it on the permissible B grounds of judicial review by challenging the order of removal in a court of law on that basis. Keeping in view the desirability of early conclusion of the proceedings of this nature in public interest, such a constitutional scheme would not be unreasonable reconciling the larger public interest with the individual interest of the concerned Judge himself. The first point for consideration, therefore, is : The existence of the right of judicial review C in the concerned Judge of the order of removal made by the President under Article 124(4) of the Constitution, if and when it is made.

Another submission of Shri Kapil Sibal, in effect, to buttress his main submission indicated above, is that the Committee constituted under Section 3(2) of the Act, is a Tribunal and, therefore, its findings are subject D to appeal in this Court under Article 136 of the Constitution. This argument also is to claim that the learned Judge is entitled to a copy of the report before its submission under Section 4(2) of the Act to the Speaker to exercise the right of appeal against the adverse finding of 'guilty', if any, in the report.

E

The constitutional scheme for the removal of a judge of the Supreme Court or a High Court in accordance with Article 124(4) of the Constitution and the Judges (Inquiry) Act, 1968 made under Article 124(5) of the Constitution read with the Judges (Inquiry) Rules, 1969 framed under the F Act was considered and indicated in the earlier decision in *Sub-Committee on Judicial Accountability.* It is, however, useful to recapitulate the scheme in the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969 made thereunder in the context of the question which now arises for decision on the basis of the declaration of law made in *Sub-Committee on Judicial Accountability.* We proceed to do so before we advert to the G specific declaration of law made in the earlier decision.

Article 124(5) mandates enactment of a parliamentary law to regulate the investigation and proof of misbehaviour or incapacity of a Judge under clause (4) and pursuant to it the Judges (Inquiry) Act, 1968 has been H enacted by the Parliament. As held in *Sub-Committee on Judicial Account-*

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ability, on a construction of Article 124, 'the policy appears to be that the entire stage up to proof of misbehaviour or incapacity, beginning with the initiation of investigation on the allegation being made, is governed by the law enacted under Article 124(5) and in view of the restriction provided in Article 121, that machinery has to be outside the Parliament and not within it' and 'the Parliament comes in the picture only when a finding is reached by that machinery that the alleged misbehaviour or incapacity has been proved'. The Judges (Inquiry) Act, 1968 enacted under Article 124(5) of the Constitution being made for this purpose, the provision thereof have to be construed in that light.

The Judges (Inquriy) Act, 1968 provides that the procedure for removal of a Judge of the Supreme Court or a High Court can be initiated only if a notice of a motion for presenting an address to the President praying for his removal, signed by not less than 100 members of the House of the People or 50 members of the Council of States is given to the Speaker/Chairman in accordance with sub-section (1) of Section 3 of the Act. Any other method for initiating the prescribed procedure for removal of a Judge is obviously excluded. The Speaker/Chairman is empowered to either admit or refuse to admit the motion 'after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him'. The indication is that the Speaker/Chairman is empowered to consult such persons as he thinks fit and is required to take into consideration the materials available to him for deciding whether to admit the motion or refuse to admit the same. It is reasonable to assume that one such person to be consulted would be the Chief Justice of India, who apart from being the Head of the Indian Judiciary would also be the authority involved in the choice and availability of a sitting Judge of the Supreme Court and a sitting Chief Justice of a High Court as members of the Committee constituted under Section 3(2) of the Act, if the motion is admitted by the Speaker/Chairman. Sub-section (2) of Section 3 then provides that the Speaker/Chairman, in case he admits the motion, 'shall keep the motion pending and constitute, as soon as may be, for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for', a Committee of three members of whom one shall be from among the Chief Justice and other Judges of the Supreme Court, one from among the Chief Justices of the High Courts and a distinguished jurist. This means that an inquiry into the grounds on which the removal of a Judge is prayed for in the notice of motion given by the specified

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A minimum number of member's of Parliament or in other words the inquiry into the allegations of misbehaviour or incapacity of the Judge requiring his removal would be made by the Committee so constituted comprising of two sitting Judges and a distinguished jurist. Sub-section (1) of Section 4 empowers the Committee to regulate its own procedure subject to any B rules made in this behalf and the giving of a reasonable opportunity to the Judge concerned of defending himself in that inquiry. Sub-section (2) of Section 4 requires the Commmittee, 'at the conclusion of the investigation', to submit its report to the Speaker/Chairman 'stating therein its findings on each of the charges separately with such observations on the whole case as it thinks fit'. The Speaker/Chairman, as required by sub-section (3), C 'shall cause the report submitted under sub-section (2) to be laid, as soon as may be, respectively before the House of the People and the Council of States'. Thus sub-sections (2) and (3) of Section 4 require the Committee to submit its report to the Speaker/Chairman 'at the conclusion of the investigation' and the Speaker/Chairman 'shall cause the report ..... to be D laid, as soon as may be, before the House of the People and the Council of States'. In the present context, it is the requirement at this stage, 'at the conclusion of the investigation', when the report of the Committee has been prepared, which raises the question : Whether, as a consequence of the earlier decision in *Sub- Committee on Judicial Accountablity,* the Committee is required to furnish a copy of its report to the concerned Judge before E submitting it to the Speaker as enjoined by Section 4(2) of the Act?

Section 6 of the Act provides for the stage subsequent to submission of the report by the Committee to the Speaker/Chairman. Sub-section (1) of Section 6 lays down that if the Committee absolves the concerned Judge F in its report and records a finding that the Judge is 'not guilty of any misbehaviour ...', then no further steps shall be taken in either House of Parliament and 'the motion pending in the House ..... shall not be proceeded with'. It is clear from sub-section (1) of Section 6 that a finding of 'not guilty' recorded by the Committee in its report terminates the process of removal of the concerned Judge initiated in accordance with G Section 3(1) of the Act, that part of the process being statutory, and the parliamentary part of the process initiated on the Committee's report being laid before the House by the Speaker/Chairman in accordance with Section 4(3) does not commence. This is clear from the expressions 'then no further steps shall be taken in either House ..... and the motion pending in the H House ..... shall not be proceeded with' in Section 6(1) of the Act. In

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Sub-Committee on Judicial Accountability, it was held as under : A

> " ..... If, however, the finding reached by the machinery provided in the enacted law is that the allegation is not proved, the matter ends and there is no occasion to move the motion in accordance with Article 124(4)." B

(para 74 at p. 744)

Sub-sections (2) and (3) of Section 6 provide for the situation where the report of the Committee contains a finding that the Judge is 'guilty' of any misbehaviour or suffers from any incapacity. Sub-section (2) prescribes C that the motion admitted by the Speaker/Chairman under Section 3(1) of the Act shall then be taken up for consideration by the House together with the report of the Committee. It is in this situation and in this manner that the parliamentary part of the process of removal of a Judge commences requiring the House to consider the motion for removal of the Judge. D Sub-section (3) lays down that if the motion is adopted by each House of Parliament in accordance with provision of clause (4) of Article 124, then the misbehaviour or incapacity of the Judge shall be *deemed to have been proved* and the address praying for the removal of the Judge shall he presented to the President in the prescribed manner. Thus, commencement E of the parliamentary part of the process for removal is after the end of the earlier statutory part, only in case the report of the Committee contains a finding that the Judge is 'guilty' of any misbehaviour or suffers from any incapacity and not otherwise. The entire process of removal is composite in nature.

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A brief reference to the relevant provisions of the Judges (Inquiry) Rules, 1969 framed under the above Act which are material in the present context may now be made. Rule 9 relates to the report of the Inquiry Committee. Sub-rule (1) says that where the members of the Inquiry Committee are not unanimous, the report submitted under Section 4 of the G Act shall be in accordance with the findings of the majority of the members. Sub- rule (2) requires the Presiding Officer of the Inquiry Committee to forward within the specified period its report in duplicate, duty authenticated to the speaker/Chairman by whom the Committee was constituted. Sub-rule (3) requires an authenticated copy of the report of the Inquiry Committee to be laid before each House of Parliament. Sub-rule (4) H

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A prescribes that where the finding of 'guilty' is by majority, the contrary finding of the third member shall also be forwarded along with the report submitted under Section 4 of the Act. Sub-rule (5) requires an authenticated copy of the contrary finding of 'not guilty' made by the third member in such a case also to be laid before each House of Parliament. Thus, sub-rules (4) and (5) require that where the finding of 'guilty' is not unanimous but only by majority, then the contrary opinion of the third member in favour of the concerned Judge shall also be laid before each House of Parliament to be available to the Parliament for consideration along with the report containing the finding of 'guilty' by the majority while considering the motion for removal of the Judge. Sub-rule (6) makes provision for the converse situation where the finding by the majority of the members of the Inquiry Committee is that the Judge is 'not guilty', but the third member makes a finding to the contrary. It provides that in such a situation where the majority of the members of the Inquiry Committee find that the Judge is 'not guilty', then 'the Inquiry Committee shall not disclose the finding made by such third member *to Parliament or to any other authority, body or person*'. (emphasis supplied)

It is clear that if the finding of 'not guilty' is even by majority and not unanimous, the contrary finding of 'guilty' by the third member is not even to be disclosed to 'Parliament or to any other authority, body or person' much less acted upon for any purpose by anyone. The scheme embodied in Section 6 of the Act read with Rules 9 is that where the finding of the Inquiry Committee is of 'not guilty' whether unanimous or by majority of the members of the Inquiry Committee, the entire process of removal of the Judge terminates with that finding giving the quietus to the accusation of misbehaviour by the Judge scotching all rumours and the motion is not even required to be taken up for consideration by the Parliament so that the parliamentary part of the process does not commence in the absence of the condition precedent of a finding of 'guilty' by the Inquiry Committee essential for its commencement. In such a situation when the finding of 'not guilty' is by majority of the members only, the contrary finding of guilty by the third member is not even to be disclosed to any authority or person including the Parliament since all debate on the conduct of the concerned Judge based on those allegations must end. The scheme is that the matter must end there finally with no one, not even the Parliament, having the right or authority to consider, debate or examine the finding of 'not guilty'.

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It is, therefore, obvious that the Inquiry Committee constituted under Section 3(2) of the Act becomes the sole and final arbiter on the question of removal of the concerned Judge where the finding reached by the Committee, whether unanimous or by majority, is that the Judge is 'not guilty'. Rule 9(6) read with Section 6(1) indicates the extent and wide sweep of a finding of 'not guilty' by the Committee by providing that the contrary finding of 'guilty' by the dissenting third member in case of a finding of 'not guilty' by majority shall not even be disclosed to anyone including the Parliament. The idea is that if the Committee even by majority records a finding of 'not guilty', notwithstanding the contrary opinion of the third member, the matter must terminate there with no one, not even the Parliament, being entitled to even scrutinise much less question the correctness or legality of the finding of 'not guilty'. The intention manifest from these provisions is that in case the Inquiry Committee makes a finding that the Judge is 'not guilty' of any misbehaviour, any further scrutiny of that finding is excluded in the constitutional scheme, and no useful purpose being served by disclosure of the contrary finding of guilty reached by the third member even to the Parliament, its disclosure is forbidden with the majority opinion of 'not guilty' giving the quietus to the allegation of misbehaviour made against the concerned Judge. The disclosure of the dissenting opinion of guilty by the third member would needlessly harm the reputation of the concerned Judge, notwithstanding termination of the process of removal with the majority finding him 'not guilty'.

These provisions in the Act and the Rules are a strong indication that the constitutional scheme for the removal of a Judge in accordance with clauses (4) and (5) of Article 124 of the Constitution and the parliamentary law enacted under Article 124(5) shuts out all scrutiny even by judicial review where the Inquiry Committee unanimously or even by majority makes a finding that the Judge is 'not guilty' of any misbehaviour. Obviously, the concerned Judge cannot be aggrieved by a finding of 'not guilty' in his favour and in case such finding is not unanimous but by majority, non-disclosure of the dissenting opinion of guilty, as required by Rules 9(6) of the Rules, even to the Parliament, prevents any possible damage to the reputation of the concerned Judge from the dissenting opinion and, therefore, there can be no legitimate grievance to him from the undisclosed dissenting opinion. For this reason, the concerned Judge can have no grievance against exclusion of judicial review in that situation.

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A The constitutional scheme indicates that it is only the Members of Parliament acting jointly in the specified minimum number who can bring about initiation of the procedure for removal of a Judge, all other modes and persons being excluded. The provision in Rule 9(6) for non-disclosure of the dissenting opinion of 'guilty' even to the Parliament further indicates B that no one including the Members of Parliament who gave the notice of motion under Section 3(1) of the Act to initiate the process of removal have any right in that situation to even scrutinise much less assail the finding of 'not guilty' recorded by the Inquiry Committee even by majority. Section 6(1) of the Act read with Rule 9(6) of the Rules is a clear pointer in this direction. Thus, there is total exclusion of judicial review at the C instance of anyone, including the concerned Judge and Members of Parliament who gave the notice of motion, as well as any debate even in Parliament, in case the finding by the Inquiry Committee, whether unanimous or by majority, is that the Judge is 'not guilty' of any misbehaviour. This being the situation in the event of the Committee's report containing D a finding of 'not guilty', there can be no requirement atleast in that situation for the Committee to furnish a copy of its report to the concerned Judge before submitting the same to the Speaker/Chairman under section 4(2) of the Act. There being no grievance to the concerned Judge, the question of his right to seek judicial review does not arise. The question, however, is of this obligation in the converse situation where the Committee makes the E finding of 'guilty' against the concerned Judge.

The absence of any obligation in the Committee to furnish a copy of its report to the conerned Judge before submitting it to the Speaker/Chairman under Section 4(2) of the Act is in consonance with the law declared F in *Sub-Committee on Judicial Accountability* that the process for removal of the Judge is statutory till the laying of the report by the Speaker before the Parliament on its submission to him by the Committee in accordance with sub-sections (2) and (3) of Section 4 of the Act. There being no scope for judicial review in the case of finding of 'not guilty' in the report for the reasons already given, the finding of 'not guilty' being immune from any G scrutiny in the constitutional scheme adopted, there need not be any obligation to furnish a copy of the report to the concerned Judge. The Judge not being aggrieved and all other being excluded when the finding is 'not guilty', any interdiction by the court is automatically ruled out, notwithstanding the process till then being statutory. The incidents of H statutory process are to be considered in this perspective.

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In this background, the read question for decision now is : Whether the right of the concerned Judge to assail the finding of 'guilty' against him reached by the Inquiry Committee, a statutory authority, can be exercised only if the report is furnished to the concerned Judge before the commencement of the parliamentary process which obliges the Inquiry Committee to furnish a copy of the report to him atleast in the situation where the finding reached is that the Judge is 'guilty' of any misbehaviour? Before proceeding to consider this question, it may be added that if there be several charges framed against the Judge and in respect of some of them the finding is that the Judge is 'guilty' while the finding on the other charges is that the Judge is 'not guilty', then the consequences which would ensue in respect of the finding on each charge would depend on its nature. In other words, in respect of a charge of which the Judge is found 'not guilty', the consequences would be those indicated above in accordance with Section 6(1) of the Act and Rule 9(6) of the Rules and the process of removal relating to those charges would terminate in the manner indicated without being subject to any further scrutiny or judicial review as in the case of a finding of 'not guilty' in respect of all the charges levelled against a Judge.

At this stage, certain extracts from the earlier decision in *Sub-Committee on Judicial Accountability* v. *Union of India and Others,* [1991] 4 SCC 699 may be quoted for convenience. The point raised in this petition was debated mainly with reference to these portions of the earlier decision. These extracts are as under:-

> "But the constitutional scheme in India seeks to achieve a judicious blend of the political and judicial processes for the removal of Judges. Though it appears at the first sight that the proceedings of the Constituent Assembly relating to the adoption of clauses (4) and (5) of Article 124 seem to point to the contrary and evince and intention to exclude determination by a judicial process of the correctness of the allegations of misbehaviour or incapacity on a more careful examination this is not the correct conclusion. ...." (para 44 at p. 731)
>
> "The proceedings in the Constituent Assembly, therefore, do not give an indication that in adopting clauses (4)

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A and (5) of Article 124 of the Constitution, the intention of the Constituent Assembly was to exclude investigation and proof of misbehaviour or incapacity of the Judge sought to be removed, by a judicial body. Having regard to the views expressed by Shri Alladi Krishnaswami Ayyar, who was a member of the Drafting Committee, while opposing the amendments proposed by Shri M. Ananthasayanam Ayyangar, it is possible to infer that the intention of the Constituent Assembly was that the provision with regard to the machinery for such investigtion and proof was a matter which need not be contained in the Constitution and it is a matter for which provision could be made by Parliament by law."

(para 46 at p. 733)

The three available constitutional options were mentioned in the decision of which the second which was accepted in the majority opinion is as under:-

" .....

Second. - Since a motion for presenting an address to the President referred to in Articles 121 and 124(4) has to be on ground of 'proved' misbehaviour and incapacity, no such motion can be made until the allegations relating to misbehaviour or incapacity have first been found to be proved in some forum outside either Houses of Parliament. Law under Article 124(5) is mandatory and until the Parliament enacts a law and makes provision for an investigation into the alleged misbehaviour or incapacity and regulates the procedure therefor, no motion for removal of a Judge would be permissible under Article 124 (4) and the Houses of Parliament would not be brought into the picture till some authority outside the two Houses of Parliament has recorded a finding of misbehaviour or incapacity. The emphasis is on the expression 'proved'."

(para 68 at p. 741)

Acceptance of the second view was stated thus - A

"The second view has its own commendable features. It enables the various provisions to be read harmoniously and, together, consistently with the cherished values of judicial independence. It also accords due recognition to the word "proved" in Article 124(4). This view would also ensure uniformity of procedure in both Houses of Parliament and serve to eliminate arbitrariness in the proceedings for removal of a Judge. It would avoid duplication of the investigation and inquiry in the two Houses. Let us elaborate on this." B C

(para 71 at p. 742)

" ..... The motion which lifts the bar contained in Article 121 is really a motion for such removal under clause (4) of Article 124 moved in the House after the alleged misbehaviour or incapacity has been proved in accordance with the law enacted by the Parliament under clause (5) of Article 124. In this conncection, the parliamentary procedure commences only after proof of misbehaviour or incapacity in accordance with the law enacted under clause (5), the machinery for investigation and finding of proof of the misbehaviour or incapacity being statutory, governed entirely by provisions of the law enacted under clause (5). This also harmonises Article 121. The position would be that an allegation of misbehaviour or incapacity of a Judge has to be made, investigated and found proved in accordance with the law enacted by the Parliament under Article 124(5) without the Parliament being involved up to that stage; on the misbehaviour or incapacity of a Judge being found proved in the manner provided by that law, a motion for presenting an address to the President for removal of the Judge on that ground would be moved in each House under Article 124(4); on the motion being so moved after the proof of misbehaviour or incapacity and it being for presenting an address to the President praying for removal D E F G H

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A of the Judge, the bar on discussion contained in Article 121 is lifted and discussion can take place in the Parliament with respect to the conduct of the Judge; and the further consequence would ensue depending on the outcome of the motion in a House of Parliament. If, however, the finding reached by the machinery provided in the enacted law is that the allegation is not proved, the matter ends and there is no occasion to move the motion in accordance with Article 124(4)."

