

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF JUSTICE

**RAJYA SABHA
STARRED QUESTION NO. 108**

TO BE ANSWERED ON THURSDAY, THE 11.02.2021

Mechanism to deal with cases of corruption against Judges

* 108 Shri K.T.S. Tulsi:

Will the Minister of **LAW AND JUSTICE** be pleased to state:

- (a) the steps taken by Government to put in place an effective and transparent mechanism to deal with cases of corruption against the Judges of the constitutional courts in the country including the Supreme Court; and
- (b) if so, the details thereof?

ANSWER

**MINISTER OF LAW AND JUSTICE, COMMUNICATIONS AND
ELECTRONICS & INFORMATION TECHNOLOGY**

(SHRI RAVI SHANKAR PRASAD)

(a)& (b): A Statement is laid on the Table of the House.

Statement referred to in reply to parts (a) and (b) of Rajya Sabha Starred Question No.*108 due for answer on 11.02.2021 regarding “Mechanism to deal with cases of corruption against Judges”

(a)& (b):The issue of checking corruption in the Higher Judiciary is largely to be addressed by the Higher Judiciary as it is an independent organ under the Indian Constitution. Accountability in Higher Judiciary is maintained through “in-house mechanism”. The Supreme Court of India, in its full Court meeting on 7th May, 1997, adopted two Resolutions namely (i) “The Restatement of Values of Judicial Life ” which lays down certain judicial standards and principles to be observed and followed by the Judges of the Supreme Court and High Courts (ii) “In-house procedure” for taking suitable remedial measure against Judges who do not follow the universally accepted values of judicial life including those included in the Restatement of Values of Judicial Life.

As per the established “in-house mechanism” for the Higher Judiciary, the Chief Justice of India is competent to receive complaints against the conduct of Judges of the Supreme Court and the Chief Justices of the High Courts. Similarly, the Chief Justices of the High Courts are competent to receive complaints against the conduct of High Court Judges. The complaints/representations received are forwarded to the Chief Justice of India or to the Chief Justice of the High Court concerned, as the case may be, for appropriate action.

Administrative control over the members of the subordinate judiciary in the States vests with the concerned High Court.

To ensure greater accountability and transparency in the Higher Judiciary, a bill titled, “the Judicial Standards and Accountability Bill”, was introduced in the Lok Sabha on 01.12.2010. The Bill laid down Judicial Standards, derived from the Restatement of Values in Judicial Life, 1997. It made it mandatory for Judges to declare their assets and liabilities as well as that of their spouses and dependent children. It also provided for a comprehensive mechanism for handling complaints made by citizens on alleged misbehavior and incapacity against judges of the Supreme Court and High Courts and for taking action against those found guilty after investigation. The Bill along with proposed amendments was considered and passed by Lok Sabha on 29.03.2012. The Bill could not be discussed in Rajya Sabha and lapsed consequent to the dissolution of the 15th Lok Sabha.

भारत सरकार
विधि और न्याय मंत्रालय
न्याय विभाग
राज्य सभा

तारांकित प्रश्न सं. *108

जिसका उत्तर गुरुवार, 11 फरवरी, 2021 को दिया जाना है

न्यायाधीशों के विरुद्ध भ्रष्टाचार के मामलों से निपटने के लिए तंत्र

108 श्री के.टी.एस. तुलसी :

क्या विधि और न्याय मंत्री यह बताने की कृपा करेंगे कि :

(क) देश में उच्चतम न्यायालय सहित सभी संवैधानिक न्यायालयों के न्यायाधीशों के विरुद्ध भ्रष्टाचार के मामलों से निपटने के लिए प्रभावी और पारदर्शी तंत्र स्थापित करने के लिए सरकार द्वारा क्या कदम उठाए गए हैं ; और

(ख) यदि हां, तो तत्संबंधी ब्यौरा क्या है ?

उत्तर

**विधि और न्याय, संचार तथा इलेक्ट्रॉनिकी और सूचना प्रौद्योगिकी मंत्री
(श्री रविशंकर प्रसाद)**

(क) और (ख) : एक विवरण सदन के पटल पर रख दिया गया है ।

“न्यायाधीशों के विरुद्ध भ्रष्टाचार के मामलों से निपटने के लिए तंत्र” से संबंधित राज्य सभा तारांकित प्रश्न सं. *108 जिसका उत्तर तारीख 11 फरवरी, 2021 को दिया जाना है, के भाग (क) और (ख) के उत्तर में निर्दिष्ट विवरण

(क) और (ख) : उच्चतर न्यायपालिका में भ्रष्टाचार की जांच के मुद्दे पर व्यापक रूप से उच्चतर न्यायपालिका द्वारा ध्यान दिया जाना है क्योंकि यह भारत के संविधान के अधीन एक स्वतंत्र अंग है। उच्चतर न्यायपालिका में जबाबदेही “आंतरिक प्रक्रिया” के माध्यम से बनाई रखी गई है। भारत के उच्चतम न्यायालय ने उसकी तारीख 7 मई, 1997 की पूर्ण न्यायालय बैठक में दो संकल्प अंगीकृत किए थे, अर्थात् (i) “न्यायिक जीवन के मूल्यों का पुर्नस्थापन” जो उच्चतम न्यायालय और उच्च न्यायालयों के न्यायाधीशों द्वारा पालन और अनुसरण किए जाने वाले कतिपय न्यायिक मानकों और सिद्धांतों को अधिकथित करते हैं ; (ii) “आंतरिक प्रक्रिया” उन न्यायाधीशों के विरुद्ध उपयुक्त उपचारात्मक कदम उठाने के लिए हैं, जो सर्वत्र स्वीकृत न्यायिक जीवन के मूल्यों का अनुसरण नहीं करते हैं जिसके अंतर्गत वे मूल्य भी हैं, जो न्यायिक जीवन के लिए मूल्यों का पुर्नस्थापन में सम्मिलित हैं।

