SUB-COMMITTEE ON JUDICIAL ACCOUNTABILITY ETC. ETC. A

v.

UNION OF INDIA AND ORS., ETC.

OCTOBER 29, 1991

[B.C. RAY, L.M. SHARMA, M.N. VENKATACHALIAH, J.S. VERMA AND S.C. AGRAWAL, JJ.] B

Constitution of India, 1950:

Articles 124(4) and (5) and 118—Removal of Judge of Supreme Court—Motion for presenting an Address to President and decision of Speaker of Lok Sabha to admit the motion and constitute a committee under Judges (Inquiry) Act for investigation and proof of grounds—Whether lapses on dissolution of the Lok Sabha—Whether Judges (Inquiry) Act being law under Article 124(5) excludes operation of doctrine of lapse and also rules framed under Article 118—Whether Articles 124(5) and 118 operate in different fields—Question whether the motion lapsed or not on the dissolution of Lok Sabha—Justiciability of. C D

Articles 124(4) and (5) and 121—Scope and interpretation of—Removal of Judge of Supreme Court—Whether Justiciable—Enactment of law under Article 124(5) for regulating procedure for investigation and proof of misbehaviour or incapacity of Judges—Whether mandatory—Word 'may'—When to be construed as 'shall'. E

Articles 124(4) and (5) and 32—Removal of Judge of Supreme Court —Apart from constitutional process, whether Supreme Court has jurisdiction to enquire into alleged misbehaviour or incapacity and restrain the concerned Judge from exercising judicial functions—Whether it can give legal directive to Chief Justice of India not to allot any judicial work to the concerned Judge—Judge facing enquiry, continuing to discharge judicial functions—Propriety of. F

Article 32 —Public Interest Litigation—Inquiry Committee constituted by the Speaker of Lok Sabha under Judges (Inquiry) Act to investigate into the alleged misconduct of Judge of Supreme Court—Writ Petitions seeking directions to Union Government to enable the Committee to discharge its functions under the Act and to restrain the Judge from performing judicial functions during pendency of proceedings before the Committee—Maintainability of—Locus standi of Sub-committee on Judi- G H

A *cial Accountability and Supreme Court Bar Association to sue—Whether Court could refuse to interfere on grounds of infructuousness, propriety and futility—Declaration of legal and Constitutional position—Duty of Court—Different organs of State to consider matters within the orbit of their respective jurisdictions and powers.*

B *Judges (Inquiry) Act, 1968:*

Constitutional validity of.

Sections 3 and 6—Removal of Judge—Motion for presenting an address to President admitted and Committee constituted by the Speaker C *of Lok Sabha to investigate into charges of misconduct—Whether lapses on dissolution of the House—Whether the Act, being law made under Article 124(5) of Constitution, excludes doctrine of lapse and also rules of procedure for the Lok Sabha framed under Article 118—Action of Speaker —Whether vitiated on grounds of denial of notice and pre-decisional opportunity of hearing to concerned Judge and Speaker's political affilia-* D *tion —Doctrine of statutory exceptions or necessity—Applicability of.*

Constitutional Law:

Separation of Powers under federal set-up—Court—Interpreter of limits of authority of different organs of State—Judicial review—Incidental E *to and flowing from concept of written Constitution, the fundemental and higher law.*

Interpretation of Constitution:

Constructions which strengthen the fundamental feature of the Con- F *stitution to be adopted—Rule of law—Whether a basic feature—Independence of Judiciary—Whether essential attribute of Rule of Law.*

Aids to Construction—Constituent Assembly debates—Whether could be relied upon—Comparative Study of Constitution of other Countries— Whether afford proper perspective—Resort to historical background— G *Whether permissible.*

Administrative Law—Natural Justice—Motion for removal of a Judge under Judges (Inquiry) Act—Speaker deciding to admit the motion and constituting a Committee to enquire into allegations of misbehaviour— Whether Judge concerned entitled to pre-decisional opportunity of H *hearing.*

Practice and Procedure:

Removal of a Judge—Constitutional process pending—Conduct of members of the bar—Propriety required that the Judge should not be embarrassed even before the charges were proved—Level of debate in and out of Court—To be dignified and decorous.

Words & Phrases: Word 'may'—When could be read as 'shall'.

Upon a notice given by 108 members of the 9th Lok Sabha of a Motion for presenting an Address to the President for the removal of a sitting Judge of the Supreme Court for the alleged misconduct committed by him while he was functioning as Chief Justice of a High Court, the Speaker of the Lok Sabha admitted the Motion and constituted a Committee consisting of a sitting Judge of this Court, Chief Justice of a High Court and a distinguished jurist in terms of Section 3(2) of the Judges (Inquiry) Act, 1968. Subsequently, the Lok Sabha was dissolved and its term came to an end.

On its understanding that the Motion as well as the decision of the Speaker thereon had lapsed consequent on the dissolution of the Lok Sabha, the Union government did not act in aid of the decision of the Speaker, and notify that the services of the two sitting Judges on the Committee would be treated as "actual-service" within the meaning of Para 11(B)(i) of Part D of the II Schedule to the Constitution.

Thereupon, a body called the Sub-Committee on Judicial Accountability, claiming to be a Sub-Committee constituted by an All India Convention on Judicial Accountability to carry forward the task of implementing the resolutions of the conventions, and the Supreme Court Bar Association, seeking to prosecute the matter in the larger public interest and, in particular, in the interests of litigant public, filed two Writ Petitions before this Court. Two prayers common to both the petitions were, first, that the Union of India be directed to take immediate steps to enable the Inquiry Committee to discharge its functions under the Judges (Inquiry) Act, 1968 and, second, that during the pendency of the proceedings before the Committee the concerned Judge should be restrained from performing judicial functions and from exercising Judicial powers.

It was contended on behalf of the petitioners that pending business lapsed on prorogation, and as a general practice the House was

A usually prorogued before it was dissolved, but impeachment motions were *sui-generis* in their nature and, therefore, they did not lapse; that the question whether a motion lapsed or not was a matter pertaining to the conduct of the business of the House of which the House was the sole and exclusive master; no aspect of the matter was justiciable before a Court and Houses of Parliament were B privileged to be the exclusive arbiters of the legality of their proceedings, that it would be highly inappropriate that the Speaker should issue notice to a Judge and call upon him to appear before him; that these proceedings could not be equated with disciplinary or penal proceedings and the Speaker would not decide anything against the Judge at that stage and would merely decide whether C the matter would bear investigation; that the constitutional machinery for removal of a Judge was merely a political remedy for judicial misbehaviour and did not exclude the judicial remedy available to the litigants to ensure and enforce judicial integrity, that the right to move the Supreme Court to enforce fundamental rights was itself a fundamental right and that took within its sweep, as inher- D ing in it, the right to an impartial judiciary with persons of impeccable integrity and character, without which the fundamental right to move the court itself becomes barren and hollow, that the court itself had the jurisdiction - nay a duty to ensure the integrity and impartiality of the members composing it and restrain any member who was found to lack in those essential qualities and attainments at E which public confidence is built.

Another Writ Petition was filed by an individual by way of a counter to the second prayer in the Writ Petitions filed by the Sub-Committee on Judicial Accountability and the Supreme Court Bar Association. It was contended that till the Inquiry Committee actu- F ally found the concerned Judge guilty of charges, there should be no interdiction of his judicial functions and that if such a finding was recorded then thereafter till such time as the Motion for the presentation of the Address for the removal of the Judge was disposed of by the Houses of Parliament—which should not be delayed beyond 180 days—the President may ask the Judge concerned to recuse G from judicial functions.

Another Writ Petition was also filed by a practising Advocate challenging the constitutional validity of the Judges (Inquiry) Act, 1968 as *ultra vires* Articles 100, 105, 118, 121 and 124(5) of the Constitution of India and seeking a declaration that the Motion pre- H sented by 108 Members of Parliament for the removal of the Judges

had lapsed with the dissolution of the Lok Sabha. The petitioner also sought the quashing of the decision of the Speaker admitting the Motion, on the ground of denial of opportunity of being heard to the concerned Judge before the admission of Motion and constitution of the Committee by Speaker.

A Transfer Petition was filed seeking the withdrawal by the Supreme Court to itself from the Delhi High Court the Writ Petition filed in the High Court, where reliefs were similar to those prayed for in the Writ Petition filed by the practising Advocate. The Writ Petition was directed to be withdrawn to the Supreme Court and was heard along with other Writ Petitions.

It was contended on behalf of the petitioners in these Writ Petitions that before taking a decision to admit the motion and constituting a Committee for investigation, it was incumbent upon the Speaker, as a minimum requirement of natural justice, to afford an opportunity to the Judge of being heard since such a decision had momentous consequences both to the Judge and to the judicial system as a whole and that any politically motivated steps to besmear a Judge would not merely affect the Judge himself but also the entire system of administration of justice and therefore it would greatly advance the objects and purposes of Judges (Inquiry) Act, 1968 if the Judge concerned himself was given such a hearing; that the Speaker had acted contrary to Constitutional practice, that the manner in which he had admitted the motion smacked of *malafides* and since the Speaker had not entered appearance and denied the allegations, he must be deemed to have admitted them; that having regard to the nature of the area the decision of the Court and its writ is to operate in, the Court should decline to exercise its jurisdiction, and that any decision rendered or any writ issued might, ultimately become futile and infructuous as the constitution of and investigation by the committee were not, nor intended to be, an end by themselves culminating in any independent legal consequence, but only a proceeding preliminary to and preceding the deliberations of the House on the motion for the presentation of an address to the President for the removal of a Judge, which was indisputably within the exclusive province of the Houses of Parliament over which courts exercised no control or jurisdiction.

On behalf of the Union of India it was contended that a combined reading of Articles 107, 108 and 109 would lead irresistibly to the conclusion that upon dissolution of the House, all bills would

A **lapse subject only to the exception stipulated in Article 108, that on first principle also it required to be accepted that no motion should survive upon the dissolution of the House unless stipulated otherwise under the Rules of procedure and conduct of business; the doctrine of lapse was a necessary concomitant of the idea that each newly constituted House was a separate entity having a life of its** B **own unless the business of the previous House was carried over by the force of statute or rules of procedure and that the question whether a motion lapsed or not was to be decided on the basis of the provisions of law guiding the matter and the House itself was not its final arbiter and the Court alone had jurisdiction to examine and pronounce on the law of the matter.**

C

Disposing of the cases, this Court,

HELD : *By majority Per Ray, J. (for himself, Venkatachaliah, Verma and Agrawal, JJ)*

1.1 Where there is a written Constitution which constitutes the D **fundamental and in that sense a "higher law" and acts as a limitation upon the Legislature and other organs of the State as grantees under the Constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited Government'. Judicial review is an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the** E **limits of the powers of the various organs of the State which derive power and authority under Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State. In a federal set-up, the judiciary becomes the guardian of the Constitution. The interpretation of the Constitution as a legal instrument and its obligation** F **is the function of the Courts. It is emphatically the province and duty of the judicial department to say what the law is. [51 G-H, 52A, D]**

1.2 In interpreting the constitutional provisions concerning the judiciary and its independence the Court should adopt a construc- G **tion which strengthens the foundational features and the basic structure of the Constitution. Rule of law is a basic feature of the Constitutional fabric and is an integral part of the constitutional structure. Independence of the judiciary is an essential attribute of Rule of law. [31 D]**

H **1.3 In construing the Constitutional provisions, the law and**

procedure for removal of Judges in other countries afford a background and a comparative view. The solution must, of course, be found within our own Constitutional Scheme. But a comparative idea affords a proper perspective for the understanding and interpretation of the Constitutional Scheme. [31 G-H] A

Barringtons **Case [1830];** *Terrell* **v.** *Secretary of State for the Colonies and Another,* **[1953] 2 QB 482, referred to.** B

Constituent Assembly Debates Vols. **I to VI @ pp 899,900 Vol. VIII @ pp. 243-262, referred to.**

Halsbury's Laws of England, **4th Ed. Vol. p 1108;** *Shetreet 'Judges on Trial'* **(1976); pp. 404-405;** *Rodney Brazier 'Constitutional Texts'* **(1990) pp. 606-607;** *Gall 'The Canadian Legal System'* **(1983); pp. 184-186, 189;** *Lane's Commentary on The Australian Constitution* **(1986) p. 373;** *Mclelland: 'Disciplining Australian Judges'* **(1990) 64 ALJ 388, at p. 403;** *Henry J. Abraham: The Judicial Process,* **3rd Ed. p. 45;** *Robert J. Janosik: Encyclopeadia of the American Judicial System,* **Vol II pp. 575 to 578;** *"The Impeachment of the Federal Judiciary" Wrisley Brown Harvard Law Review* **1912-1913 684 at page 698;** *'The Judicial Process in Comparative Perspective' (Clarendon Press-Oxford* **1989 at page 73);** *(Erskine May's "The Law, Privileges, Proceeding and Usage of Parliament"* **(Twenty-first Edition London Butterworths 1989);** *M.N. Kaul and S.L. Shakdher in Practice and Procedure of Parliament",* **referred to.** C D E

2.1 It is not correct to say that the question whether a motion has lapsed or not was a matter pertaining to the conduct of the business of the House, of which the House was the sole and exclusive master, and that no aspect of the matter was justiciable before a Court. [29 C,53 G] F

2.2 The question whether the motion has lapsed is a matter to be pronounced upon on the basis of the Constitution and the relevant rules. [53 E]

G

2.3 On such interpretation of the Constitutional provisions as well as the Judges (Inquiry) Act, 1968, the Courts retain jurisdiction to declare that a motion for removal of Judge does not lapse on dissolution of the House. [53F-G]

Bradlaugh **v.** *Gossett,* **[1884] 12 Q.B.D. 271, distinguished.** H

A *A.K. Gopalan* v. *The State of Madras,* **[1950] SCR 88** *Special Reference Case,* **[1965] 1 SCR 413, referred to.**

Barton v. *Taylor,* **[1886] 11 AC 197,** *Rediffuson (Hong Kong) Ltd.* v. *Attorney General of Hong Kong,* **[1970] AC 1136, referred to.**

B **3.1 The constitutional process for removal of a Judge upto 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. Upto that point the matter cannot be said to remain outside the Court's jurisdiction. [66 E]**

C

3.2 The scheme of Articles 124(4) and (5) is that the entire process of removal is in two parts - the *first* part, under clause (5) from initiation to investigation and proof of misbehaviour or incapacity is covered by an enacted law, Parliament's role being only D **legislative as in all the laws enacted by it, the *second* part under clause (4) is in Parliament and that process commences only on proof of misbehaviour or incapacity in accordance with the law enacted under clause (5). Thus, the first part is entirely statutory, while the second part alone is the parliamentary process. [61 D]**

E **3.3 The context and setting in which clause (5) appears along with clause (4) in Article 124 indicate its nature and distinguish it from Articles 118, 119 and 121, all of which relate to procedure and conduct of business in Parliament. [61 B-C]**

3.4 The validity of law enacted by the Parliament under clause F **(5) of Article 124 and the stage upto 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 rea-** G **son, 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. [59 G-H, 60 A]**

4.1 Article 121 suggests that the bar on discussion in Parlia- H **ment with respect to the conduct of any Judge is lifted 'upon a**

motion for presenting an address to the President praying for the removal of a Judge as hereinafter provided'. The words 'motion' and 'as hereinafter provided' are obvious references to the motion for the purpose of clause (4) of Article 124 which, in turn, imports the concept of "proved" misbehaviour or incapacity. What lifts the bar under Article 121 is the *'proved'* misbehaviour or incapacity. Clause (5) of Article 124 provides for an enactment of law for the purpose of investigation and proof of misconduct or incapacity preceding the stage of motion for removal on the ground of 'proved' misbehaviour or incapacity under clause (4). [56 H, 57 A-B]

4.2 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 upto 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 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 consequences 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). [57 G-H, 58 A-B]

4.3 Thus prior proof of misconduct in accordance with the law made under Article 124(5) is a condition precedent for the lifting of the bar under Article 121 against discussing the conduct of a Judge in the Parliament. Article 124(4) really becomes meaningful only with a law made under Article 124(5), without which, the constitutional scheme and process for removal of a Judge remains inchoate. [66 F]

4.4 The bar in Article 121 applies to discussion in Parliament but investigation and proof of misconduct or incapacity cannot exclude such discussion. 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 limita-

A **tion of Article 121. The policy appears to be that the entire stage upto 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. Parliament neither has any role to play**
B **till misconduct or incapacity is found proved nor has it any control over the machinery provided in the law enacted under Article 124(5). 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**
C **scheme of Articles 121, 124(4) and 124(5). The general scheme of the Act conforms to this view. [58 H-59 A-D]**

4.5 It is not the law enacted under Article 124(5) which abridges or curtails the parliamentary process or exclusivity of its jurisdiction, but the Constitutional Scheme itself which by enacting clauses
D **(4) and (5) simultaneously indicated that the stage of clause (4) is reached and the process thereunder commences only when the alleged misbehaviour or incapacity is proved in accordance with the law enacted under clause (5). It is only then that the need for discussing a Judge's conduct in the Parliament arises and, therefore, the bar under Article 121 is lifted. [60 D-E]**

E

5.1 If the motion for presenting an address for removal is envisaged by Articles 121 and 124(4) 'on ground of *proved* misbehaviour or incapacity', it presupposes that misbehaviour or incapacity has been proved earlier. This is more so on account of the expression 'investigation and proof' used in clause (5) with specific refer-
F **ence to clause (4), indicating that 'investigation and proof' of misbehaviour or incapacity is not within clause (4) but within clause (5). Use of the expression 'same session' in clause (4) without any reference to session in clause (5) also indicates that session of House has no significance for clause (5) i.e., 'investigation and proof' which is to be entirely governed by the enacted law and not the parliamen-**
G **tary practice which may be altered by each Lok Sabha. [61 F-H]**

5.2 The significance of the word 'proved' before the expression 'misbehaviour or incapacity' in clause (4) of Article 124 is also indicated when the provision is compared with Article 317 providing for removal of a member of the Public Service Commission. The
H **expression in clause (1) of Article 317 used for describing the ground**

of removal is 'the ground of misbeaviour' while in clause (4) of Article 124, it is, 'the ground of *proved* misbehaviour or incapacity'. [62 A]

5.3 Use of the word 'may' in clause (5) indicates that for the 'procedure for presentation of address' it is an enabling provision and in the absence of the law, the general procedure or that resolved by the House may apply but the 'investigation and proof' is to be governed by the enacted law. The word 'may' in clause (5) is no impediment to this view. When a provision is intended to effectuate a right — here it is to effectuate a constitutional protection to the Judges under Article 124(4) — even a provision as in Article 124(5) which may otherwise seem merely enabling becomes mandatory. The exercise of the power is rendered obligatory. The use of the word 'may' does not necessarily indicate that the whole of clause (5) is an enabling provision leaving it to the Parliament to decide whether to enact a law even for the investigation and proof of the misbehaviour or incapacity or not. [62 D, 62 G, 63 E-F]

State of Uttar Pradesh **v.** *Joginder Singh,* **[1964] 2 SCR 197 at 202;** *Punjab Sikh Regular Motor Service, Moudhapara* **v.** *The Regional Transport Authority, Raipur & Anr.,* **[1966] 2 SCR 221, referred to.**

Erederic Guilder Julius **v.** *The Right Rev. The Lord Bishop of Oxford; the Rev. Thomas Tellusson Carter,* **[1879-80] 5 A.C. 214 at 244, referred to.**

5.4 Similarly, use of word 'motion' to indicate the process of investigation and proof in the Judges (Inquiry) Act, 1968, because the allegations have to be presented to the 'Speaker' does not make it 'motion in the House' notwithstanding use of that expression in Section 6. Otherwise, section 6 would not say that no further step is to be taken in case of a finding of 'not guilty'. It only means that when the allegation is not proved, the Speaker need not commence the process under clause (4) which is started only in case it is proved. The Speaker is, therefore, a statutory authority under the Act chosen because the further process is parliamentary and the authority to make such a complaint is given to Members of Parliament. Moreover, the enactment under Article 124(5) cannot be a safe guide to determine the scope of Article 124(5). [64 A-C]

6.1 Article 124(5) does not operate in the same field as Article 118 relating to procedure and conduct of business in Parliament. [61C]

A **6.2 Article 118 is a general provision conferring on each House of Parliament the power to make its rules of procedure. These rules are not binding on the House and can be altered by the House at any time. A breach of the rules amounts to an irregularity and is not subject to judicial review in view of Article 122. [64 G]**

B **6.3 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. [64 H, 65 A]**

C **6.4 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 Article 118. Since Articles 118 and 124(5) operate**
D **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 a law would constitute illegality and could not be immune from judicial scrutiny under Article 122(1). [65 B-C]**

E **7.1 Neither the doctrine that dissolution of a House passes a sponge over parliamentary slate nor the specific provisions contained in any rule or rules framed under Article 118 of the Constitution determine the effect of dissolution on the motion for removal of a Judge under Article 124, because Article 124(5) and the law**
F **made thereunder exclude the operation of Article 118 in this area. [49 F]**

***Purushothaman Nambudiri* v. *The State of Kerala,* [1962] Suppl. 1 SCR 753, referred to.**

G **7.2 The law envisaged in Article 124(5) is parliamentary law which is of higher quality and efficacy than rules made by the House for itself under Article 118. Such a law can provide against the doctrine of lapse. [50 H]**

7.3 In the constitutional area of removal of a Judge, the law made under Article 124(5) must be held to go a little further and to
H **exclude the operation of the Rules under Article 118 and no ques-**

tion of repugnance could arise to the extent the field is covered by the law under Article 124(5). [51 C] A

State of Punjab **v.** *Sat Pal Dang & Ors,* **[1969] 1 SCR 478, relied on.**

8.1 The Judges (Inquiry) Act, 1968 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 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 legislation reconciling the concept of accountability of Judges and the values of judicial independence. The provisions of the Judges (Inquiry) Act do not foul with the constitutional scheme. [65 B-C, 64 C] B C D

8.2 The Speaker, while admitting a motion and constituting a Committee to investigate the alleged grounds of misbehaviour or incapacity does not act as part of the House. The House does not come into the picture at this stage. The provisions of the Judges (Inquiry) Act, 1968 are not unconstitutional as abridging the powers and privileges of the House. The Judges (Inquiry) Act, 1968 is constitutional and is *intra vires.* [66 G-H] E

9.1 The Judges (Inquiry) Act, 1968 is law enacted under Article 124(5) which provides against doctrine of lapse.

9.2 The effect of sections 3(1) and (2) and 6(2) of the Judges (Inquiry) Act, 1968, is that the motion should be kept pending till the committee submits its report and if the committee finds the Judge guilty, the motion shall be taken up for consideration. Only one motion is envisaged which will remain pending. No words of limitation that the motion shall be kept pending subject to usual effect of dissolution of the House can or should be imported. [50 G] F G

9.3 Section 3 of the Act applies to both the Houses of Parliament. The words "shall keep the motion pending" cannot have two different meanings in the two different contexts. It can only mean that the consideration of the motion shall be deferred till the report H

A of the Committee implying that till the happening of that event the motion will not lapse. Therefore, such a motion does not lapse with the dissolution of the House of Parliament. [51 D]

10. At the stage of the provisions when the Speaker admits the motion under section 3 of the Judges (Inquiry) Act, a Judge is not, B as a matter of right, entitled to a notice. The scheme of the statute and the rules made thereunder by necessary implication, exclude such a right. But that may not prevent the Speaker, if the facts and circumstances placed before him indicate that hearing the Judge himself might not be inappropriate, might do so. But a decision to admit the motion and constitute a Committee for investigation with- C out affording such an opportunity does not, by itself and for that reason alone, vitiate the decision. [68 E-G]

11.1 It is true that society is entitled to expect the highest and most exacting standards of propriety in judicial conduct, and any conduct which tends to impair public confidence in the effi- D ciency, integrity and impartiality of the court is indeed forbidden. But, the proposition that, apart from the constitutional machinery for removal of a Judge, the judiciary itself has the jurisdiction and in appropriate cases a duty to enquire into the integrity of one of its members and restrain the Judge from exercising judicial functions is beset with grave risks. The court would then indeed be acting as a E tribunal for the removal of a Judge and is productive of more problems than it can hope to solve. [69 C, 70 H]

Sampath Kumar & Ors. v. *Union of India & Ors,* [1985] 4 S.C.C. 458, referred to.