(para 74 at p. 744)

"The other view is that clause (4) of Article 124 gives power to the Parliament to act for removal of the Judge on the ground of proved misbehaviour or incapacity in the manner prescribed if the matter is brought before it at this stage; and for reaching that stage the Parliament is required to enact a law under clause (5) regulating the procedure for that purpose. This means that making of the allegation, initiation of the proceedings, investigation and proof of the misbehaviour or incapacity of a Judge are governed entirely by the law enacted by the Parliament under clause (5) and when that stage is reached, the Parliament comes into the picture and the motion for removal of the Judge on the ground of proved misbehaviour or incapacity is moved for presentation of the address to the President in the manner prescribed. ..... This indicates that the machinery for investigation and proof must necessarily be outside Parliament and not within it. In other words, proof which involves a discussion of the conduct of the Judge must be by a body which is outside the limitation of Article 121. The word 'proved' also denotes proof in the manner understood in our legal system i.e. as a result of a judicial process. The policy appears to be that the entire stage up to proof of misbehaviour or incapacity, beginning with the initiation of investigation on the allegation being made, is governed by the law enacted under Article 124 (5) and in view of the restriction provided in Article 121, that machinery has to

be outside the Parliament and not within it. If this be so, it is a clear pointer that the Parliament neither has any role to play till misconduct or incapacity is found proved nor has it any control over the machinery provided in the law enacted under Article 124(5). The Parliament comes in the picture only when a finding is reached by that machinery that the alleged misbehaviour or incapacity has been proved. The Judges (Inquiry) Act, 1968 enacted under Article 124(5) itself indicates that the Parliament so understood the integrated scheme of Articles 121, 124(4) and 124(5). The general scheme of the Act conforms to this view. ....."

(para 76 at p. 745)

"*If this be the correct position,* then the validity of law enacted by the Parliament under clause (5) of Article 124 and *the stage up to conclusion of the inquiry in accordance with that law being governed entirely by statute would be open to judicial review as the parliamentary process under Article 124(4) commences only after a finding is recorded that the alleged misbehaviour or incapacity is proved in the inquiry conducted in accordance with the law enacted under clause (5). For this reason the argument based on exclusivity of Parliament's jurisdiction over the process and progress of inquiry under the Judges (Inquiry) Act, 1968 and consequently exclusion of this Court's jurisdiction in the matter at this stage does not arise.* ....."

(para 77 at p. 746)

(emphasis supplied)

" ..... This indicates that this area is not left uncovered which too is a pointer that the stage at which the bar in Article 121 is lifted, is the starting point of the parliamentary process i.e. when the misbehaviour or incapacity is proved; the stage from the initiation of the process by making the allegation, its mode, investigation and proof are covered by the law enacted under clause (5); in case

A the allegation is not proved, the condition precedent to invoke the Parliament's jurisdiction under clause (4), does not exist, which is the reason for Section 6 of 1968 Act saying so; and in case it is proved, the process under clause (4) commences, culminating in the result provided in it."

B (para 79 at p. 747)

"Accordingly, the scheme is that the entire process of removal is in two parts - the *first* under clause (5) from initiation to investigation and proof of misbehaviour or C incapacity is covered by an enacted law, Parliament's role being only legislative as in all the laws enacted by it; and the *second* part only after proof under clause (4) is in Parliament, that process commencing only on proof in accordance with the law enacted under clause (5). Thus the first part is entirely statutory while the second part D alone is the parliamentary process.

The Constitution intended a clear provision for the first part covered fully by enacted law, the validity of which and the process thereunder being subject to judicial E review independent of any political colour and after proof it was intended to be a parliamentary process. It is this synthesis made in our Constitutional Scheme for removal of a Judge."

(paras 81 and 82 at pp. 747-748)

F

"Indeed, the Act reflects the constitutional philosophy of both the judicial and political elements of the process of removal. The ultimate authority remains with the Parliament in the sense that even if the committee for investigation records a finding that the Judge is guilty of the G charges it is yet open to the Parliament to decide not to present an address to the President for removal. But if the committee records a finding that the Judge is not guilty, then the political element in the process of removal has no further option. The law is, indeed, a civilised piece of H legislation reconciling the concept of accountabilty of

Judges and the values of Judicial independence." A

(para 97 at pp. 751-752)

"Our conclusions, therefore, on Contentions B, C and D are as under:

B

The constitutional process for removal of a judge up to the point of admission of the motion, constitution of the committee and the recording of findings by the committee are not, strictly, proceedings in the Houses of Parliament. The Speaker is a statutory authority under the Act. Up to that point the matter cannot be said to remain C outside the Court's jurisdiction. Contention B is answered accordingly.

Prior proof of misconduct in accordance with the law made under Article 124(5) is a condition precedent for D the lifting of the bar under Article 121 against discussing the conduct of a Judges in the Parliament. Article 124(4) really becomes meaningful only with a law made under Article 124(5). Without such a law the constitutional scheme and process for removal of a Judge remains inchoate. Contention C is answered accordingly." E

(paras 99 and 100 at pp. 752-753)

The proceeding being statutory means that it is governed in that part by the law enacted under Article 124(5) and it is statutory in the sense that it is outside the Parliament while thereafter in case of a finding of 'guilty' F by the Committee, the proceedings are in the Parliament.

The constitutional scheme indicated by clauses (4) and (5) of Article 124 and reflected in the law enacted by the Parliament under Article 124(5) is, as indicated in *Sub-Committee on Judicial Accountability,* 'a judicious G blend of the politicial and judicial processes for the removal of Judges' and, therefore, we must first look at these provisions to provide the answer to every query raised in this context. The different schemes for removal of Judges in the other countries do not provide the answer to the problem before us and are at best only of marginal precedent value. The practice and precedents in other countries, such as Australia, may provide guidance H

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A only in respect of the political part of the procedure in our constitutional scheme which commences after a finding of 'guilty' is made by the Inquiry Committee and the report is laid before the Parliament under Section 4(3) of the Act. We must, therefore, find the indication for the problem before us primarily from the provisions of the Constitution and the law enacted under Article 124(5). In view of 'a judicious blend of the political and B judicial processes' in the constitutional scheme in India, no one need look askance at the exclusion of judicial review at the instance of everyone in case the Inquiry Committee makes a finding that the Judge is 'not guilty'. The clear pointer is that the accusation made in the manner prescribed by the specified minimum number of Members of Parliament having been C investigated by an Inquiry Committee comprising of high judicial dignitaries and the conclusion reached by them being that the Judge is 'not guilty' of any misbehaviour, the matter must conclude there scotching all rumours without anyone being permitted to even reagitate much less examine the correctness of the finding of 'not guilty'.

D

When the finding in the Committee's report is that the Judge is 'guilty' of any misbehaviour, then Section 6(2) of the Act mandates that the motion for removal of the Judge shall be taken up for consideration by the House together with the report of the Committee submitted in accordance with Section 4(2) and laid before it under Section 4(3) of the Act. Rule 9(1) of the E Rules provides that where the members of the Inquiry Committee are not unanimous, the report submitted by the Committee shall be in accordance with the finding of the majority of the members thereof. We have already indicated the provision in Rule 9(6) and its true import where the majority of the members makes a finding that the Judge is not guilty. Rule 9(4) provides F for the other situation where the majority of the member of the Committee make a finding that the Judge is guilty of misbehaviour but the third member makes a contrary finding. Unlike sub-rule (6) which contains a clear prohibition against disclosure of the dissenting opinion of the third member when the majority opinion is that the Judge is not guilty, sub-rule (4) requires that where the majority opinion is that the Judge is guilty, the finding to the contrary made G by the third member shall also be forwarded by the Inquiry Committee along with the report submitted under Section 4(2) of the Act in accordance with the findings of the majority that the Judge is guilty, as required by Rule 9(1). This distinction in the two situations is significant. Whereas according to Rule 9(6), the dissenting opinion of the third member is not even to be disclosed to H anyone including the Parliament, where the majority of the members of the

Inquiry Committee makes a finding that the Judge is not guilty of any misbehaviour, where the majority finds the Judge 'guilty' of misbehaviour, the dissenting opinion of the third member to the contrary, that is, 'not guilty' must be forwarded along with the report submitted under Section 4(2) of the Act. Sub-rule (5) of Rule 9 further lays down that an authenticated copy of the finding made by the third member referred to in sub-rule (4) shall also be laid before each House of Parliament. Obviously, the purpose of requiring the dissenting opinion of not guilty by the third member to be submitted along with the report under Section 4(2) and the further requirement that it should also be laid before each House of Parliament is to enable the Parliament while considering the motion for removal of the Judge on a finding of guilty being recorded by the majority of members of the Inquiry Committee to take into account the dissenting opinion as well before deciding whether to act on the majority opinion of guilty or not. Rule 10(2) requires a copy of the evidence received by the Inquiry Committee to be also laid before each House of Parliament along with the report. These provisions indicate the manner of consideration by the Parliament of the motion for removal of the Judge before taking a decision whether the motion is to be adopted in accordance with Article 124(4) or not since it is only on the motion being so adopted by the requisite majority in each House of Parliament that the misbehaviour or incapacity of the Judge shall be *deemed* to have been proved as provided in Section 6(3) of the Act.

The Parliament while considering the motion for removal of the Judge for deciding whether to adopt the motion or not takes into consideration the report as well as the dissenting opinion, if any, of the third member of the Inquiry Committee in case the majority opinion is that the Judge is guilty, along with the entire evidence received by the Inquiry Committee on which the finding of guilty of the Inquiry Committee is based. No doubt, the Parliament does not substitute its finding for that of the Inquiry Committee or supersede it in case it decides not to adopt the motion by the requisite majority so that the motion for removal of the Judge fails and the proceedings terminate but in doing so it does take the decision to not adopt the motion because it declines to accept and act on the finding of guilty recorded in the report of the Committee after debating the issue on the basis of the materials before it.

These express provisions in the law enacted under Article 124(4) leave no doubt that a full consideration on merits including correctness of

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A the finding of 'guilty' made by the Inquiry Committee on the basis of the materials before the Parliament is contemplated during the parliamentary part of the process the removal of a Judge. Notwithstanding the finding of 'guilty' made by the Inquiry Committee in its report, the Parliament may, on a full consideration of the matter on the materials before it, choose not
B to adopt the motion for removal of the Judge which would terminate the process of removal.

Consistent with this scheme which is manifest from the provisions of the law enacted under Article 124(5) is the requirement that the Parliament should also have the benefit of the comments, if any, of the concerned
C Judge on the finding of 'guilty' against him made in the report of the Inquiry Committee. In addition to the requirement of placing of the materials received by the Inquiry Committee before each House of Parliament in accordance with Rule 10(2), the requirement in sub-rules (4) and (5) of Rule 9 of the dissenting opinion of not guilty by the third member
D of the Inquiry Committee to be also made available to the Parliament is a clear indication that when the Parliament takes up for consideration the motion for removal of the Judge along with the report containing the finding of 'guilty' made by the Inquiry Committee, the Parliament should have not merely the entire material received by the Inquiry Committee on which its finding of 'guilty' is based but also the contrary opinion of not
E guilty recorded on the same material by the third member of the Committee. The concerned Judge would invariably be in a position to facilitate the task of the Parliament in this behalf by indicating his point of view against the finding of guilty recorded in the Committee's report, in case he chooses to avail of the opportunity. It is, therefore, implicit in the constitutional
F scheme for the removal of a Judge provided in Article 124(4) and the law enacted under Article 124(5) that the Parliament should also have the benefit of the point of view and the comments, if any, of the concerned Judge on the finding of 'guilty' against him recorded by the Inquiry Committee in its report when the Parliament takes up the motion for removal of the Judge for consideration along with the Inquiry Committee's report
G and the other relevant materials made available to it. To enable performance of this exercise and to effectuate the concerned Judge's right to show cause against the finding of 'guilty' made in the report at this stage to the Parliament, it is the clear obligation of the Speaker/Chairman to supply a copy of the Inquiry Committee's report to the concerned Judge
H while causing it to be laid before the Parliament under Section 4(3) 'as

soon as may be' on its submission under Section 4(2). This view also has the advantage of providing the concerned Judge an opportunity during the parliamentary part of the process of removal to place his point of view and offer the comments, if any, on the finding of 'guilty' against him made by the Inquiry Committee for consideration by the Parliament before voting on the motion for removal of the Judge.

The further question then is of the nature of this opportunity to the conerned Judge during the parliamentary part of the process. Reference to the procedure adopted for giving an opportunity to Mr. Justice Vasta of the Supreme Court of Queensland in Australia where the process for removal of the Judge was entirely parliamentary was made by Shri F.S. Nariman. Learned counsel submitted that an opportunity to the learned Judge during the parliamentary process in the case of the finding of 'guilty' by the Committee is not inconsistent with the constitutional scheme adopted in India where the parliamentary process commences only after a finding of 'guilty' is recorded by the Inquiry Committee during the statutory part. The learned Attorney General expressed his full agreement with this submission of Shri Nariman. Shri Kapil Sibal without contesting this submission of Shri Nariman supported on this aspect by the Attorney General, contended that it would be needless harassment to the learned Judge to face also the parliamentary process if the finding of 'guilty', if any, recorded by the Committee in its report can be quashed by resort to judicial review thereof at this stage on the permissible grounds.

We find no reason to doubt the correctness of the submission of Shri Nariman about the requirement of an opportunity to the concerned Judge to place his point of view with the comments, if any, against the Committee's finding of 'guilty' for consideration by the Parliament along with the other materials available to it while considering the motion for removal of the Judge to decide to adopt or not to adopt it. We are, therefore, of the opinion that in the constitutional scheme in India envisaged and reflected by the constitutional provisions and the law enacted thereunder for the removal of a Judge it is implicit that such an opportunity be given to the concerned Judge when the Parliament takes up the motion for his removal for consideration along with the Committee's report and other relevant materials. We have already indicated the obligation of the Speaker/Chairman to supply a copy of the report to the concerned Judge while laying it before the Parliament under Section 4(3) as a part of this

A opportunity to be given to the learned Judge. The precise details of the manner in which such an opportunity is to be given to the concerned Judge may be for the Speaker/Chairman and the Parliament to decide, but it does appear to us to be the clear mandate in our constitutional scheme that the procedure adopted for this purpose should be such as would ensure
B availability to each House of Parliament of the concerned Judge's point of view and comments, if any, on the finding of guilty made in the Committee's report when it takes up for consideration the motion for removal of the Judge, such procedure ensuring fairness to the concerned Judge and being in keeping with the dignity of the high office held by the learned Judge.

C This aspect being related to the right of judicial review available to the concerned Judge and in view of our above opinion that an opportunity to the Judge during the parliamentary process is clearly implicit in the constitutional scheme, a brief reference to the nature of opportunity given in the case of Justice Vasta in Australia would be helpful as a pursuasive
D precedent.

Justice Angelo Vasta faced a proceeding for his removal from office as a Judge of the Supreme Court of Queensland in Australia. A Commission of Inquiry was set up under the Parliamentary (Judges) Commission of Inquiry Act, 1988. The function of the Commission as provided in the
E Act was to inquire and advise the Legislative Assembly of Queensland whether the behaviour of Justice Vasta warranted his removal from office. The Commission was constituted of a former Chief Justice of Australia and two other Judges. The Commission was guided by the Special Report of the Australian Parliamentary Commission of Inquiry into the conduct of
F Justice Lionel Murphy, a Judge of the High Court of Australia under Section 72 of the Australian Constitution. The Commission advised the Legislative Assembly of Queensland that in the opinion of the members of the Commission, the behaviour of Justice Vasta in relation to the matters specified warranted his removal from office as a Judge of the Supreme Court of Queensland. The report of the Commission of Inquiry concerning
G Justice Vesta was laid on the table of the House on May 30, 1989. The Parliamentary Debates No. 16, 1988-89, from page 5146, indicate the procedure adopted by the Legislative Assembly of Queensland on the report of the Commission of Inquiry being laid before the House. On May 30, 1989, Mr. M.J. Ahern, Premier and Minister for State Department,
H moved the House in the matter and while saying that Justice Vasta be

called upon to show cause why he should not be removed from office, speaking on the motion the Premier said :-

> The Commissioners have found and reported to Parliament that there has been behaviour by the Judge such that his removal from office is warranted. *No responsible Parliament could in those circumstances do other than call upon the judge to show cause why he should not be removed. That course is consistent with history, convention, the law and proper constitutional practice. The resolution proposed by the Government will give the judge full and proper opportunity to show cause* without embarking up a re-examination of those matters so minutely and carefully examination (*sic*)by the Commissioners.
>
> xxx xxx xxx
>
> I intend to say no more. I urge all honourable members to adopt a similar discretion in the interests of not prejudicing the judge and his right to appear before us to attempt to show cause."
>
> (at p. 5147)
>
> (emphasis supplied)

In seconding the motion, the Minister for Justice and Attorney General, Mr. P.J. Clauson said :-

> "xxx xxx xxx
>
> By establishing the Parliamentary Judges Commission, the Assembly delegated to that body the difficult and arduous task of hearing the evidence, determining questions of credit and law, and making recommendations which we will consider. Of course, the final decision rests quite properly with the Legislative Assembly. The Parliamentary Commission was established to assist Parliament, not to pre-empt its important constitutional role.
>
> xxx xxx xxx

A *I believe that Mr. Justice Vasta has the right - and we have the duty to allow him - to address us, either personally or by his legal representatives, should he so wish;* but the purpose of this privilege is to assist us in our difficult deliberation. .....

B Finally, I also wish to emphasise to honourable members that it would be inappropriate at this stage for there to be debate on the findings of the Commission and *it would be better both for the dignity of this House and in fairness to Mr. Justice Vasta that we give him the opportunity to address*
C *us before the matter is fully debated and a decision is made by the Assembly."*

(at pp. 5147-48)

(emphasis supplied)

D The Parliamentary Debates further show that Justice Vasta was given such an opportunity which he availed. It is not necessary in the present case to make any further reference to the proceedings against Justice Vasta. Suffice it to say that the materials relating to the proceedings of removal of Justice Vasta show clearly that he was given an opportunity to
E show cause against his removal from office as a Judge by the Parliament when it took up for consideration the recommendation of the Commission of Inquiry which had found him guilty of misbehaviour warranting his removal; and the cause shown by Justice Vasta before the Legislative Assembly was taken into consideration in making the final decision.

F We find no reason why in the constitutional scheme adopted in India, the concerned Judge should not be given a similar opportunity when the Parliament takes up for consideration the motion for his removal on a finding of 'guilty' being made by the Committee constituted under the Judges (Inquiry) Act, 1968. Such an opportunity is consistent with and is
G also the requirement of fairness, an essential attribute of procedure for any decision having civil consequences. We need say no more on this aspect. We consider it necessary to say this much in view of our above opinion and Shri F.S. Nariman's submission with which the learned Attorney General agreed that this is the kind of procedure which the Parliament is expected to and is likely to follow in the present case, should the occasion arise for
H commencement of the parliamentary process if the Committee finds the

learned Judge 'guilty' of misbehaviour. A

If the constitutional scheme, as we have held, envisages and provides for an opportunity to the concerned Judge to show cause against his removal from office on the finding of 'guilty' recorded by the Inquiry Committee being placed before the Parliament for its consideration and the Parliament is required to take it into account before it decides to accept B the finding of 'guilty' and act on it by adopting the motion of removal by the requisite majority or not to adopt the motion which would terminate the proceedings for removal, it would indicate that the opportunity of this kind in the scheme to show cause is against the inchoate finding of guilty prior to the stage of making the final decision which alone is required to C be subject to judicial review. The clear intendment is that in such a situation it is the Parliament which should first consider the question without there being any need for judicial review at that stage. This is so because the misbehaviour is *deemed to be proved,* according to Section 6(3) of the Act, only when the Parliament adopts the motion in the manner D prescribed. The remedy of judicial review to the concerned Judge is available only when his misbehaviour is 'deemed to be proved' in law and not against the inchoate finding of 'guilty' made by the Inquiry Committee which may or may not be acted upon by the Parliament. Another reason to support this view appears to be that the proceedings for removal of a Judge are required to be concluded at the earliest in public interest and, E therefore, no interdiction of the process is contemplated at the stage of an inchoate finding of 'guilty' by the Inquiry Committee. An opportunity to the concerned Judge at that stage also to show cause against that inchoate finding of 'guilty' fully safeguards his interest without the need for judicial review at that stage, the scope for Parliament's scrutiny of the Committee's F finding of guilty being very wide.

Even though judicial review of the finding of 'guilty' made by the Inquiry Committee may be permissible on limited grounds pertaining only to legality, yet the power of the Parliament would not be so limited while G considering the motion for removal inasmuch as the Paarliament is empowered to not adopt the motion in spite of the finding of 'guilty' made by the Committee on a consideration of the entire material before it which enables it to go even into the probative value of the material on which the finding is based and to decide the desirability of adopting the motion in a given case. The Parliament decides by voting on the motion and is not H

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A required to give any reasons for its decision if it chooses not to adopt the motion. We have already indicated that the concerned Judge is to be given an opportunity to show cause against his removal before the Parliament. There is no reason to assume that the Parliament would not discharge its obligation in the constitutional scheme with as much responsibility and seriousness as is expected from any other organ of the State or authority B involved in the process of removal of a Judge. The nature and extent of power entrusted to the Parliament in this process is a relevant factor to indicate exclusion of judicial review till after the making of the order of removal by the President in case the parliament adopts the motion by the requisite majority. The finding of 'guilty' made by the Committee is only a C recommendation to the Parliament to commence its process and to act on that finding which, at best, is tentative and inchoate at the stage of submission of the report under Section 4 of the Act.

The contrary view would result in a serious anomaly. If the finding of D 'guilty' made by the Committee by itself amounts to 'proved misbehaviour' for the purpose of Article 124(4), anomalous situation would arise if the Parliament does not adopt the motion of removal thereafter. In that situation the process would end and, notwithstanding a finding of 'proved misbehaviour', the Judge cannot be removed from office. Such a piquant situation at the end of the process of removal in spite of a finding of 'proved misbehaviour' could E never be contemplated in the scheme and, therefore, a construction which can lead to that absurdity must be eschewed.

This being so, the remedy of judicial review to the concerned Judge has to be only after the stage of his 'proved misbehaviour' is reached on F adoption of the motion by the Parliament which leads inevitably to the order of removal made by the President in accordance with Article 124(4). Resort to judicial review by the concerned Judge between the time of conclusion of the inquiry by the Committee and making of the order of removal by the President would be premature and is unwarranted in the constitutional scheme.

G

This construction while protecting the interest of the concerned Judge gives full effect and due importance to the role of all the high dignitaries involved in the process of removal, there being no reason to doubt that each one of them would be fully alive to the significance of his role and extent of H obligation under the constitutional scheme. If, however, any illegality occurs

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even then, the provision for judicial review at the end of the process permits its correction without inte dicting the process in between. A

We may at this stage deal with the other submission of Shri Kapil Sibal that the Inquiry Committee is a Tribunal for the purpose of Article 136 of the Constitution.

B

Shri Kapil Sibal has urged that the Committee constituted by the Speaker/Chairman in exercise of his power under Section 3(2) of the Judges (Inquiry) Act, 1968 is a 'Tribunal' for the purpose of Article 136 of the Constitution and since an appeal would lie in this Court against the findings of the said Committee, the report of the Committee is required to be furnished to the Judge concerned in order to enable him to exercise that right. Shri Sibal has pointed out that while recording its findings on the charges framed by it the Committee exercises judicial functions. Reference has been made to the provisions of Section 5 of the Act to show that the Committee has the trappings of a court. Relying on the decisions of this Court in *The Bharat Bank Ltd.* v. *Employees of the Bharat Bank Ltd.,* [1950] SCR 459; *Durga Shankar Mehta* v. *Thakur Raghuraj Singh & Ors.,* [1955] 1 SCR 267; *Indo-China Steam Navigation Co. Ltd.* v. *Jasjit Singh;* [1964] 6 SCR 594 and *Dev Singh & Ors.* v. *Registrar, Punjab & Haryana High Court & Ors.,* [1987] 2 SCR 1005, Shri Sibal has contended that the Committee fulfils the tests laid down by this Court for determining whether an authority is a tribunal for the purpose of Article 136. The learned Attorney General has supported Shri Sibal.

C

D

E

Before we deal with the question whether the Committee in the present case fulfils the tests for determining whether a particular body is a tribunal, we may briefly refer to some of the decisions of this Court wherein this question has been considered.

F

In *Jaswant Sugar Mills Ltd.* v. *Lakshmichand & Ors.,* [1963] Supp. 1 SCR 242, at p. 260, the expression 'determination', in the context in which it occurs in Article 136, has been construed to mean "an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law of disposal". It was further held that the expression "order" must also have a similar meaning, except that it need not operate to end the dispute. The Conciliation Officer, while granting or refusing permission to alter the terms of employment of workmen, in exercise of the power conferred upon him by clause 29 of the order issued

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A by the Governor of Uttar Pradesh under the U.P. Industrial Disputes Act, 1947, was held not to be a Tribunal under Article 136 though the Conciliation Officer was required to act judicially. It was observed :

> *"He is concerned in granting leave to determine whether there is a prima facie case for dismissal or discharge of an employee* or for altering terms of employment, and whether the employer is actuated by unfair motives; he has not to decide whether the proposed step of discharge or dismissal of the employee was within the rights of the employer. *His order merely removes a statutory ban in certain eventualities,* laid upon the common law right of an employer to dismiss, discharge or alter the terms of employment according to contract between the parties. The Conciliation Officer has undoubtedly to act judicially in dealing with an application under cl. 29, but he is not invested with the judicial power of the State: he cannot therefore be regarded as a 'tribunal' within the meaning of Article 136 of the Constitution."
>
> (at p. 262)
>
> (emphasis supplied)

In *Workmen of Meenakshi Mills Ltd.* v. *Meenakshi Mills Ltd. & Anr.*, JT (1992) 3 SC 446, on a conspectus of the earlier decisions, it was held by the Constitution Bench that the appropriate Government or authority while granting or refusing permission for retrenchment of workmen under Section 25-N of the Industrial Disputes Act, 1947, is not a tribunal on the view that the position of the appropriate Government or authority exercising the said power was not very different from that of a conciliation officer who was held to be not a tribunal in *Jaswant Sugar Mills.* The view taken was that there was no provision attaching finality to an order under Section 25-N(2) and it was permissible for the workmen aggrieved by retrenchment affected in pursuance of order granting permission for such retrenchment to raise an industrial dispute and also open to the appropriate Government to refer such a dispute for adjudication. It is unnecessary to refer to the earlier decisions considered therein.

The decisions of this Court indicate that one of the considerations which has weighed with the Court for holding a statutory authority to be a

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tribunal under Article 136 is finality or conclusiveness and the binding nature of the determination by such authority.

It may be pointed out that in *Dev Singh & Ors.* v. *Registrar, Punjab & Haryana High Court & Ors.* (supra), on which reliance was placed by Shri Sibal, it was held that the High Court, while exercising its appellate powers under Rule X(2) in Chapter 18-A of the Rules and Orders of the Punjab High Court Vol. I, against penalties inflicted by the District Judge in disciplinary proceedings against ministerial servants, was acting purely administratively and was not acting as a tribunal since it was not resolving any dispute or controversy between two adversaries but only exercising its power of control over the subordinate judiciary. It was observed :

> "..... In certain matters even Judges have to act administratively and in so doing may have to act quasi-judicially in dealing with the matters entrusted to them. It is only where the authorities are required to act judicially either by express provisions of the statute or by necessary implication that the decisions of such an authority would amount to a quasi-judicial proceedings. When Judges in exercise of their administrative functions decides cases it cannot be said that their decisions are either judicial or quasi-judicial decisions. .... In the appeal before the High Court, the High Court was following its own procedure, a procedure not normally followed in judicial matters. *The High Court was not resolving any dispute or controversy between two adversaries. In other words, while deciding this appeal there was no lis before the High Court.* The High Court was only exercising its power of control while deciding this appeal....."
>
> (at pp. 1028-29)
>
> (emphasis supplied)

We have earlier indicated the constitutional scheme in the process of removal of a Judge as envisaged by clauses (4) and (5) of Article 124 read with the provisions of the law enacted under Article 124(5). It is with reference to that constitutional scheme that this contention has to be examined.

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A It is no doubt true that while investigating into the charges framed by it against the Judge, the Committee is required to act judicially and, as held by this Court in *Sub-Committee on Judicial Accountability*, the said process is subject to judicial review. But the question is whether in discharging this function the Committee acts as a tribunal. In order to answer the question it is necessary to examine the nature of determination made by the Committee.

In this context, it would be relevant to recall the scheme indicated earlier. The determination by the Committee that the Judge is 'not guilty' of misbehaviour, is alone final as it terminates the proceeding. However, C in that case there is no scope for judicial review of the finding of 'not guilty' made by the Committee as already indicated. This aspect negates the character of tribunal for this reason alone. In the other situation when the Committee's determination is that the Judge is 'guilty' of misbehaviour, that finding is inchoate which may or may not be acted upon by the Parliament. D Finding of 'guilty' made by the Committee is in the nature of recommendation to Parliament to commence its process and by itself is not self-effectuating. Thus, the finding recorded by the Committee where it finds the Judge guilty of any misbehaviour being subject to acceptance by the Parliament, is not final and is, therefore, not conclusive.

E No action is to be taken on the motion in case the Committee finds that the Judge is not guilty of any misbehaviour. In that event if the Committee has to be regarded as a tribunal under Article 136, it would serve no useful purpose and would also lead to the anamolous result that the Committee is to be treated as a tribunal if it finds that the Judge is not F guilty of any misbehaviour but it is not to be treated as a tribunal if it finds that the Judge is guilty of any misbehaviour. The character of the Committee as a tribunal cannot depend on the findings that are ultimately recorded by it.

The misbehaviour of the Judge is 'deemed to be proved' according G to Section 6(3) of the Act only when the motion is adopted by the Parliament and not otherwise. The finding of 'guilty' made by the Committee does not by itself bring about that result. An essential test of the determinative nature of the finding, an attribute of the tribunal is lacking. The test indicated in *Dev Singh* (supra) of the absence of any dispute or H lis between two adversaries also negatives the contention that the Commit-

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tee is a tribunal for the purpose of Article 136. A

In effect, the report of the Inquiry Committee containing a finding that the Judge is guilty of misbehaviour is in the nature of recommendation for his removal which may or may not be acted upon by the Parliament while considering the motion for removal according to the procedure laid down in the Constitution for removal of a superior Judge, which is the only B manner of curtailing the fixed tenure of the Judge. This is for security of tenure and thereby to ensure independence of the higher judiciary. The report of the Committee being of this kind, in our opinion, the Inquiry Committee cannot be treated as a 'tribunal' for the purpose of Article 136 of the Constitution. For this reason, no provision is made in the law enacted C under Article 124(5) for supply of a copy of the report by the Committee to the concerned Judge before submitting it to the Speaker as required by Section 4 of the Act in the manner prescribed in the Rules.

If the supply of a copy of the report to the Judge by the Committee before its submission to the Speaker was contemplated by the law enacted D under Article 124(5) that area would not be left blank in the provisions made in the law while providing elaborately for submission of the report together, with its manner, including the number of copies, in Section 4 of the Act and Rule 9 framed thereunder. The absence of such a provision in this law is deliberate and not an inadvertent omission to emphasise E absence of that requirement which also matches the contruction made by us of the constitutional scheme including the requirement of an opportunity to show cause against removal to be given by the Parliament to the Judge.

Keeping in view the aforesaid provisions of the Act and Rules and specially the fact that certain finding recorded by a member of the Com- F mittee is not required to be disclosed in the given circumstances and the finding recorded by the Committee holding that the Judge is guilty of any misbehaviour is not final and conclusive, it is legally not permissible to hold that the Committee is a tribunal under Article 136 of the Constitution. This contention of Shri Sibal is, therefore, rejected. G

No doubt, on a motion for presenting an address to the President praying for removal of the Judge being adopted in each House of Parliament by the requisite majority in the manner prescribed, the misbehaviour or incapacity of the Judge is 'deemed to be proved' and the order of removal made by the President in accordance with Article 124(4) would H

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follow. The question is: whether it is open to the concerned Judge so removed to challenge the finding of 'guilty' made by the Inquiry Committee which leads to the making of order of removal by the President *after the President has made the order of removal?* Shri Nariman's submission was that judicial review of the order of removal may not be excluded but he could not definitely say so. The learned Attorney General as well as Shri Sibal submitted that it is likely that the remedy of judicial review may be available to the concerned Judge after the order of removal has been made, but it was extremely doubtful. Shri Sibal added that with the parliamentary part of the process intervening, it appeared more unlikely that such a remedy would be available to the concerned Judge after the order of removal is made by the President.

On giving our anxious consideration to the submissions made by the learned counsel, we find no embargo, in principle or authority, to infer that in the constitutional scheme adopted in India, Judicial review of the finding of guilty recorded by the Inquiry Committee during the statutory part of the process is impermissible after that tentative finding matures into 'proved misbehaviour' culminating in the order of removal. The argument of 'now or never' does not appeal to us and what appears more consistent in the constitutional scheme is that judicial review on permissible grounds is available *not now but at the end of the process after the order of removal,* if that stage is reached. In our view, this conclusion adequately protects the right of the concerned Judge, ensures expeditious conclusion of the process once it is commenced in the manner prescribed and accords with the view that the scheme is 'a judicious blend of the political and judicial processes for the removal of Judges'. It ensures preservation of the right, interest and dignity of the learned Judge and is commensurate with the dignity of all the institutions and functionaries involved in the process. It also excludes the needless meddling in the process by busy bodies confining the participation in it to the Members of Parliament, the Speaker/Chairman and the Inquiry Committee comprising of high judicial functionaries apart from the concerned Judge, if the allegations permitted to be made only in the prescribed manner justify an inquiry into the conduct of the Judge.

In the event of an order of removal being made by the President under Article 124(4), the right of the concerned Judge to seek judicial review on permissible grounds would be for quashing the order of removal made against him on the basis that the finding of 'guilty' made by the

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Inquiry Committee in its report which matured into 'proved misbehaviour' on adoption of the motion by Parliament suffers from an illegality rendering it void resulting in the extinction of the condition precedent for commencement of the parliamentary process for removal in the absence of which there is no foundation for considering or adopting the motion for presenting an address to the President for removal of the Judge and, therefore, no authority in the President to make the order of removal.

The permissible grounds for judicial review of the finding of 'guilty' reached by a statutory process are well-settled and whether the ground of challenge in a given case is available for this purpose or not would be a question of fact in each case. In view of the limited question raised in this petition after conclusion of the proceedings before the Inquiry Committee and the preparation of its report, there is no occasion for us to examine the grounds of attack to a finding of 'guilty', if any, reached in the present case. That question does not arise for consideration by us in the present proceeding and, therefore, we need not say anything more on this aspect.