F

Corpus Juris Secundum, (Vol.48A), referred to.

11.2 The relief of a direction to restrain the Judge from discharging judicial functions cannot be granted. The entire Constitutional Scheme, including the provisions relating to the process of G removal of a Judge are to be taken into account for the purpose of considering this aspect. Since the Constitutional Scheme is that the Judge's conduct cannot be discussed even in the Parliament which is given the substantive power of removal, till the alleged misconduct or incapacity is 'proved' in accordance with the law enacted for this purpose, it is difficult to accept that any such discussion on H the conduct of the Judge or any evaluation or inference as to its

merit is permissible according to law elsewhere except during investigation before the Inquiry Committee constituted under the statute for this purpose. Therefore, it is difficult to accept that there can be any right in anyone running parallel with the Constitutional Scheme for this purpose contained in clauses (4) and (5) of Article 124 read with Article 121. No authority can do what the Constitution by necessary implication forbids. [71 B-F]

11.3 The question of propriety is, however, different from that of legality. Whether the Judge should continue to function during the intervening period is to be covered by the sense of propriety of the concerned Judge himself and the judicial tradition symbolised by the views of the Chief Justice of India. It should be expected that the Judge would be guided in such a situation by the advice of the Chief Justice of India, as a matter of convention, unless he himself decided as an act of propriety to abstain from discharging judicial functions during the interregnum. It is reasonable to assume that the framers of Constitution had assumed that a desirable convention would be followed by a Judge in that situation which would not require the exercise of a power of suspension. It would also be reasonable to assume that the Chief Justice of India is expected to find a desirable solution in such a situation to avoid embarrassment to the concerned Judge and to the Institution in a manner which is conducive to the independence of judiciary and should the Chief Justice of India be of the view that in the interests of the institution of judiciary it is desirable for the Judge to abstain from judicial work till the final outcome under Article 124(4), he would advise the Judge accordingly, and the concerned Judge would ordinarily abide by the advice of the Chief Justice of India. All this is, however, in the sphere of propriety and not a matter of legal authority to permit any court to issue any legal directive to the Chief Justice of India for this purpose. [71 G, 72 A, C-E]

12. Even on the allegations made in the petition and plea of *malafides* which require to be established on strong grounds no such case is made out. A case of *malafides* cannot be made out merely on the ground of political affiliation of the Speaker either. That may not be a sufficient ground in the present context. At all events, as the only statutory authority to deal with the matter, doctrine of statutory exceptions or necessity might be invoked. [74 B-C]

13. The law as to standing to sue in public interest actions has

A undergone a vast change over the years and liberal standards for determining *locus standi* are now recognised. The present matter is of such nature and the constitutional issues of such nature and importance that it cannot be said that members of the Bar, and particularly, the Supreme Court Bar Association have no *locus standi* in the matter. An elaborate re-survey of the principles and precedents B over again is unnecessary. Suffice it to say that from any point of view, the petitioners satisfy the legal requirements of the standing to sue. [74 E-F]

S.P. *Gupta & Ors. etc. etc.* v. *Union of India & Ors. etc. etc.*, [1982] 2 SCR 365, relied on.

C

14. Certain submissions advanced on the prayer seeking to restrain the judge from functioning till the proceedings of the committee were concluded lacked as much in propriety as in dignity and courtesy with which the Judge is entitled. While the members of the bar may claim to act in public interest, they have, at the same D time, a duty of courtesy and particular care that in the event of the charges being found baseless or insufficient to establish any moral turpitude, the Judge does not suffer irreparably in the very process. The approach should not incur the criticism that it was calculated to expose an able and courteous Judge to public indignity even before the allegations were examined by the forum constitutionally E competent to do so. The level of the debate both in and outside the Court should have been more decorous and dignified. Propriety required that even before the charges are proved in the only way in which it is permitted to be proved, the Judge should not be embarrassed. The constitutional protection to Judges is not for their personal benefit; but is one of the means of protecting the judiciary F and its independence and is, therefore, in the larger public interest. Recourse to constitutional methods must be adhered to if the system were to survive. [74 G, 75 A-C]

15.1 The interpretation of the law declared by this Court that a motion under section 3(2) of the Judges (Inquiry) Act, 1968, G does not lapse upon the dissolution of the House is a binding declaration. If the law is that the motion does not lapse, there can be no occasion for the House to say so at any time and it is erroneous to assume that the Houses of Parliament would act in violation of the law, since the interpretation of the law is within the exclusive power of the courts. [76 E]

H

15.2 If the House is not required to consider this question since the parliamentary process can commence only after a finding of guilt being proved, the further question of a futile writ also does not arise. The point that the House can decide even after a finding of guilt that it would not proceed to vote for removal of the Judge is not germane to the issue since that is permissible in the Constitutional Scheme itself under Article 124(4), irrespective of the fact whether Article 124(5) is a mere enabling provision or a constitutional limitation on the exercise of power under Article 124 (4). [60 B-C]

15.3 The Union Government has sought to interpret the legal position for purpose of guiding its own response to the situation and to regulate its actions on the Speaker's decision. That understanding of the law is unsound. [76 G]

15.4 No specific writ of direction need issue to any authority. Having regard to the nature of the subject matter and the purpose it is ultimately intended to serve, all that is necessary is to declare the legal and correct constitutional position and leave the different organs of the State to consider matters falling within the orbit of their respective jurisdiction and powers. [76 H, 77 A]

15.5 In the circumstances, the question of Court declining to exercise its jurisdiction on the ground that the Judgment rendered and Writ issued by it would become infructuous does not arise. [31 A-C, 77 A]

Per Sharma, J. (dissenting);

1.1 On a close examination of the Constitution, it is clear that a special pattern has been adopted with respect to the removal of the members of the three organs of the State—The Executive, the Legislature and the Judiciary—at the highest level, and this plan having been consciously included in the Constitution, has to be kept in mind in construing its provisions. The approach should be that when a question of removal of a member of any of the three wings at the highest level—i.e. the President; the Members of the Parliament and the State Legislatures; and the Judges of the Supreme Court and the High Courts—arises, it is left to an organ other than where the problem has arisen, to be decided. Consistent with this pattern, Clause (4) of Article 124 in emphatic terms declares that a Judge of the Supreme Court or the High Court shall not be removed from his office except on a special majority of the Members of each House of Parliament. Both the Executive and the Judiciary

A **are thus excluded in this process. The scheme cannot be construed as lack of trust in the three organs of the State. There are other relevant considerations to be taken into account while framing and adopting a written Constitution, which include the assurance to the people that the possibility of a subjective approach clouding the decision on an issue as sensitive as the one under consideration, has**
B **been as far eliminated as found practicable in the situation. And where this is not possible at all, it cannot be helped, and has to be reconciled by application of the doctrine of necessity, which is not attracted in the instant case. [81 F-H, 82 D-E, F-G]**

All Party Hill Leaders Conference **v.** *M.A. Sangma,* **[1978] 1 SCR**
C **393 at 411, referred to.**

The Federalist : *Hamilton,* **referred to.**

1.2 There cannot be two opinions on the necessity of an independent and fearless judiciary in a democratic country like ours,
D **but it does not lead to the further conclusion that the independence of judiciary will be under a threat, unless the matter of removal of Judges, even at the highest level, is not subjected to the ultimate control of Courts. Great care was taken by the framers of the Constitution to this aspect and the matter was examined from every possible angle, before adopting the scheme as laid down. So far as**
E **the district courts and subordinate courts are concerned, the control has been vested in the High Court, but when it came to the High Court and Supreme Court Judges, it was considered adequate for the maintenance of their independence to adopt and enact the Constitution as it is found now. There is no reason to doubt the wisdom of the Constituent Assembly in entrusting the matter exclu-**
F **sively in the hands of the Parliament and there is no ground for suspicion that the Members of Parliament or their representatives, the Speaker and the Chairman, shall not be acting in the true spirit of the Constitutional provisions. The mandate of the Constitution is binding on all. [100 B-E]**

G **2.1 The exercise of power under clause (4) was not made conditional on the enactment of a law under clause (5), and the reason for inserting clause (5) in Article 124 was merely for elaborating the provisions. Clause (4) does not state that the misbehaviour or the incapacity of the Judge will have to be proved only in accordance with a law to be passed by the Parliament under clause (5). Clause**
H **(4) would continue to serve the purpose as it does now, without any**

amendment if clause (5) were to be removed from the Constitution today. There is no indication of any limitation on the power of the Parliament to decide the manner in which it will obtain a finding on misbehaviour or incapacity for further action to be taken by it. Clause (5) merely enables the parliament to enact a law for this purpose, if it so chooses. [88 E, 88 A, 89 A]

2.2 The word 'may' has been sometimes understood in the imperative sense as 'shall', but ordinarily it indicates a choice of action and not a command. In the present context, there is no reason to assume that it has been used in its extraordinary meaning. [88 F]

3. The object of Article 121 is to prevent any discussion in Parliament with respect to the conduct of a Judge of the Superior Courts, except when it cannot be avoided. The Article, accordingly, prohibits such a discussion except upon a motion for presenting an address to the President for removal of a Judge. [89 B]

4.1 The expression "motion" has not been defined in the Judges (Inquiry) Act, 1968. The Lok Sabha Rules framed under Article 118 of the Constitution deal with "motions". There are separate rules of procedures for conduct of business adopted by the Rajya Sabha. Section 3(1) of the Act states that if a notice of "motion" is given for presenting an address to the President for the removal of a Judge, the Speaker or the Chairman, as the case may be, after consulting such persons as he deems fit, as also such relevant materials which may be available to him either admit the "motion" or refuse to admit the same. The manner in which this section refers to "motion" in the Act for the first time without a definition or introduction clearly indicates that it is referring to that "motion" which is ordinarily understood in the context of the two Houses of Parliament attracting their respective rules. Section 3 does not specify as to how and to whom the notice of "motion" is to be addressed or handed over and it is not quite clear as to how the Speaker suddenly comes in the picture unless the Lok Sabha Rules are taken into account. Therefore, the provisions of the Act have to be read alongwith some of the Lok Sabha Rules. Rules 185, 186 and 187 which are relevant for the purpose should be treated to be supplementary to the Act. [90 D-G, 91 B]

4.2 Sub-section (2) of Section 3, which is of vital importance in the present context, says that if the "motion" referred to in sub-section (1) is admitted, the Speaker "shall keep the motion pending"

A and constitute a Committee for investigation into the allegations. [91 C]

4.3 The situs where the "motion" is pending is almost conclusive on the issue whether the House is seized of it or not. The Act does not leave any room for doubt that the "motion" remains pending in the House and not outside it. This is corroborated by the language used in proviso to Section 3(2) which deals with cases where notices of "motion" under Section 3(1) are given on the same date in both Houses of Parliament. It says that in such a situation, no Committee shall be constituted unless the "motion" has been "admitted in both Houses", and where such "motion" has been admitted "in both Houses", the Committee shall be constituted jointly by the Speaker and the Chairman. It is not an inadvertent reference in the Act of the "motion" being pending in the House: the Act and the Rules made thereunder envisage and deal with a "motion" which is admitted in the House and remains pending there to be taken up again when the date is fixed by the Speaker on receipt of the report from the Committee. The language throughout the Act has been consistently used on this premise and is not capable of being ignored or explained away. [91 D, G-H, 92 A, C-D]

4.4 The scope of the Act and the Rules is limited to the investigation in pursuance of a "motion" admitted by the Speaker. At the conclusion of the investigation the Committee has to send the report to the Speaker (or the Chairman as the case may be) along with a copy of the original Motion. If the finding goes against the Judge, the Motion, the same original Motion, together with the report would be taken up for consideration by the House where the Motion is pending, and the address and the Motion would be put to vote together in each House of Parliament. What the Act and the Rules contemplate is the original Motion to be taken up for consideration by the House, and if this Motion is held to have exhausted itself on admission by the Speaker nothing remains on which the Act would operate. [92 E, G]

4.5 Thus, the concept of the original Motion being pending in the House, to be taken up for debate and vote on the receipt of the report of the Committee, is the life and soul of the Act, and if that Motion disappears nothing remains behind to attract the Act. This idea runs through the entire Act and the Rules, and cannot be allowed to be replaced by a substitute. The existence of a Motion pending in the House is a necessary condition for the application of

the Act. Bereft of the same, the Act does not survive. It is, therefore, not permissible to read the Act so as to mean that the House is not seised of the Motion and that it does not have anything to do with the inquiry pending before the Committee, until the report is received. If clauses (4) and (5) of Article 124 are construed otherwise the Act will have to be struck down as *ultra vires,* or in any event, inoperative and infructuous and, on this ground alone, the Writ Petitions are liable to be dismissed. [92 H, 93 A-B]

5.1 The mandate of the Constitution against discussion on the conduct of a Judge in the House is for everybody to respect, and it is the bounden duty of the Speaker to enforce it. He has to ensure that Article 121 is obeyed in terms and spirit. The pendency of the motion in the House cannot be a ground to violate Article 121, and the apprehension that if the motion is held to be pending in the House, on its admission, the object of Article 121 would be defeated is misconceived. [93 C, F]

5.2 The wider proposition that the House was seized of the matter so effectively as to entitle every member to demand a discussion in the House at any stage will not only violate Article 121, but also offend the provisions of the 1968 Act. It is not correct to assume that if the right of the individual member to insist on immediate discussion is denied, the consequence will be to deprive the Parliament of the control of the motion. The Speaker may consult other persons before admitting the motion, and while so doing he may consult the members of the House also, but without permitting a discussion in the House. The consultation, which the Act permits, is private in nature, not amounting to a public discussion, while the object of Article 121 is to prevent a public debate. It may also be open to the Speaker to consult the House on a legal issue which can be answered without reference to the conduct of Judge in question, as for example, the issue involved in the instant case, whether on account of dissolution of the old House the Motion has lapsed and the Committee of Inquiry is defunct. What is prohibited is not every matter relating to the removal of a Judge; the bar is confined to a discussion with respect to the conduct of a Judge in the discharge of his duties. [95 E-H, 96A]

5.3 There is no justification for interpreting such portion of the 1968 Act, which directed or declared the initial motion admitted by the Speaker to remain pending in the House, as creating legal fiction limited for the purpose of ensuring that the bar under Article 121 was not lifted prematurely. [96 B]

A *East End Dwellings Co. Ltd. And Finsbury Borough Council*: **1952 A.C. 109, referred to.**

5.4 A close reading of the entire Act indicates that the language therein was consciously chosen to make the House seized of the matter, and consequently it became necessary to include the B **provision directing the motion to remain pending for the purpose of preventing a premature discussion. The Act has, thus, very successfully respected both Articles 124 and 121 in their true spirit, by neatly harmonising them. [97 B]**

5.5 Parliament is in control of the matter from the very begin- C **ning till the end. By the introduction of the Speaker and the requirement of a large number of members of either House to initiate the matter, the House is brought in control of the proceeding through its representative, the Speaker or the Chairman. The ground of proved misbehaviour or incapacity is necessary only for putting the matter to vote in the House under clause (4), and is not a condition** D **precedent for initiating a proceeding and taking further steps in this regard. [97 G-H, 98 A]**

5.6 It is a well established practice for a larger body to entrust investigations to a smaller body for obvious practical reasons, and such an exercise cannot be characterised as indulging in abnegation E **of authority. It could have asked a Parliamentary Committee to enquire into the allegations or employed any other machinery for the purpose. [98 D]**

5.7 So long as the statute enables the House to maintain its control either directly or through the Speaker, the entrustment of F **the investigation does not amount to abdication of power. It is a case where the Parliament has taken a decision to respect the verdict of the Committee in favour of the Judge, consistently with clause (4) and no fault can be found. [99 B]**

State of Uttar Pradesh **v.** *Batuk Deo Pati Tripathi and Anr.*, **[1978]** G **2 SCC 102, referred to.**

5.8 The House, which is in control of the proceeding is entitled to take all necessary and relevant steps in the matter, except discussing the conduct of the Judge until the stage is reached and the bar under Article 121 is lifted. If it is held that the Committee is an H **independent statutory body not subject to the control of the House**

directly or through the Speaker, then the Act may be rendered unworkable. Besides, this would lower the dignity of the Chief Justice of India by providing a machinery consisting of 5 or 4 Judges to sit in appeal over him. If the Committee is held to be functioning under the supervision and control of the Parliament, with a view to aid it for the purpose of a proceeding pending in the House, it will be the Parliament which will be in control of the proceeding and not the Committee. [99 E-F, H]

6.1 When even after a verdict against the Judge is returned by the Committee, the Parliament, or for that matter any of the two Houses can refuse to vote in favour of the Motion for removal of a Judge, and the Court would not have any jurisdiction to interfere in the matter, it is not conceivable, that at the intermediate stage of investigation the Court has got the power to intervene. This is because, if the control of the House continues on the proceeding throughout, which can be exercised through the Speaker, it cannot be presumed that the Court has a parallel jurisdiction, which may result in issuance of contradictory directions. Besides, the Court cannot be expected to pass orders in the nature of step in aid, where the final result is beyond its jurisdiction. Any order passed or direction issued by this Court may result in merely an exercise in futility, and may cause a situation, embarrassing both for the highest judicial and legislative authorities of the country. The Constitution cannot be attributed with such an intention. [101 A-C]

6.2 In the circumstances the courts, including this Court, do not have any jurisdiction to pass any order in relation to a proceeding for removal of a Judge of the superior courts. [101 C]

7. No opinion is expressed on the controversy whether the Motion lapsed or not on the dissolution of the earlier House, as the issue is for the Lok Sabha to decide. [102 E]

8. This Court cannot pass any order whether permanent or temporary on the prayer that the respondent No. 3, the concerned Judge, should not be allowed to exercise his judicial powers. [102 F]

9.1 Although the powers of State have been distributed by the Constitution amongst the three limbs, i.e. the Legislature, the Executive and the Judiciary, the doctrine of Separation of Powers has not been strictly adhered to and there is some overlapping of powers in the gray areas. [80F-G]

A *Smt. Indira Gandhi* v. *Raj Narain,* **[1976] 2 SCR 347 at p. 415, referred to.**

9.2 Generally, questions involving adjudication of disputes are amenable to the jurisdiction of the courts, but there are exceptions, not only those covered by specific provisions of the Constitution in express terms, but others enjoying the immunity by necessary implication arising from established jurisprudential principles involved in the Constitutional scheme. [81 C]

B

10. It is permissible to take into consideration the entire historical background of the provisions of the Constitution and the Act as aid to interpretation. [84 C]

C *Bengal Immunity Company* v. *The State of Bihar,* **[1955] 2 SCR 603 at 632 & 633;** *B. Prabhakar Rao* v. *State of Andhra Pradesh,* **[1985] Suppl 2 SCR 573, referred to.**

Heydon's case : **76 E.R. 637;** *Eastman Photographic Material Company* v. *Comptroller General of Patents,* **L.R. [1898] A.C. 571,** D **referred to.**

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 491 of 1991.
(Under Article 32 of the Constitution of India)

WITH

E TRANSFER PETITION (CIVIL) No. 278 of 1991.
(Under Article 139-A(i) of the Constitution of India)

WITH

WRIT PETITION (CIVIL) Nos. 541, 542 & 560/91

G. Ramaswamy, Attorney General, Altaf Ahmad, Addl. Solicitor General, Shanti Bhushan, Ram Jethmalani, P.P. Rao, Kapil Sibal, F P.R.Krishnan, Ms. Indira Jaisingh, Ashok Desai, Hardev Singh, P.S. Poti, Danial Latifi, Rajinder Sachhar, M.K. Ramamurthy, R.K. Garg, S.K. Dholakia, Santosh Hegde, V.N. Ganpule, Tapas Ray, N.B. Shetye, Jayant Bhushan, Mohan Rao, Prashant Bhushan, Ms. Kamini Jaiswal, A.K. Srivastava, Manoj Wad, Ms. Rashmi Kathpalia, Ms. Nina Dikshit, E.M.S. Anam, Rajiv K. Garg, N. D. Garg, G.D. Sharma, Sudhir Walia, G A.M. Khanwilkar, Mrs. Anil Katiyar, Ms. A. Subhashini, R.S. Suri, M. Veerappa, K.R. Nambiar, Harish Uppal (appeared in person) and P.H. Parekh for the appearing parties.

The Judgment of the Court was delivered by

B.C. RAY, J. These writ petitions raise certain constitutional is- H sues of quite some importance bearing on the construction of Articles 121 and 124 of the Constitution of India and of the "The Judges

(Inquiry) Act, 1968" even as they in the context in which they are brought, are somewhat unfortunate.

Notice was given by 108 members of the 9th Lok Sabha, the term of which came to an end upon its dissolution, of a Motion for presenting an Address to the President for the removal of Mr. Justice V.Ramaswami of this Court. On 12th March, 1991, the motion was admitted by the then Speaker of the 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 distinguished jurist in terms of Section 3(2) of The Judges (Inquiry) Act, 1968.

The occasion for such controversy as is raised in these proceedings is the refusal of the Union Government to act in aid of the decision of the Speaker and to decline to notify that the services of the two sitting Judges on the Committee would be treated as "actual-service" within the meaning of Para 11(b) (i) of Part D of the II Schedule to the Constitution. It is said that without such a notification the two sitting Judges cannot take time off from their court-work. The Union Government seeks to justify its stand on its understanding that both the motion given notice of by the 108 Members of the Lok Sabha for presenting an Address to the President for the removal of the Judge concerned as well as the decision of the Speaker of the 9th Lok Sabha to admit the motion and constitute a Committee under the provisions of the Judges (Inquiry) Act have lapsed with the dissolution of the 9th Lok Sabha.

Constitutional issues of some importance, therefore, arise as to the constitutional and the legal position and status of a Motion for the removal of a Judge under a law made pursuant to Article 124(5) of the Constitution and as to whether the Doctrine of Lapse would apply to such a Motion upon the dissolution of the Lok Sabha and whether, in view of the contention that such motions for removal, impeachment etc. of holders of high constitutional offices are in their very nature politically introduced, debated and decided in the Houses of Parliament and not elsewhere, the matters arising out of or relating to a Motion for removal of a Judge in either House of the Parliament are at all justiciable before courts of law. It is also urged that even if these issues have some degree of adjudicative disposition and involve some justiciable areas, the Court should decline to exercise jurisdiction as its decision and its writ might become infructous in view of the fact that in the ultimate analysis, the final arbiter whether at all any Address is to be presented rests exclusively with the Houses of Parliament and which, are wholly outside the purview of the Courts.

A 2. The foregoing serves to indicate broadly the complexities of the constitutional issues on which the Court is invited to pronounce and, as in all constitutional litigation, the views inevitably tend to reflect a range of policy options in constitutional adjudications and, in some measure, value judgments.

B 3. Writ Petition No. 491 of 1991 is by a body called the "Sub-Committee on Judicial Accountability" represented by its convener, Sri Hardev Singh, a Senior Advocate of this Court. Petitioner-body claims to be a Sub-Committee constituted by an "All India Convention on Judicial Accountability" "to carry forward the task of implementing the resolutions of the conventions". Writ Petition No. 541 of 1991 is by the Su-
C preme Court Bar Association represented by its Honorary Secretary. The Bar Association seeks to prosecute this petition "in the larger public interest and in particular in the interests of litigant public". The two prayers common to both the petitions are, first, that the Union of India be directed to take immediate steps to enable the Inquiry Committee to discharge its functions under the "The Judges (Inquiry) Act, 1968" and, secondly, that
D during the pendency of the proceedings before the Committee the learned Judge should be restrained from performing judicial functions and from exercising Judicial powers.

4. Writ Petition No. 542 is by a certain Harish Uppal. This writ petition is more in the nature of a counter to the second prayer in the WP
E No. 541/1991 and WP No. 491/1991. Petitioner, Sri Harish Uppal says that till the Inquiry Committee actually finds the learned Judge guilty of the charges there should be no interdict of his judicial functions and that if such a finding is recorded then thereafter till such time as the Motion for the presentation of the Address for the removal of the Judge disposed of by the Houses of Parliament—which petitioner says should not be delayed
F beyond 180 days --- the President may ask the Judge concerned to recuse from judical functions.

In Writ Petition No. 560/1991 brought by Shyam Ratan Khandelwal, a practising Advocate, the constitutional validity of the Judges (Inquiry) Act, 1968 is challenged as *ultra vires* Articles 100, 105, 118, 121 and
G 124(5) of the Constitution of India. It also seeks a declaration that the Motion presented by 108 Members of Parliament for the removal of the Judge has lapsed with the dissolution of the 9th Lok Sabha. It also seeks quashing of the decision of the Speaker admitting the Motion on the ground that an opportunity of being heard had been denied to the Judge before the Speaker admitted the Motion and proceeded to constitute a
H Committee. On the question of the validity of The Judges (Inquiry) Act,

1968 the petitioner contends that the law properly construed vests the powers of admitting a Motion and of constituting a Committee under Section 3 in the Speaker in his capacity as Speaker of the House and subject to the well known and well settled principles of law, procedure and conventions of the Houses of Parliament and the statute does not depart from these principles. On the contrary, the statute admits of a construction which accords with the powers and privileges of the House and that the Motion even at that stage of admission would require to be debated by the House. It is urged that if that be the construction, which the language of the statute admits then there should be no vice of unconstitutionality in it. But if the statute is construed to vest such power exclusively in the Speaker, to the exclusion of the House, the statute, on such constitution would be unconstitutional as violative of Articles 100 (1), 105, 118 and 121 of the Constitution.

4. Transfer Petition No. 268/1991 is for the withdrawal by this Court to itself from the High Court of Delhi, the Writ Petition (Civil) No. 1061/1991 in the Delhi High Court where reliefs similar to those prayed for by Sri Khandelwal in WP (Civil) No. 560/1991 are sought. The prayer for transfer has not yet been granted; only the further proceedings in the High Court are stayed. But full-dress arguments in all these matters have been heard. It is appropriate that this writ petition should also be formally withdrawn and finally disposed of along with the present batch of cases. All that is necessary is to make a formal order withdrawing WP (Civil) No. 1061/1991 from the Delhi High Court, which we hereby do.

5. Certain allegations of financial improprieties and irregularities were made against Justice V. Ramaswami, when he was the Chief Justice of the High Court of Punjab & Haryana. There were certain audit reports concerning certain items of purchases and other expenditure. The then Chief Justice of India, Justice Sabyasachi Mukharji, took note of the reports in this behalf and of representations submitted to him in this behalf and advised Justice Ramaswami to abstain from discharging judicial functions until those allegations were cleared. Thereafter, a Committee of three Judges was constituted by the then Chief Justice of India, to look into the matter and to advise him whether on the facts Justice Ramaswami might be embarrassed in discharging judicial functions as a Judge of this Court. The Committee tendered its advice to the Chief Justice. It noted that Justice Ramaswami had declined to acknowledge the jurisdiction of any Committee to sit in judgment over his conduct. The Committee, accordingly, abstained from an inquiry on the charges but, on an evaluation of the matter before it, expressed the view that as long as the charges of

improper conduct involving moral turpitude were not established in the various enquiries then pending the operation of the constitutional warrant appointing him a Judge of the Court could not be interdicted.

Thereafter, in February, 1991, 108 Members of the Lok Sabha presented a Motion to the Speaker of the 9th Lok Sabha for Address to the President for the removal of the learned Judge under Article 124(4) of the Constitution read with the provisions of the Judges (Inquiry) Act, 1968. On 12.3.1991 the Speaker of the Lok Sabha in purported exercise of his powers under Section 3 of the said Act, admitted the Motion and constituted a Committee as aforesaid to investigate the grounds on which the removal was prayed for.

Soon after the decision of the Speaker to admit the Motion and constitute a Committee to investigate the charges was made, the term of the Ninth Lok Sabha came to premature end upon its dissolution. The petitioners question the legality of the Speaker's order and assert that, at all events, the Motion had lapsed with the dissolution of the House. This contention is supported by the Union of India. They say that the effect of dissolution of the Ninth Lok Sabha is to "pass a sponge across the Parliamentary slate" and all pending motions lapse. The motion for removal, it is urged, is no exception.

6. We have heard Sri Shanti Bhushan, Sri Ram Jethmalani, Sri P.P. Rao, Sri R.K. Garg and Ms. Indira Jaising - learned senior counsel in support of the prayers in writ petitions Nos. 491 and 541 of 1991 filed by the Sub-Committee on Judicial Accountability and the Supreme Court Bar Association respectively; Sri G. Ramaswamy, learned Attorney General for the Union of India; Sri Kapil Sibal for the petitioners in writ petition No. 560/91 and transfer petition No. 278/91. Sri Harish Uppal, petitioner-in-person in writ petition No. 542/91 has filed his written submissions.

The arguments of the case covered a wide constitutional scheme relating to the removal of members of the superior judiciary in India and to the problems of justiciability of disputes arising therefrom. We shall refer to the arguments when we assess the merits of these contentions.

7. The contentions urged at the hearing in support of the petitions which seek enforcement of Speaker's decision as well as those urged in support of the petitions which say that the Motion has lapsed can be summaried thus:

Contention A:

The motion for removal of the Judge moved by 108 Members of Parliament as well as the purported decision of the Speaker to admit that motion and to constitute a committee to investigate into the grounds on which removal is sought have lapsed upon the dissolution of the 9th Lok Sabha. The general rule is that no House of Parliament can seek to bind its successor. All pending business at the time of dissolution of House lapses. A motion for removal of a judge is just another motion and perishes with the expiry of the term or the earlier dissolution of the House.

The question whether the motion for the removal of the Judge has lapsed or not is a matter pertaining to the conduct of the business of the House of which the House is the sole and exclusive judge. No aspect of the matter is justiciable before Court.

Contention B:

The constitutional process of removal of a Judge, both in its substantive and procedural aspects, is a political process within the exclusive domain of the Houses of Parliament. The conduct of the Speaker in regulating the procedure and business of the House shall not be subject to the jurisdiction of any Court. The Speaker of the Lok Sabha in the exercise of his powers under the Judges (Inquiry) Act, 1968, acts in an area outside the courts' jurisdiction. There is nothing in the Judges (Inquiry) Act, 1968 which detracts from this doctrine of lapse. On the contrary, the provisions of the 'Act' are consistent with this Constitutional position.

Contention C:

Article 124(5) pursuant to which the Judges (Inquiry) Act, 1968, is a mere enabling provision. Prior 'proof' of misconduct is not a condition precedent before the bar under Article 121 against the discussion of the conduct of the Judge is lifted.

Contention D:

The action of the Speaker in admitting the notice of motion without reference to the House and constituting a committee for investigation without the support of the decision of the

House is *ultra vires* Articles 100(1), 105, 121 and the rules made under Article 118 of the Constitution.

The provisions of the Judges (Inquiry) Act, 1968 can be read consistently with the Constitutional Scheme under the aforesaid Articles. But if the provisions of the Act are so construed as to enable the Speaker to exercise and perform those powers and functions without reference to and independently of the House, then the provisions of the Act would be unconstitutional.

Contention E:

The decision of the Speaker to admit the motion and to constitute a committee for investigation is void for failure to comply with the rules of natural justice as no opportunity, admittedly, was afforded to the Judge of being heard before the decision was taken.

Contention F:

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

Contention G:

The Speaker's decision is vitiated by *mala fides* and oblique and collateral motives.

Contention H:

The Supreme Court Bar Association and the Sub-Committee on Judicial Accountability - the petitioners in Writ Petition No. 491 of 1991 and Writ Petition No. 541 of 1991, respectively, do not have the requisite standing to sue and the writ petitions are, accordingly, not maintainable at their instance.

Contention I:

> At all events, even if the Speaker is held to be a statutory authority acting under the Statute and not as part of the proceedings or business of the Lok Sabha and is amenable to the jurisdiction of the Court, any judgment rendered and writ issued by this Court have the prospect of being infructuous in view of the undisputed constitutional position that, in the ultimate analysis, the decision to adopt or turn down the motion is exclusively within the power of the House and the Court would have no jurisdiction over that area.

The Court would, therefore, decline to exercise its jurisdiction on grounds of infructuousness.

8. Before we discuss the merits of the arguments it is necessary to take a conspectus of the constitutional provisions concerning the judiciary and its independence. In interpreting the constitutional provisions in this area the court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. Rule of law is a basic feature of the Constitution which permeates the whole of the Constitutional fabric and is an integral part of the constitutional structure. Independence of the judiciary is an essential attribute of Rule of law. Articles 124(2) and 217(1) require, in the matter of appointments of Judges, consultation with the Chief Justices. These provisions also ensure fixity of tenure of office of the Judge. The Constitution protects the salaries of Judges. Article 121 provides that no discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a 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 as hereinafter provided. Articles 124(4) and 124(5) afford protection against premature determination of the tenure. Article 124(4) says "a Judge of the Supreme Court shall not be removed from his office except" etc. The grounds for removal are again limited to proved misbehaviour and incapacity. It is upon a purposive and harmonious construction and exposition of these provisions that the issues raised in these petitions are to be resolved.

9. In construing the Constitutional provisions the law and procedure for removal of Judges in other countries afford a background and a comparative view. The solution must, of course, be found within our own Constitutional Scheme. But a comparative idea affords a proper perspective for the understanding and interpretation of the Constitutional Scheme.

10. In England a Judge of the superior courts can be removed only on presentation of an address by both the Houses of Parliament to the Crown. Proceedings may be initiated by a petition to either House of Parliament for an address to the Crown or by a resolution for an address to the Crown to appoint a committee of inquiry into the conduct of the person designated, though preferably they should be commenced in the House of Commons. Sometimes [as in Barringtons Case (1830)], a Commission of Inquiry is appointed and the matter is considered in the light of the report of the said Commission. The motion for removal is considered by the entire House. In case any enquiry is to be conducted into the allegations, it is either referred to a Select Committee of the House or to the Committee of the whole House. Opportunity is given to the Judge whose conduct is impugned to make defence on public inquiry.

The report of the Committee and its recommendation are placed before the House where the matter is debated.(See : *Halsbury's Laws of England,* 4th Ed. Vol. p. 1108).

11. This process has been subjected to following criticism -

(i) legislative removal is coloured by political partisanship inasmuch as the initiation of the process as well as the ultimate result may be dictated by political considerations and process of fact-finding and deliberations also suffer from party spirit.

(ii) the government has considerable control not only on the ultimate result of the proceedings but also on parliamentary time which enables them to prevent motions for an address from being adopted if it suits them.

(iii) the legislative procedure is not adequate for adjudicative fact-finding; and

(iv) since Parliament is the master of its own procedure, the procedures and rules of evidence appropriate to judicial proceedings which would seem to be required in a case of judicial removal are unlikely to be allowed in Parliament. (See: Shetreet - *Judges on Trial* (1976) p. 405-407)

12. The Justice Sub-Committee on the Judiciary considered the question whether the existing process for removal by address of the Houses should be substituted for or supplemented by a new mechanism designed to meet changing needs and conditions. The Sub-Committee, in its 1972 Report, answered the said question in the affirmative and has proposed a new procedure for removal of judges. The Sub-Committtee has recommended the establishment of an ad hoc judicial commission to be ap-

pointed by the Lord Chancellor, if he decides that the question of removing a judge is to be investigated. The Commission should include a majority of, and in any event not less than three, persons who hold or have held high judicial office. Members of Parliament or persons who hold or have held any political appointment would be excluded. Upon completing its inquiry the ad hoc Commission shall report the facts and recommend whether the question of removal of a judge should be referred to the Judicial Committee of the Privy Council. If the Commission so recommended, the Privy Council would consider the matter and if it concluded that the judge should be removed, it would so advise Her Majesty. [see: Shetreet '*Judges on Trial*', (1976); pp. 404-405].

Dr. Shetreet has suggested a via-media and has favoured the establishment of a Judicial Commission for removal (but not for discipline short of removal) along the lines suggested by the Sub-Committee but has expressed the view that the existing process of address should also be preserved. [See: Shetreet '*Judges on Trial*', (1976); p. 409]. Similar view has been expressed by Margaret Brazier. (See: Rodney Brazier 'Constitutional Texts' (1990) pp.606-607).

13. In Canada, under section 99(1) of the Constitution Act of 1867, the judges of the superior courts hold office during good behaviour, and are removable by the Governor-General on address of the Senate and House of Commons. On petition for removal submitted in 1868 and 1874 the matter was referred to a Select Committee of the House. In a third case in 1874 the judge died before any action could be taken on motion for appointment of a Select Committee. Recently in 1966-67, a motion for removal of Mr. Justice Leo Landreville of the Supreme Court of Ontario was moved and in that connection a Royal Commission consisting of Mr. Justice Ivan C. Rand, a retired judge of the Supreme Court of Canada was appointed under the Inquiries Act R.S.C. 1952 C. 154 to conduct an enquiry. After considering the report of the said Commission, a Joint Committee of the Houses recommended removal but the judge resigned while Parliament was preparing for his removal by joint address. Thereafter, Judges Act was enacted in 1971 whereby Canadian Judicial Council has been created. The functions of the said Council as set out in s. 39(2) include making the enquiries and the investigation of complaints or allegations described in s. 40. Section 40 provides that the council may conduct an enquiry to determine whether a judge of superior, district or county court should be removed from office and it may recommend to the Minister of Justice of Canada that a Judge should be removed from office. The grounds on which such a recommendation can be made are set out in s. 41(2) of the Act and they are : (a) age or infirmity, (b) having been

A guilty of misconduct, (c) having failed in the due execution of his office, or (d) having been placed, by his conduct or otherwise, in a position incompatible with the due execution of his office. (Gall *'The Canadian Legal System'* (1983); pp. 184-186).

In 1982 the matter of Mr. Justice Thomas Berger, a Judge of the B Supreme Court of British Columbia, was investigated by the Canadian Judicial Council prompted by certain remarks made by the judge. The Council concluded that the public expression of political views in the nature of those made by Mr. Justice Berger constituted an "indiscretion", but that they were not a basis for a recommendation that he be removed from office and on the basis of the said recommendation, no further action C was taken though Mr. Justice Berger tendered his resignation as a judge a few months later. (See: *Gall: The Canadian Legal System,* (1983) p. 189).

14. Under section 72(ii) of the Commonwealth of Australia Constitution Act, 1900, the justices of the High Court and of the other courts created by the Parliament cannot be removed except by the Governor-D General-in-Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehavior or incapacity. Similar provisions are contained in the Constitutions of the States with regard to removal of Judges of State Courts.

Proceedings were initiated for removal of Mr. Justice Murphy of the E High Court of Australia in 1984 under section 72(ii) of the Commonwealth of Australia Constitution Act. In connection with those proceedings at first a select Committee of the Senate was appointed to enquire and report into the matter. It consisted of six senators drawn from three political parties. The Committee by majority decision (3: 2, one undecided) found no conduct amounting to misbehaviour under section 72(ii). F In view of the split vote a second Committee of four senators from the same three political parties was established and it was assisted by two retired judges - one from the Supreme Court of Western Australia and the other from Supreme Court of the Australian Capital Territory and the said Committee recorded its finding but the judge did not appear before either of the committees. The judge was also prosecuted before the Central G Criminal Court of New South Wales and was found guilty of an attempt to pervert the course of justice but the said verdict was set aside by the Court of Criminal Appeal. Fresh trial was held whereunder the judge was found not guilty. Thereafter, an ad hoc legislation, namely, Parliamentary Commission of Inquiry Act, 1986 was enacted by the Commonwealth Parliament and a Commission consisting of three retired judges respectively of H Supreme Court of Victoria, Supreme Court of Australia Capital Territory

and the Federal Court and Supreme Court of South Australia was constituted to investigate into the allegations of misbehaviour. Before the said commission could give its report, the judge became gravely ill and the Act was repealed [Lane's Commentary on the *Australian Constitution,* (1986) p. 373].

15. In one other case, proceedings for removal were initiated against Mr. Justice Vasta of the Supreme Court of Queensland and for that purpose, the Queensland Legislature enacted the Parliamentary (Judges) Commission of Inquiry Act, 1988 whereby a commission comprised of three retired judges respectively of the High Court of Australia, Supreme Court of Victoria and the Supreme Court of New South Wales was constituted.

16. In Australia, there has been criticism of the existing procedure with regard to removal of judges both by judges as well as by lawyers. Mr. Justice L.J. King, Chief Justice of the Supreme Court of South Australia, has observed:

> "The concept of removal by an address of both Houses of Parliament is itself the subject of a good deal of criticism. Curiously, common criticism which are made are contradictory. One criticism is that the necessity for the involvement of the legislature ensures that the procedure will not be used and that the judges therefore have a practical immunity from removal. Removal by this means is certainly extremely rare. That may be, however, because in the countries in which this procedure prevails, conditions are such that a judge who commits a serious act of judicial misconduct would certainly resign. That consideration, together with the fact that standards of judicial conduct are generally very high in those countries, renders removal by the legislature a rarity. The opposite criticism, however, is that there is no established procedure for the trial of a judge whose removal by the legislature is sought. It is assumed that the legislature would itself institute some form of inquiry at which the judge would be able to defend himself against the accusations, but that would be a matter for the legislature in each case. There are some who fear that a parliamentary majority, encouraged by inflamed public feeling about an unpopular judicial decision, might some day act to remove a judge without due process.
>
> It is at least questionable whether the system of removal by an address of both Houses of Parliament accords to a judge the

A degree of security which is required by the concept of judicial independence.

['*Minimum Standards of Judicial Independence*' 1984 (58) ALJ 340, at p. 345]

B Similarly, Mr. Justice M.H. Mclelland of the Supreme Court of New South Wales has expressed the view:

> "In lieu of measures of the kinds already discussed, some permanent, and preferably Australia-wide, machinery should be provided by legislation for the purpose of establishing an effective procedure for the determination by a judicial tribunal of the existence of misbehaviour or incapacity which could warrant a judge's removal from office. The design of that machinery should be such as to produce as little damage to judicial independence, public confidence in the judicial system, and the authority of the courts, as is consistent with its effective operation. It should also be such as to ensure to a judge both procedural fairness and protection from public vilification or embarrassment pending the making of the determination".

(*Disciplining Australian Judges,* (1890) 64 ALJ 688 at p. 401)

E Mr. Justice Mclelland has also suggested that the tribunal should be subject to the supervisory jurisdiction of, and an appeal should lie from the tribunal to, the High Court of Australia. In this context, he has stated:

> "Furthermore, the protection of judicial tenure and independence which the Act of Settlement provisions were intended to effect, has in the intervening period lost a great deal of its strength. In 1701, the Crown, the House of Lords and the House of Commons were three powerful but relatively independent entities. It was necessary for a judge to incur the displeasure of all three concurrently to be at risk of removal under the parliamentary address procedure. The subsequent development of the party system and cabinet government (especially with modern ideas of strict party discipline) has radically altered the position. In modern times, the executive government and the lower house (and frequently the upper house, where there is one) are effectively under the control of a single individual or cohesive group, so that now a judge may be at risk of removal under the parliamentary address procedure if

> he or she were to incur the sole displeasure of that individual or group."

(*Disciplining Australian Judges,* (1990) 64 ALJ 388 at p. 402-3)

Sir Maurice Byers, former Solicitor General of the Commonwealth has also spoken in the same vein:

> "A federal system involves a tension between the High Court and the Parliament and the executive. Recent years have seen this increase because interpretations of the Constitution have become party dogma. The Court's constitutional decisions are seen by many of the uninformed and quite a few of the informed as bearing upon party political questions. When, as in the case of Mr. Justice Murphy and to a much less degree Sir Garfield Barwick, a former political figure, hands down a judgment he attracts the animus and often the abuse of some in Parliament. Section 72 of the Constitution leaves him exposed to the attack of his opponents and the often doubtful support of his former friends. Whether Parliament may itself decide the judicial question of his fitness for office or "proved misbehaviour or incapacity" is at the least doubtful. But the Court should not be exposed to this hazard. A Commission of Judges whose membership rotates is called for." (From the other side of the Bar Table: An Advocates' view of the Judiciary, (1987) 10 University of New South Wales Law Journal 179 at p. 185).

A Constitutional Commission was set up in Australia for suggesting reforms in the Commonwealth Constitution. The said Commission has recommended that provision should be made by amendment to the Commonwealth Constitution for (a) extending the security of tenure provided by section 72 to all judges in Australia, and (b) establishing a national judicial tribunal to determine whether facts found by that tribunal are capable of amounting to misbehaviour or incapacity warranting removal of a judge from office.

(*Mclelland 'Disciplining Australian Judges',* (1990) 64 ALJ 388, at p. 403)

17. In the United States, the removal of a judge of the U.S. Supreme Court or a Federal judge is governed by the provisions of the U.S. Constitution wherein Article II(4) provides for the removal from office of the President, Vice-President and all civil officers of the United States on impeachment for, and conviction of, treason, bribery or other high crimes

A and misdemeanours. Impeachment may be voted by a simple majority of the members of the House of Representatives, there being a quorum on the floor and trial is then held in the Senate, which may convict by a vote of two-thirds of the members of the Senate present and voting, there being a quorum. With regard to state judiciary, the process of removal is governed by the State Constitutions. Majority of the States follow the federal B pattern and provide for impeachment as the normal process of removal of appointed judges. In some States, provision is made for removal by an address of the Governor to both Houses of legislature or by a joint resolution of the legislature. In some States, the removal power is vested in the State Supreme Courts while in some states, special courts are provided to hear removal charges. In the State of New York, the Court is known as the C Court on the judiciary. (See *Henry J. Abraham: The Judicial Process,* 3rd Ed. p.45).

For judicial administration at the national level, there is Judicial Conference of the United States which consists of the Chief Justices of the United States, the chief judges of each of the eleven numbered circuits D and of the District of Columbia and federal circuits but also, since 1957, a district judge representative from each circuit with the exception of the federal circuit, which lacks a trial-court tier. By an Act of the Congress passed in 1932 (incorporated in Title 28 of the U.S. Code) the Judicial Conference is charged with the duty to make a comprehensive survey of the condition of business in the courts; to prepare plans for assignment of E judges to or from circuits or districts where necessary; and to submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The work of the Judicial Conference is performed in special committees which include the special committee on judicial ethics. Another Act of Congress passed in 1939 makes provision for a judicial F council for each circuit composed of circuit judges of the circuit who is empowered to make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit. The mandate of the Judicial Councils embraces the business of the judiciary in its institutional sense (administration of justice), such as avoiding of loss of public esteem and confidence in respect to the court system, from the G actions of a judge or other person attached to the courts. The Judicial Councils have exercised the power of review of allegations of misconduct on the part of court personnel, officers and judges. In view of the increased number of judges, who can be removed only by the process of impeachment, Congress has enacted the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 whereby the Judicial Coun- H cils have been explicitly empowered to receive complaints about judicial

conduct opaquely described as "prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a Judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability." It prescribes an elaborate judicilised procedure for processing such complaints within the administrative system of the councils and the Judicial Conference. Should a Council determine that the conduct constitutes grounds for impeachment the case may be certified to the Judicial Conference of the United States which may take appropriate action and if impeachment is deemed warranted, the Conference is empowered to transmit the record and its determination to the House of Representatives.