We may, however, add that the intervention of the parliamentary part of the process, in case a finding of guilty is made, which according to Shri Sibal would totally exclude judicial review thereafter is a misapprehension since limited judicial review even in that area is not in doubt after the decision of this Court in *Keshav Singh* [1965] 1 SCR 413. A reference to this aspect was made also in *Sub-Committee on Judicial Accountability,* while dealing with the meaning and scope of clause (5) of Article 124 of the Constitution. It was said therein as under :

> "Article 124(5) is in the nature of a special provision intended to regulate the procedure for removal of a Judge under Article 124(4) which is not a part of the normal business of the House but is in the nature of special business. It covers the entire field relating to removal of a Judge. Rules made under Article 118 have no application in this field.
>
> Article 124(5) has no comparison with Article 119. Articles 118 and 119 operate in the same field viz., normal business of the House. It was, therefore, necessary to specifically prescribe that the law made under Article 119 shall prevail over the rules of procedure made under

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A Article 118. Since Articles 118 and 124(5) operate in different fields a provision like that contained in Article 119 was not necessary and even in the absence of such a provision, *a law made under Article 124(5) will override the rules made under Article 118 and shall be binding on both the Houses of Parliament. A violation of such law would constitute illegality and could not be immune from judicial scrutiny under Article 122(1).*"

B

(paras 95 and 96 at p. 751)

(emphasis supplied)

C

At this stage, a reference to the nature and scope of judicial review as understood in similar situations is helpful. In *Administrative Law* (Sixth Edition) by H.W.R. Wade, in the Chapter "Constitutional Foundations of the Powers of the Courts" under the heading 'The Sovereignty of D Parliament', the effect of Parliament's intervention is stated thus :

"..... There are many cases where some administrative order or regulation is required by statute to be approved by resolutions of the Houses. But this procedure in no way protects the order or regulation from being condemned E by the court, under the doctrine of ultra vires, if it is not strictly in accordance with the Act. *Whether the challenge is made before or after the Houses have given their approval is immaterial.*"

F

(at p. 29)

(emphasis supplied)

Later at p. 411, Wade has said that *'in accordance with constitutional principle, parliamentary approval does not affect the normal operation of* G *judicial review'*. At p. 870 while discussing 'Judicial Review', Wade indicates the position thus –

"As these cases show, judicial review is in no way inhibited by the fact that rules or regulations have been laid before Parliament and approved, despite the ruling H of the House of Lords that the test of unreasonableness

should not then operate in its normal way. The Court of Appeal has emphasised that in the case of subordinate legislation such as an Order in Council approved in draft by both Houses, 'the courts would without doubt be competent to consider whether or not the Order was properly made in the sense of being intra vires'." A B

The clear indication, therefore, is that mere parliamentary approval of an action or even a report by an outside authority when without such approval, the action or report is ineffective by itself, does not have the effect of excluding judicial review on the permissible grounds. In the present context, the only question for us to consider is whether judicial review of the finding of guilty in the report of the Inquiry Committee constituted under the Judges (Inquiry) Act, 1968 would be permissible on the available grounds of judicial scrutiny after the making of an order of removal by the President pursuant to adoption of the motion for removal by the Parliament based on the Inquiry Committee's report. There is no ground to hold that judicial review is barred for this reason. C D

In our opinion, availability of judicial review to the learned Judge, in case the need arises as a result of the order of removal made by the President, after the making of such an order cannot be doubted in view of the wide powers of the Supreme Court of India. E

Judicial review is the exercise of the courts' inherent power to determine legality of an action and award suitable relief and thereby uphold the rule of law. No further statutory authority is needed for the exercise of this power which is granted by the Constitution of India to the superior courts. There is no reason to take the view that an order of removal of a Judge made by the President of India under Article 124(4) of the Constitution is immune from judicial review on permissible grounds to examine the legality of the finding of guilty made by the Inquiry Committee during the statutory process for removal which is the condition precedent for commencement of the parliamentary process culminating in the making of order of removal by President. F G

In *Regina* v. *Boundary Commission for England,* Ex parte Foot and Others, *Regina* v. *Boundary Commission for England,* Ex parte Gateshead Borough Council and Others [1983] 1 Q.B. 600, C.A., the Court of Appeal held that the judicial review by the High Court was permissible to consider H

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A whether the Boundary Commission had properly carried out the instructions given by the Parliament in its report under the terms of the House of Commons (Redistribution of Seats) Act, 1979. The conclusion of the Court of Appeal at p. 635 on examining the merits was as under :-

> B "..... Parliament has thought it right to set up independent advisory bodies, the Boundary Commission, to advise it and, in so doing, it has given the commissions instructions as to the criteria to be employed in formulating that advice. For good reasons, which we can well understand, Parliament has not asked the courts to advise C it and it has not provided for any right of appeal to the courts from the advice or proposed advice of the Boundary Commissions.
>
> *This does not mean that the courts have no part to play.* D They remain charged with the duty of helping to ensure that the instructions of Parliament are carried out. *This is done by a procedure known as judicial review. Precisely what action, if any, should be taken by the Courts in any particular case depends upon the circumstances of that case* including, in particular, the nature of the instructions E which have been given by Parliament to the minister, authority of body concerned."
>
> (emphasis supplied)

F On that conclusion, the Court of Appeal declined to interfere. The House of Lords dismissed the further appeal. Judicial review of the action of an independent advisory body set up by the Parliament to advise it is clearly indicated by this decision.

In *Nottinghamshire County Council* and *Secretary of State for the* G *Environment, City of Bradfored Metropolitan Council* and *Secretary of State for the Environment,* [1986] 1 A.C. 240, the House of Lords specified the limits of judicial review 'in a matter of public financial administration that had been one for the political judgment of the Secretary of State and the House of Commons' clearly indicating existence of the power of review in H such matter while circumscribing limits thereof. We are at present con-

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cerned only with existence of the power of judicial review in such matters and not the extent of its limits. A

This is also the indication from the decision of the Court of Appeal in *Regina* v. *Her Majesty's Treasury,* Ex parte Smedley, [1986] 1 Q.B. 657, C.A., wherein the relevant passages are as under : B

> "..... It therefore behoves the courts to be ever sensitive to the paramount need to refrain from trespassing upon the province of Parliament or, so far as this can be avoided, even appearing to do so. Although it is not a matter for me, I would hope and expect that Parliament would be similarly sensitive to the need to refrain from trespassing upon the province of the courts." (at p. 666) C

> "I have somewhat laboured these distinctions between the respective functions of Parliament and Her Majesty in Council in the present case, for the purpose of demonstrating the somewhat limited role which is allotted to Parliament by section 1(3) of the Act of 1972. This role is analogous to a power of veto. If it withholds its approval from the draft Order in Council, the Order cannot be made. If, however, the approval of Parliament is given, Her Majesty in Council is left with a discretion whether or not to make the Order. There is no possible question of the court seeking or being able to control the exercise of the Parliamentary power of veto. However, I can see no reason why the exercise of the last mentioned discretion given to Her Majesty in Council should not be open to attack in the courts by the process of judicial review, subject to the stringent restrictions on any such attack imposed by what has come to be known as the *Wednesbury* principle (*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation,* [1948] 1 K.B. 223, 229). ....." D E F G

(at p. 672)

The contention that the remedy of judicial review would not be available to the learned Judge once the parliamentary part of the process of removal commences on a finding of guilty being made in the report of H

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A the Inquiry Committee, even when it leads to the making of an order of removal against him on account of the intervention of the parliamentary process, is, in our opinion, based on a misapprehension and is, therefore, not acceptable to us.

B We may briefly refer to the indication available of judicial review in similar situations in some other countries and also mention the two decisions in *Halsted L. Ritter* v. *The United States,* 84 C. Cls. 293 and *Adam Clayton Powell* v. *John W. McCormack,* 23 L. Ed. 2d. 491 : 395 US 486. Ritter was a Judge of the District Court in the United States who was impeached for his removal from office in 1936. The House of Repre-
C sentatives of the United States adopted articles of impeachment against him which were duly presented to the Senate of the United States sitting as the High Court of Impeachment. Ritter filed a suit to recover his salary for the period in which the question arose of the Court's jurisdiction to review the conclusion of the United States Senate in a case of impeachment
D of a Judge. Ritter's suit was dismissed as the Court came to the conclusion that it had no authority to review the impeachment proceedings held in the Senate since 'the Senate was the sole tribunal that could take jurisdiction of the articles of impeachment presented to that body ..... and its decision is final'. Apart from the fact that the law in United States has undergone considerable. Change since *Ritter's* case, it appears to us that *Ritter* is
E clearly distinguishable since the process for removal of a Judge there was entirely political, no part of it being statutory, and Article I of the U.S. Constitution states that the House 'shall have sole power of impeachment' and that 'the Senate shall have the sole power to try all impeachments'. On the contrary, the contitutional scheme in India, as already indicated, is that
F the scheme is composite being a judicious blend of statutory and parliamentary components.

Adam Clayton Powell v. *John W. McCormack,* 23 L. Ed. 2d 491 is a decision rendered in 1969. It was held by the U.S. Supreme Court that the
G House of Representatives has no power to exclude from its membership a person duly elected who meets the requirements specified in the Federal Constitution; and such a person on being excluded from membership by a resolution of the House is entitled to a declaratory judgment that his exclusion was unlawful. It was held that the case was justiciable since the House of Representatives had no power to exclude from its membership
H any person who was duly elected and who met the requirements specified

in the Constitution, there being a distinction between exclusion from Congress and expulsion therefrom. It was held in *Powell* while dealing with the question of justiciability and the 'political question doctrine' relating to it, as under" :-

> "Respondents' first contention is that this case presents a political question because under Art. I, S. 5, there has been a "textually demonstrable constitutional commitment" to the House of the "adjudicatory power" to determine Powell's qualifications. Thus it is argued that the House, and the House alone, has power to determine who is qualified to be a member.
>
> In order to determine whether there has been a textual commitment to a co-ordinate department of the Government, we must interpret the Constitution. In other words, we must first determine what power the Constitution confers upon the House through Art. I, S. 5, before we can determine to what extent, if any, the exercise of that power is subject to judicial review. ....."
>
> xxx xxx xxx
>
> "In other words, whether there is a "textually demonstrable constitutional commitment of the issue to a coordinate political department" of government and what is the scope of such commitment are questions we must resolve for the first time in this case. *For, as we pointed out in Baker* v. *Carr, Supra, "deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution."*
>
> (paras 22 and 23 at pp. 515-517)
>
> (emphasis supplied)

Powell's case indicates availability of judicial review in certain situations even where the entire process is within the House.

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A *Salleh Abas* v. *Abdul Hamid,* 1988 L.R.C. 25 was a case relating to removal of a Supreme Court Judge in Malaysia. Article 125 of the Constitution of Malaysia is similar to Article 124 of the Constitution of India. Clauses (2), (3) and (4) of Article 125 of the Constitution of Malaysia provide that a Judge of the Supreme Court shall not be removed from
B office except in accordance with the provisions of the Article; clause (3) provides for removal on the ground of misbehaviour or of inability, from infirmity of body or mind or any other cause, properly to discharge the functions of his office and prescribes the appointment of a tribunal in accordance with clause (4) when such a situation arises; and then only is there removal of a Judge from office on the recommendation of the
C tribunal. Clause (4) therein prescribes the composition of the tribunal by appointment of the Judges specified. The question arose of jurisdiction of the Court to restrain the tribunal appointed under Article 125(3) from submitting its recommendations or report of the inquiry made by it in connection with the removal of a Judge of the Supreme Court of Malaysia.
D The Supreme Court of Malaysia expressed its unanimous view as under :

> "The function of the Tribunal appointed under Article 125(3) of the Constitution is to enquire and investigate on the representation and then report to the Yang di-Pertuan Agong with any recommendation it may make. *The*
E *Tribunal is a body which investigates and does not decide. It is performing a constitutional function.* The Tribunal should not therefore be restrained from performing its constitutional function.
>
> F Finally, the members of the Tribunal are appointees of the Yang di-Pertuan Agong. From the language of Article 125 it is clear the Yang di-Pertuan Agong is entitled to the report of the Tribunal. To restrain the Tribunal from submitting their report is in effect to restrain His Majesty from receiving the report."
>
> G (at p. 28)
>
> (emphasis supplied)

Injunction was refused to restrain submission of the report by the
H Tribunal constituted under Article 125(3).

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Raoul Berger, Impeachment : The Constitutional Problems (1973), in Chapter III dealing with 'Judicial Review', states thus :

> "..... If there be indeed a conflict between the judicial jurisdiction in "all cases" and the Senate's "Sole power to try all impeachments," our course has been marked out by Chief Justice Marshall : "*When two principles come in conflict with each other, the court must give them both a reasonable construction, so as to preserve them both to a reasonable extent,*" a canon earlier cited by Elbridge Gerry in the First Congress. We need only read the power to "try" as a grant of jurisdiction to try a case in the first instance, leaving untouched an appeal to the Supreme Court from action in excess of jurisdiction - a case "arising under" the Constitution. ..... An accommodation of a "Trial" by the Senate with an appeal from violation of constitutional boundaries would harmonize with the *Powell* holding that the *Article I, S. 5(I) provision* that "each House shall be the Judge of the ... qualifications of its own members" *does not bar inquiry into action in excess of jurisdiction.* ....."
>
> (at pp. 111-112)
>
> (emphasis supplied)

Discussing further 'judicial review' in the context of impeachment proceedings, Raoul Berger states at p. 116 that 'it was never intended that Congress should be the final judge of the boundaries of its own powers' and proceeds to say, thus –

> "To this it may be answered that just as the ultimate guarantee that the judiciary will not step out of bounds is the self-restraint of the Court, so the Senate too must be trusted to exercise self-restraint. It is one thing, however, to expect self-restraint of judges schooled to disciplined, dispassionate judgement, and not subject to the gusts of faction, and something else again to expect self-restraint of a body predominantly political in character and which both in England and the United States has been unable to shake off partisan considerations when sitting in judgment. Self-restraint could be relied upon with respect to

A the judiciary because, in the words of Hamilton, they "have neither FORCE nor WILL, but merely judgment," and were "therefore the least dangerous to the political rights of the Constitution." .....

B Constitutional limits, as *Powell* v. *McCormack,* again reminds us, are subject to judicial enforcement; and *I would urge that judicial review of impeachments is required to protect the other branches from Congress' arbitrary will.* It is hardly likely that the Framers, so devoted to "checks and balances," who so painstakingly piled one check of C Congress on another, would reject a crucial check at the nerve center of the separation of powers. *They scarcely contemplated that their wise precautions must crumble when Congress dons its "judicial" hat,* that then Congress would be free to shake the other branches to their very foundations. Before we swallow such consequences, the intention D of the Framers to insulate congressional transgressions of the "limits" they imposed upon impeachment should be proved, not casually assumed. *The Constitution, said the Supreme Court, condemns "all arbitrary exercise of power;"* "there is no place in our constitutional system for the E exercise of arbitrary power." *The "sole power to try" affords no more exemption from that doctrine than does the sole power to legislate,* which, it needs no citation, does not extend to arbitrary acts.

F Finally, if it be assumed that the "sole power to try" conferred insulation from review, it must yield to the subsequent Fifth Amendment provision that "no person" shall "be deprived of life, liberty, or property without due process of law." If the Constitution does in fact place limits upon the power of impeachment, action beyond those G limits is without "due process of law" in its primal sense: "when the great barons of England wrung from King John ... the concession that neither their lives nor their property should be disposed of by the crown, except as provided by the law of the land, they meant by 'law of the land' the H ancient and customary laws of the English people." In our

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system the place of the "ancient and customary laws" was taken by the Constitution; and Article VI, S. 2, expressly makes the Constitution "the supreme law of the land." *Injurious action not authorized by the Constitution is therefore contrary to the "law of the land" and is forbidden by* the due process clause. "Due process" has been epitomized by the Court as the "protection of the individual against arbitrary action." One who enters government services does not cease to be a "person" within the Fifth Amendment; and an impeachment for offences outside constitutional authorization would deny him the protection afforded by "due process." *It would be passing strange to conclude that a citizen may invoke the judicial "bulwark" against a twenty-dollar fine but not against an unconstitutional impeachment, removal from and perpetual disqualification to hold federal office. Here protection of the individual coincides with preservation of the separation of powers;* and the interests of the assaulted branch, as Judge George Wythe perceived, are one with the interest of "the whole community." *Those interests counsel us to give full scope of the "strong American bias in favor of a judicial determination of constitutional and legal issues," and to deny insulation from review of impeachments in defiance of constitutional bounds."*

(at pp. 118-121)

(emphasis supplied)

American Bar Association Journal, Vol. 60 (June 1974) contains an interesting article "Is Judicial Review of Impeachment Coming?" by Daniel A. Rezneck, wherein judicial review in the case of an entirely political process has been discussed. An extract therefrom is as under :

Baker and Powell Opened the Door

If powell was entitled to judicial review of the legality of his exclusion from the House, it is difficult to see why a president may not seek judicial review in the event of his impeachment and conviction. Raoul Berger of Harvard, perhaps the country's leading authority on the law

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A of impeachment, concluded in his 1973 book, *Impeachment: The Constitutional Problems,* that *Baker* v. *Carr* and *Powell* v. *McCormack* together open the way for judicial review of the impeachment process to assure that it conforms to constitutional standards." (at p. 681)

B The effect of *Powell* is also considered in Texas Law Review, Vol. 68, Number 1, November 1989, at p. 97 under heading 'Judicial Review of Impeachments'. A useful extract therefrom is as under :

"The Supreme Court's decision in *Powell* v. *McCormick* C also indicates that there may be judicial review of any aspects of an impeachment proceeding. In *Powell,* the Supreme Court held that whether the House of Representatives followed the proper procedure in excluding Adam Clayton Powell from taking his seat in the House was *not* a political question. The *Powell* Court also held D that although Congress has the dual powers to expel and to exclude its members, Congress is not empowered to apply expulsion standards in proceedings to exclude a representative.

E The lesson of *Powell* is that the *Supreme Court may use judicial review to determine whether Congress followed the proper procedure for making the political decision committed to it by the Constitution.* ..... Also, under *Powell* the *federal courts may decide whether Congress has chosen the correct procedure to accomplish its asserted purposes.* ....." F

(at pp. 99-100)

(emphasis supplied)

G In *S.P. Gupta* v. *Union of India,* [1981] Supp. SCC 87 Venkataramiah, J. as he then was, after stating that 'the doctrine of political question which was holding the field long time back in the United States of America has now been exploded', referred to the decisions of the U.S. Supreme Court in *Baker* v. *Carr,* 369 US 186 : 7 L. Ed. 2d 663 (1962) and *Powell* v. *McCormack,* 395 Us 486 : 23 L. Ed. 2d 491 (1969) as well as the opinion H of R. Berger and then summarised the position in India as under :

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"In our country which is governed by a written Constitution also many questions which appear to have a purely political colour are bound to assume the character of judicial questions. In the *State of Rajasthan* v. *Union of India* [1978] 1 SCR 1, the Government's claim that the validity of the decision of the President under Article 365(1) of the Constitution being political in character was not justifiable on that sole ground was rejected by this Court. Bhagwati, J. in the course of his judgment observed in that case at SCR pages 80- 81 thus : (SCC p. 661, para 149)

It will, therefore, be seen that merely because a question has a political colour, the Court cannot fold its hands in despair and declare "Judicial hands off". So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so. It is necessary to assert in the clearest terms, particularly in the context of recent history, that the Constitution is suprema lex, the paramount law of the land, and there is no department or branch of government above or beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one howsoever highly placed and no authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the Constitution. This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of government, whether it is limited, and if so, what are the limits *and whether any action of that branch transgresses such limits. It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law.*

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A The objection that the questions involved in thse petitions are non-justiciable merely on the ground that they are political in character has to be negatived. But it is made clear that the courts are not entitled to enquire into every sort of question without any limitation. There is still a certain class of questions such as international relations, B national security which cannot be entertained by the Court. *It is for the Court to determine in each case whether a particular question should be debated before it or not.*" (paras 997 & 998 at pp. 776-777)

C (emphasis supplied)

The above discussion indicates the modern trend to accept judicial review in certain situations within circumscribed limits even where the entire process is political since the 'political quesiton doctrine', as discussed in *Powell,* permits this course. In such cases where the entire D process is political, judicial review to the extent permissible on conclusion of the political process is not doubted. There appears to be no reason in principle why judicial review at the end of the entire process of removal of a Judge in India, where it is a composite process of which the political process is only a part, can be excluded after conclusion of the entire E process including the political process. It appears to us that the view we have taken is reinforced by the law in other systems as indicated above.