In so far as the States are concerned, all the fifty States have central institutions for disciplining their judges and in each a variously constituted commission is organised in either a single tier or in many tiers depending on the perceived desirability of separating fact-finding from judgment recommendation tasks. Commission recommendations are transmitted to the State Supreme Court for its authoritative imprimatur, except in states where they are received by legislatures that retain judicial removal power. (See Robert J.Janosik Encyclopaedia of the American Judicial System, Vol.II pp.575 to 578).

18. This study of the practice prevailing in the abovementioned countries reveals that in Canada, Australia and the United States, the process of removal of a judge incorporates an investigation and inquiry into the allegations of misconduct or incapacity against a judge by a judicial agency before the institution of the formal process of removal in the legislature. England is the only exception where the entire process is in Parliament but there also views are being expressed that it should be replaced by a judicial process of investigation by a judicial tribunal before the matter is taken up by the Houses of Parliament. This is also the trend of the recommendations in the resolutions adopted by the United Nations General Assembly and international conferences of organisations of lawyers.

19. International Bar Association at its 19th Biennial Conference held at New Delhi in October 1982 adopted Minimum Standards of Judicial Independence. Paras 27 to 32 relating to 'Judicial Removal and Discipline' are as under :

> "27.The proceedings for discipline and removal of judges should ensure fairness to the judge, and adequate opportunity for hearing.

A 28. The procedure for discipline should be held in camera. The judge may however request that the hearing be held in public, subject to final and reasoned disposition of this request by the Disciplinary Tribunal. Judgments in disciplinary proceedings whether held in camera or in public, may be published.

B 29. (a) The grounds for removal of judges should be fixed by law and shall be clearly defined.

(b) All disciplinary action shall be based upon standards of judicial conduct promulgated by law or in established rules of court.

C 30. A judge shall not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge.

31. In systems where the power to discipline and remove judges
D is vested in an institution other than the Legislature, the tribunal for discipline and removal of judges shall be premanent and be composed predominantly of members of the Judiciary.

32. The head of the court may legitimately have supervisory powers to control judges on administrative matters."

E 20. The First World Conference on the Independence of Justice held at Montreal on June 10, 1983 adopted a Universal Declaration on the Independence of Justice. It relates to international judges as well as national judges. The following paragraphs deal with 'Discipline and Removal' in relation to national judges:

F "2.32 A complaint against a judge shall be processed expeditiously and fairly under an appropriate practice, and the judge shall have the opportunity to comment on the complaint at its initial stage. The examination of the complaint at its initial stage shall be kept confidential, unless otherwise requested by the judge.

G

2.33 (a) The proceedings for judicial removal or discipline, when such are initiated, shall be held before a court or a board predominantly composed of members of the judiciary and selected by the judiciary.

H (b) However, the power of removal may be vested in the Legislature by impeachment or joint address, preferably upon a recommendation of a court or board as referred to in 2.33(a).

[*Explanatory Note* : In countries where the legal profession plays an indispensable role in maintaining the rule of law and judicial independence, it is recommended that members of the legal profession participate in the selection of the members of the court or board, and be included as members thereof.]

2.34 All disciplinary action shall be based upon established standards of judicial conduct.

2.35 The proceedings for discipline of judges shall ensure fairness to the judge and the opportunity of a full hearing.

2.36 With the exception of proceedings before the Legislature, the proceedings for discipline and removal shall be held in camera. The judge may, however, request that the hearing be held in public, subject to a final and reasoned disposition of this request by the Disciplinary Tribunal. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.

2.37 With the exception of proceedings before the Legislature or in connection with them, the decision of a Disciplinary Tribunal shall be subject to appeal to a court.

2.38 A judge shall not be subject to removal except on proved grounds of incapacity or misbehaviour, rendering him unfit to continue in office.

2.39 In the event that a court is abolished judges serving in this court shall not be affected, except for their transfer to another court of the same status."

21. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from August 26 to September 6, 1985 adopted the Basic Principles on the Independence of the Judiciary. Paragraphs 17 to 20 dealing with 'Discipline, Suspension and Removal' are as under :

"17.A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to

A discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings."

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The Congress Documents were endorsed by the U.N. General Assembly in its Resolution 40/32 on November 9, 1985 and Resolution 40/146 on December 13, 1985. Resolution 40/146 dated December 13, 1985 of the General Assembly specifically welcomed the Basic Principles on the Independence of the Judiciary and invited Government "to respect them and to take them into account within the framework of their national legislation and practice" (para 2).

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22. Unlike the judges of the Superior courts in England, the judges in the colonies did not enjoy the security of tenure as guaranteed under the Act of Settlement, 1700 and they held office at the pleasure of the Crown. (See : *Terrell* v. *Secretary of State for the Colonies and Another*, 1953(2), 482). The position was not different in India till the enactment of Government of India Act, 1935. In Clause (b) of the proviso to sub-Section 2 of Section 200 of the said Act which related to judges of the Federal Court, it was prescribed that "a judge may be removed from his office by order of the Governor-General on the ground of misbehaviour or of infirmity of body or mind, if the Judicial Committee of the Privy Council, on reference being made to them, report that the judge ought on any such ground to be removed". Similar provisions were made with regard to judges of the High Court in Section 220. It would thus appear that prior to the coming into force of the Constitution of India, it was necessary to have a determination by a judicial body about the alleged grounds of misbehaviour or infirmity of mind and body before a judge of the Federal Court or High Court could be removed. Does the Constitution seek to alter this position in a way, as to exclude investigation and proof of misbehaviour or incapacity by a judicial body and to rest the power of removal including the investigation and proof of misbehaviour or incapacity in Parliament alone.

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23. Basically, the process of removal or impeachment of a judge is a political process. A learned author in *"The Impeachment of the Federal*

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Judiciary." [*Wrisley Brown Harward Law Review* 1912-1913 684 at page 698) says: A

> *".....Thus an impeachment in this country, though judicial in external form and ceremony, is political in spirit. It is directed against a political offence. It culminates in a political judgment. It imposes a political forfeiture. In every sense, say that of administration, it is a political remedy, for the suppression of a political evil, with wholly political consequences.* B
>
> This results in no confusion of the political and the judicial powers. The line of demarcation is clearly discernible even through the labyrinth of formal non-essentials under which ingenious counsel in various cases have sought to bury it. The judgment of the High Court of Parliament upon conviction of an impeachment automatically works a forfeiture of political capacity; but this is simply an effect of the judgment, which is to be distinguished from the judgment itself..." C

Mauro Cappelletti in *'The Judicial Process in Comparative Perspective'* [Clarendon Press-Oxford 1989 at page 731 says: D

> "Two main features of this accountability type can be identified; first, the fact that account has to be given to 'political' bodies, ultimately to the legislative and/or the executive branches by means of essentially 'political', non-judicial processes; second, and perhaps even more characteristically, the fact that account has to be given not, or not primarily, for 'legal' violations, but rather for behaviour (and this might include private, out-of-office behaviour) which is evaluated on the basis of 'political' criteria. E
>
> Perhaps the best illustration of political accountability can be found in the systems of the common law tradition. In England, judges (like any other officials) can be impeached 'before the House of Lords, at the suit of the House of Commons', although this practice has fallen into desuetude; moreover, higher court judges can be 'removed from office by the Crown on an address presented to Her Majesty by both Houses of Parliament'. The idea behind this 'address' procedure is that judges are appointed 'during good behaviour', hence, they can be removed upon breach of the condition. Misbehaviour includes such situations as 'the case of conviction upon an indictment for any infamous offence of such a nature as to render the F G H

A person unfit to exercise the office', but also 'improper exercise of the functions appertaining to the office, or non-attendance, or neglect of or refusal to perform the duties of the office'. Of course the decision of the Houses and the Crown can only be an essentially political one, not a purely juridical decision, even though we are informed that the removal procedure is B subject to some extent 'to the rules of natural justice'..."

24. 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 C Article 124 seem to point to the contrary and evince an 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. In the submissions of the learned counsel who contend against the manifestation of an intention to bring in a judicial element, reliance has been placed on the proceedings of the Constitu- D ent Assembly dated July 29, 1947 relating to adoption of Clause 18 of the report of the Union Constitution Committee relating to the Supreme Court. Shri Alladi Krishnaswami Ayyar had moved the said clause subject to modifications and conditions in the said clause which related to appointment and removal of judges of Supreme Court. It was provided that "a judge of the Supreme Court of India shall not be removed from his office E except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity. Further provision may be made by Federal law for the procedure to be adopted in this behalf". Shri K.Santhanam had moved an amendment in the said Clause relating to removal of judges and he wanted the last sentence about further provision being made by F Federal law for the proceducre to be adopted in that behalf, to be omitted. Shri M.Ananthasayanam Ayyangar proposed amendments suggesting two alternative clauses in the place of the Clause with regard to removal of the judges. In one clause, it was suggested that "a judge may be removed from office on the ground of misbehaviour or infirmity of mind or body by an address presented in this behalf by both the Houses of the legisla- G ture to the President provided that a committee consisting of not less than 7 High Court Chief Justices chosen by the President, investigates and reports that the judge on any such ground be removed". The other alternative clause suggested by Shri M.Ananthasayanam Ayyangar was that "a judge of the Supreme Court may be removed from office by the President on the ground of misbehaviour or of infirmity of mind or body, if on H reference being made to it (Supreme Court) by the President, a special

tribunal appointed by him for the purpose from amongst judges or ex-judges of the High Courts or the Supreme Court, report that the judge ought on any such grounds to be removed." The Constituent Assembly adopted clause 18 with the amendments as proposed by Shri Alladi Krishnaswami Ayyar and rejected the amendments suggested by Shri M. Ananthasayanam Ayyangar. Shri Santhanam did not press his amendment and it was withdrawn. There is no doubt that in the amendments which were suggested by Shri M.Ananthasayanam Ayyangar, it was provided that there should be investigation into the allegations of misbehaviour or infirmity by a committee consisting of Chief Justices of the High Courts or the special tribunal consisting of judges or ex-judges of the High Court or the Supreme Court, but the rejection of the said amendments moved by Shri Ayyangar does not mean that the Constituent Assembly was not in favour of determination about the correctness of such allegations by judicial body because Shri Alladi Krishnaswami Ayyar, while moving Clause 18 had emphasised the word 'proved misbehaviour' and had stated :

> "While the ultimate power may rest with the two Houses, the Clause provides that the charges must be proved. How exactly to prove the charges will be provided for in the Federal law. We need not be more meticulous or more elaborate, than the people who have tried a similar case in other jurisdictions. I challenge my friend to say whether there is any detailed provision for the removal of judges more than that in any other Constitution in the world. The general principle is laid down in the Constitution and later on the Federal law will provide for adequate machinery and that is the import of the clause".....There is sufficient safeguard in the reference "proved misbehaviour" and we might make elaborate and adequate provision for the way in which the guilt could be brought home to a particular judge in any Federal law that may be passed but that is a different matter"....."But I do not think that in a Constitution it is necessary to provide detailed machinery as to the impeachment, the charges to be framed against a particular judge. To make a detailed machinery for all these could be a novel procedure to be adopted in any Constitution".
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> (*Constituent Assembly Debates,* vols. I to VI at pp. 899-900)

25. Reference was also made to the debates of the Constituent Assembly dated May 24, 1949 on Article 103 of the Draft Constitution. Shri Tajamul Husain moved an amendment in Clause (4) of Article 103 which related to the removal of a judge of Supreme Court and suggested an amendment in the said clause so as to povide that "a judge of the Supreme

A Court shall not be removed from his office except by an order of the President passed, after a Committee consisting of all the judges of the Supreme Court had investigated the charge and reported on it to the President and etc." The said amendment was negatived by the Constituent Assembly. (Constituent Assembly Debates, vol. VIII at pp. 243 and 262). The said amendment was similar to those moved by Shri M. Ananthasayanam
B Ayyangar at the stage of adoption of Clause 18 of the report of the Union Constitution Committee noticed earlier. The reasons which were given by Shri Alladi Krishnaswami Ayyar for opposing the said amendments would apply to this amendment also.

26. The proceedings in the Constituent Assembly, therefore, do not
C give an indication that in adopting Clauses (4) and (5) of Article 124 of the Constitution, the intention of the Costituent Assembly was to exclude investigation and proof of misbehavior 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
D 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 investigation 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.

E 27. This is some of the historical material and background on the topic. We may now proceed to consider the merits of the contentions.

RE: CONTENTION A:

28. This contention has two aspects : whether a motion for removal
F of a Judge lapses upon the dissolution of the House of Parliament and secondly, the question whether it so lapses or not is a matter within the exclusive domain and decision of that House itself. On the first aspect, the contention of the learned Attorney General and Shri Kapil Sibal, learned Senior Counsel, are similar. On the second aspect, the learned Attorney General would say that the question whether a motion lapsed or not is to
G be decided on the basis of the provisions of law guiding the matter and the House itself is not its final arbiter. Learned Attorney General would say that the Court alone has jurisdiction to examine and pronounce on the law of the matter.

29. On the question of lapse reliance was placed on the classic
H treatise of Erskine May's *"The Law, Privileges, Proceedings and Usage*

of Parliament" [Twenty-first Edition, London Butterworths 1989]. A motion is described as a "proposal made for the purpose of illustrating the decision of the House". According to Erskine May, certain matters may be raised by only a substantive motion. He says:

> "Certain matters cannot be debated, except on a substantive motion which allows a distinct decision of the House. Amongst these are the conduct of the sovereign, the heir to the throne or other members of the Royal Family, a Governor-General of an independent territory, the Lord Chancellor, the Speaker, the Chairman of Ways and Means, Members of either House of Parliament and judges of the superior courts of the United Kingdom, including persons holding the position of a judge, such as a judge in a court of bankruptcy and a county court, or a recorder..."

30. Sri Sibal placed strong reliance on the following statements in M.N.Kaul and S.L.Shakdher in "Practice and Procedure of Parliament" as to the effects of the dissolution of the House :

> "Dissolution, as already stated, marks the end of the life of a House and is followed by the constitution of a new House. Once the House has been dissolved, the dissolution is irrevocable. There is no power vested in the President to cancel his order of dissolution and revive the previous House. The consequences of a dissolution are absolute and irrevocable. In Lok Sabha, which alone is subject to dissolution under the Constitution, dissolution "passes a sponge over the parliamentary slate". All business pending before it or any of its committees lapses on dissolution. No part of the records of the dissolved House can be carried over and transcribed into the records or registers of the new House. In short, the dissolution draws the final curtain upon the existing House".

Adverting to the effect of dissolution on other business such as motions, resolutions etc., the learned authors say:

> "All other business pending in Lok Sabha, e.g., motions, resolutions, amendments supplementary demands for grants etc., at whatever stage, lapses upon dissolution, as also the petitions presented to the House which stand referred to the Committee on Petitions."

Learned Attorney General urged that a combined reading of Articles 107, 108 and 109 leads irresistibly to the conclusion that upon dissolution

A of the House, all bills will lapse subject only to the exception stipulated in Article 108. It is further urged that on first principle also it requires to be accepted that no motion should survive upon the dissolution of the House unless stipulated otherwise under the Rules of Procedure and conduct of business. The doctrine of lapse, it is urged, is a necessary concomitant of the idea that each newly constituted House is a separate entity having a B life of its own unless the business of the previous House is carried over by the force of statute or rules of procedure. Both the learned Attorney General and Shri Kapil Sibal took us through the Rules of Procedure and Conduct of Business in Lok Sabha made under Article 118 of the Constitution to show that invariably all pending business come to an end with the expiry of the term of the House or upon its earlier dissolution.

C

Shri Ram Jethmalani for the petitioner-sub-committee referred to the conventions of the British Parliament and urged that pending business lapses on prorogation and as a general practice the House is usually prorogued before it is dissolved. Learned counsel said that impeachment motions are *sui generous* in their nature and that they do not lapse. It is. D however, necessary to distinguish the Indian Parliamentary experience under a written Constitution from the British conventions. Indeed, referring to the doctrine of lapse this Court in *Purushothaman Nambudiri* v. *The State of Kerala* [1962] Suppl.1 SCR 753 Gajendragadkar J said:

> ".....In support of this argument it is urged that wherever the E English parliamentary form of Govrnment prevails the words "prorogation" and "dissolution" have acquired the status of terms of art and their significance and consequence are well settled. The argument is that if there is no provision to the contrary in our Constitution the English convention with regard to the consequence of dissolution should be held to follow even in India. There is no doubt that, in English, in addi- F tion to bringing a session of Parliament to a close prorogation puts an end to all business which is pending consideration before either House at the time of such prorogation; as a result any proceedings either in the House or in any Committee of the house lapse with the session Dissolution of Parliament is G invariably preceded by prorogation, and what is true about the result of prorogation is, it is said, a *fortiori* true about the result of dissolution. Dissolution of Parliament is sometimes described as "a civil death of Parliament". Ilbert, in his work on 'Parliament' has observed that "prorogation means the end of a session (not of a Parliament)"; and adds that "like dissolu- H tion, it kills all bills which have not yet passed". He also describes dissolution as an "end of a Parliament (not merely of

a session) by royal proclamation", and observes that "it wipes the slate clean of all uncompleted bills or other proceedings"..."[p.759 & 760]. A

After referring to the position in England that the dissolution of the House of Parliament brought to a close and in that sense killed all business of the House at the time of dissolution, the learned Judge said: B

> ".....Therefore, it seems to us that the effect of cl. (5) is to provide for all cases where the principle of lapse on dissolution should apply. If that be so, a Bill pending assent of the Governor or President is outside cl. (5) and cannot be said to lapse on the dissolution of the Assembly."
>
> [p. 768] C

> ".....In the absence of cl. (5) it would have followed that all pending business, on the analogy of the English convention, would lapse on the dissolution of the Legislative Assembly. It is true that the question raised before us by the present petition under Art. 196 is not free from difficulty but, on the whole, we D are inclined to take the view that the effect of cl. (5) is that all cases not falling within its scope are not subject to the doctrine of lapse of pending business on the dissolution of the Legislative Assembly. In that sense we read cl. (5) as dealing exhaustively with Bills which would lapse on the dissolution of the Assembly. If that be the true position then the argument that E the Bill which was pending assent of the President lapsed on the dissolution of the Legislative Assembly cannot be upheld."
>
> [P. 769]

31. It is true that Purushothaman Nambudiri case dealt with a legislative measure and not a pending business in the nature of motion. But, we are persuaded to the view that neither the doctrine that dissolution of a House "passes a sponge over parliamentary slate" nor the specific provisions contained in any rule or rules framed under Article 118 of the Constitution determine the effect of dissolution on the motion for removal of a judge under Article 124. the reason is that Article 124(5) and the law made thereunder exclude the operation of Article 118 in this area. F G

Section 3 of the Act provides:

> " 3(1) If notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,—
>
> (a) in the case of a notice given in the House of the People, by not less than one hundred members of that House; H

A (b) in the case of a notice given in the Council of States, by not less than fifty members of that Council;

then, the Speaker or, as the case may be, the Chairman may, 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.

B

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case may be, the Chairman 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 consisting

C of three members of whom —

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

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

D (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;

Proviso &)	Omitted
Sub-sections)	as
E (3) to (9))	unnecessary here.

Section 6(2) provides :

"(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

F taken up for consideration by the House or the Houses of Parliament in which it is pending."

The effect of these provisions is that the motion shall be kept pending till the committee submits its report and if the committee finds the Judge guilty, the motion shall be taken up for consideration. Only one

G motion is envisaged which will remain pending. No words of limitation that the motion shall be kept pending subject to usual effect of dissolution of the House can or should be imported. The reason is that a law made by the Parliament and binding on the House can provide against the doctrine of lapse. The law envisaged in article 124(5) is Parliamentary law which is of higher quality and efficacy than rules made by the House for itself

H under Article 118. Such a law can, and under the present statute does

provide against the doctrine of lapse. Further, Art.118 expressly states that each House of Parliament may make rules "for regulating, subject to the provisions of this Constitution". A

In *State of Punjab* v. *Sat Pal Dang & Ors.* [1969] 1 SCR 478 this Court held that the law for purposes of Article 209 (analogues to Article 119) could even take the form of an Ordinance promulgated by the Governor of a State under Article 213 and that wherever there is repugnance between the Rules of Procedure framed under Article 208 (Article 118 in the case of Parliament), the law made under Article 209 shall prevail. In the constitutional area of removal of a Judge, the law made under Article 124(5) must be held to go a little further and to exclude the operation of the Rules under Article 118. Indeed, no question of repugnance could arise to the extent the field is covered by the law under Article 124(5). B C

Such a view would indeed obviate some anomalies which might otherwise arise. Rajya Sabha is not dissolved and a motion for presentation of address for the removal of the Judge can never lapse there. Section 3 applies to both the Houses of Parliament. The words "shall keep the motion pending" cannot have two different meanings in the two different contexts. It can only mean that the consideration of the motion shall be deferred till the report of the committee implying that till the happening of that event the motion will not lapse. We are of the view that the argument that such a motion lapses with the dissolution of the House of Parliament is not tenable. D E

32. The second limb of Contention A is that the question whether a motion has lapsed or not is a matter pertaining to the conduct of the business of the House of which the House is the sole and exclusive master. No aspect of the matter, it is contended, is justificiable before a Court. Houses of Parliament, it is claimed, are privileged to be the exclusive arbiters of the legality of their proceedings. Strong reliance has been placed on the decision in oft-quoted decision in *Bradlaugh* v. *Gossett,* [1884] 12 Q.B.D. 271. There the exclusiveness of parliamentary jurisdiction on a matter related to the sphere where Parliament, and not the Court, had exclusive jurisdiction even if the matters were covered by a statute. F G

But where, as in this country and unlike in England, there is a written constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the Legislature and other organs of the State as grantees under the Constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited Government'. Judicial review is, indeed, an incident of and flows H

A from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and, authority under Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State. It is to be noted that the British Parliament with the Crown is Supreme and its powers are unlimited and
B courts have no power of judicial review of legislation... This doctrine is in one sense the doctrine of ultra vires in the constitutional law. In a federal set up the judiciary becomes the guardian of the Constitution. Indeed, in *A.K. Gopalan* v. *The State of Madras*, [1950] SCR 88 Article 13 itself was held to be *ex abundante cautela* and that even in
C its absence if any of the fundamental rights were infringed by any legislative enactment, the court had always power to declare the enactment invalid. The interpretation of the Constitution as a legal instrument and its obligation is the function of the Courts. "It is emphatically the province and duty of the judicial department to say what the law is". *In Re: Special Reference Case*, [1965] 1 SCR 413 Gajendragadkar, CJ said:

D

> ".....though our Legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution.
>
> In a democratic country governed by a written Constitution, it
E is the Constitution which is supreme and sovereign....."

But it is the duty of this Court to interpret the Constitution for the meaning of which this Court is final arbiter.

33. Shri Kapil Sibal referred us to the following observations of Stephen J. in *Bradlaugh* v. *Gossett*, supra:

F

> .....It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that even if that interpretation should be erroneous, this court has no power to interfere with it directly or
G indirectly..."

[p. 280 & 281]

> "The House of Commons is not a Court of Justice, but the effect of its privilege to regulate its own internal concerns practically invest it with the judicial character when it has to
H apply to particular cases the provisions of Acts of Parliament.

We must presume that it discharges this function properly and with due regard to the laws, in the making of which it has so great a share. If its determination is not in accordance with law, this resembles the case of an error by a judge whose decision is not subject to appeal. There is nothing startling in the recognition of the fact that such an error is possible. If, for instance, a jury in a criminal case gives a perverse verdict, the law has provided no remedy. The maxim that there is no wrong without a remedy does not mean, as it is sometimes supposed, that there is legal remedy for every moral or political wrong....."

[p. 285]

The rule in *Bradlaugh* v. *Gossett,* supra, was held not applicable to proceedings of colonial legislature governed by the written constitutions *Barton* v. *Taylor,* [1886] 11 AC 197 and *Rediffusion (Hong Kong) Ltd.* v. *Attorney General of Hong Kong,* [1970] AC 1136.

The principles in Bradlaugh is that even a statutory right if it related to the sphere where Parliament and not the courts had exclusive jurisdiction would be a matter of the Parliament's own concern. But the principle cannot be extended where the matter is not merely one of procedure but of substantive law concerning matters beyond the Parliamentary procedure. Even in matters of procedure the constitutional provisions are binding as the legislations are enforceable. Of the interpretation of the Constitution and as to what law is the Courts have the constitutional duty to say what the law is. The question whether the motion has lapsed is a matter to be pronounced upon the basis of the provisions of the Constitution and the relevant laws. Indeed, the learned Attorney General submitted that the question whether as an interpretation of the constitutional processes and laws, such a motion lapses or not is exclusively for the courts to decide.

The interpretation of the laws is the domain of the courts and on such interpretation of the constitutional provisions as well as the Judges (Inquiry) Act, 1968, it requires to be held that under the law such a motion does not lapse and the Courts retain jurisdiction to so declare. Contention A is answered accordingly.

RE: CONTENTIONS (B), (C) AND (D):

34. These contentions have common and over-lapping areas and admit of being deal with and disposed of together. On the interpretative criteria apposite to the true meaning and scope of Articles 121, 124(4) and 124(5), indeed, three constructional options become available:

A First: The entire power for taking all steps for the removal of a Judge, culminating in the presentation of an address by different Houses of Parliament to the President, is committed to the two Houses of Parliament alone and no initiation of any investigation is possible without the initiative being taken by the Houses themselves. No law
B made by Parliament under Article 124(5) could take away this power. The bar of Article 121 is lifted the moment any Member of Parliament gives notice of motion for the removal of a Judge and the entire allegations levelled by him would be open for discussion in the House itself. It will be for the majority of the Members of the House to
C decide if and how they would like to have the allegations investigated. Any abridging this power is bad.

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
D 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 regu-
E lates the procedure therefor, no motion for removal of a Judge would be permissible under Article 124(4) and the House 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'.

F

Third: That Article 124(5) is only an enabling provision and in the absence of any enactment by the Parliament under that provision it would be open to either House to entertain a motion for the removal of a Judge.

G However, it is open to the Parliament under Article 124(5) to enact a law to regulate the entire procedure starting with the investigation of the allegations against the Judge concerned and ending with the presentation of the address by the two Houses of Parliament. It would be open to the Parliament to designate any authority of its choice
H for investigating the allegations and also to regulate the

procedure for the consideration of the matter in either House.

As soon as a law has been enacted all its provisions would be binding on both Houses of Parliament and would even override any Rules framed by the two Houses under Article 118 of the Constitution. It will not be permissible for either House to act contrary to the provisions of such Act. The question as to when and in what circumstances motion would be allowed to be moved in either House of Parliament to lift the ban against the discussion of conduct of a Judge under Article 121 would be according to such Act of Parliament.

In regard to the first and the second alternative propositions, the deliberations of the Joint Select Committee would indicate a sharp divide amongst the eminent men who gave evidence. Particularly striking is the sharp contrast between the opinions of Mr. K.K. Shah and Mr. M.C. Setalvad. The first view would tend to leave the matter entirely with the House, which can adopt any procedure even differing from case to case. The matter would be entirely beyond judicial review. Then there is the inevitable element of political overtone and of contemporary political exacerbations arising from inconvenient judicial pronouncements thus endangering judicial independence.

The third view would suffer from the same infirmities except that Parliament might itself choose to discipline and limit its own powers by enacting a law on the subject. The law enacted under Article 124(5) might be a greatly civilized piece of legislation deferring to values of judicial independence. But then the Parliament would be free to repeal that law and revert back to the position reflected in the first view. The third view can always acquire back the full dimensions of the first position at the choice of the Parliament.

35. 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.

36. Article 121 and the material parts of Article 124 read as under:

"121. Restriction on discussion in Parliament. - No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a 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 as hereinafter provided.

... ...

124. Establishment and constitution of Supreme Court.

(1) ... ...

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice of India shall always be consulted:

Provided further that -

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

... ...

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4)."

Article 121 suggests that the bar on discussion in Parliament with respect to the conduct of any Judge is lifted 'upon a *motion* for presenting an address to the President praying for the removal of a Judge as hereinaf-

ter provided'. The word 'motion' and '*as hereinafter provided*' are obvious references to the motion for the purpose of clause (4) of Article 124 which in turn, imports the concept of "proved" misbehaviour or incapacity. What lifts the bar under Article 121 is the *'proved'* misbehaviour or incapacity. Then arises the question as to how the investigation and proof of misbehaviour or incapacity preceding the stage of motion for removal on the ground of "proved" misbehaviour or incapacity under Article 124(4) is to be carried on. Clause (5) of Article 124 provides for enactment of a law for this purpose.

37. The seminal question is whether clause (5) is merely an enabling provision particularly in view of the use of the word 'may' therein, or it incorporates a condition precedent on the power of removal of the parliament. In other words, can the function of removal under Article 124(4) be performed without the aid of a law enacted under clause (5)? If it can be, then the power for investigation and proof of misbehaviour or incapacity of a Judge must be found in clause (4) itself and the scope of clause (5) limited only to enactment of a law for this limited purpose if the Parliament so desires and not otherwise. The other view is that clause (5) contains a constitutional limitation on the power of removal contained in clause (4) so that it can be exercised only on misbehaviour or incapacity "proved" in accordance with the law enacted under clause (5). In such situation, the power of the Parliament would become available only for enacting the law under clause (5) and if misbehaviour or incapacity is "proved" in accordance with such law. 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 misbehavior or incapacity has been proved in accordance with the law enacted by the Parliament under clause (5) of Article 124. In this connection, 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 upto 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 of the Judge, the bar on

A 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
B Article 124(4).

38. If it be accepted that clause (4) of Article 124 by itslf contains the complete power of removal and the enactment of a law under clause (5) is merely enabling and not a constitutional limitation on the exercise of the power of removal under clause (4), then some other questions arise
C for consideration. If clause (5) is merely an enabling provision, then it cannot abridge the scope of the power in clause (4) and, therefore, the power of a House of Parliament under clause (4) cannot be curtailed by a mere enabling law enacted under clause (5) which can be made only for the purpose of aiding or facilitating exercise of the function under clause (4). In that situation, enactment of the enabling law under clause (5)
D would not take the sphere covered by the law outside the ambit of Parliament's power under clause (4). The argument that without enactment of the law under clause (5), the entire process from the time of initiation till presentation of the address to the President, including investigation and proof of the misbehaviour or incapacity, is within the sphere of Parliament, but on enactment of a law under clause (5) that area is carved out of
E the Parliament's sphere and assumes statutory character appears tenuous. If the argument were correct, then clause (5), would merely contemplate a self-abnegation.

39. 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
F 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
G 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. The matter not being before the Parliament prior to this stage is also indicated by Article 121 which lifts the bar on discussion in Parliament only upon a motion for presenting an
H address to the President as provided later in Article 124(4). The bar in

Article 121 applies to discussion in Parliament but investigation and proof of misconduct or incapacity cannot exclude such discussion. 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 upto 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. Some expressions used in the Act, particularly sections 3 and 6 to suggest that the motion is initiated in the House or is kept pending in the House during investigation can be reconciled, if this Constitutional Scheme is accepted. Those expresions appear to have been used since the authority to entertain the complaint is 'Speaker/Chairman', the complaint is described as 'motion' and the complaint can be made only by the specified number of Members of Parliament. In substance it only means that the specified number of M.Ps. alone can make such a complaint; the complaint must be made to the 'Speaker/Chairman'; on receiving such a complaint if the Speaker/Chairman form the opinion that there is a *prima facie* case for investigation, he will constitute the judicial committee as prescribed; and if the finding reached is 'guilty' then the Speaker/Chaiman commences the parliamentary pocess in accordance with Article 124(4) for removal of the Judge and the bar in Article 121 is lifted.

40. If this be the correct position, then the validity of law enacted by the Parliament under clause (5) of Article 124 and the stage upto 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

A 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. For the same reason, the question of applying the doctrine of lapse to the motion made to the Speaker giving rise to the constitution of the Inquiry Committee under the Act, also does not arise, and there can be no occasion for the House to say so at any time. If the B House is, therefore, not required to consider this question since the parliamentary process can commence only after a finding of guilt being proved, the further question of a futile writ also does not arise. The argument that the House can decide even after a finding of guilt that it would not proceed to vote for removal of the Judge is not germane to the issue since that is permissible in the Constitutional Scheme itself under Article 124(4) C irrespective of the fact whether Article 124(5) is a mere enabling provision or a constitutional limitation on the exercise of power under Article 124(4).

41. It is not the law enacted under Article 124(5) which abridges or curtails the parliamentary process or exclusively of its jurisdiction but the D Constitutional Scheme itself which by enacting clauses (4) and (5) simultaneously indicated that the stage of clause (4) is reached and the process thereunder commences only when the alleged misbehaviour or incapacity is proved in accordance with the law enacted under clause (5).

42. It is only then that the need for discussing a Judge's conduct in E the Parliament arises and, therefore, the bar under Article 121 is lifted. In short, the point of time when the matter comes first before the Parliament in the Constitutional Scheme, Article 121 provides that the bar is lifted. The other view creates difficulties by restricting discussion in Parliament on a motion which would be before it. The suggestion to develop a convention to avoid discussion at that stage or to prevent it by any other F device adopted by the Speaker after admitting the motion, does not appear to be a satisfactory solution or explanation. That this obvious situation could have been left unprovided for and the field left to a convention to be developed later, while enacting these provisions with extreme care and caution in a written Constitution, is extremely unlikely. This indicates that this area is not left uncovered which too is a pointer that the stage at G 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 the allegation is not proved, the condition precedent to invoke the Parliament's jurisdiction under clause (4), does not exist, which is the H 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.

43. In Part V of the Constitution relating to 'The Union', Article 124 is in 'Chapter IV.- The Union Judiciary' while Articles 118 and 119 relating to Parliament's power to make rules or enact a law to regulate its procedure and the conduct of its business are in 'Chapter II.- 'Parliament' (under the heading 'Procedure Generally' wherein Article 121 also finds place. The context and setting in which clause (5) appears along with clause (4) in Article 124 indicate its nature connected with clause (4) relating to curtailment of a Judge's tenure, clause (4) providing the manner of removal and clause (5) the pre-requisite for removal, distinguished from Articles 118, 119, and 121, all of which relate to procedure and conduct of business in Parliament. Article 124(5) does not, therfore, operate in the same field as Article 118 relating to procedure and conduct of business in Parliament.

Accordingly, the scheme is that the entire process of removal is in two parts—the *first* part under clause (5) from initiation to investigation and proof of misbehaviour or 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 alone is the parliamentary process.

44. 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 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.

If the motion for presenting an address for removal is envisaged by Articles 121 and 124(4) 'on ground of *proved* misbehaviour or incapacity' it presupposes that misbehaviour or incapacity has been proved earlier. This is more so on account of the expression 'investigation and proof' used in clause (5) with specific reference to clause (4). This indicates that 'investigation and proof' of misbehaviour or incapacity is not within clause (4) but within clause (5). Use of the expression 'same session' in clause (4) without any reference to session in clause (5) also indicates that session of House has no significance for clause (5) i.e., 'investigation and proof' which is to be entirely governed by the enacted law and not the parliamentary practice which may be altered by each Lok Sabha.

A 45. The significance of the word 'proved' before the expression 'misbehaviour or incapacity' in clause (4) of Article 124 is also indicated when the provision is compared with Article 317 providing for removal of a member of the Public Service Commission. The expression in clause (1) of Article 317 used for describing the ground of removal is 'the ground of misbehaviour' while in clause (4) of Article 124, it is, 'the ground of B *proved* misbehaviour or incapacity'. The procedure for removal of a member of the Public Service Commission is also prescribed in clause (1) which provides for an inquiry by the Supreme Court on a reference made for this purpose. In the case of a Judge, the procedure for investigation and proof is to be in accordance with the law enacted by the Parliament under clause (5) of Article 124. In view of the fact that the adjudication of C the ground of misbehaviour under Article 317 (1) is to be by the Supreme Court, in the case of a Judge who is a higher constitutional functionary, the requirement of judicial determination of the ground is re-inforced by the addition of the word 'proved' in Article 124(4) and the requirement of law for this purpose under Article 124(5).

D 46. Use of the word 'may' in clause (5) indicates that for the 'procedure for presentation of address' it is an enabling provision and in the absence of the law the general procedure or that resolved by the House may apply but the 'investigation and proof' is to be governed by the enacted law. The word 'may' in clause (5) is no impediment to this view.

E 47. On the other hand, if the word 'shall' was used in place of 'may' in clause (5) it would have indicated that it was incumbent on the Parliament to regulate even the procedure for presentation of an address by enacting such a law leaving it no option even in the matter of its procedure after the misbehaviour or incapacity had been investigated and found true. 'Sometimes, the legislature uses the word "may" out of defer- F ence to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed.' (See : *State of Uttar Pradesh* v. *Joginder Singh,* [1964] 2 SCR 197 at 202. Indeed, when a provision is intended to effectuate a right—here it is to effectuate a constituational protection to the Judges under Article 124 (4)—even a provision as in Article 124 (5) which may otherwise seem merely ena- G bling, becomes mandatory. The exercise of the powers is rendered obligatory. In *Frederic Guilder Julius* v. *The Right Rev. The Lord Bishop of Oxford; the Rev. Thomas Tellusson Carter,* [1879-80] 5 A.C. 214 at p. 244, Lord Blackburn said :

> H "....The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right...."

In *Punjab Sikh Regular Motor Service, Moudhapura* v. *The Regional Transport Authority, Raipur & Anr,* [1966] 2 SCR 221, this Court referring to the word 'may' in Rule 63 (a) in Central Provinces and Berar Motor Vehicles Rules, 1940, observed :

> "....On behalf of the appellant attention was drawn to the expression 'may' in Rule 63. But in the context and the language of the rule the word 'may' though permissive in form, must be held to be obligatory. Under Rule 63 the power to grant renewal of the counter-signature on the permit in the present case is conferred on the Regional Transport Authority, Bilaspur. The exercise of such power of renewal depends not upon the discretion of the authority but upon the proof of the particular cases out of which such power arises. 'Enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right'. (See : *Julius* v. *Bishop of Oxford,* 5 A.C. 214, 244)...."

If the word 'may' in Article124 (5) is given any other meaning that sub-Article would render itself, to be treated by the Parliament, as superfluous, redundant and otiose. The power to prescribe a procedure for the exercise of power under Article 124 (4) could otherwise also be available to the House. The law envisaged under Article 124(5) is not such a law; but one which would effectuate the constitutional policy and philosophy of the machinery for removal of Judges.

The use of the word 'may' does not, therefore, necessarily indicate that the whole of clause (5) is an enabling provision leaving it to the Parliament to decide whether to enact a law even for the investigation and proof of the misbehaviour or incapacity or not.

The mere fact that clause (5) does not form a part of clause (4) itself, as appears to have been considered at one stage when the constitution was being drafted, does not reduce the significance or content of clasue (5). It is likely that the framers of the Constitution thought of clearly demarcating the boundaries and, therefore, indicated that upto the stage of proof of misbehaviour of incapacity the field is covered by a law enacted by the Parliament, the first part being covered by clause (5) and the latter by clause (4) with the only difference that the Parliament was given the option to regulate even the procedure for the presentation of an address after the misbehaviour or incapacity had been proved by enacting a law for the purpose to make it more definite and consistent.

A 48. Similarly, use of word 'motion' to indicate the process of investigation and proof in the Judges (Inquiry) Act, 1968 because the allegations have to be presented to the 'Speaker' does not make it 'motion in the House' notwithstanding use of that expression in Section 6. Otherwise, section 6 would not say that no further step is to be taken in case of a finding of 'not guilty'. It only means that when the allegation is not B proved, the Speaker need not commence the process under clause (4) which is started only in case it is proved. The Speaker is, therefore, a statutory authority under the Act chosen because the further process is parliamentary and the authority to make such a complaint is given to Members of Parliament. Moreover, to the enactment under Article 124(5) cannot be a safe guide to determine the scope of Article 124(5).

C

If this construction of the inter-connection amongst Articles 118,121, 124 (4) and 124 (5) is the proper one to be placed on them, as indeed we so do, the provisions of the Judges (Inquiry) Act do not foul with the Constitutional Scheme.

D 49. On scope of the law under Article 124(5), the idea of regulating procedure for (i) Presentation of the address; (ii) Investigation and proof of misbehaviour or incapacity admit of two possible options of interpretation. The idea of "Presentation of the address" may be confined to the actual presentation of address by both Houses of the Parliament; or may be held to cover the entire process from initiation by the motion in the E House till the final act of delivery of the address. If the first view is correct the law under Article 124(5) would apply at the stage of investigation and proof of misbehaviour or incapacity and at the final stage of presentation of address after the motion is adopted by both the Houses. The motion and its consideration and adoption by the House would be outside the ambit of such law and it would be regulated by the rule of F procedure made under Article 118. This view is too narrow. By bringing in the rules of procedure of the House made under Article 118 it introduces an element of uncertainty and might affect independence of the judiciary.

50. Second view is to be preferred. It enables the entire process of G removal being regulated by a law of Parliament - ensures uniformity and reduces chances of arbitrariness. Article 118 is a general provision conferring on each House of Parliament the power to make its own rules of procedure. These rules are not binding on the House and can be altered by the House at any time. A breach of such rules amounts to an irregularity and is not subject to judicial review in view of Article 122.

H 51. 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.

52. 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 Article 118. Since Article 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 a law would constitute iliegality and could not be immune from judical scrutiny under Article 122(1).

53. 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 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 legislation reconciling the concept of accountability of Judges and the values of judicial independence.

54. Indeed, the dissenting note of Dr. L.M. Singhvi, in the Report of the Joint Committee on the Judges (Inquiry) Bill, 1964 brings into sharp focus the thrust of the report of the majority. It is to be recalled that the 1964 Bill vested the power to initiate the process of removal with the Executive. That was found objectionable and inconsistent with the idea of judicial independence. However, as to the nature of the authority which was the repository of the power to investigate, the dissenting opinion, by necessary implication, emphasises the majority view which ultimately became the law. Dr. Singhvi in his dissent says :

> "10. The present Bill seeks to provide only the modality of a tribunal clothed in the nomenclature of a Committee. The Committee contemplated in the Bill may well be considered a tribunal or an "authority" within the meaning of Articles 226 and 227 of the Constitution, rendering its work subject to judicial review and supervision. What is more, the Parliamnet is not left with any choice in the matter and procedure of parliamen-

A tary committee has been wholly excluded. With this I am not in agreement.

11. In both these matters in respect of which I have dissented from my esteemed colleagues in the Joint Select Committee, there appears to be an imprint on the provisions of the Bill of the now defunct Burmese Constitution, which provided that a B notice of such resolution should be signed by not less than one-fourth of the total membership of either Chamber of Parliament and further that the charge would be investigated by a special tribunal (S. 143 of the Burmese Constitution). In the Burmese case, the special tribunal was to consist of the President or his nominee and the Speakers of the Chamber of C Nationalities and the Chamber of Deputies. I feel that the Burmese analogue is neither inspiring nor instructive, and that the more highly evolved procedures of other democratic constitutions which have been tried and tested for centuries would have served us better".

D 55. Our conclusions, therefore, on contentions B, C and D are as under :

The constitutional process for removal of a Judge upto 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 E of Parliament. The Speaker is a statutory authority under the Act. Upto that point the matter cannot be said to remain 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 the lifting of the bar under F Article 121 against discussing the conduct of a Judge 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.

G The Speaker while admitting a motion and constituting a Committee to investigate the alleged grounds of misbehaviour or incapacity does not act as part of the House. The House does not come into the picture at this stage. The provisions of the Judges (Inquiry) Act, 1968 are not unconstitutional as abridging the powers and privileges of the House. The Judges (Inquiry) Act, 1968 is constitutional and is *intra vires*. Contention D is H disposed of accordingly.

RE: CONTENTION (E)

56. It is urged by Shri Sibal that having regard to the serious consequences that flow from the admission of a motion by the Speaker and the decision to constitute a Committee for investigation, it is incumbent upon the Speaker to afford an opportunity to the Judge of being heard before such a decision is taken. It is urged that such decision has momentous conseqences both to the Judge and to the judicial system as a whole and that any politically motivated steps to besmear a Judge will not merely affect the Judge himself but also the entire system of administration of justice. If a motion brought up with collateral and oblique motives, it would greatly advance the objects and purpcses of Judges (Inquiry) Act, 1968 if the Judge concerned himself is heard before a decision to admit a motion which has shattering consequences so far as the Judge is concerned is taken. The minimum requirements of natural justice, appropriate in the context, says learned counsel, require that the Judge should have an opportunity of being heard.

57. Shri Jethmalani, on the contrary, contended that it would be highly inappropriate that the Speaker should issue notice to a Judge and call upon him to appear before the Speaker. That apart, Shri Jethmalani said at that stage of the proceedings where the Speaker merely decides that the matter might bear investigation no decisions affecting the rights, interests or legitimate expectation can be said to have been taken. Shri Jethmalani sought to point out that these proceedings could not be equated with disciplinary or penal proceedings. The Speaker does not decide anything against the Judge at that stage.

Referring to the nature and purpose of such preliminary proceedings Corpus Juris Secundum (Vol. 48A) says:

> "As a general rule, disciplinary or removal proceedings relating to Judges are *sui generis* and are not civil or criminal in nature; and their purpose is to inquire into judical conduct and thereby maintain standards of judicial fitness".

[p.614]

As to the stage at which there is a need for notice and opportunity to the Judge to be heard the statement of the law is :

> "The general rule is that before a Judge may be disciplined, as by removal, he is entitled to notice and an opportunity to defend even though there is no statute so requiring. Ordinarily,

A the right to defend is exercised in a trial or hearing, as considered infra 51. More specifically the Judge is entitled to notice of the particular charges against him. In addition, notice of the charge should be given sufficiently in advance of the time for presenting a defence to permit proper preparation of a showing in opposition".

B (pp. 613-614)

But negativing the position that the Judge would be entitled to notice even at the preliminary stage it is stated :

"Investigations may be conducted into matters relating to judi-
C cial conduct as a preliminary to formal disciplinary proceedings.

A judiciary commission may conduct an investigation into matters relating to judicial conduct as a preliminary to formal disciplinary proceedings, and a court may, under its general powers
D over inferior courts, appoint a special commissioner to preside over a preliminary investigation. A court rule providing that a Judge charged with misconduct should be given a reasonable opportunity in the course of a preliminay investigation to present such matters as he may choose, affords him more protection than is required by constitutional provisions".