At the commencement of the hearing of this petition, the learned Attorney General made the statement that the Speaker would await the declaration of law made in our decision and abide by it. A statement to F this effect was also made by Shri F.S. Nariman on behalf of the Inquiry Committee. Consistent with the statement made by the learned Attorney General, the Hon'ble Speaker of the Lok Sabha also extended the time for submission of the report by the Committee, to give us reasonable time to prepare our opinion after conclusion of the hearing. This augurs well for G the future.

Willis in Constitutional Law of the United States (1936) making 'final evaluation of the work of the Supreme Court' speaks about the U.S. Supreme Court thus :

H ".... Without the active co-operation of justices of the

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Supreme Court, the Constitution would be a dead letter. They protect alike their own powers, executive powers, and legislative powers against encroachments and designs of the other departments. ..... It does not have the positive power over the purse nor over the sword, nor any other powers which could actually overthrow our government, but *the negative power of declaring the law, - which has kept our whole mighty fabric of government from rushing to destruction.*

The Court has not been infallible. It has made mistakes. It sometimes has run counter to the deliberate and better judgment of the community. But *the final judgement of the American people will unquestionably be that their constitutional rights are safe in the hands of the federal judiciary.* Throughout the whole history of the United States, it furnishes the highest example of adequate results of any branch of our government. It has averted many a storm which was threatening our peace and has lent its powerful aid in uniting the whole country in the bonds of justice. To paraphrase the language of William Wirt, "if the judiciary were struck from our system" there would be little of value that would remain. The government cannot exist without it. "*It would be as rational to talk of a solar system without a sun" as to talk of a government in the United States without the doctrine of the supremacy of the Supreme Court.*"

(at pp. 114-115)

(emphasis supplied)

The role of the Supreme Court of India is no less significant or wide as envisaged in the Constitution which came to be enacted after the role of the U.S. Supreme Court in a comparable constitutional scheme had come to be so understood and appreciated.

In this context, it is also useful to recall the observations of R.S. Pathak, C.J., speaking for the Constitution Bench in *Union of India and Another* v. *Raghubir Singh (Dead) by Lrs. etc.,* [1989] 2 SCC 754 about the nature and scope of judicial review in India. The learned Chief Justice stated thus :

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A "..... It used to be disputed that Judges make law. Today, it is no longer a matter of doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from the decisions of the superior courts. "There was a time," observed Lord Reid, "When it was thought almost indecent B to suggest that Judges make law - they only declare it ..... But we do not believe in fairy tales any more". In countries such as the United Kingdom, where Parliament as the legislative organ is supreme and stands at the apex of the constitutional structure of the State, the role played by C Judicial law-making is limited. .....

xxx xxx xxx

And ungoed Thomas J, in *Cheney* v. *Conn* referred to D a Parliamentary statute as "the highest form of law .... which prevails over every other form of law". *The position is substantially different under a written Constitution such as the one which governs us.* The Constitution of India, which represents the Supreme Law of the land, envisages three distinct organs of the State, each with its own dis- E tinctive functions, each a pillar of the State. ..... *The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. ..... With this impressive expanse of judicial power, it is only right that the superior courts in* F *India should be conscious of the enormous responsibility which rest on them. This is specially true of the Supreme Court,* for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India." (para 7 at pp. 765-766)

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"..... This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that "the life of the law has not been logic it has been experience", and again when he declared in another study H that "the law is forever adopting new principles from life

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at one end", and "sloughing off" old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the introduction of new extra-legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined.

Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. *The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition,* or the modalities of an indeterminancy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters."

(paras 10 and 11 at pp. 766-767)

(emphasis supplied)

It is this onerous constitutional obligation which we have attempted to discharge keeping in view the limitations within which the exercise has to be performed.

We have already indicated the constitutional scheme in India and the true import of clauses (4) and (5) of Article 124 read with the law enacted under Article 124(5), namely, the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969, which, *inter alia* contemplate the provision for an opportunity to the concerned Judge to show cause against the finding of 'guilty' in the report before the Parliament takes it up for consideration along with the motion for his removal. Along with the decision in *Keshav Singh* has to be read the declaration made in *Sub-Committee on Judicial Accountability* that 'a law made under Article 124(5) will

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override the rules made under Article 118 and shall be binding on both the Houses of Parliament. A violation of such a law would constitute illegality and could not be immune from judicial scrutiny under Article 122(1)'. The scope of permissible challenge by the concerned Judge to the order of removal made by the President under Article 124(4) in the judicial review available after making of the order of removal by the President will be determined on these considerations. This question in the context of the process and progress of the statutory inquiry prior to recording of the findings in the report of the Inquiry Committee does not arise in this case and has not been raised at the instance of the concerned Judge even in the connected matter, W.P. (C) No. 149 of 1992 *Shri Krishna Swami* v. *Union of India & Ors.*, which was filed ealier and, therefore, we express no opinion on the scope of judicial review during the progress of inquiry prior to its conclusion. The reasons for declining to consider those questions at the instance of a third person in the absence of the concerned Judge facing the inquiry are given by us in the separate judgment delivered by us in that matter.

In sum, the position is this : Every Judge of the Supreme Court and the High Courts on his appointment is irremovable from office during his tenure except in the manner provided in clauses (4) and (5) of Article 124 of the Constitution of India. The law made by the Parliament under Article 124(5), namely, the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969 framed thereunder, is to be read along with Article 124(4) to find out the constitutional scheme adopted in India for the removal of a Judge of the Supreme Court or a High Court. The law so enacted under Article 124(5) provides that any accusation made against a sitting Judge to enable initiation of the process of his removal from office has to be only by not less than the minimum number of Members of Parliament specified in the Act, all other methods being excluded. On initiation of the process in the prescribed manner, the Speaker/Chairman is to decade whether the accusation requires investigation. If he chooses not to act on the accusation made in the form of motion by the specified minimum number of Members of Parliament, the matter ends there. On the other hand, if the Speaker/Chairman, on a consideration of the materials available and after consulting such person as he thinks fit, forms the opinion that a *prima facie* case for investigation into the accusation against the Judge is made out, he constitutes a Committee of judicial functionaries in accordance with Sec-

tion 3(2) of the Act. If the Inquiry Committee at the conclusion of the investigation made by it records a finding that the Judge is 'not guilty', the process ends with no one, not even the Parliament, being empowered to consider much less question the finding of 'not guilty' recorded by the Inquiry Committee. If the finding made by the Inquiry Committee is that the Judge is 'guilty', then the Parliament considers the motion for removal of the Judge along with the Committee's report and other available materials including the cause, if any, shown by the concerned Judge against his removal for which he has to be given an opportunity after submission of the report to the Speaker/Chairman under Section 4(2) of the Act. To be effective, this opportunity must include supply of a copy of the report to the concerned Judge by the Speaker/Chairman while causing it to be laid before the Parliament under Section 4(3). If the Parliament does not adopt the motion for removal of the Judge, the process ends there with no challenge available to any one. If the motion for removal of the Judge is adopted by the requisite majority by the Parliament culminating in the order of removal by the President of India under Article 124(4) of the Constitution, then only the concerned Judge would have the remedy of judicial review available on the permissible grounds against the order of removal. The statutory part of the process, by which a finding of guilty is made by the Inquiry Committee, is subject to judicial review as held in *Sub-Committee on Judicial Accountability,* but in the manner indicated herein, that is, only in the event of an order of removal being made and then at the instance of the aggrieved Judge alone. The Inquiry Committee is statutory in character but is not a tribunal for the purpose of Article 136 of the Constitution.

A B C D E

The view we have taken is in complete accord with the majority opinion in *Sub-Committee on Judicial Accountability* that the Statutory part of the process of removal of a Judge is subject to judicial review. The question of the stage and the situation in which the remedy of judicial review becomes available and by whom it can be availed did not arise for consideration in the earlier case and, therefore, this further question which now arises before us was not dealt with therein. The real controversy in the earlier decision was whether the entire process of removal of a Judge in our constitutional scheme is parliamentary to attract the doctrine of lapse to the motion for removal of the learned Judge on dissolution of the Ninth Lok Sabha or a part thereof was statutory to which the doctrine of lapse of motions in the Parliament could have no application. It was in this

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A context that the majority in that decision took the view that the process was statutory till the Parliament takes up the motion for consideration on a finding of 'guilty' being made by the Inquiry Committee in its report which is submitted to the Parliament; and the Ninth Lok Sabha having been dissolved before commencement of the parliamentary process, there was no question of the motion lapsing at that stage which was statutory.

B

On a careful reading of the earlier decision in *Sub-Committee on Judicial Accountability,* we are unable to accept the submission that the only logical corollary of the earlier decision is that the concerned Judge has a right to obtain a copy of the report of the Inquiry Committee before C commencement of the parliamentary process to enable him at this stage to avail the remedy of judicial review in case the Committee has recorded a finding of 'guilty' against the learned Judge. We have adequately indicated how the rights of the learned Judge are fully protected on the construction we have made of the relevant provisions and the manner in which we have D read the constitutional scheme adopted in India for the removal of a superior Judge in accordance with clauses (4) and (5) of Article 124.

We have no doubt that every constitutional functionary and authority involved in the process is as much concerned as we are to find out the true meaning and import of the scheme envisaged by the relevant constitutional E and statutory provisions, in order to prevent any failure by any one to discharge the constitutional obligations avoiding transgression of the limits of the demarcated powers. No doubt, there are certain grey areas. We have attempted to illuminate them with the able assistance of the learned counsel who are equally concerned that the law should be unambiguously F and correctly stated to avoid any possible misapplication thereof. All that is necessary for us to do is to declare the correct constitutional position as we are able to discern, there being no need to issue any specific writ or direction to any authority and to 'leave the different organs of the State to consider matters falling within the orbit of their respective jurisdiction and powers' as was done in the earlier case. We do so, accordingly, herein.

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Brother Kasliwal expressly says in his separate opinion that he fully agrees with us. Brother K. Ramaswamy, however, appears to have differed in some area. On a reconsideration of the matter in the light of the exposition of law made by Brother K. Ramaswamy in his separate opinion H circulated to us, we find that to a large extent he agrees with us, but in the

area of his disagreement, we regret our inability to concur with him. A

Consequently, for the aforesaid reasons, this Writ Petition is disposed of by declaring the law as contained in the judgment.

KASLIWAL, J. I have gone through the judgment prepared by my learned brothers Justice J.S. Verma and Justice K. Ramaswamy. I fully agree with the judgment prepared by Justice J.S. Verma and regret my inability to agree with the view taken by Justice K. Ramaswamy. However, looking to the questions raised being of seminal importance, I would like to express my own views also in the matter. B C

The petition has been filed by the wife of Mr. Justice V. Ramaswami, a sitting Judge of this Court. I need not recapitulate the facts of this case which have already been stated in detail in the judgment prepared by my learned brothers. The short controversy raised in the petition now relates to an issue of a Writ of Mandamus directing the Committee apppointed under the Judges (Inquiry) Act, 1968 (hereinafter referred to as the 'Act') to forward a copy of the report as and when prepared, to Justice V. Ramaswami. It has been also prayed that a direction be also given to the Committee to withhold the forwarding of the report to the Hon'ble Speaker of the Lok Sabha simultaneously, so that Justice V. Ramaswami may get reasonable time to initiate appropriate proceedings, in the event he wishes to challenge all or any part of the said report. D E

The above relief has been sought mainly on two grounds:

(1) That a Constitution Bench of this Court in its judgment in *Sub-Committee on Judicial Accountability* v. *Union of India & Ors.,* [1991] 4 SCC 699 has already held that the proceedings before the Committee from its inception till the time the report of the Committee is placed before Parliament are deemed to be proceedings outside Parliament and this part being statutory can be subjected to judicial review. F G

(2) If a copy of the report is not given to Justice V. Ramaswami before such report is forwarded to the Hon'ble Speaker for the purpose of taking out appropriate proceedings, it would not only defeat the Constitutional right of Justice V. Ramaswami, but would also violate principles of natural justice. H

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A It may be noted at the inception that the petitioner has not challenged. The Judges (Inquiry) Act, 1968 or the The Judges (Inquiry) Rules, 1969 (hereinafter referred to as the 'Rules') framed in exercise of the powers conferred by sub-section 4 of Section 7 of the Judges (Inquiry) Act, 1968. We have thus, to consider the scheme of the provisions of the Act and the Rules as well as the provisions of the Constitution, in order to B decide whether the relief sought by the petitioner can be given or not. Though, the Act deals with the procedure for the investigation and proof of misbehaviour or incapacity of a Judge, but in the present case we are only concerned with the investigation and proof of misbehaviour and not with the incapacity of the Judge to discharge his duties efficiently due to C any physical or mental incapacity. Section 3 of the Act provides for investigation into misbehaviour and for that purpose it is necessary that a notice for such motion has to be given by not less than hundred members of the House of the People in case of such notice given in the House of the People and not less than fifty members in the case of a notice given in D the Council of States. The Speaker or the Chairman, as the case may be, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him, either admit the motion or refuse to admit the same. If such motion is admitted, then the motion shall be kept pending and a Committee consisting of the following three members shall be constituted for making investigation into the grounds on E which the removal of a Judge is prayed. This Committee shall consist of the following three members of whom :-

(a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court;

F (b) one shall be chosen from among the Chief Justice of the High Courts; and

(c) one shall be a person who is, in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist.

G The Committee under sub-section (3) of Section 3 is required to frame definite charges against the Judge on the basis of which the investigation is proposed to be held and under sub-section (4) of Section 3, such charges together with a statement of the grounds on which each such charge is based shall be communicated to the Judge and he shall be given H a reasonable opportunity of presenting a written statement of defence

within such time as may be specified in this behalf by the Committee. Then under sub-section (8) of Section 3, the Committee may, after considering the written statement of the Judge, if any, amend the charges framed under sub-section (3) and in such a case, the Judge shall be given a reasonable opportunity of presenting a fresh written statement of defence. Under sub-section (9) of Section 3, the Central Government may, appoint an advocate to conduct the case against the Judge, if required by the Speaker or the Chairman or both as the case may be. Under Section 4 of the Act, the Committee has been given power to regulate its own procedure in making the investigation subject to any rules. This also provides of giving reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence and of being heard in his defence. Sub-section (2) of Section 4 with which we are directly concerned reads as under:-

> "At the conclusion of the investigation, the Committee shall submit its report to the Speaker or, as the case may be, to the Chairman, or where the Committee has been constituted jointly by the Speaker and the Chairman, to both of them, stating therein its findings on each of the charges separately with such observations on the whole case as it thinks fit."

Thereafter under sub-section 3 of Section 4 of the Act, the Speaker or the Chairman, or, where the Committee has been constituted jointly by the Speaker and the Chairman, both of them, shall cause the report to be laid as soon as may be, respectively before the House of the People and the Council of States. Section 5 provides for the powers of the Committee, like a Civil Court and has been authorised to summon and enforce the attendance of any person and examining him on oath, requiring the discovery and production of documents, receiving evidence on oath, issuing commissions for the examination of witnesses or documents and such other matters as may be prescribed. Then comes Section 6 which has important bearing on the issue raised before us and as such is reproduced as under:-

> "6. (1) If the report of the Committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, then, no further steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses

A of Parliament shall not be proceeded with.

(2) If the report of the Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in sub-section (1) of Section 3 shall, together with the report of the Com-
B mittee, be taken up for consideration by the House or the Houses of Parliament in which it is pending.

(3) If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of Article
C 124 or, as the case may be, in accordance with that clause read with Article 218 of the Constitution, then, the misbehaviour or incapcity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the prescribed manner to the President by each House of Parliament in the same
D session in which the motion has been adopted."

Section 7 provides for the power to make rules. We would now consider the provisions of the Rules which are relevant and necessary for deciding the controversy raised before us. Rule 5 provides for the manner in which
E the charges framed against the Judge shall be served on him. Under Rule 6 when the Judge appears, he may object in writing to the sufficiency of the charges framed against him and if the objection is sustained by the majority of the members of the Inquiry Committee, the Inquiry Committee may amend the charges and gives the Judge a reasonable opportunity of presenting a fresh written statement of defence. Under Rule 7, if the Judge
F denies that he is guilty of the misbehaviour or if he refuses, or omits, or is unable, the plead or desires that the inquiry should be made, the Inquiry Committee shall proceed with the inquiry. Rule 8 permits the Inquiry Committee to proceed with the inquiry in the absence of the Judge, if the Judge does not appear after service of notice on him. Rule 9 deals with
G the report of the Inquiry Committee and this Rule being relevant and necessary for deciding the controversy is reproduced as under :

"9. Report of Inquiry Committee. – (1) Where the members of the Inquiry Committee are not unanimous, the report submitted by the Inquiry Committee under Section
H 4 shall be in accordance with the findings of the majority

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of the members thereof.

(2) The presiding officer of the Inquiry Committee shall –

(a) cause its report to be prepared in duplicate,

(b) authenticate each copy of the report by putting his signature thereon, and

(c) forward, within a period of three months from the date on which a copy of the charges framed under sub-section (3) of Section 3 is served upon the Judge, or, where no such service is made from the date of publication of the notice referred to in sub-rule (3) of rule 5, the authenticated copies of the report to the Speaker or Chairman by whom the Committee was constituted, or where the Committee was constituted jointly by them, to both of them:

Provided that the Speaker or Chairman, or both of them (where the Committee was constituted jointly by them), may, for sufficient cause, extend the time within which the Inquiry Committee shall submit its report.