E [p. 615]

58. The position is that at the stage of the provisions when the Speaker admits the motion under section 3 of the Judges (Inquiry) Act, a Judge is not, as a matter of right, entitled to such notice. The scheme of the statute and rules made thereunder by necessary implication, exclude
F such a right. But that may not prevent the Speaker, if the facts and circumstances placeed before him indicate that hearing the Judge himself might not be inappropriate, might do so. But a decision to admit the motion and constitute a Committee for investigation without affording such an opportunity does not, by itself and for that reason alone, vitiate the decision. Contention E is disposed of accordingly.

G

RE : CONTENTION (F)

59. The substance of this contention as presented by the learned counsel for the petitioner, "Sub-Committee" — argued with particular emphasis by Shri R.K. Garg — is that the constitutional machinery for
H removal of a Judge is merely a political remedy for judicial misbehaviour

and does not exclude the judicial remedy available to the litigants to ensure and enforce judicial integrity. It is urged that the right to move the Supreme Court to enforce fundamental rights is in itself a fundamental right and that takes within its sweep, as inhering in it, the right to an impartial judiciary with persons of impeccable intergity and character. Without this the fundamental right to move court itself becomes barren and hollow. It is urged that the court itself has the jurisdiction — nay a duty — to ensure the integrity and impartiality of the members composing it and restrain any member who is found to lack in those essential qualities and attainments at which public confidence is built.

It is true that society is entitled to expect the highest and most exacting standards of propriety in judicial conduct. Any conduct which tends to impair public confidence in the efficiency integrity and impartiality of the court is indeed forbidden. In Corpus Juris Secundum (Vol. 48A) referring to the standards of conduct, disabilities and privileges of Judges, it is observed :

> "The State which creates a judicial office may set appropriate standards of conduct for a Judge who holds that office, and in many jurisdictions, courts acting within express or implied powers have adopted or have followed certain canons or codes of judicial conduct. The power of a particular court in matters of ethical supervision and the maintenance of standards for the judiciary may be exclusive.
>
> Guidelines for judicial conduct are found both in codes of judicial conduct and in general moral and ethical standards expected of judicial officers by the community. Canons or codes are intended as a statement of general principles setting forth a wholesome standard of conduct for judges which will reflect credit and dignity on the profession and insofar as they prescribe conduct which is malum in se as opposed to malum prohibitum they operate to restate those general priniciples that have always governed judicial conduct.
>
> Although these canons have been held to be binding on judges and may have the force of law where promulgated by the courts, except as legislatively enacted or judicially adopted they do not of themselves have the force and effect of law".
>
> [pp. 593-594]

On the nature of prescribed conduct it is stated :

A "A Judge's official conduct should be free from impropriety and the appearance of impropriety and generally, he should refrain from participation in activities which may tend to lessen public respect for his judicial office.

It is a basic requirement, under general guidelines and canons of judicial conduct, that a Judge's official conduct be free B from impropriety and the appearance of impropriety and that both his official and personal behaviour be in accordance with the highest standard society can expect. The standard of conduct is higher than that expected of lay people and also higher than that expected of attorneys. The ultimate standard must be conducted which constantly reaffirms fitness for the high re- C sponsibilities of judicial office and judges must so comfort themselves as to dignify the administration of justice and deserve the confidence and respect of the public. It is immaterial that the conduct deemed objectionable is probably lawful albeit unjudicial or that it is perceived as lowhumored horseplay.

D In particular, a judge should refrain from participation in activities which may tend to lessen public respect for his judicial office and avoid conduct which may give rise to a reasonable belief that he has so participated. In fact even in his private life a judge must adhere to standards of probity and propriety higher than those deemed acceptable for others. While a judge E does have the right to entertain his personal views on controversial issues and is not required to surrender his rights or opinions as a citizen his right of free speech and free association are limited from time to time by his official duties and he must be most careful to avoid becoming involved in public controversies".

F

[pp. 594-596]

In *Sampath Kumar & Ors.* v. *Union of India & Ors,* [1985] 4 S.C.C. 458, dealing with the qualifications, accomplishments and attainments of the members of the Administrative Tribunal, which were intended to substitute for the High Courts, this court emphasised the qualities essential G for discharging judicial functions.

60. But we are afraid the proposition that, apart from the constitutional machinery for removal of a Judge, the judiciary itself has the jurisdiction and in appropriate cases a duty to enquire into the integrity of one of its members and restrain the Judge from exercising judicial functions is H beset with grave risks. The court would then indeed be acting as a tribunal for the removal of a Judge. Learned counsel supporting the proposition

stated that the effect of restraining a Judge from exercising judicial functions is not equivalent to a removal because the conditions of service such as salary etc. of a Judge would not be impaired. But we think that the general proposition that the court itself has such a jurisdiction is unacceptable. It is productive of more problems then it can hope to solve.

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

62. The question of propriety is, however, different from that of legality. The absence of a legal provision, like Article 317(2) in the case of a Member of Public Service Commission, to interdict the Judge faced with such an inquiry from contining to discharge judicial functions pending the outcome of the inquiry or in the event of a finding of misbehaviour or incapacity being proved till the process of removal under Article 124(4) is complete, does not necessarily indicate that the Judge shall continue to function during that period. That area is to be covered by the

A sense of propriety of the learned Judge himself and the judicial tradition symbolised by the views of the Chief Justice of India. It should be expected that the learned Judge would be guided in such a situation by the advice of the Chief Justice of India, as a matter of convention unless he himself decides as an act of propriety to abstain from discharging judicial functions during the interregnum. Since the learned Judge would continue B to hold the office of a Judge unless he resigns or is removed, an arrangement to meet the situation has to be devised by the Chief Justice. The Constitution while providing for the suspension of a Member of a Public Service Commission in Article 317 (2) in a similar situation has deliberately abstained from making such a provision in case of higher constitutional functionaries, namely, the Superior Judges and President and Vice-C President of India, facing impeachment. It is reasonable to assume that the framers of Constitution had assumed that a desirable convention would be followed by a Judge in that situation which would not require the exercise of a power of suspension. Propriety of the desirable course has to be viewed in this perspective. It would also be reasonable to assume that the Chief Justice of India is expected to find a desirable solution in such a D situation to avoid embarrassment to the learned Judge and to the Institution in a manner which is conducive to the independence of judiciary and should the Chief Justice of India be of the view that the interests of the institution of judiciary it is desirable for the learned Judge to abstain from judicial work till the final outcome under Article 124(4), he would advise the learned Judge accordingly. It is further reasonable to assume that the E concerned learned Judge would ordinarily abide by the advice of the Chief Justice of India. All this is, however, in the sphere of propriety and not a matter of legal authority to permit any court to issue any legal directive to the Chief Justice of India for this purpose. Accordingly Contention F is rejected.

F **RE : CONTENTION (G)**

63. This relates to the *mala fides* alleged against the Speaker. The averments in this behalf are identical in both Raj Birbal's and Sham Ratan Khandelwal's petitions. We may notice the relevant averments :

G "It is, therefore, disconcerting to note that the Speaker acted contrary to Constitutional practice. It is assumed that this high Constitutional functionary would have known of the well settled and established constitutional practice in regard to the fact that motions lapse with the dissolution of the House. The action of the Speaker, therefore, in admitting the motion in the H manner that he did, smacks of *mala fides* and, therefore, de-

serves to be struck down. A

The action of the Speaker is *mala fide* on yet another count. The Speaker has not resigned from the primary membership of the Janta Dal.

The petitioners verily believe that the first signatory to the B motion is the erstwhile Prime Minister of India Shri V.P. Singh who happens also to be the leader of the Janta Dal. The signatories to the said motion, the petitioners verily believe, belong mostly to the Janta Dal, though the details of this fact are not precisely known to the petitioners. The Speaker, as has been indicated earlier, ought to have allowed Parliament to look C into the matter and discuss as to whether or not the motion ought to be admitted. The Speaker ought to have at least tabled the motion in the House to ascertain the views of the Members of Parliament belonging to various Houses. The Speaker, to say the least, ought to have transmitted all materials to Justice Ramaswami and sought a response from him D before attempting to admit the motion. The Speaker ought to have dealt with the motion much earlier and transmitted to Justice Ramaswami all the materials as well as the views that might have been expressed to him in the course of his consultations which enabled him to come to a decision. The Speaker in the very least ought to have ascertained the wishes of the E House in this regard. The Speaker ought not to have decided to admit the motion in the manner he did on the last evening of the 9th Lok Sabha amidst din and noise, when what he spoke was also not entirely audible in the House. The Speaker is a high Constitutional functionary and ought to have exercised his functions in the highest traditions of the office of this high F constitutional functionary. The Speaker ought also not to have dealt with the motion, the prime movers of which are members of his own party. The Speaker ought to have disqualified himself in this regard and placed the matter for the discussion of the House. The conduct of the Speaker in this entire episode was unbecoming of a high Constitutional functionary. The ac- G tion of the Speaker is *mala fide* and deserves to be struck down on this count alone."

The averments as to *mala fides* are intermixed with and inseparable from touching the merits of certain constitutional issues. Indeed, *mala fides* are sought to be impugned to the Speaker on the grounds that he did H

not hear the Judge, did not have the motion discussed in the House etc. We have held these were not necessary.

64. But a point was made that the Speaker not having entered appearance and denied these allegations on oath must be deemed to have admitted them. It appears to us that even on the allegations made in the petition and plea of *mala fides* which require to be established on strong grounds, no such case is made out. A case of *mala fides* cannot be made out merely on the ground of political affiliation of the Speaker either. That may not be a sufficient ground in the present context. At all events, as the only statutory authority to deal with the matter, doctrine of statutory exceptions or necessity might be invoked. Contention G cannot therefore be accepted.

RE : CONTENTION (H)

65. This pertains to the *locus standi* of "Sub-Committee on the Judicial Accountability" and the Supreme Court Bar Association to maintain the proceedings. If this is true, then the petitioners in Transfer Petition No. 278 of 1991 and other writ petitions challenging the Speaker's decision would not also have the necessary standing to sue. The law as to standing to sue in public interest actions had undergone a vast change over the years and liberal standards for determining *locus standi* are now recognised. The matter has come to be discussed at considerable care and length in *S.P. Gupta & Ors. etc.* v. *Union of India & Ors. etc. etc.*; [1982] 2 SCR 365. The present matter is of such nature and the constitutional issues of such nature and importance that it cannot be said that members of the Bar, and particularly the Supreme Court Bar Association have no *locus standi* in the matter. An elaborate re-survey of the principles and precedents over again is unnecessary. Suffice it to say that from any point of view the petitioners satisfy the legal equipments of the standing to sue. We, therefore, reject the Contention H.

66. We are constrained to say that certain submissions advanced on the prayer seeking to restrain the learned judge from functioning till the proceedings of the committee were concluded lacked as much in propriety as in diginity and courtesy with which the learned judge is entitled. The arguments seemed to virtually assume that the charges had been established. Much was sought to be made of the silence of the Judge and his refusal to be drawn into a public debate. If we may say so with respect, learned judge was entitled to decline the invitation to offer his explanation to his detractors. No adverse inference as to substance and validity of the

charges could be drawn from the refusal of the learned judge to recognise these forums for his vindication. While the members of the bar may claim to act in public interest they have, at the same time, a duty of courtesy and particular care that in the event of the charges being found baseless or insufficient to establish any moral turpitude, the judge does not suffer irreparably in the very process. The approach should not incur the criticism that it was calculated to expose an able and courteous judge to public indignity even before the allegations were examined by the forum constitutionally competent to do so. We wish the level of the debate both in and outside the Court was more decorous and dignified. Propriety required that even before the charges are proved in the only way in which it is permitted to be proved, the Judge should not be embarrassed. The constitutional portection to Judges is not for their personal benefit; but is one of the means of protecting the judiciary and its independence and is, therefore, in the larger public interest. Recourse to constitutional methods must be adhered to, if the system were to survive. Learned Judge in his letter to the Registrar-General which he desired to be placed the Court had, indeed, expressed deep anguish at the way the petitioners had been permitted themeslves to sit in judgment over him and deal with him the way they did.

A B C D

RE : CONTENTION (I)

67. This argument suggests that the court should, having regard to the nature of the area the decision of the court and its writ is to operate in, decline to exercise its jurisdiction, granting it has such jurisdiction. It is urged that any decision rendered or any writ issued might, in the last analysis, become futile and infructuous as indeed the Constitution of and investigation by the committee are not, nor intended to be, an end by themselves culminating in any independent legal consequences but only a proceeding preliminary to and preceding the deliberations of the House on the motion for the presentation of an address to the President for the removal of a Judge. The latter, it is urged, is indisputably with in the exclusive province of the Houses of Parliament over which courts exercise no control or jurisdiction. The constitution of and the proceedings before the committee are, it is urged, necessarily sequential to and integral with the proceedings in the Houses of Parliament. Since the committee and its investigations have neither any independent existence nor separate legal effect otherwise than as confined to, and for the purposes and as part of the possible propective proceedings in the Houses of Parliament, the court should decline to exercise jurisdiction on a matter which is of no independent legal consequence of its own and which, in the last analysis, falls and remains entirely in an area outside the courts' jurisdiction. It is urged

E F G H

A that both from the point of view of infructuousness, propriety and futility, the court should decline the invitation to interfere even though that part of the proceedings pertaining to the constitution of the committee might not strictly be within the exclusive area of Parliament. Courts, it is urged, would not allow its process to expect in a matter which will eventually merge in something over which it will have no jurisdiction.

B

68. The elements of infructuousness, it is suggested, arise in two areas. The first is, as is posited, what should happen if the Houses of Parliament choose to say that in their view the motion has lapsed? Would the court then go into the legality of the proceedings of the Houses of Parliament and declare the decision of the House void?

C

The second area of the suggested source of infructuousness is as to the consequences of the position that the Houses of Parliament would, notwithstanding the report of the committee, be entitled to decide not to present an address to the President to remove the Judge. It is, it is said, for the House of Parliament to discipline the Government if the House is of D the view that Government is guilty of an illegal inaction on the Speaker's decision as ultimately the House has dealt with the committee's report.

69. On the first point there is and should be no difficulty. The interpretation of the law declared by this court that a motion under section 3(2) of the Judges (Inquiry) Act, 1968, does not lapse upon the dissolution E of the House is a binding declaration. No argument based on an assumption that the House would act in violation of the law need be entertained. If the law is that the motion does not lapse, it is erroneous to assume that the Houses of Parliament would act in violation of the law. The interpretation of the law is within the exclusive power of the courts.

F 70. So far as the second aspect is concerned, what is now sought by the petitioners who seek the enforcement and implementation of the Speaker's decision is not a direction to the committee to carry out the investigation. Such a prayer may raise some issues peculiar to that situation. But here, the Union Government has sought to interpret the legal position for purposes of guiding its own response to the situation and to regulate its G actions on the Speaker's decision. That understanding of the law is now found to be unsound.

All that is necessary to do is to declare the correct constitutional position. No specific writ of direction need issue to any authority. Having regard to the nature of the subject matter and the purpose it is ultimately H intended to serve all that is necessary is to declare the legal and constitu-

tional position and leave the different organs of the State to consider matters falling within the orbit of their respective jurisdiction and powers. Contention I is disposed of accordingly.

71. In the result, for the foregoing reasons, Writ Petition Nos. 491 and 541 of 1991 are disposed of by the appropriate declarations of the law as contained in the judgment.

Writ Petition Nos. 542 and 560 of 1991 are dismissed.

Transfer Petition No. 278 of 1991 is allowed. Writ Petition No. 1061 of 1991 is withdrawn from the Delhi High Court. The transferred writ petition is also dismissed.

SHARMA, J. I have gone through the erudite Judgment of my learned Brothers, and I regret that I have not been able to persuade myself to share their views. In my opinion, all these petitions are fit to be dismissed.

The stand of the petitioners in W.P. (C) Nos. 491 of 1991 and 541 of 1991 is that the inquiry with respect to the alleged misbehaviour of Mr. Justice V. Ramaswami, the third respondent in W.P. (C) No. 491 of 1991, which was referred to a Committee under the provisions of the Judges (Inquiry) Act, 1968 ought to proceed and accordingly the Union of India must take all necessary steps.

2. The main arguments on their behalf have been addressed by Mr. Shanti Bhushan, Mr. Ram Jethmalani and Mr. R.K.Garg, all appearing for the petitioners in W.P. (C) No. 491 of 1991, which has been treated as the main case. Although in substance their stand is similar, they are not consistent on some of the points debated during the hearing of the case. They have been supported in general terms by Ms. Indira Jaising and Mr. P.P. Rao, the learned counsel representing the Supreme Court Bar Association, the petitioner in W.P. (C) No. 541 of 1991, and for the sake of convenience the petitioners in these two cases shall be hereinafter referred to as the petitioners. The opposite point of view has been pressed by Mr. Kapil Sibal, on behalf of Mrs. Raj Birbal, the petitioner in T.P. (C) No. 278 of 1991, Mr. V.R.Jayaraman intervenor in W.P. (C) No. 491 of 1991 and Mr. Shyam Ratan Khandelwal, the petitioner in W.P.(C) No. 560 of 1991; and in view of their stand, they shall be referred to as respondents in this judgment.

3. The Committee for the investigation into the alleged misbehaviour of the third respondent was constituted on 12.3.1991 under the provi-

A sions of the Judges (Inquiry) Act, 1968 (hereinafter referred to as the Act) by Shri Rabi Ray, the then Speaker of the Lok Sabha, not a party in W.P. (C) Nos. 491 of 1991 and 541 of 1991, but impleaded by Mr. Shyam Ratan Khandelwal as respondent No. 1 in W.P. (C) No. 560 of 1991. The Lok Sabha was dissolved the very next day, i.e. 13.3.1991.

B 4. Mr. Attorney General appearing on behalf of the Union of India has contended that this Court should affirm the views expressed by the Union of India in its affidavit that on dissolution of the last Lok Sabha, the Motion against the third respondent lapsed and the matter cannot proceed further.

C 5. According to the case of the petitioners, once the Committee was constituted, the entire inquiry must be completed in accordance with the provisions of the Act, and the stand of the Union Government that the Motion in this regard lapsed on the dissolution of the House is fit to be rejected. The Union Government, in the circumstances, is under a duty to act in such manner by way of providing funds *et cetera,* that it may be D practically possible for the Committee to complete its task. Since the obligation to act accordingly, arises under the Act, this Court has full authority to enforce the performance of the statutory duty; and having regard to the circumstances in the present case it is appropriate to exercise that power.

E The petitioners further pray that in the meantime the third respondent should not undertake to dispose of judicial matters, and since he has not himself refrained from so doing, no judicial work should be allotted to him. The Chief Justice of India has also been impleaded as a party respondent but this Court while issuing Rule Nisi after hearing learned counsel for the parties, did not consider it expedient to issue notice to the F Chief Justice. A prayer for interim direction in this regard was also rejected. During the hearing of the cases another application to the same effect was filed and was heard at considerable length and ultimately rejected by a reasoned order.

6. Mr. Sibal, the learned counsel for the respondents has chal- G lenged the maintainability of the writ petitions, on the ground that the matter is not justiciable. It was further argued that since the Speaker proceeded to admit the Notice of Motion initiated by 108 Members of the Lok Sabha without reference to the House, the order of the Speaker was void, and the constitution of the Committee is *ultra vires.* The Speaker's order has been challenged also on the grounds of violation of principles of H natural justice and *mala fides.* So far as the effect of the dissolution of the

last Lok Sabha is concerned the respondents have supported the stand of the Union Government that the Motion has lapsed, but consistent with their plea of non-justiciability, Mr. Sibal has indicated that it is for the House to decide this issue.

Long arguments were addressed by the learned counsel for the parties on the correct interpretation of Article 124(4) and (5) and the Act, and Mr. Sibal has contended that if the construction suggested by him of the provisions of the Act are not accepted, the Act has to be struck down either in its entirety or in part as *ultra vires* the Constitution.

In W.P. (C) No. 560 of 1991 Mr. Shyam Ratan Khandelwal has, *inter alia,* prayed for declaring the Judges (Inquiry) Act, 1968 and the Rules framed thereunder as *ultra vires* Article 121 and 124(5) of the Constitution; for quashing the decision of the Speaker; and, for issuing a Writ of Mandamus to the Committee not to embark upon or proceed with the inquiry. He also wants a declaration that the Chief Justice of India cannot withhold allocation of work to the third respondent for discharging his judicial functions, and seeks for consequential directions in this regard. During the course of his argument, Mr. Sibal, in reply to a query from the Bench, clarified the position that if his plea of non-justiciability is accepted, all the petitions may have to be dismissed.

7. It is appropriate that the point relating to the jurisdiction of this Court, and for that matter of any court in India, is considered first. If the stand of the respondents is correct on this issue, it may not be necessary to deal with the other questions raised by the parties. In support of his argument, Mr. Sibal has relied upon the provisions of Article 122(2) of the Constitution read with Article 93, and has urged that the present matter relates to the conduct of the business of the Lok Sabha and is included within the functions of regulating its procedure, and as such the Speaker who is a Member and officer of the Parliament cannot be subjected to the jurisdiction of any Court in respect of the exercise of those powers. The questions whether the Motion on the basis of which the present inquiry by the Committee has been ordered has lapsed or not and whether the inquiry should further proceed or not are for the House to determine, and its decision will be final. Reference was also made to Article 100, but the learned counsel clarified his stand that in the present context a special majority as indicated in Article 124(4) will have to be substituted for a simple majority mentioned in Article 100(1). It has been contended that the Speaker was not free to take a decision by himself to refer the matter to the Committee for inquiry and that too without hearing the Judge concerned; and in any event his order is subject to any decision

A to the contrary of the House arrived at, at any stage. Emphasis was laid on the concept of Separation of State powers amongst its three wings, and it was claimed that all matters within the House including moving of motions, adjournment motions and debates are beyond the purview of judicial scrutiny. Counsel said that it does not make any difference that in the present case it is the Union Government, which has taken a decision for B itself on the disputed issue; and the petitioners cannot use this as an excuse for approaching the Court. The Court should refuse to entertain the writ petitions on this ground, as it cannot be persuaded to do indirectly what it cannot do directly. The crux is that the matter is in the exclusive domain of the Parliament.

C 8. Although in my final conclusion I agree with the respondents that the courts have no jurisdiction in the present matter, I do not agree with Mr. Sibal's contention based on an assumption of the very wide and exclusive jurisdiction of the Parliament in the general terms, as indicated during his argument. His stand that the Speaker could not have taken a decision singly also does not appear to be well founded. He strenuously D argued that since the matter relating to the removal of a Judge is from the very beginning within the exclusive control of one of the Houses of the Parliament every decision has to be taken by the entire House and if necessary a debate will have to be permitted. As a result, the bar on discussion in the House on the Judges' conduct will disappear from the initial stage itself, but that cannot be helped. He relied upon the interpre- E tation of Mr. M.C.Setalvad on clauses 4 & 5 of Article 124 as stated by him before the Joint Committee on the Judges (Inquiry) Bill, 1964 (being Bill No. 5 of 1964 which was ultimately dropped) and his view that the desired object of avoiding debate on the conduct of a Judge in the Parliament can be achieved only by the Speaker carefully exercising his discretion after taking into account the impropriety of such a debate.