(3) A copy of the report of the Inquiry Committee, authenticated in the manner specified in sub-rule (2), shall be laid before each House of Parliament.

(4) Where the majority of the members of the Inquiry Committee makes a finding to the effect that the Judge is guilty of a misbehaviour or that he suffers from an incapacity, but the third member thereof makes a finding to the contrary, the presiding officer of the Inquiry Committee shall authenticate, in the manner specified in sub-rule (2), the finding made by such third member, in duplicate and shall forward the same along with the report submitted by him under Section 4.

(5) An authenticated copy of the finding made by third member, referred to in sub-rule (4) shall also be laid before each House of Parliament.

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A (6) Where the majority of the members of the Inquiry Committee makes a finding to the effect that the Judge is not guilty of any misbehaviour or that he does not suffer from any incapacity, and the third member thereof makes a finding to the contrary, the Inquiry Committee shall not disclose the finding made by such third member to Par-
B liament or to any other authority, body or person."

Rule 10 provides for recording of evidence according to the provisions of the Code of Civil Procedure so far as may be applicable to the examination of any witness by the Committee. A copy of the evidence,
C oral and documentary, received by the Committee shall be laid before each House of Parliament along with the report laid before it under Section 4 of the Act. Sub-rule (1) of Rule 11 provides for allowing the Judge a right to consult, and to be defended by, a legal practitioner of his choice. Apart from the provisions of the Act and the Rules, it has been provided in clause
D 4 of the Article 124 of the Constitution that 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
E the grounds of proved misbehaviour.

In pursuance to the above provisions 108 members of the House of the People had given a notice of motion which was admitted by the Speaker on 12.3.1991 and a Committee was constituted of the following three
F persons (1) Hon'ble Mr. Justice P.B. Sawant, a sitting Judge of this Court (2) Hon'ble Mr. Justice P.D. Desai, Chief Justice of Bombay High Court and (3) Hon'ble Mr. Justice O. Chinnappa Reddy, a retired Judge of this Court in the category of a distinguished jurist. The Lok Sabha was dissolved on 13.3.1991. The Union Government after the fresh elections of the Lok Sabha refused to act in aid of the decision taken by the Speaker of
G the earlier Lok Sabha and as such a Writ Petition was filed by a body called the Sub-Committee on Judicial Accountability. That case was decided on October 29, 1991 and the majority opinion in that case was that the process for removal of a Judge of the Supreme Court comprises of two stages. The first stage is of investigation and proof in accordance with The Judge
H (Inquiry) Act, 1968 enacted under Article 124(5) of the Constitution by the

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Committee constituted by the Speaker acting as a statutory authority under the Act and the second stage commences after allegations of misbehaviour are found proved. In the second stage when motion is moved, bar under Article 121 on discussion in Parliament in respect of the conduct of the Judge is lifted and the process envisaged under Article 124(4) is attracted. The first stage is subject to judicial review, but the second stage is not subject to judicial review as the process involved being parliamentary process.

The Inquiry report in the present case has been stated to be complete and awaits the decision of this Court in the present case. A perusal of the provisions of the Act and the Rules mentioned above shows that the process as a whole is an amalgam of statutory process as well as parliamentary process. There are number of checks and safeguards kept in the process where the matter relates to the misbehaviour of a sitting Judge of the Supreme Court and the High Courts who are high constitutional functionaries. The Parliament while enacting The Judges (Inquiry) Act, 1968 long after 18 years of the coming into force of the Constitution was fully conscious regarding the consideration of any allegation of misbehaviour imputed against a Judge of the Supreme Court or of a High Court. It may be noted that Article 121 of the Constitution was a clear bar for any discussion in Parliament with respect to the conduct of any Judge of the Supreme Court or of the High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge. The framers of the Constitution under clause 5 of Article 124 of the Constitution gave an authority to the Parliament to make any law for regulating 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). The framers of the Constitution themselves laid down in clause 4 of Article 124 of the Constitution that 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 total membership of that House and also by a majority of not less than two-thirds of the members of that House present and voting. In case of the consideration of a motion for the removal of the Judge on the ground of proved misbehaviour, the above provision shows that the framers of the Constitution themselves keeping in view the independence of the judiciary and the Judges of the High Courts and Supreme Court provided that in case of any charges of misbehaviour the

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A Judge shall not be removed from his office except by an order of the President passed after such motion is supported by not only a majority of the total membership of the House, but also by a majority of not less than two-thirds of the members of that House present and voting and to be presented to the President in the same session. The Parliament while
B enacting The Judges (Inquiry) Act, 1968 in respect of constituting a Committee for the investigation and proof of any allegations of misbehaviour provided for constitution of a Committee consisting of only persons belonging to the judiciary. Not only that the members of the Committee consisted of – one, to be chosen from among the Chief Justice of India and other Judges of the Supreme Court, second one, to be chosen from among the
C Chief Justices of the High Courts and the third one a distinguished jurist. The matter of investigation as such was entrusted to a high judicial authority consisting of a sitting Judge of the Supreme Court, a Chief Justice of the High Court and a distinguished jurist. This shows that the intention of the Parliament was to maintain the dignity and independence of the
D judiciary and as such the investigation in respect of the misbehaviour of a sitting Judge of the Supreme Court or the High Court was entrusted to a wholly judicial body consisting of judicially trained persons and no interference of any kind has been allowed or given to any executive authority or to any person outside the judiciary. Not only that, a combined reading
E of all the relevant provision of the Constitution, the Act and the Rules clearly show that where an Inquiry Committee unanimously or by majority records a finding of not guilty of the charges levelled against the Judge, the matter ends and no further discussion on the motion is required in the Parliament. It is further important to note that sub-rule (6) of Rule 9
F further provides that where the majority of the members of the Inquiry Committee makes a finding to the effect that the Judge is not guilty of any misbehaviour and the third member thereof makes a finding to the contrary, the Inquiry Committee shall not disclose the finding made by such third member to Parliament or to any other authority, body or person. This provision clearly indicates the respect, dignity and maintenance of the
G independence of the judiciary and not to disclose to any authority, body or person including the Parliament, the contrary finding of the guilty made by the third member and thus to maintain the prestige of the Judge concerned intact. The Parliament under the above scheme is entitled to take up the motion for consideration only when it receives a report with the finding of
H guilty recorded by a majority or unanimous opinion of the members of the

Committee. It may be further noted that in such kind of case where out of the three members of the Committee, if two members record a finding a guilty while the third member gives a finding of not guilty, then in that case, both the findings are required to be submitted on the floor of the House so that at the time of consideration of the motion both views may be available for consideration before taking any final decision on the motion.

In the background of the abvoe scheme of the law we have to consider whether this Court can give any direction for the supply of the report of the Committee to the concerned Judge for the purpose of giving sufficient time so that the Judge may decide to take further action or not by way of challenging the report by judicial review. Both the reliefs as prayed are intermixed and according to the petitioner and rightly so one without the other is of no use. Admittedly, there is no provision in the Act or the Rules for the supply of such copy to the concerned Judge by the Inquiry Committee before sending such report to the Speaker for laying down the report before the Parliament.

The argument of Mr. Sibal, Learned Senior Counsel appearing on behalf of the petitioner is that this Court in the case *Sub-Committee on Judicial Accountability* (supra) has held that the admission of motion by the Speaker and constitution of the Committee are statutory functions of the Speaker outside parliamentary process. Till the report is received by the Parliament and the motion is taken for consideration the matter is outside the Parliamentary process and any action till such stage being outside Parliamentary process is amenable to judicial review. It has been submitted that the learned Judge is entitled to question the adverse findings of misbehaviour, if any, recorded by the Committee and this can be done only when the copy of the report is given to the learned Judge and thereafter reasonable time is given for availing the right of challenging the same by judicial review. It has also been contended that there is no provision in the Act and the Rules for the Speaker to supply a copy of the report to the learned Judge. Once a report is placed on the floor of each House of Parliament, it is exclusively within the domain of the Parliament and it cannot be predicated as to what procedure the Parliament may adopt regarding the consideration of the motion. This valuable right cannot be taken away nor rendered nugatory by interpretative process which would violate the principles of natural justice.

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A Mr. G. Ramaswamy, Learned Attorney General contended that the Committee is in the nature of a subordinate authority to the Speaker. The report is like granting of sanction for prosecution of a public servant as contemplated under Section 197 of the Code of Criminal Procedure, 1973. Unless the validity of the sanction is questioned at the earliest stage the B accused is precluded to assail it at a later stage. On the same analogy the learned Judge is entitled to challenge the adverse findings, if any, recorded in the report by the Committee before the same is taken for consideration by the Parliament. This can only be done when such report is made available to the learned Judge for seeking a judicial review. It is not for this Hon'ble Court to decide as to what procedure Parliament will follow C for the purpose of voting upon the motion nor can this Court, in any way, interefere with the Parliamentary process. It is for the Parliament alone to decide as to how the motion shall be dealt with and in case a copy of the Inquiry report is not furnished to the learned Judge at this stage for seeking judicial review, it would be against the basic principle of natural justice not D to condemn a person unheard.

So far as the propositions of law laid down in *Sub-Committee on Judicial Accountability's* case is concerned, I do not consider it necessary to burden this judgment as it has been considered in great detail in the judgment by Verma, J. Suffice to say that in the aforesaid case the con- E troversy raised in the present case was not in issue and the Court in that case was concerned with the stage of entertaining the motion by the Speaker for consideration of the House and the fate of such motion upon the dissolution of the Lok Sabha.

F We shall now deal with the question directly raised in the present case whether this Court should give a direction to the President of the Committee to furnish the copy of the report to the learned Judge before sending the same to the Speaker and to make a further direction to withhold the submission of the report for a reasonable period so that the learned Judge may get time to avail or not to avail the remedy of challeng- G ing the adverse findings in the report by way of judicial review. In order to decide this question it is necessary to consider as to under what principle of law or authority such relief is sought. Admittedly, there is no provision in the Act or Rules for giving the copy of the Inquiry report to the concerned Judge before sending it to the Speaker. This position is even H accepted by the learned Counsel appearing for the petitioner. If we ex-

amine the provisions of the Act and the Rules a contrary conclusion emerges to what is prayed by the petititoner. Section 4(2) of the Act clearly envisages that at the conclusion of the investigation, the Committee shall submit its report to the Speaker and under sub-section (3) the Speaker shall cause the report to be laid, as soon as may be before the House of the People in the present case. Further under Rule 9(2) (c), it is provided that the Presiding Officer of the Inquiry Committee shall forward the report within a period of three months from the date on which a copy of the charges framed under sub-section (3) of Section 3 is served upon the Judge, or where no such service is made from the date of publication of the notice referred to in sub-rule (3) of Rule 5. Under the proviso, the Speaker is authorised to extend the time for sufficient cause. Thus, the intendment of the aforesaid scheme of the provisions is a speedy disposal of the investigation in public interest and the report is required to be sent to the Speaker as soon as the investigation is concluded, unless the case falls within the ambit of Rule 9(6) in that case the Inquiry Committee shall not disclose the finding made by such third member to Parliament or to any other authority, body or person.

Now the other aspect to be examined is the violation of any principle of natural justice, if the copy of the report is not given to the Judge concerned for seeking a judicial review and this is the main plank of submission on which the entire edifice is built on behalf of the petitioner. So far as, the principle of *audi alteram partem* that no person can be condemned unheard, is concernd; in my view is not applicable in the present case. The right of hearing to the concerned Judge in the present scheme of law can only arise before two authorities. One before the Inquiry Committee and the other before the Parliament. So far as the right of hearing before the Committee is concerned, there is ample opportunity given in the provisions of the Act and the Rules. The entire investigation into misbehaviour is done after a notice given to the concerned Judge. The charges framed together with a statement of the grounds on which each such charge is based is communicated to the Judge and he is given a reasonable opportunity of presenting a written statement of defence. The Committee after considering the written statement of the Judge may amend the charges and thereafter the Judge is again given a reasonable opportunity of presenting a fresh written statement of defence. The Committee in making the investigation is required to give a reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence and of being

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A heard in his defence. The plea of the Judge is recorded, the evidence of each witness examined by the Inquiry Committee is taken down in writing. The Judge is also given a right to consult, and to be defended by a legal practitioner of his choice. Thus, so far as the opportunity of hearing before the Inquiry Committee is concerned, the above-mentioned provisions clear-
B ly show that full opportunity of hearing is given to the Judge in respect of contesting the charges framed against him as well as cross-examining any witness and leading any evidence in defence.

Now, so far as the opportunity of any hearing to be given to the concerned Judge by the Parliament, that stage has not reached in the
C present case. It is no doubt correct that Parliament is free to adopt its own procedure while considering the motion, but that alone cannot be considered as a ground for seeking judicial review against the report of the Committee. The question of not giving any opportunity of hearing before any action is taken against the learned Judge by the Parliament can only
D arise after any decision is taken against the Judge by the Parliament. The violation of principle of the natural justice, if any, cannot be examined in isolation, but depends on the facts and circumstances of each case. No argument based on the violation of principle of natural justice can be considered on the assumption that the Parliament may adopt a procedure which may be in violation of principles of natural justice. Learned Attorney
E General at a subsequent stage of the arguments as well as the Counsel for the Committee were in agreement on this score that the Parliament shall give an opportunity of hearing to the learned Judge before taking a final decision on the motion and as a necessary corollary thereof the copy of the Inquiry report shall be given to the learned Judge by the Parliament. Thus,
F if a direction is being sought for supplying a copy of the report on the ground of assumed violation of any principle of natural justice by the Parliament, we find no justification and it would be pre-judging the issue and predicating a remady without laying any foundation or basis for such relief.

G It may also be noted that the rules of natural justice are manifested in the twin principles of *nemo judes in sua caues* and *audi alteram partem.* We are not concerned here with the former since no case of bias has been urged. The grievance ventilated is that being condemned unheard. The *audi alteram partem* rule has a few facets two of which are (9) notice of
H the case to be met; and (b) opportunity to explain. There is no violation in

the present case of anyone of the above two facets of the *audi alteram partem* rule. The violation of principle of natural justice will depend on the facts and circumstances of the each case and in my view there is nothing to show that in the present case there is any violation of the principles of natural justice.

The next limb of this ground of violation of principles of natural justice claimed on behalf of the petitioner is that if the copy of the report will not be given to the learned judge, then it would defeat his right of judicial review. I do not find any force in this submission. The right of judicial review is not a right emerging under any principle of natural justice. It cannot be equated with the rule of *audi alteram partem*. The right of judicial review is itself a right available only on limited permissible grounds. The right of seeking a judicial review depends on the facts of each individual case and will depend on several factors which would be necessary to be examined before the particular order or action is put under challenge. There cannot be any demand of judicial review as an abstract proposition of law on the premise of violation of any principles of natural justice at this stage in the scheme of the Act and the Rules. No direction as such can be sought on the basis that if the copy of the report is not supplied at this stage, the learned Judge would be left with no remedy of judicial review at a later stage. Neither in the Scheme of the Act and the Rules nor under any provision of the Constitution it has been shown that such right is available to the concerned Judge. There is neither any violation of any principle of natural justice nor violation of any constitutional or statutory provision in not affording a copy of the Inquiry report before sending the same to the Speaker. This Court cannot gives any mandamus to any authority unless it can be shown that such authority is acting in violation of any provisions of the statute or constitutional obligation. Thus, even if it may be considered that the Committee is performing a statutory function amenable to the jurisdiction of this Court in judicial review, it must be shown that it is acting in violation of any rule or law. In the present case the Inquiry Committee is rather performing its legal duty and fulfilling the statutory obligation of sending the report to the Speaker and as such no mandamus or direction can be given to delay or put any hindrance in such lawful action on the part of the Committee.

I am not convinced with the submission of the Learned Attorney General that the Inquiry report in this case can be compared or equated

A with the sanction given under Section 197 of the Code of Criminal Procedure in respect of a public servant. The powers, duties and functions of the Inquiry Committee constituted under the provisions of the Act and composed of high judicial functionaries which records its finding after giving an opportunity to the concerned Judge on the basis of the oral and
B documentary evidence cannot be compared or equated with the sanction accorded by an executive authority in respect of a public servant.

We shall also examine other aspects of the matter having a direct bearing on the question in issue. So far as any finding of guilty recorded by the Committee on the charges is concerned, it is not conclusive and final
C and the Parliament can still hold that the charges levelled against the concerned Judge did not amount to misbehaviour and may decide not to adopt the motion. On the other hand, if in the course of judicial review this Court approves or affirms such findings recorded by the Inquiry Committee being a decision of this Court shall be binding on the Parlia-
D ment. In that case, it would not be possible for the Parliament to take a different view and this would be an extra constitutional interference in the framework of the scheme. In another case during the course of judicial review this Court may come to the conclusion of quashing the entire proceedings conducted by the Inquiry Committee and require it to hold a fresh Inquiry. In that kind of case a problem may arise of the continuation
E of the investigation beyond the period allowed in the Rules and by the Speaker. It is important to note that the life and existence of the Inquiry Committee itself is coterminus with the period of 3 months as laid down in rule 9(2)(c) of the Rules or till the Speaker extends the time for sufficient cause under the proviso to the aforesaid rule. After this period
F is over, the Committee ceases to function and neither this Court nor any other Court can extend this period in the exercise of judicial review of the findings of the Inquiry Committee. The period of 3 months has been fixed in the statutory rules itself and the Speaker alone has been authorised to extend such period for sufficient cause. In my humble opinion this court cannot extend such period nor give any direction to the Speaker to do so,
G and any attempt of remanding the matter for fresh Inquiry or to keep the matter pending till the concerned Judge decides to challenge the report by way of judicial review or to keep the matter pending for decision under the exercise of judicial review beyond the aforesaid period is not permissible and cannot be done in an indirect manner which cannot be done directly.
H This Court has no power to extend the life of the Inquiry Committee by a

judicial fiat in the teeth of the express provisions of the statutory rules. A

Further, in case a judicial review is permitted at this stage against the findings recorded by the Committee then in that case even findings of not guilty recorded by the Committee may also be challenged in Court by persons who had initiated the motion. It has been contended in this regard on behalf of the Learned Counsel for the petitioner that no question of any challenge to the findings of not guilty recorded by the Committee is permissible as contemplated under Section 6(1) of the Act according to which if the report of the Committee contains a finding that the Judge is not guilty of any misbehaviour then no further steps shall be taken in either House of Parliament in relation to the report. I find no force in such contention because this will only apply when such finding of not guilty is affirmed by the Court in judicial review also. But in case such finding itself is reversed in judicial review, then the finding of not guilty by the Committee no longer exists and it would be taken as a finding of guilty recorded in judicial review. Thus, many problems may arise which cannot be predicated and which may result against the interest of the concerned Judge himself. B C D

Thus, in the circumstances mentioned above in the scheme of the Act and the Rules and the Constitution, no direction can be given to the Inquiry Committee to furnish the report to the Judge for seeking judicial review at this stage when the investigation is already complete. So far as the stage after the conclusion of the proceedings in the Parliament are concerned, the remedy of judicial review is always available which, of course, will depend on the facts and circumstances of the case emerging then and subject to recognised permissible grounds of judicial review. E F

The entire constitutional scheme in this matter shows that the Parliament had complete confidence in the independence and dignity of judiciary. The Inquiry has been left to the Inquiry Committee composed of high judicial functionaries alone. In case of such Committee giving a finding of not guilty, the same has been considered as final and giving a quietus and no further discussion on the motion has been made permissible. It is only in case of finding of guilty recorded by the Inquiry Committee that the motion is required to be taken up for further consideration. In this kind of case in the larger public interest including the independence of the judiciary itself any delay after the recording of such finding of guilty, if any, G H

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A by the Inquiry Committee and to permit such report being challenged by way of judicial review at this stage would not be proper. The matter after recording, if any, a finding of guilty against the concerned Judge by the Inquiry Committee should be left for further consideration by the Parliament. The Parliament should be left answerable to the public at large for its future course of action in the matter.