F

9. Although the powers of State has been distributed by the Constitution amongst the three limbs, that is the Legislature, the Executive and the Judiciary, the doctrine of Separation of Powers has not been strictly adhered to and there is some overlapping of powers in the gray areas. A few illustrations will show that the courts' jurisdiction to examine matters G involving adjudication of disputes is subject to several exceptions. Let us consider a case in which an individual citizen approaches the Court alleging serious violation of his fundamental rights resulting in grave and irreparable injury, arising as a consequence of certain acts, and the decision of his claim is dependent on the adjudication of a dispute covered by Article 262 or Article 363. He does not have a legal remedy before the H courts. Similarly a Member of Parliament or of a State Legislature who

may have a just grievance in matters covered by Article 122(2) or 212(2) cannot knock the doors of the courts. Let us take another example where a group of citizens residing near the border of the country are in imminent danger of a devastating attack from an enemy country in which they are sure to lose large number of lives besides their property. This can be averted only by accepting the terms offered by the enemy country, which are in their opinion reasonable and will be highly in the interest of the nation as a whole. The concerned authorities of the State, however, hold a different view and consider starting a war immediately as an unavoidable strategy, even in the face of imminent danger to the border area. On an application by the aggrieved citizens, the Court cannot embark upon an inquiry as to the merits and demerits of the proposed action of the State nor can it direct that the residents of the threatened area must be shifted to some safe place before starting of the war. The examples can be multiplied. Generally, questions involving adjudication of disputes are amenable to the jurisdiction of the courts, but there are exceptions, not only those covered by specific provisions of the Constitution in express terms, but others enjoying the immunity by necessary implication arising from established jurisprudential principles involved in the Constitutional scheme. It was observed by this Court in *Smt. Indira Gandhi* v. *Raj Narain,* [1976] 2 SCR 347 at page 415, that rigid Separation of Powers as under the American Constitution or under the Australian Constitution does not apply to our country and many powers which are strictly judicial have been excluded from the purview of the courts under our Constitution.

10. Judicial power of the State in the comprehensive sense of the expression as embracing all its wings is different from the judicial power vested or intended to be vested in the courts by a written Constitution. The issue which arises in the present case is whether under the Constitutional scheme a matter relating to the removal of a Judge of the superior courts (Supreme Court or High Courts) is within the jurisdiction of the courts or in any event of this Court. On a close examination of the Constitution it appears to me that a special pattern has been adopted with respect to the removal of the members of the three organs of the State—The Executive, the Legislature and the Judiciary—at the highest level, and this plan having been consciously included in the Constitution, has to be kept in mind in construing its provisions. The approach appears to be that when a question of removal of a member of any of the three wings at the highest level - i.e. the President ; the Members of the Parliament and the State Legislatures; and the Judges of the Supreme Court and the High Courts — arises, it is left to an organ other than where the problem has arisen, to be decided.

A 11. The President has to be elected by the members of an electoral college as prescribed by Article 54, in the manner indicated in Article 55. Since he has to exercise his functions in accordance with the advice tendered by the Council of Ministers, the matter relating to his impeachment has been entrusted by Article 61 to the Parliament. In the constitution of the two Houses of the Parliament and the Legislatures of the B States, the people of the country are involved more directly, through process of election and any dispute arising therefrom is finally settled judicially. When it comes to a disqualification of a sitting member, the matter is dealt with by Article 103 or 192 as the case may be and what is significant for the purpose of the present case is that instead of entrusting the matter to the relevant House itself, the Constitution has provided for a C different machinery, not within the control of the Legislature. The decision on such a dispute is left to the President, and he is not to act on the advice of the Council of Ministers, but in accordance with the opinion of the Election Commission which has been held by this Court to be a Tribunal falling squarely within the ambit of Article 136 of the Constitution in *All Party Hill Leaders Conference* v. *M.A. Sangma,* [1978] 1 SCR D 393 at 411. Thus, the power to decide a dispute is not to be exercised by the Legislature, but lies substantially with the courts. Consistent with this pattern clause (4) of Article 124 in emphatic terms declares that a Judge of the Supreme Court or the High Court shall not be removed from his office except on a special majority of the Members of each House of Parliament. Both the Executive and the Judiciary are thus excluded in this E process. The provisions of the Constitution and the Act and relevant materials which will be discussed later all unmistakably indicate this Constitutional plan.

12. The scheme, as mentioned above, which according to my reading of the Constitution has been adopted, cannot be construed as lack of F trust in the three organs of the State. There are other relevant considerations to be taken into account while framing and adopting a written constitution, which include the assurance to the people that the possibility of a subjective approach clouding the decision on an issue as sensitive as the one under consideration, has been as far eliminated as found practicable in the situation. And where this is not possible at all, it cannot be helped, G and has to be reconciled by application of the doctrine of necessity, which is not attracted here. Hamilton, in "The Federalist", while discussing the position in the United States, observed that when questions arise as to whether a person holding very high office either in the Judiciary or the Legislature or the President himself has rendered himself unfit to hold the office, they are of a nature which relates chiefly to the injuries done H immediately to the society itself. Any proceeding for their removal will,

for this reason seldom fail to agitate the passions of the whole community and divide it into parties more or less friendly or inimical to the person concerned. The delicacy and the magnitude of a trust which so deeply concerns the reputation and existence of every man engaged in the administration of public affairs speak for themselves. A

13. Mr. Sibal has further relied on Hamilton stating that "the awful discretion which a court of impeachment must necessarily have to doom to honour or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust, to a small number of persons." The counsel added that presumably that is the reason that the question of removal of a Judge of the superior court has been exclusively entrusted to the Parliament and further in that spirit the Act requires a large number of Members of the parliament to even give the Notice of Motion. Quoting from 'Harvard Law Review' (1912-1913 vol.), counsel argued that judicial office is essentially a public trust, and the right of the public to revoke this trust is fundamental. In a true republic no man can be born with a right to public office. Under such a system of government, office, whether elective or appointive, is in a sense a political privilege. The grant of this privilege flows from the political power of the people, and so, ultimately must it be taken away by the exercise of the political power resident in the people. After referring to the view of many Jurists of international repute Mr. Sibal again came back to "The Federalist", considering the *inappropriateness of the Supreme* Court of United States of America to be entrusted with the power of impeachent in the following words:— "It is much to be doubted whether the members of that Tribunal at all times be endowed with so eminent a portion of fortitude, as would be called for in the execution of so difficult a task, and it is still more to be doubted whether they would possess the degree of credit and authority, which might, on certain occasions be indispensable towards reconciling the people to their decision". I am not sure whether these are the precise considerations which appealed to the framers of our Constitution to adopt the Scheme as indicated earlier, but there is no doubt that the subject dealing with the removal of the very high functionaries in three vital limbs of the State, received special treatment by the Constitution. My conclusion is further supported by the materials discussed below. B C D E F G

14. Learned counsel for the parties referred to the historical background of the relevant provisions of the Constitution and the Act, as also to the constitutional provisions of several other countries, as aid to the interpretation of the legal position in relation to removal of Judges of the superior courts. Mr. Sibal laid great emphasis on the evidence of Mr. H

A Setalvad and several other persons before the Joint Committee on the Judges (Inquiry) Bill, 1964. His argument is that the Bill was dropped as a result of the opinion expressed before the Joint Committee, and consequently another Bill was drafted which was ultimately adopted by the Parliament as the 1968 Act. The provisions of the earlier Bill, objections raised thereto, and the fact that the Act of 1968 was passed on a subse-
B quent Bill, reconstructed immediately after the decision to drop the original Bill, are all permissible aids to the interpretation of the legal position which has to be ascertained in the present cases before us. Although the learned counsel for the petitioners challenge their admissiblity, portions of the documents referred to by Mr. Sibal were attempted to be construed on behalf of the petitioners as supporting their stand. In my view, it is per-
C missible to take into consideration the entire background as aid to interpretation. The rule of construction of statutes dealing with this aspect was stated as far back as in 1584 in *Heydon's* case: 76 E.R. 637, and has been followed by our Court in a large number of decisions. While interpreting Article 286 of our Constitution, reliance was placed by this Court in the *Bengal Immunity Company* v. *The State of Bihar,* [1955] 2 SCR 603 at
D 632 & 633, on Lord Coke's dictum in *Heydon's* case and the observations of the Earl of Halsbury in *Eastman Photographic Material Company* v. *Comptroller General of Patents L.R.,* [1898] A.C. 571 at p. 576 reaffirming the rule in the following words:-

E "My Lords, it appears to me that to construe the statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion".

F In *B. Prabhakar Rao* v. *State of Andhra Pradesh,* [1985] Suppl. 2 SCR 573, the observations at p. 591, quoted below, are illuminating:-

"Where internal aids are not forthcoming, we can always have recourse to external aids to discover the object of the legislation. External aids are not ruled out. This is now a well settled
G principle of modern statutory construction. Thus 'Enacting History' is relevant: "The enacting history of an Act is the surrounding corpus of public knowledge relative to its introduction into Parliament as a Bill, and subsequent progress through, and ultimate passing by, Parliament. In particular it is the extrinsic material assumed to be within the contemplation of
H Parliament when it passed the Act." Again "In the period im-

mediately following its enactment, the history of how an enactment is understood forms part of the contemporanea expositio, and may be held to throw light on the legislative intention. The later history may, under the doctrine that an Act is always speaking, indicate how the enactment is regarded in the light of development from time to time". "Official statements by the government department administering an Act, or by any other authority concerned with the Act, may be taken into account as persuasive authority on the meaning of its provisions". Justice may be blind but it is not to be deaf. Judges are not to sit in sound proof rooms.

Committee reports, Parliamentary debates, Policy statements and public utterances of official spokesmen are of relevance in statutory interpretation. But 'the comity, the courtsey and respect that ought to prevail between the two prime organs of the State, the legislature and the judiciary', require the courts to make skilled evaluation of the extra textual material placed before it and exclude the essentially unreliable. "Nevertheless the court, as master of its own procedure, retains a residuary right to admit them where, in rare cases, the need to carry out the legislator's intention appears to the court so to require".

With a view to correctly interpret the Act which was the subject matter of that case, the history and the succession of events including the initial lowering the age of superannuation, the agitation consequent upon it, and the agreement that followed the agitation were all taken into consideration. I, accordingly, propose to briefly state the relevant background of both the Constitutional provisions and of the Act.

15. At the time of framing of the Constitution of India, the Constitutions of several other countries, which appeared to be helpful were examined, and a Draft was initially prepared. On the amendment moved by Sir Alladi Krishnaswamy Iyyar the relevant provision was included in the Draft in terms similar to section 72(ii) of the Commonwealth of Australia Constitution Act (1900) except the last sentence in the following terms:-

"Further provision may be made by the Federal Law for the procedure to be adopted in this behalf."

When the matter was finally taken up by the Constituent Assembly the Debates indicate that there was a categorical rejection of the suggestion to entrust the matter to the Supreme Court or a Committee of a

number of sitting Judges of the Supreme Court; and while doing so, the law of the other Commonwealth countries were taken into consideration. So far the last sentence of the draft was concerned, Sir Alladi explained the position by stating "that such a provision does not occur in other Constitutions, but there is a tendency to overelaborate the provisions on our side and that is the only justification for my putting in that clause."

16. Before further considering the Debates and the other steps in framing of the Constitution, it may be useful to appreciate the relevance and importance of the point which has an impact on the controversial issue before us. According to the petitioners, the question relating to the removal of a Judge comes to the Parliament only on receipt of a report by the Committee under the Act. The Parliament or any of its Houses, not being in the picture earlier, does not have any control over the Committee, which is to function purely as a statutory body, and, therefore, amenable to the jurisdiction of this Court. If this stand is correct, what was the position before 1968, when there was no Act? The question is whether the Parliament did not have any power to take any action even if an inquiry in the alleged misbehaviour or incapacity of a Judge was imminently called for. In other words whether the exercise of the power under clause (4) of Article 124 by the Parliament was dependent on the enactment of a law under clause (5) and until this condition was satisfied no step under clause (4) could be taken. If on the other hand the Parliament's power was not subject to the enactment of a law, was it divested of this jurisdiction when it passed an Act? On what principle could the initial jurisdiction of the Parliament disappear in 1968? Since this aspect has a bearing, it was the subject matter of some discussion during the arguments of the learned advocates.

17. Mr. Sibal was emphatic in claiming that clause (5) was enabling in nature, and clause (4) could not be interpreted as dependent on clause (5). He relied on Mr. Setalvad's evidence before the Joint-Committee of Bill No. 5 of 1964. The stand of Mr. Shanti Bhushan, instructed by Mr. Prashant Bhushan, the Advocate-on-record on behalf of the petitioner in the leading case Writ Petition (C) No. 491 of 1991, has been that clause (5) was merely enabling, but not in the sense as stated by Mr. Setalvad in his evidence. In the view of the latter, it is open to the Parliament either to follow the procedure laid down by an Act made under clause (5) or to ignore the same in any case and adopt any other procedure. In other words, even after the passing of the 1968 Act, the Parliament can choose either to proceed according to the said Act or to act independently ignoring the same. Mr. Shanti Bhushan said that this is not permissible. Once the 1968 Act was enacted, the Parliament is bound to follow it, but earlier

it was free to proceed as it liked. He, however, was quite clear in his submission that the exercise of power under clause (4) could not be said to be conditional on the enactment of a law under clause (5), and that to interpret the provisions otherwise would lead to the extraordinary result that the Parliament was in a helpless condition for about 18 years till 1968, if a Judge was rendered unfit to continue. I agree with the learned counsel.

18. The other learned advocates appearing for the petitioners did not advert to this aspect pointedly. The stand of Mr. Garg is that whether or not the third respondent is removed, or whether the inquiry proceeds before the Committee or not, he must cease to function as a Judge, as his image being under a cloud, must be cleared so that the people may have trust in the judiciary. Mr. Ram Jethmalani, the other learned counsel who appeared on behalf of the petitioner in Writ petition (C) No. 491 of 1991, was initially of the view as Mr. Shanti Bhushan on the co-relation of clause (4) and (5), but after some discussion, he reconsidered the position and took a positive stand that the exercise of power under clause (4) was dependent on a law being enacted under clause (5), and that the Parliament was bound to proceed in accordance with the provisions of the Act.

19. Now coming back to the Debates, Mr. Santhanam suggested an amendment for including more details to which the answer of Sir Alladi was as follows :

> "We need not be more meticulous and more elaborate than people who have tried a similar case in other jurisdictions. I challenge my friend to say whether there is any detailed provision for the removal of Judges more than that in any other Constitution in the world".

He requested the House to accept the general principle, namely, that the President in consultation with the Supreme Legislature of this country shall have that right, and assured that, "That does not mean that the Supreme Legislature will abuse that power". He rejected the idea of making further additions to the provision relating to the framing of the law by saying, "To make a detailed provision for all these would be a noble procedure to be adopted in any Constitution. You will not find it in any Constitution, not even in the German Constitution which is particularly detailed, not in the Dominion Constitution and not even in the Act of Settlement and the later Acts of British Parliament which refer to the removal of Judges". Some members strongly suggested that the Supreme Court of India or a number of sitting Judges of the Court should be

involved in the proceeding, to which Sir Alladi had strong objection. He called upon the members, "not to provide a machinery consisting of five or four Judges to sit in judgment over a Chief Justice of the Supreme Court. Are you really serious about enhancing the dignity of the Chief Justice of India ? You are. I have no doubt about it". The clause was ultimately drafted as mentioned above vesting the power in the "Supreme Parliament" as "there must be some power of removal vested somewhere". He pointed out that the matter was not being left in the discretion of the either House to remove a Judge, but ultimate soverign power will be vested in the two Houses of the Parliament and, "that is the import of my amendment". In this background, the Article was finally included in the Draft.

Although as was clear from the statements of Sir Alladi as also the language used, the intention of the Sub-committee preparing the Draft was not to make clause (4) dependent on clause (5), still presumably with a view to allaying any misapprehension which could have arisen by including the entire provisions in one single clause, they were divided and put in two separate clauses and while so doing, the language was slightly changed to emphasise the limited scope of the law. Clause (4) does not state that the misbehaviour or incapacity of the Judge will have to be proved only in accordance with a law to be passed by the Parliament under clause (5). Clause (4) would continue to serve the purpose as it does now, without any amendment if clause (5) were to be removed from the Constitution today. There is no indication of any limitation on the power of the Parliament to decide the manner in which it will obtain a finding on misbehaviour or incapacity for further action to be taken by it. Clause (5) merely enables the Parliament to enact a law for this purpose, if it so chooses. The word 'may' has been sometimes understood in the imperative sense as 'shall', but ordinarily it indicates a choice of action and not a command. In the present context, there does not appear to be any reason to assume that it has been used in its extraordinary meaning. It is significant to note that while fixing the tenure of a Judge in clause (2) of Article 124, proviso (b) permits the premature removal in the manner provided in clause (4) without mentioning clause (5) at all. The significance of the omission of clause (5) can be appreciated by referring to the language of clause 2(A) of Article 124 directing that the "age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide".

On an examination of all the relevant materials, I am of the view that the exercise of power under clause (4) was not made conditional on the enactment of a law under clause (5), and the reason for inserting

clause (5) in Article 124 was, as indicated by Sir Alladi, merely for elaborating the provisions. A

20. The other provisions with reference to which the matter needs further examination are Article 121 of the Constitution and the Act of 1968. The object of Article 121 is to prevent any discussion in Parliament with respect to the conduct of a Judge of the Superior Courts, except when B it cannot be avoided. The Article, accordingly, prohibits such a discussion except upon a motion for presenting an 'address' to the President for removal of a Judge. The point is that if the entire proceeding in regard to the removal of a Judge from the very initial stage is assumed to be in the House, does the bar under Article 121 get lifted at that very stage, thus frustrating the very purpose of the Article. There is a complete unanimity C before us, and rightly so, that the object of Article 121 to prevent a public discussion of the conduct of a Judge is in public interest and its importance cannot be diluted. Mr. Shanti Bhushan elaborated this aspect by saying that any such discussion in the House is bound to be reported through the media and will thus reach the general public and which by itself, irrespective of the final outcome of the discussion, will damage the D reputation of the Judge concerned and thereby the image of the entire judiciary; and must not, therefore, be permitted until a report against the Judge after a proper inquiry is available. Mr. Sibal also agreed on the significance of Article 121 and relied on the views of several eminent international jurists, but we need not detain ourselves on this point, as there is no discordant note expressed by anyone before us. The question, E however, is as to whether the object of Article 121 will be defeated, if clause (4) of Article 124 is construed as complete in itself and independent of clause (5), and clause (5) be understood as merely giving an option to the Parliament to enact a law, if it so chooses; and further whether the inquiry before the Committee is within the control of the House of the Parliament so as to exclude an outside interference by any other authority, F including the courts.

21. It is true that the provisions of an Act control or determine the constitutional provisions, but where the meaning of an Article is not clear it is permissible to take the aid of other relevant materials. Besides, in the present context, where it is necessary to assess the effect of the construc- G tion of the other provisions of the Constitution and of the Act on Article 121, the Act provides useful assistance; and its importance has been greatly enhanced in view of the points urged in the arguments of the learned counsel for the parties before us. All the learned advocates for the petitioners as also the Attorney General are positive that the Act is a perfectly valid piece of legislation and no part of it is illegal or *ultra vires.* It is on H

this premise that the writ petitions of the petitioners have been filed and the reliefs are prayed for. Mr. Sibal representing the respondents has half-heartedly challenged the Act, making it clear at the same time that if his interpretation of the provisions is accepted no fault can be found with the Act. Besides, the foundation of the reliefs, asked for in the writ petitions, is the Act and the inquiry thereunder and if the Act itself goes, the reference to the Committee of Inquiry itself will have to be held as non-existent in the eye of Law and the writ petitions will have to be rejected on that ground alone. We must, therefore, assume for the purpose of the present cases, that the Act is good and on that basis if the petitioners be found to be entitled to any relief, it may be granted. I am emphasising this aspect as the Act gives a complete answer to the main question as to whether the Committee is subject to the control of the Lok Sabha, and whether this construction of the provisions defeats the purpose of Article 121.

22. The Judges (Inquiry) Act, 1968 is a short enactment containing only seven sections. Section 1 gives the title and the date of commencement, Section 2 contains definitions and Section 7 deals with power to make rules. The expression "motion" which has not been defined in the Act is significant in the scheme and naturally, therefore, has been subject of considerable discussion during the hearing of these cases. The Lok Sabha Rules framed under Article 118 of the Constitution deal with "motions" in Chapter XIV. There are separate rules of procedures for conduct of business adopted by the Rajya Sabha. In view of the facts of this case, I propose to refer only to the Lok Sabha Rules. Section 3(1) of the Judges (Inquiry) Act, 1968 states that if a notice of "motion" is given for presenting an address to the President for the removal of a Judge, signed, in the case of a notice given in the Lok Sabha, by not less than 100 members, and in the case of a notice given in the Rajya Sabha, by not less than 50 members of the House, the Speaker or the Chairman, as the case may be, after consulting such persons as he deems fit, as also such relevant materials which may be available to him, either admit the "motion" or refuse to admit the same. The manner in which this section refers to "motion" in the Act for the first time without a definition or introduction clearly indicates that it is referring to that "motion" which is ordinarily understood in the context of the two Houses of Parliament attracting their respective rules. Section 3 does not specify as to how and to whom this notice of "motion" is to be addressed or handed over and it is not quite clear how the Speaker suddenly comes in the picture unless the Lok Sabha Rules are taken into account. Rule 185 states that notice of "motion" shall be given in writing addressed to the Secretary General and its admissibility should satisfy the conditions detailed in Rule 186. Rule 187 directs the

Speaker to examine and decide the admissibility of a "motion" or a part thereof. Rule 189 says that if the Speaker admits notice of a "motion" and no date is fixed for discussion of such "motion", it shall be notified in the Bulletin with the heading "No-Day-Yet-Named Motions". It is at this stage that 1968 Act by Section 3(1) takes over the matter and asks the Speaker to take a decision for admitting this "motion" or refusing it after consulting such persons and materials as he deems fit. The conclusion is irresistible that the provisions of the Act have to be read along with some of the Lok Sabha Rules. Rules 185, 186 and 187 should be treated to be supplementary to the Act. Then comes sub-section (2) of Section 3 which is of vital importance in the present context. It says that if the "motions" referred to in sub-section (1) is admitted, the Speaker "shall keep the motion pending" and constitute a Committee for investigation into the allegations consisting of three members of whom one shall be chosen among Chief Justice and other Judges of the Supreme Court and another from among the Chief Justices of the High Court.

23. The situs where the "motion" is pending is almost conclusive on the issue whether the House is seised of it or not. Unless the "motion" which has to remain pending, as directed by Section 3(2) is outside the House and the Speaker while admitting it acts as a statutory authority and not qua Speaker of the Lok Sabha, as is the case of the petitioners before us, the petitioners will not have any base to build their case on. If the Speaker has admitted the "motion" in the capacity as the Speaker and consequently, therefore, representing the House, and has constituted a Committee, it will be entirely for him and through him the House, to pass any further order if necessary about the future conduct of the Committee, and not for this Court, for, the Committee cannot be subjected to a dual control. So the question to ask is where is the "motion" pending, which is promptly answered by the provisions in the Act, by declaring that it remains pending in the House. Section 6 deals with the matter from the stage when the report of the Committee is ready and sub-section (1) says that if the report records a finding in favour of the Judge, "the motion pending in the House" shall not be proceeded with. If the report goes against the Judge, then "the motion referred to in sub-section (1) of Section 2 shall, together with a report of the Committee, be taken for consideration by the House or the Houses of Parliament in which it is pending". The Act, therefore, does not leave any room for doubt that the "motion" remains pending in the House and not outside it. This is again corroborated by the language used in Proviso to Section 3 (2) which deals with cases where notices of "motion" under Section 3(1) are given on the same date in both Houses of Parliament. It says that in such a situation, no Committee shall be constituted unless the "motion" has been "admitted in

A both Houses" and where such "motion" has been admitted "in both Houses", the Committe shall be constituted jointly by the Speaker and the Chairman. The rule making power dealt with in Section 7 is in the usual terms enumerating some of the subject matters without prejudice to the generality of the power, and permits the Joint Committee of both Houses of Parliament to frame the rules, and accordingly, the Judges (Inquiry) Rules,
B 1969 were made. Rule 2(e) of these Rules describes "motion" as motion admitted under Section 3(1) of the Act. Supplementing the provisions of Section 6(2), Rule 16(2) provides that "a copy of the motion admitted under sub-section (1) of section 3 shall be reproduced as an Annexure to such an address". Sub-rule (4) states that "the address prepared under sub-rule (1) and the motion shall be put to vote together in each House of
C Parliament". It is clear that it is not an inadvertent reference in the Act of the "motion" being pending in the House; the provisions unmistakably indicate that the Act and the Rules envisage and deal with a "motion" which is admitted in the House and remains pending there to be taken up again when the date is fixed by the Speaker on receipt of the report from the Committee. The language throughout the Act has been consistently
D used on this premise and is not capable of being ingored or explained away. Nowhere in the Act or the Rules, there is any provision which can lend any support to the stand of the petitioners before us.