B

Thus, taking in view the entire facts and circumstances of the case, no direction can be given as prayed by the petitioner and the petition stands disposed of in terms of the direction gives in the judgment of brother Verma, J.

C

K. RAMASWAMY, J. Having had the benefit of reading the draft judgment circulated by my learned brother Verma, J. and given my anxious consideration, I express my regrets not to sail totally with them but prefer to sink alone.

D

The petitioner sought a writ of Mandamus or any other writ or directions to direct Mr. Justice P.B. Sawant Committee, appointed under sec.3(2) of the Judges (Enquiry) Act 1968 for short 'the Act', to supply a copy of its report to Hon'ble Mr. Justice V. Ramaswami before its submission to the Speaker of the Lok Sabha. She also sought direction to the said E committee to withhold forwarding simultaneously the said report to the Speaker. The facts in nut-shell are that the Speaker of 9th Lok Sabha constituted Mr. Justice P.B. Sawant Committee to enquire into the grounds of the motion prayed for the removal of Mr. Justice V. Ramaswami from the office as Judge of this court with the allegations that he committed, in F his administrative capacity as Chief Justice of Punjab & Haryana High Court, financial irregularities which constitute misbehaviour within the meaning of Art. 124(4) of the Constitution of India. Mr. M. Krishna Swami filed Writ Petition No. 149 of 1992 and questioned the power and jurisdiction of the Speaker to admit the motion, the constitution of the committee and the procedure it adapted to investigate into the charges etc. The G committee on assumption of its office started investigation, the stay of the proceedings, though sought for, was not granted and the investigation went on. While we were hearing the writ petition, on May 10, 1992, the learned Judge addressed a letter to the Presiding Officer of the Committee requesting to supply him a copy of its report before it was forwarded to the H Speaker and also requested to withhold the same by giving reasonable time

to peruse and to take appropriate action thereon. An application for the same relief was also made in Writ petition No. 149 of 1992. This Bench was given to understand that the Committee would submit the report to the Hon'ble Speaker on or before July 31, 1992, the extended date. During summer vacation the petitioner filed the writ petition for the aforesaid reliefs which was posted along with writ petition No. 149 of the 1992. On enquiry by this Bench whether the learned Judge would agree to abide by the decision that may be given in this case, Mr. Kapil Sibal, the learned senior counsel for the petitioner, on instruction, stated to the positive. He placed on record the letter he addressed and the endorsement thereon by the learned Judge.

He agrued that in *Sub-Committee on Judicial Accountability* v. *Union of India & Ors.,* [1991] 2 SCR 741 for short 'SCJA' case, this Court held that the admission of the motion by the Speaker and constitution of the committee are statutory functions of the Speaker outside Parliamentary process. Till the report was placed on the floor of each House of the Parliament, the Speaker has possession of the report and power to withhold. So the Committee too. If it finds on investigation that the misconduct has not been proved, there ends the matter and need to take further political process is obviated. If it finds that the misconduct has been proved, the Parliamentary process to remove the Judge gets revived on placing the report and the evidence on the floor of each House of Parliament and the address started. The investigation is judicious blend of political and judicial process. The admission of the motion, constitution of the committee and submission of the report by the committee to the Speaker are outside Parliamentary processes and amenable to judicial review. The learned Judge is entitled to question the adverse finding of misbehaviour and so is entitled to the supply of a copy of the report before it is actually submitted to the Speaker. When the learned Judge has a right and is entitled to judicial review, to question the correctness of the finding of proved misbehaviour he has right to move this court under Art. 32 or Art. 136 or the High Court under Art. 226. Without supply of the copy of the report he cannot adequately plead and prove its incorrectness to quash the same. Accordingly it is his contention that the supply of the report and grant of reasonable time are essential postulates sequal to avail judicial review. Accordingly the learned Judge is entitled to the copy of the report thereof. In support thereof he stated that the Parliamentary process commences only when the Speaker moves the motion as annexure in the House

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A along with the address to be presented to the President for the removal of the Judge. Until then the Speaker remains a statutory authority, there is no express provision either in the act or the Judges Enquiry Rules 1969 for short 'the Rules' or in the Constitution to provide the learned Judge with an opportunity of representation and hearing on the floor of both the B Houses of Parliament. We cannt predicate as to what procedure the Parliament may adapt in its address and it is also immune from judicial review. By necessary implication, the learned Judge when he has right to review must have remedy to challenge the adverse report in a judicial process and supply of the copy of the report is a must. There is also no provision in the Act and Rules for the Speaker to supply a copy of the C report to the learned Judge. Once a report is placed on the floor of each House of the Parliament it is exclusively within the domain of the Parliament and the Judge loses his right to judicial review. The Parliament may choose to give a copy of the report or constitute a sub committee to analyse the report or may proceed with the address without any oppoutunity to the D learned Judge. As a corollary to the judgment of this court in SCJA's case, the report of the committee with its finding must be furnished to the learned Judge without which there can never be any efficacious judicial review. This valuable right cannot be taken away nor rendered nugatory by interpretative process which would violate the principles of natural justice and unfair procedure offending Art. 21. The Committee is a statutory E Tribunal, even though per force its report is not operative. As a Tribunal it is enjoined to supply him a copy of its report and if it fails to supply, the learned Judge is entitled to maintain the writ petition compelling the committee to supply the copy of the report.

F Sri G. Ramaswami, the learned Attorney General contended that the committee is in the nature of a subordinate authority to the Speaker, the latter being a statutory authority. The report is like grant of sanction for prosecution of a public servant under section 197 of the Code of Criminal Procedure, 1973. Unless validity of the sanction is questioned at the earliest stage the accused is precluded to assail it later on. On the same analogy G the Judge is entitled to challenge adverse findings, the foundation for address in the Parliament, at the earliest stage even before being considered by the parliament. This court in SCJA's case found that the judicial review is available against the adverse report of the committee. The Parliamentary process of removal is not amenable to judicial review. There- H fore, before any motion is laid on the floor of each House of Parliament,

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the learned Judge is entitled to the supply of a copy of the report and to the judicial review thereof. Thereafter, this court has no jurisdiction to interdict the proceeding before both the Houses of Parliament take up the motion for discussion. Interference later on would tantamount to interfering with the Parliamentary process. The Parliament alone is to decide as to how the motion is to be dealt with. Neither this court nor any other court in this county has any jurisdiction to deal with the matter or interfere with its decisions. Under these circumstances the learned Judge is entitled to a copy of the report and a right to judicial review of the same by this court. Any construction otherwise would leave the learned Judge high and dry. Such a situation is anathema to rule of law and the cause of justice. Exercise of the power of judicial review would be consistent with the interpretation of the provision of the Constitution, the Act and the Rules as laid by this Court in SCJA's case. Any other view would run counter to the conclusions in SCJA's case. He also contended that it is a basic principle of natural justice that the person against whom findings are rendered is entitled to be heard and seek judicial review of the adversse findings. As a corollary he is entitled to be supplied with the copy of the report and later the members of the Committee are not amenable to writ jurisdiction.

Sri Nariman, the learned Senior counsel for the committee contended that the report submitted by the committee germinates certain statutory consequences directly relatable to the political process of removal of the Judge, be the finding one of guilt or exoneration. The report forms a Parliamentary document for its consideration and determines the future course of the pending motion. If the finding is one of guilt the motion has to proceed to the stage of consideration and vote. If the finding is of "not guilty" the motion by force of statute is terminated without further consideration or discussion by the Parliament. By operation of sections 4(2) and 4(3) of the Act the committee is enjoined to submit its report to the Speaker who is obligated to place it on the floor of both the houses of Parliament under section 4(3). If the contention that the findings in the report are subject to judicial review, the consequence would be that the finding of "not guilty" is also equally liable to be questioned by any member of the Parliament that moved the motion. Until the report is upheld or quashed the Speaker would take no further steps in both Houses of the Parliament. By necessary implication it excludes consideration by the Parliament. In other words judicial review woud tantamount to stultify the

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A political process in the highest forum under the Constitution. On placing the report on the floor of each House of Parliament the motion would be subject to discussion, and resolution by majority in terms of Art. 124(4) which by necessary implication excludes judicial review of the said finding and of the political process in the Parliament. The learned Judge is not
B without remedy. Judicial review need not necessarily be by a court of law. Article 124(4) empowers the Parliament to review the report submitted by the Committee in terms of the law made under Art. 124(5). The learned Judge is entitled to be heard in the Parliament when the report is taken up for consideration. In support thereof he placed reliance of the instance of Mr. Justice Angelo Vasta of the Supreme Court of Qeensland, Australia,
C wherein Justice Vasta was given a notice and he was heard on the floor of the House before the Parliament discussed his conduct and recommended to the Governor for his removal.

It is next contended that the ratio in SCJA's case only to oversee "the
D process and progress" of the Committee's proceedings before it sends its report. The function of the Committee ends with its submitting the report to the Speaker with its finding of proved guilt or non-guilt. By implication thereafter the report is not subject to judicial review. The judicial review after the order of removal passed by the President, in terms of Article
E 124(4), does not appear to be immune from judicial review, be it by a civil suit under Sec. 9 of the Code of Civil Procedure, 1908 which did not expressly or by necessary implication bar it or in a proceeding under Art. 32 or Art. 226 of the Constitution. It is settled law by this court that it is not bound by the technicalities of prerogative writs. Exercise of power
F under Art. 226 or Art. 32 of the Constitution is elastic to mete out justice. The nature of the remedy may be different, may not be reinstatement but may be damages. It is his further contention that expedition in disposal of the motion admitted by the Speaker is the animation from a reading of the relevant provisions prescribing 3 months time to send the report to the Speaker. Interference is that Judicial review in the– is not called for. He
G also contends that being a document of the Parliament, the logical consequences would be to permit the highest forum namely the Parliament to discuss the proved misbehaviour of the learned Judge and to allow the Parliament to take its decision per majority in terms of Article 124(4) of the Constitution. The judicial review by necessary implication must be
H eschewed at this stage by proper and true interpretations of Article 124(4)

and Article 124(5), the Act and the Rules. According to the learned counsel it is not sensitivity of the learned Judge, but larger public interest of the confidence in the independence of judiciary which is paramount. Non review of the report till the order of removal by the President is passed, would protect and subserve public interest. It would also avoid protraction and proliferation of insidious effects on the efficacy of judicial review is the interregnum.

In support of his contention that the judicial review removal under Art. 124(4) is impermissible, he placed reliance on the decision in *Tun Dato Haji Mohanad Sallah Bin Abus* v. *Tam Sri Dato,* 1983 L.R.C. 25 of the Supreme Court of Malasiya, wherein the Court held that a mandamus cannot be issued restraining the Tribunal to investigate into the misbehaviour of the Judge and to submit the report thereon since it is a constitutional function which in effect amounts to restraining His Majesty from receiving the report.

Regarding justiciability of the order of removal at the end stage he placed reliance on *Powell* v. *McComack,* [1937] 395 U.S. 486 whereunder removal of Powell from the House by the Senate was reviewed by the Supreme Court and it was held that the impeachment power was subject to judicial review. He also placed reliance on the Commentary thereon by Raul Berge on Impeachment, Black on Impeachment and Prof. S.A. DeSmith's Article in 16 Modern Law Review 502; 1974 American Bar Association Journal 681; and Prof. Lawrence Tribe of Harward University, American Constitutional Law 1988, 2nd Edn. Taxes Law Review, Vol. 68(1989) p. 97 Judicial Review of Impeachment by Michael Gerhadt and Emanucts Constitutional Law 1991-92. He drew analogies from the provisions of the Constitution itself. The impeachment of the President under Art. 61; removal of the Vice-President under Art. 67(b), the Dy. Chairman of the Rajya Sabha under Art. 70(c), removal of the Speaker and Dy. Speaker of Lok Sabha under Art. 94(c) are not subject to judicial review, as they are purely political processess while for removal of a Judge under Art. 124(4) and 124(5) is an amalgam of political and judicial process. The removal of the Chairman or Member of the Public Service Commission on a report by the Supreme Court under Art. 317 is not subject to judicial review under Art. 32, since the report is of the Supreme Court and not of a Committee of Judges.

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A The learned Attorney General and Sri Sibal are unanimous in their reply that the political process of removal of a Judge after the resolution per majority, in tune with Art. 124(4) of the constitution, is not subject to judicial review as the Parliament exercises judicial power but not legislative power. Its power of recording judicial finding whether or not guilty was B entrusted to the Committee and it is its judgment. It cannot be prognosticated as to what procedure the Parliament would follow to discussing the misbehaviour of the learned Judge. Therefore, the judicial review would trench into a conflict of jurisdiction of two constitutional wings of the State and the Court would exercise self-restraint to disturb the finality of constitutional process of removing a Judge. This Court in SCJA's case held C that the judicial review would be available to the Judge only before it is being placed on the floor of the House as a concomitant. But they relented to the position that judicial review would be available, if the removal is not passed say by a majority of 2/3rd members of the Parliament present and voting or discussion and voting was not in the same session or that even D the proved facts and based thereon the finding of guilt as accepted by the Parliament *per se* is not a misconduct in the eye of law, etc. Sri Sibal distinguished *Powel's* case on the ground that it was a disqualification to sit as a member of the House and not impeachment for misconduct and purely political process. He relied on *Halsted L. Ritter* v. *U.S.*, 84 Court of E Claims 293 referred to by Sri Nariman and *certiorari* was denied in *Ritter* v. *U.S.*, 300 U.S. 663. This Court in SCJA's case expressly held that from the stage of admitting the motion till submission of the report being statutory the Tribunal's findings are reviewable by this court under Art. 32 or 136 of the Constitution or Art. 226 in the High Court. The adverse F report, if found, would give cause of action to file writ petition. It is open to the learned Judge to show to the court the illegalities committed by the Committee and at the threshold they be corrected and the judicial review after removal is not efficacious. The availability of the remedy after removal does not preclude the court to correct illegalities or errors at the earliest.

G

Though the contentions are carved on wide canvass, I prefer to focus the problem within narrow confines. Whether, judicial review of a finding of guilt recorded by the committee or removal of the Judge following the resolution passed by both the House of Parliament on an address with H requisite majority, amenable to judicial review and if so on what grounds,

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at what stage and to what extent, would not arise on the present facts. The controversy thereof traverses wider dimensions pregnant with far reaching ramifications. The need to traverse the entire gamut is obviated for the reason that it is premature to go into the question at this stage and secondly when it trenches into conflict of jurisdictions of this court and of the Parliament, it would be better to avoid an opinion at an inopportune stage. The Parliament while making the Act in the Language of this court in SCJA's case adopted a "judicious blend" or "admixture and amalgam" of political and judicial process as held in *Krishna Swami's* case, to remove a Judge of the Constitutional court. The initiation of the process to remove a Judge was entrusted to the requisite members of either Rajya Sabha or Lok Sabha with stated grounds in the motion. The power was entrusted to the Speaker to admit or to refuse its admission and on its admission the duty to constitute a High Judicial Committee composed of a sitting Judge of the Supreme Court, one of the Chief Justices of the High Courts and a distinguished Jurist. In SCJA' case this Court held that all the actions of the Speaker under the Act are statutory ones outside the parliamentary proceedings and are subject to judicial review.

In my respectful view, the only question, on the facts relevant for decision in this case is, whether the learned Judge is entitled to supply of a copy of the report of the Committee to be submitted to the Hon'ble Speaker of Lok Sabha. If the contention of Sri Nariman is accepted that the moment the report was signed by the Committee it forms a Parliamentary document is accepted, the logical result must end in an address by both the Houses of Parliament; a resolution in that behalf passed in terms of Art. 124(4) and an order of removal would be passed by the President. Certainly, the consequence would be that the political process comes to a terminus and the order of removal of the Judge becomes final. Whether it is reviewable by judicial process is yet another question. As soon as the report is signed by the Committee, as reported to have already been signed by the Committee, whether it would automatically form part of the Parliamentary document is the question. Whether the finding of exoneration of the learned Judge by the Committee is also liable to be questioned as contended for by Sri Nariman? Let us first take the later question. To bring out that contention pointedly to focus, it is necessary to consider the scope of Sec.6 of the Act which reads thus:

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A 6.(1) "If the report of the Committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapcity, then, no further steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses of Parliament shall not be proceeded with.

B

(2) If the report of the Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in sub-section (1) of section 3 shall, together with the report of the Committee, be taken up for consideration by the House or the Houses of Parliament in which it is pending.

C

(3) If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of Article 124 or, as the case may be, in accordance with that clause read with article 218 of the Constitution, then, the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the prescribed manner to the President by each House of Parliament in the same session in which the motion has been adopted."