24. The scope of the Act and the Rules is limited to the investigation in pursuance of a "Motion" admitted by the Speaker. At the Conclu-
E sion of the investigation the Committee has to send the report to the Speaker (or the Chairman as the case may be) along with a copy of the original Motion. If the finding goes against the Judge, section 6(2) of the Act directs that the Motion, the same original Motion, shall together with the report be taken up for consideration by the House where the Motion is pending. The relevant part of section 6(2) mentions:

F

> "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.....in which it is pending".

Rule 16(4) states that the address and the Motion shall be put to vote together in each House of Parliament. What the Act and the Rules con-
G template is the original Motion to be taken up for consideration by the House, and if this Motion is held to have exhausted itself on admission by the Speaker, as has been urged on behalf of the petitioners, nothing remains on which the Act would operate. The concept of the original Motion being pending in the House, to be taken up for debate and vote on the receipt of the report of the Committee, is the life and soul of the Act, and
H if that Motion disappears nothing remains behind to attract the Act. This

idea runs through the entire Act and the Rules, and cannot be allowed to be replaced by a substitute. The existence of a Motion pending in the House is a necessary condition for the application of the Act. Bereft of the same, the Act does not survive. It is, therefore, not permissible to read the Act consistent with the stand of the petitioners that the House is not seised of the Motion and does not have anything to do with the inquiry pending before the Committee, until the report is received. If clauses (4) and (5) of Article 124 are construed as suggested on behalf of the petitioners, the Act will have to be struck down as *ultra vires,* or in any event inoperative and infructuous and on this ground alone the Writ Petitions are liable to be dismissed.

25. It has been contended that if the Motion is held to be pending in the House on its admission, the object of Article 121 shall be defeated. The apprehension appears to be misconceived. The mandate of the Constitution against discussion on the conduct of a Judge in the House is for everybody to respect, and it is the bounden duty of the Speaker to enforce it. He has to ensure that Article 121 is obeyed in terms and spirit, and as a matter of fact there is no complaint of any misuse during the last more than 41 years. The question, however, is whether it will not be feasible for the Speaker to maintain the discipline, if the Motion on admission becomes pending in the House. Before 1968 Act was passed, the motion, like any other motion, was governed by the Lok Sabha Rules, and Rule 189 enabled the Speaker to notify it as a No-Day-Yet-Named Motion without fixing a date, and to permit the matter to be discussed only at the appropriate stage. After the Act, what was left within the discretion of the Speaker, has been replaced by mandatory statutory provision, directing that the motion shall remain pending in the House, to be taken up only on receipt of a finding of the Committee against the Judge. The pendency of the motion in the House, therefore, cannot be a ground to violate Article 121.

26. Mr Sibal, however, claimed that the members of the House are entitled to express their opinion on the proposed endictment from the very initial stage and as a part of his argument relied upon the statement of Mr. Setalvad before the Joint-Committee. Mr. Shanti Bhushan challenged the views of Mr. Setalvad on the ground that they would foul with Article 121. I am afraid, the statements of Mr. Setalvad, referred to above, have not been properly appeciated by either side. The modified Bill, on the basis of which the 1968 Act was passed, had not been drafted by then and Mr. Setalvad was expressing his opinion on the earlier Bill, which substantially vested the power of removal of a Judge in the Executive, and kept the Parliament out of the picture until the receipt of a report on the

A alleged misbehaviour or incapacity. If that Bill had been passed, the effect would have been that the entire proceeding beginning with the initiation of the inquiry and concluding with the report would have remained completely outside the House, an interpretation which is being attempted by the present petitioners before us, on the present Act too. The objection to the entrustment of the power to the Executive was mainly on the ground
B that the intention of the Article 124 to leave the removal of a Judge in the hands of the Parliament would be frustrated. In answer to a query of the Chairman of the Committee, Mr. Setalvad said that as a result of the provisions of the Bill (then under consideration) the Parliament would be completely kept out until a finding of another body was received by the
C House and this would militate against the constitutional scheme. In this background when his attention was drawn to the bar of Article 121 he replied that it was possible to prevent a premature discussion in the Parliament, by the Speaker exercising his authority with discretion. He referred to the Lok Sabha Rules in this context and further recommended for the Speaker to be vested with larger powers. He was emphatic that the Presi-
D dent should not be entrusted with the matter, even at the initial stage, and that it should be left in the hands of the Speaker to take appropriate steps. The suggested substitution of the Speaker (and the Chairman) in place of the President was in accordance with the view that the matter is within the exclusive domain of the two Houses of the Parliament which could exercise its powers through the respective representatives Speaker and the
E Chairman. About Mr. Setalvad's evidence I would like to clarify the position that I am not treating his opinion as an authority, and I have taken into account the same as one step in the history of the present legislation starting fron the original Bill of 1964. The report of the Joint-Committee (presented on 17th May, 1966) sets out the observations of the
F Committee with regard to the principal changes proposed in the Bill. Paragraph 17 of the Report dealing with clause (2) states that the expression "Special Tribunal" has been substituted by "Committee" and "Speaker" and "Chairman" have been brought in "with a view to ensuring that the Committee may not be subject to writ jurisdiction of the Supreme Court & the High Courts". With respect to clause (3), the following observations of
G the Committee are relevant :

> "The Committee are of the view that to ensure and maintain the independence of the judiciary, the Executive should be excluded from every stage of the procedure for investigation of the alleged misbehaviour or incapacity of a Judge and that
H the initiation of any proceeding against a Judge should be made in Parliament by a notice of a motion. The Committee

also feel that no motion for presenting an address to the President praying for the removal of a Judge should be admitted unless the notice of such motion is signed in the case of a motion in the Lok Sabha, by not less than one hundred members of that House and in the case of a motion in Rajya Sabha, by not less than fifty members of that House. Further, the Committee are of the opinion that the Speaker or the Chairman or both, as the case may be, may after consulting such persons as they think fit and after considering such materials, as may be available, either admit or reject the motion and that if they admit the motion, then they should keep the motion pending and constitute a Committee consisting of three members, one each to be chosen from amongst the Chief Justice and other Judges of the Supreme Court, Chief Justice of the High Courts and distinguished Jurists, respectively".

Paragraph 20 of the Report deals with clause (6) and the proposed changes, that were more consistent with the motion being pending in the House or Houses. Ultimately, another Bill on the lines suggested by the aforesaid Joint-Committee was drafted and adopted. Mr. Setalvad's opinion is relevant as an important step in this history of legislation and can be referred to as such.

27. The wider proposition put forward by Mr. Sibal that the House was seised of the matter so effectively as to entitle every member to demand a discussion in the House at any stage is, however, not fit to be accepted. This will not only violate Article 121, but also offend the provisions of the 1968 Act. It is not correct to assume that if the right of the individual member to insist on immediate discussion is denied, the consequence will be to deprive the Parliament of the control of the motion. When the Speaker exercises authority either under the Lok Sabha Rules or under the 1968 Act, he acts on behalf of the House. As soon as he ceases to be the Speaker, he is divested of all these powers. When he acts the House acts. It is another matter that he may consult other persons before admitting the motion, and while so doing, he may consult the members of the House also, but without permitting a discussion in the House. The consultation, which the Act permits, is private in nature, not amounting to a public discussion while the object of Article 121 is to prevent a public debate. It may also be open to the Speaker to consult the House on a legal issue which can be answered without reference to the conduct of Judge in question, as for example, the issue (involved in the present case) whether on account of dissolution of the old House the Motion has lapsed and the Committee of Inquiry is defunct. What is prohibited is not every matter

A relating to the removal of a Judge; the bar is confined to a discussion with respect to the conduct of a Judge in the discharge of his duties.

28. Mr. Shanti Bhushan strenuously contended that such portion of the 1968 Act which direct or declare the initial motion admitted by the Speaker to remain pending in the House, should be interpreted as creating B a legal fiction limited for the purpose of ensuring that the bar under Article 121 is not lifted prematurely. I do not see any justification for placing this construction on the Act. This issue could not arise with reference to the original Bill which was ultimately dropped, as under its scheme the matter could not have reached the Parliament before the report the Special Tribunal was laid before the Houses under the President's direc- C tion. The petitioners are trying to put an interpretation on the present Act that may lead to the same conclusion, that is, that the Parliament does not come in the picture until the receipt of the report from the Committee. This is wholly inconsistent with the original Bill not finding favour with the Parliament. But apart from this consideration, let us assume that the petitioners are right, and the matter does not reach the Parliament at all D before it is ready for consideration on the basis of the Inquiry Report. It cannot be suggested that even at that stage a discussion on the conduct of a Judge is barred; and before this stage is reached there is no occasion for relying upon Article 121 to prevent a discussion. The situation, therefore, does not require the aid of any legal fiction. The consequence of accepting the argument of Mr. Shanti Bhushan will be to render the aforesaid E provisions of the statute wholly superfluous. Also, had it been a case of a legal fiction as suggested, it would attract the observations of Lord Asquith in *East End Dwellings Co. Ltd And Finsbury Borough Council:* 1952 A.C. 109, (followed in this country in numerous cases) to the effect that if you are bidden to treat an imaginary state of affairs as real, you must also imagine as real the consequences and incidents which, if the putative state F of affairs had in fact existed, must inevitably have flowed from or accompanied it; and if the statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs. The alternative suggestion of Mr. Shanti Bhushan that the motion, on its admission, having served its purpose, is completely ex- G hausted, and a new motion is to be moved again by a member on the receipt of the Report from the Committee, has also no merit, for if the motion completely exhausts itself and therefore does not remain in existence any further, no problem about the lifting of the bar under Article 121 arises for being solved with the help of a legal fiction.

H An attempt was made by Mr. Shanti Bhushan to derive some support

from that part of clause (4) of Article 124 which requires the voting in the two Houses to take place in the same session. The provision appears to me to be absolutely irrelevant. The clause does not require that the entire proceeding with respect to the removal of a Judge commencing with the notice of motion has to be within the same session. It refers only to the voting part. A close reading of the entire Act indicates that the language therein, which completely demolishes the petitioners' case, was consciously chosen to make the House seised of the matter, and consequently it became necessary to include the provisions directing the motion to remain pending for the purpose of preventing a premature discussion. The Act has, thus, very successfully respected both Articles 124 and 121 in their true spirit, by neatly harmonising them.

29. Let us consider another argument of the petitioners that by reason of the expression "on the ground of proved misbehaviour or incapacity" occurring in clause (4) of Article 124 it should be held that until an adverse verdict of misbehaviour or incapacity by some other body is received by the House, the matter does not come within its purview. The body in contemplation of clause (4) may be an authority, completely unassociated with either House of the Parliament or the Speaker or the Chairman, and the Parliament may not have any control over the same. Such authority would be purely statutory, not amenable to the discipline of the Parliament, but subject to the Court's jurisdiction. Merely for the reason that a statute under clause (5) prescribes the procedure in this regard by entrusting the Speaker to take a decision at the initial stage, he could not cease to be a statutory authority. In other words, he acts in his individual capacity under the power vested by the law and not in a representative capacity. I do not find this construction of clauses (4) and (5) acceptable. This would, in substance, deny the Parliament the power to remove a Judge exclusively vested in it by Constitution. Let us ignore the present Act and consider another statute with provisions in express terms on the lines suggested by the petitioners, that is, entitling the statutory authority to act independently of the Parliament, the Speaker and the Chairman. If that could be permissible it would lead to the Parliament being reduced to a helpless spectator, dependent on the statutory authority, to act on or to ignore a complaint. This would be in complete violation of the intention of the Constitution to vest the power to remove a Judge exclusively in the Parliament. It must, therefore, be held that the Parliament is in control of the matter from the very beginning till the end, and it acted correctly in accepting the objections of the Joint-Committee to the original Bill, aforementioned, and in passing the Act of 1968, in the form we find it. By the introduction of the Speaker and the requirement of a large number of members of either House to initiate the matter, the

A House is brought in control of the proceeding through its representative the Speaker or the Chairman. It has to be noted that "the ground of proved misbehaviour or incapacity" is necessary only for putting the matter to vote in the House under clause (4), and is not a condition precedent for initiating a proceeding and taking further steps in this regard.

B 30. Mr Sibal projected another extreme point of view by contending that a finding of the Committee in favour of the Judge cannot be held to be binding on the Parliament on account of the limited scope of a statute passed under clause (5). There is no merit in this argument either. Clause (4) authorises the Parliament to act on the ground of proved misbehaviour or incapacity and clause (5) permits it to pass a law to lay down the C manner in which it may become possible to do so. It is true that the Parliament can exercise its power without formally framing a law. The House in question could in the absence of a law, decide on the procedure to be followed in a given case but it was perfectly open to it to pass an Act laying down a general code to be followed until the Act is repealed or amended. It is a well established practice for a large body to entrust D investigations to a smaller body for obvious practical reasons, and such an exercise cannot be characterised as indulging in abnegation of authority. It could have asked a Parliamentary Committee to enquire into the allegations or employed any other machinery for the purpose. The ratio in *State of Uttar Pradesh* v. *Batuk Deo Pati Tripathi and Anr.*, [1978] 2 SCC 102, is attracted here. In that case the Administrative Committee of the High E Court, constituted under the Rules of the Court resolved that the District Judge should be retired compulsorily from the service, and the Registrar of the High Court communicated the decision to the State Government and thereafter circulated to all the Judges of the High Court for their information. The State Government passed orders retiring the District Judge, whereupon he filed a writ petition in the High Court. The matter F was heard by a Full Bench and the majority of the Judges held that the writ petitioner could not have been compulsorily retired on the opinion recorded by the Administrative Committee, as the Full Court was not consulted. The application was allowed and a writ was accordingly issued. On appeal by the State Government this Court reversed the decision holding that Article 235 of the Constitution authorised the High Court to frame G the rules for prescribing the manner in which the power vested in the High Court had to be exercised, and observed that though the control over the subordinate courts is vested constitutionally in the High Court by the Article, it did not follow that the High Court has no power to prescribe the manner in which that control may, in practice, be exercised; and in fact, the very circumstance that the power of control, which comprehends H matters of a wide ranging authority, vests in the entire body of Judges

makes it imperative that the rules are framed so that the exercise of the control becomes feasible, convenient and effective. The Parliament is a far larger body than the High Court and the observations apply to it with greater force. So long as the statute enables the House to maintain its control either directly or through the Speaker, the entrustment of the investigation does not amount to abdication of power. It is a case where the Parliament has taken a decision to respect the verdict of the Committee in favour of the Judge, consistently with clause (4) and no fault can be found.

31. It has been stated on behalf of the respondents that the question whether the Motion against the respondent no. 3 has lapsed as a result of the dissolution of the old House is agitating the minds of the members of the Lok Sabha and the issue is under consideration of the new Speaker. In support, he produced a copy of the proceeding of the House. If the present Speaker holds that the Motion has lapsed, and the Committee does not have any duty to perform, the proceeding cannot be proceeded with any further. In reply the learned counsel for the petitioners claimed that after the matter is entrusted to the Committee, neither he nor the Parliament at this stage can undo the admission of the Motion by the earlier Speaker, or withdraw the investigation. If the petitioners are right, then what happens if a member of the Committee becomes unavailable by any reason whatsoever or another member renders himself unfit to be on the Committee, say by reason of his apparent and gross bias, against or in favour of the Judge concerned, coming to light after the formation of the Committee ? The answer is that the House which is in control of the proceeding is entitled to take all necessary and relevant steps in the matter, except discussing the conduct of the Judge until the stage is reached and the bar under Article 121 is lifted. If on the other hand it is held that the Committee is an independent statutory body not subject to the control of the House directly or through the Speaker, as the petitioners suggest, the Act may be rendered unworkable. Besides, this would impute to the Parliament to have done exactly what the Constituent Assembly refused to do by accepting Sir Alladi's impassioned appeal, referred to above in paragraph 19, not to lower the dignity of the Chief Justice of India by providing a machinery consisting of 5 or 4 Judges to sit in appeal over him. It may be noted here that the Constitution has considered it fit to entrust the inquiry in the alleged misbehaviour of a member of a Public Service Commission, a constitutional functionary but lower in rank than the Supreme Court, to the Supreme Court without associating a Chief Justice of the High Court or any other person lower in rank. If the Committee is held to be functioning under the supervision and control of the Parliament, with a view to aid it for the purpose of a proceeding pending in the House, it will be the Parliament which will be in control of the proceeding and not the Committee.

A 32. Mr Jethmalani was fervent in his exhortation to construe the Constitution and the Act in a manner which will protect the independence of the judiciary from the politicians, and this, according to him, is possible only if this Court comes to an affirmative conclusion on the question of justiciability. There cannot be two opinions on the necessity of an independent and fearless judiciary in a democratic country like ours, but it B does not lead to the further conclusion that the independence of judiciary will be under a threat, unless the matter of removal of Judges, even at the highest level, is not subjected to the ultimate control of Courts. The available materials unmistakably show that great care was taken by the framers of the Constitution to this aspect and the matter was examined from every possible angle, before adopting the scheme as indicated earlier. So far as C the district courts and subordinate courts are concerned, the control has been vested in the High Court, but when it came to the High Court and Supreme Court Judges, it was considered adequate for the maintenace of their independence to adopt and enact the Constitution as we find it. I do not see any reason to doubt the wisdom of the Constituent Assembly in entrusting the matter exclusively in the hands of the Parliament and I do D not have any ground for suspicion that the Members of Parliament or their representatives, the Speaker and the Chairman, shall not be acting in the true spirit of the Constitutional provisions. Similarly, the task of enacting a law under clause (5) was taken up seriously by considering every relevant aspect, and the process took several years before the Act was passed. I do not propose to deal with this point any further beyond saying that the E mandate of the Constitution is binding on all of us, and I would close by quoting the following words from Hamilton:

> "If mankind were to resolve to agree in no institution of government, until every part of it had been adjusted to the most exact standard of perfection, society would soon become a F general scene of anarchy, and the world a desert. Where is the standard of perfection to be found ? Who will undertake to unite the discordant opinions of a whole community, in the same judgment of it; and to prevail upon one conceited projector to renounce his infallible criterion for the fallible criterion of his more conceited neighbour? To answer the purpose of the G adversaries of the Constitution, they ought to prove, not merely that particular provisions in it are not the best which might have been imagined, but that the plan upon the whole is bad and pernicious".

33. It has not been suggested on behalf of the petitioners or by H anybody else that it is open to the Court to examine the legality of a final decision taken by the Parliament under clause (4). Even after a verdict

against the Judge is returned by the Committee, the Parliament or for that matter any of the two Houses can refuse to vote in favour of the Motion for removal of a Judge, and the Court shall not have any jurisdiction to interfere in the matter. Is it conceivable, in the circumstances, that at the intermediate stage of investigation the Court has got the power to intervene ? The answer is in the negative for more than one reason. If the control of the House continues on the proceeding throughout, which can be exercised through the Speaker, it cannot be presumed that the Court has a parallel jurisdiction, which may result in issuance of contradictory directions. Besides, the Court cannot be expected to pass orders in the nature of step in aid, where the final result is beyond its jurisdiction. Any order passed or direction issued by this Court may result in merely an exercise in futility, and may cause a situation, embarassing both for the highest judicial and legislative authorities of the country. The Constitution cannot be attributed with such an intention. I, therefore, hold that the courts including the Supreme Court do not have any jurisdiction to pass any order in relation to a proceeding for removal of a Judge of the superior courts.

34. Reference was made by the learned counsel for the parties to the Constitutions of several other countries, but I do not consider it necessary to discuss them excepting the Australian Constitution as they do not appear to be helpful at all. As has been mentioned earlier the language of Article 124 (4) is similar to section 72(ii) of the Commonwealth of Australia Constitution Act (1900), except with this difference that the Australian Constitution Act does not specifically provide for any law to be made for regulating the procedure and investigation. However, the constitutional and the legal position in Austraila is not helpful to resolve the present dispute before us, as the Commonwealth of Australia Constitution Act (1900) has adopted rigid Separation of Powers between the Executive, Legislature and Judiciary (as has been observed by this Court on many occasions including at page 415 in *Smt. Indira Gandhi* v. *Raj Narain,* [1976] 2 SCR 347, referred to above in paragraph 9. Reference has been made by P.H. Lane in his commentary on the Australian Constitution to the proceedings which were initiated for removal of Mr. Justice Murphy under section 72 (ii) of the Constitution Act. On account of sharp difference amongst the members of the Select Committee of the Senate appointed to inquire into the matter and a further failure to resolve the situation by establishing a second Committee and in view of certain other facts an ad hoc legislation was passed under the name of Parliamentary Commission of Inquiry Act, 1986. Under this Act further steps were being taken when Mr. Justice Murphy moved the High Court of Austraila for an order of injunction challenging the validity of the Act and alleging that one of the members of the Commission constituted under the Act (a

A retired Judge) was disqualified on account of bias. The application was dismissed on merits without adverting to the question of justiciability. This decision, to my mind, is of no help to the petitioners before us, mainly on account of the difference in the Constitutional scheme of the two countries with respect to the Separation of Powers. The judicial powers there have been exclusively vested in the courts by section 71 of the B Constitution Act of 1900. Lane has at page 372 of his book opined that section 72 (ii) may be non-justiciable, since it seems to place the exercise under the section in Parliament itself. He, however, further proceeds to say that the Parliament could seek the High Court's help, for example, in the peripheral matter of the meaning of misbehaviour or incapacity in section 72(ii). He has also referred to certain other provisions of the C Constitution Act, and analysed the roles of Parliament and Court with his comments. I do not consider it necessary to proceed further beyond saying that Mr. Justice Murphy's case does not provide any aid in deciding the issue in the cases before us. Although our Constitution was made after examining the Constitutions of many other countries, it has adopted a pattern of its own. The learned counsel also placed a large number of D decisions, both Indian and foreign and since I have not found them relevant, I have refrained from discussing them. None of the cases in which this Court has either interfered with the decision of the House or has refused to do so, related to a proceeding for removal of a Judge, and are clearly distinguishable in view of my opinion expressed above. I am also not dealing with the other points urged by Mr. Sibal, as I agree with him E on the main issue of justiciability. I am avoiding to express any opinion on the controversy whether the Motion lapsed or not on the dissolution of the earlier House, as the issue is for the Lok Sabha to decide.

35. In view of the above findings this Court cannot pass any order whether permanent or temporary on the prayer that the respondent No. 3 F should not be allowed to exercise his judicial powers. In the result all the writ petitions are dismissed. The prayer for transfer of Writ Petition No. 1061 of 1991 in Transfer Petition No. 278 of 1991 is allowed and that Writ Petition is also dismissed. There will be no order as to costs.

N.P.V. Petitions disposed of.