D

E

The Act insisted that the political process of removal of a Judge must be flavoured by a finding of guilt of proved misbehaviour or incapacity, a foundation for removal under Art. 124(4) by a high judicial authority as it impinges upon the reputation and forfeiture of office by an equally high constitutional functionary. Article 124(5) empowers to make law of procedure for investigation into misbehaviour or incapacity of a Judge. Section 3(2) authorises the Speaker to constitute the Committee in terms thereof and, therefore, he ceases to have any hold over the committee. The Committee thus is a high judicial body consistent with the status of the Judge. The contention of the Attorney General that the Committee is a delegate of the Speaker, is ill conceived. By operation of Sec. 6(1), if the report of the Committee contains a finding that the Judge is not guilty of misbehaviour or does not suffer from any incapacity, then no further steps

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should be taken in either House of the Parliament in relation to the report and there is legislative mandamus that the motion pending in either the House of Parliament shall not be proceeded with. In other words the motion stands lapsed. The result also is envisaged in Rule 9(4). Rule 9 provides the procedure to submit the report. Sub-rule 4 of rule 9 provides thus :

> "(4) Where the majority of the members of the Inquiry Committee makes a finding to the effect that the Judge is guilty of a misbehaviour or that he suffers from an incapacity, but the third member thereof makes a finding to the contrary, the presiding officer of the Inquiry Committee shall authenticate, in the manner specified in sub-rule (2), the finding made by such third member, in duplicate and shall forward the same along with the report submitted by him under sec.4.

Sub-rule (6) of rule 9 reads thus :

> "(6) Where the majority of the members of the Inquiry Committee makes a finding to the effect that the Judge is not guilty of any misbehaviour or that he does not suffer from any incapacity, and the third member thereof makes a finding to the contrary, the Inquiry Committee shall not disclose the finding made by such third member to Parliament or to any other authority, body or person."

A conjoint reading of sec. 6(1), rule 9(4) read with rule 9(6) would establish the legislative animation that where the report contains a finding of guilt of misbehaviour or that the Judge suffers from an incapacity, unanimously or per majority view, then the Presiding Officer (sitting Judge of this Court) of the Inquiry Committee shall authenticate, in the manner prescribed in sub-rule (2) the finding made by the third member of not guilty, in duplicate, should be forwarded to the Speaker/Chairman along with the report submitted by him under sec.4. At the discussion by the Parliament, the favourable finding of 'not guilty' may be taken into account by the Parliament or even the finding of guilt may be open to discussion with the aid of the evidence placed on its floor and the Parliament may or may not agree with the majority view in which case there shall be deemed proof or

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A disproof of misbehaviour or incapacity in the light of majority resolution, though no express finding was recorded in that behalf. On the other hand, if the majority members make a finding that the Judge is not guilty of any misbehaviour or he does not suffer from any incapacity, but the third member records a finding to the contrary, the Committee shall not disclose
B that finding of the third member to the Parliament or to any other authority, body or person. In other words there is a statutory prohibition or mandatory injunction to the committee to disclose the minority view to the public. Thus it is clear that the finding of "not guilty", in other words, "exoneration" from the alleged misbehaviour or incapacity by majority of the members was treated to be conclusive and should be kept secret and
C by necessary implication it excluded judicial review. The reason is obvious that the finding of a high judicial body, a final arbitor, must be respected; should receive finality and should not be tinkered with. Equally disclosure of even the minority view would effect not only the reputation of the Judge but the non-disclosure would also ward off collateral attack from any
D quarter or liability to be questioned by any third party. It is held in *Krishna Swami's* case that neither the members of the Parliament, nor anybody have locus or right to participate and lead evidence against the Judge at the investigation done by the Committee. As a necessary corollary no-one is entitled to impugne the correctness of the findings of 'not guilty' recorded by the Committee, absolving the Judge from the charge. Therefore, the
E legislature itself made a distinction between the consequences that would flow from recording a finding of guilty or exoneration and the former is subject to political process, together with the contra finding of third member but in the latter case it is conclusive. As held in SCJA's case, no further steps based thereon should be taken up for consideration. In other
F words, it is immune from attack from any quarter whatsoever, when even the Parliament itself was prohibited to go into that question. It must thus be held that first contention of Sri Nariman is not tenable and accordingly it is negatived.

G The next question is as to when the report of unanimous or per majority finding of 'proved misbehaviour or incapacity' would form part of Parliamentary document. Under sub-section (2) of sec.4, 'at the conclusion of the investigation, the Committee shall send the report to the Speaker, or as the case may be, to the Chairman or where the Committee has been constituted jointly by the Speaker and the Chairman, to both of them
H stating therein its findings on each of the charges with such of the reasons

on the whole case as it deems fit'. Under sub-sec. (3) thereof the Speaker or the chairman or both when the committee was constituted jointly by them, 'shall cause the report to be laid, as soon as may be, before the House of People and Council of State'. Under Rule 9(3), a copy of the report of the Inquiry Committee, authenticated in the manner specified in sub-rule (2), 'shall be laid before each House of Parliament'. Under sub-rule (6) of rule 9 when one member recorded a finding of not guilty of misbehaviour or does not suffer from any incapacity, the said report of the third member, as authenticated by the Presiding Officer, shall also be laid before each House of Parliament along with the evidence as per Rule 9(5).

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In SCJA's case interpreting Sections 3, 4 and 6 of the Act, the majority, in the context of the doctrine of lapse, held that the entire stage up to proof of misbehaviour or incapacity began with the initiation of investigation on the allegation being made is governed by the law enacted under Art. 124(5). The stage of an address by each House of the Parliament commences only when the alleged misbehaviour or incapacity is proved in accordance with the law enacted under Clause 5 (para 78). The first part is entirely statutory while the second part alone is the Parliamentary process. The first part covered fully by enacted law, the validity of which and process thereunder being subject to judicial review independent of any political colour and after proof it is was intended to be a parliamentary process (para 82). The House does not come into picture at the stage of admitting the motion, constituting the committee and the investigation into the alleged misbehaviour or incapacity.

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Therefore, the Speaker on receipt of the report submitted by the committee under section 4(2) or, as the case may be, the Chairman or both of them, by operation of sub-section (3) thereof should cause the report to be laid before each House of parliament. The manner of preparation of the record is controlled and regulated by rule 16. It postulates that, when the committee unanimously or per majority thereof, finds that the Judge is guilty of any misbehaviour or suffers from an incapacity, the Secretary of the Lok Sabha or Rajya Sabha, as the case may be, shall prepare the address in form II and a copy of the motion shall be annexed to the address. They shall fix the date for consideration by each House and address may be supported by majority member in terms of Art. 124(4).

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A Thus it is clear that the moment the report was signed by the committee, it did not, *ipso facto*, become the document of the Parliament but when the Speaker/Chairman or both, as the case may be, caused the report to be laid on the floor of each House of Parliament together with the evidence and the motion in the manner prescribed in Rule 16, it becomes the B document of the Parliament. Until then the Speaker/Chairman holds the document in his statutory capacity under the Act. The anchor of Sri Nariman lost its hook.

The question then is whether the committee is a tribunal? In *Indo-China Steam Navigation Co. Ltd.* v. *Jasjit Singh, Addl. Collector of Custom* C *& Ors.*, [1964] 6 SCR 594 the facts were that under the Customs Act on proceedings having been taken and the goods confiscated, an appeal was laid before the Central Board of Revenue which was rejected. A revision to the Central Govt. also met with the same fate. When their correctness was questioned in this court under Act. 136, a preliminary objection was D raised that the Board and the Government are not a tribunal within the meaning of Art. 136 and that, therefore, the order passed by the authorities under the Act was not subject to judicial review. While repealing the contention the Constitution Bench held at pages 603 & 604 thus :

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> "It is difficult to lay down any definite or precise test for determining the character of a body which is called upon to adjudicate upon matters brought before it. Sometimes in deciding such a question, courts enquire whether the body or authority whose status or character is the subject F matter of the enquiry, is clothed with the trappings of a court. Can it compel witnesses to appear before it and administer oath to them, is it required to follow certain rules of procedure, is it bound to comply with the rules of natural justice, is it expected to deal with the matters before it fairly, justly and on the merits and not be guided G by subjective considerations; in other words, is the approach which it is quasi-judicial approach? If all or some of the important tests in that behalf are satisfied, the proceedings can be characterised as judicial proceedings and the test of trappings may be said to be satisfied. But H apart from the test of trappings, another test of impor-

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> tance is whether the body or authority had been constituted by the State and the State had conferred on its inherent judicial power. If it appear that such a body or authority has been constituted by the legislature and on it has been conferred the State's inherent judicial power, that would be a significant, if not a decisive, indication that the said body or authority is a Tribunal".

Accordingly it was held that the Central Board of Revenue and the Central Govt. are Tribunals for the purpose of Art. 136. In *the Bharat Bank Ltd., Delhi* v. *Employees of the Bharat Bank Ltd., Delhi,* [1950] SCR 495 when similar objection was taken of Industrial Tribunal another Consitution Bench held that the main function of the Industrial Tribunal is to adjudicate on industrial disputes which implies that there must be two or more parties before it with conflicting cases and that it has also to arrive at a conclusion as to how the dispute is ended. *Prima facie,* therefore, a Tribunal like this cannot be excluded from the scope of Art. 136. It was also further held that though the award in *proprio vigore* is not enforceable, is life kindles into being, on acceptance by the government concerned and a notification was issued by the government in the manner prescribed by law. It by itself is not a determinitive factor to keep the award outside the purview of Art. 136 of the Constitution. In *Associated Cement Co. Ltd.* v. *P.N. Sharma & Anr.,* [1965] 2 SCR 366 the question was whether the order passed by the government with the concurrence of the Labour Commissioner under the Punjab Welfare Officer Recruitment and Conditions of Service Rules, 1952 is a Tribunal within the meaning of Art. 136. This Court at pages 386 & 387 held thus:

> "The presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. The main and the basic test, however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial func-

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A tion. Applying this test, there can be no doubt that the power which the State Govt. exercises under R.6(5) and R.6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory Rule and it can be exercised in respect of disputes between the management and its Welfare Officers. There is, in that B sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it".

The same is the ratio in *Durga Shankar Mehta* v. *Thakur Raghuraj Singh* C *and Ors.*, [1955] 1 SCR 267 and *Dev Singh & Ors.* v. *Registrar, Punjab & Haryana High Court & Ors.*, [1987] 2 SCR 1005 the latter a little digressed on facts.

It is, therefore, settled law that all the trappings of the court need D not necessrily be present in a particular case to bring the authority as a Tribunal but the essential postulate must be that it must be the creature of the statute and the State should delegate its inherent power of judicial review to the Tribunal; all or some of the trappings of a court may or may not be present in a given case. The Tribunal should adjudicate the dispute E between the parties before it, after giving reasonable opportunity to the parties, consistent with the principles of fair play and natural justice. It is not necessary that *proprio vigore* it is enforceable. The mere fact that it is subject to further orders does not take away the effect of the decision or findings recorded thereunder.

F The committee is not a recommendatory body. It is high judicial authority deriving its power from Art. 124(5) of the Constitution read with Section 3(2) of the Act. On framing definite charges and service on him, it gives reasonable time to the learned Judge to file his defence. The Committee under Rule 8 is empowered to conduct ex-parte enquiry, in the G absence of the Judge, when he did not appear or had chosen to remian absent. The Judge also has been given right under Rule 11 to consult his counsel and the right to be defended by a legal practitioner of his choice. During investigation the Committee was empowered by Sec. 5 of the Act with 'powers of a civil court while trying the civil suit' under Code of Civil H Procedure, 1908 in respect of enumerated matters, namely, 'to summon,

and enforce the attendance of the witnesses and their examination, power of discovery and inspection or to direct them, production of documents, to receive evidence on oath, to issue commission for examination of the witnesses or the documents and such other prescribed matters'. Under sec.4(1) the Committee shall give reasonable opportunity to the Judge and the Advocate appointed under Sec. 3(9) to examine witnesses, right to examine, adjudication of evidence in proof or disproof of the charges and right to be heard in defence. Under Rule 10(1) the evidence should be recorded as per provision of the Code of Civil Procedure. The right to examine and cross-examine witnesses is a valuable right akin to a trial of dispute between two contending parties and their right to address the Committee on the evidence adduced in proof or disproof of the charges is to adjudge the issue in a judicious manner. The Committee thus has been empowered to adjudicate on the proof or disproof of the charges in accordance with the evidence legally adduced after hearing the Judge and the Advocate. The Committee has no other function except to adjudicate upon the dispute of "the proved guilt or not guilty". By operation of Rule 6 the Committee, may on consideration of the evidence and applying the standard of 'proof beyond reasonable doubt', make a finding that the misbehaviour or incapacity has been proved or disproved. The finding of guilt alone is subject to political process. Thus the Inquiry Committee is a high judicial body or authority.

The problem could be broached from a different perspective. In substance the investigation and proof of misbehaviour or incapacity of a Judge under Art. 124(5) read with the Act and the Rules; the address by each House of Parliament supported by the requisite majority and removal of a Judge by the President is akin to a disciplinary measure to resuscitate and infuse needed judicial conduct and fervidity by assertion of the supremacy of law that the Judge too will be subject to law. The Judge occupies a constitutional office. Article 124(5) devised an amalgam of judicial and political process to remove an erring Judge or Judge suffering from incapacity. The report submitted by the Committee to the Speaker with the finding that the alleged misbehaviour is proved and the Judge is found guilty of the proved misbehaviour, constitutes fresh material. This Court in *Union of India* v. *H.C. Goel,* [1964] 4 SCR 718 at 728 held that:-

"The enquiry report along with the evidence recorded

A *constitute the material on which the government has ultimately to act.* That is the only purpose of the enquiry held by the competent officer and the report which he makes as a result of the said enquiry".

(Emphasis supplied)

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It was further held at p.729 that:-

"It is true that the order of dismissal which may be passed against a government servant found guilty of misconduct, C can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public D servant if he is able to satisfy the High Court that the ultimate conclusion of the government in the said proceedings which is the basis of his dismissal is based on no evidence".

E In *Union of India & Ors.* v. *Mohd. Ramzan Khan,* [1991] 1 SCC 588 a bench of three Judges held (of course it is subject to the decision by the Constitution Bench, pending reference) that the disciplinary authority is very often influenced by the conclusion of the enquiry officer and even by the recommendations relating to the nature of the punishment to be F inflicted. With the 42nd amendment the delinquent officer is associated with the disciplinary enquiry not beyond the recording of evidence and submissions made on the basis of the matter to assist the enquiry officer has to come to his conclusion. In case his conclusions are kept away beyond the enquiry with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such G material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is conerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him, though the same was made available to the punishing H authority in the matter of reaching its conclusion, it is voilative of the rules

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of natural justice. This court further approved the ratio in *Mazharul Islam Hashmi* v. *State of U.P. & Anr.,* [1979] 4 SCC 537 = AIR 1979 SC 1237 that the other person must know what he has to meet and he must have an opportunity of meeting that case. The Legislature, however, can exclude operation of these principles expressly or impliedly but in the absence of any such exclusion, principles of natural justice will have to be followed. The finding of guilt of misbehaviour or incapacity, with which the Judge is suffering from, would visit with civil consequences of loss of reputation in the society apart from forfeiture of office. In *Mohinder Singh Gill & Anr.* v. *The Chief Election Commissioner, New Delhi & Ors.,* [1978] 2 SCR 272 it was held that a person effected by the civil consequences is entitled to the Report. It is now settled law that the principles of natural justice are an integral part of constitutional scheme of just and fair procedure envisaged under Art.14 of the Constitution.

The above discussion leads to conclude that if the committee makes, an unanimous or per majority, finding that the learned Judge is 'not guilty' of misbehaviour, the finding receives quietus and is conclusive. The political process pursuant to pending motion should not be proceeded with and should stand lapsed. The minority finding of 'guilt' should remain secret and none be entitled to, either access to the report of exoneration or to assail the correctness of the finding of not guilty recorded by the committee. The need to supply the report is obviated. On the other hand if the committee either unanimously or per majority makes a finding of 'guilty of the proved misbehaviour' only that part should be laid on the floor of each House of the Parliament in terms of the Act and the Rules along with the minority views of 'not guilty' and the political process for removal of the Judge would start. That report is adverse to the learned Judge. The constitutional scheme laid emphasis on expedition of the consideration of the pending motion and, it should doubtless be done for, its dilation would generate deleterious effects on public confidence in the efficacy of administration of justice. Every right carries with it the corollary remedy to redress the injury. Indisputably and as a fact in fairness, Sri Nariman, also accepted that the learned Judge is entitled to judicial review. The arena of controversy is, whether, before the parliament had taken up the motion for consideration or after the President passed an order of removal under Article 124(4). As prefaced before the start of discussion that stage would

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A set only if and when the learned Judge has chosen to seek judicial review. That would arise only when he has been supplied with a copy of the report. Without knowing what the contents of the report are; the reasoning in support of the findings of proved misbehaviour or other illegalities in the process of adjudication, can a party be foreclosed from legal remedy? In B such a case is it not a non-issue? Without supply of the material, the foundation of legal injury, can he adequately and effectively plead, proved and disabuse the incorrectness of the finding etc.? May be the learned Judge opts to avail the remedy on the floor of the House of Parliament. Does non-supply of the report not trench into offending the principles of C natural justice? Is it not anathema to judicial process? The secrecy of the report of minority member's finding of 'guilt' is to protect the Judge but when the finding of guilt when adversely effects the Judge, can it be denied on the plea of secrecy? May be the counsel may canvas any contention on a non-issue. Is the court bound to answer all the contentions raised? In the circumstances, I am of the humble view that the learned Judge is entitled D to the supply of a copy of the report and the committee being a high statutory one, the court can, keeping the status of the committee in view, make a request to supply the copy of the report to the learned Judge.

The necessary conclusion, therefore, is that the learned Judge is E entitled to the supply of a copy of the report of the committee. Its concomitant would be that the learned Judge needs time to reflect upon to taking a decision and action thereon. Though the Speaker was sought to be impleaded as a respondent to the writ petition, later on he was deleted. Therefore, the question of direction to the Hon'ble Speaker with F a request not to lay the report on the floor of each House of Parliament does not arise. Necessarily, the committee is to be requested to withnold submission of its report for a reasonable time.

Accordingly, I allow the writ petition and direct the Registrar General to communicate a letter of request to Sri Justice P.B. Sawant G Committee to supply a copy of the report to Hon'ble Sri Justice V. Ramaswami and to convey further request to withhold submission of its report for a reasonable time from the date of the receipt of the letter of request from the Registry. The Attorney General is also requested to apprise the Hon'ble Speaker of the Lok Sabha of the order passed in this H behalf and if necessary to extend the needed time to enable the committee

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to submit its report within that extended time. The writ petition is accordingly ordered but in the circumstances without cost. A

ORDER

This Writ Petition is disposed of in terms of, and in accordance with the majority opinion. B

T.N.A. Petition disposed of.