उच्चतर न्यायपालिका के लिए स्थापित “आंतरिक प्रक्रिया” के अनुसार भारत के मुख्य न्यायमूर्ति उच्चतम न्यायालय के न्यायाधीशों और उच्च न्यायालयों के मुख्य न्यायमूर्तियों के आचरण के विरुद्ध शिकायतें प्राप्त करने के लिए सक्षम है। इसी प्रकार, उच्च न्यायालयों के मुख्य न्यायमूर्ति उच्च न्यायालयों के न्यायाधीशों के आचरण के विरुद्ध शिकायतें प्राप्त करने के लिए सक्षम है। प्राप्त की गई शिकायतें/अभ्यावेदन समुचित कार्रवाई के लिए यथास्थिति, भारत के मुख्य न्यायमूर्ति या संबद्ध उच्च न्यायालय के मुख्य न्यायमूर्ति को अग्रेषित कर दी जाती है।

राज्यों की अधीनस्थ न्यायपालिका के सदस्यों के ऊपर प्रशासनिक नियंत्रण संबद्ध उच्च न्यायालय में निहित होता है।

उच्चतर न्यायपालिका में बृहत् उत्तरदायित्व और पारदर्शिता सुनिश्चित करने के लिए “न्यायिक मानक और उत्तरदायित्व विधेयक” शीर्ष वाला विधेयक तारीख 01 दिसंबर, 2010 को लोक सभा में पुरःस्थापित किया गया था। यह विधेयक न्यायिक जीवन में मूल्यों का पुर्नस्थापन, 1997 से व्युत्पन्न न्यायिक मानकों को अधिकथित करता है। इसमें न्यायाधीशों के लिए उनकी और उनके पति-पत्नी तथा आश्रित बालकों की आस्तियों और दायित्व को घोषित करना आज्ञापक बना दिया गया। यह उच्चतम न्यायालय और उच्च न्यायालय के न्यायाधीशों के विरुद्ध अवचार और असक्षमता के अभिकथन पर नागरिकों द्वारा की गई शिकायतों के निपटान के लिए और अनुसंधान के पश्चात् दोषी पाए जाने पर उनके विरुद्ध कार्रवाई

करने के लिए व्यापक तंत्र का उपबंध भी करता है । प्रस्तावित संशोधनों के साथ विधेयक पर विचार किया गया था और तारीख 29 मार्च, 2012 को लोक सभा द्वारा पारित कर दिया गया था । 15वीं लोक सभा के विघटन के परिणामस्वरूप विधेयक पर राज्य सभा में विचार नहीं किया जा सका और यह व्यपगत हो गया ।

SHRI K. T. S. TULSI: Sir, I find that the answer has restricted itself only to in-house mechanism, but it has been agreed in various quarters that there needs to be a transparent mechanism and it is for this purpose that Judicial Standard and Accountability Bill, 2010 was introduced to lay down judicial standards and simpler processes for removal of judges. I don't know what happened to that.

SHRI RAVI SHANKAR PRASAD: As regards the statement that only in-house procedure has been highlighted, if we would appreciate, acknowledge and respect the independence of judiciary, this will have to be entrusted primarily to them. I wish to say it on the floor of the House that one sitting judge has been prosecuted by the CBI also with proper sanction of the leaders of India and even the hon. President also. One retired Chief Justice of High Court has been arrested also. Therefore, we give due credence and respect to the decision of the judiciary. As regards the Bill in question is concerned, yes it was passed before we came to power. It was pending before the Lok Sabha, but because of the dissolution of the Lok Sabha, it lapsed. There have also been some concerns from the judiciary that some provisions impinge upon its independence. That is the question we have to agree.

As far as removal part is concerned, I wish to apprise the senior Member who is also an eminent lawyer that we came with the National Judicial Appointment Commission and passed it unanimously by both the Houses. But, ultimately, the Supreme Court repealed it on grounds and reasons which I wish to say very clearly that we don't appreciate. Sir, it is the law of the land.

As regards the appointing authority, I also wanted to convey to the hon. House with fully authority, while we respect the institution of collegium, as a Government, we are also a stakeholder and we continue to insist that.

SHRI K.T.S. TULSI: Sir, I am sure, the hon. Minister is aware that judiciary itself is an institution whose foundations are based on honesty and integrity. This is what a Three-Judge Bench of the Supreme Court said and another Bench, in 2018, consisting of Justice Madan Lokur, Justice Kurian Joseph and Justice Deepak Gupta, said that if judicial discipline and propriety are not maintained the institution itself will go forever. This is a procedure where the complaint is against the institution and the institution itself has to decide. Let them be part of this. But, the legislation which was enacted sought to balance public interest.

MR. CHAIRMAN: Tulsiji, you have to ask only your supplementary. We are not having a discussion. Discussion can be held separately.

SHRI K.T.S. TULSI: But, Sir, I have not got any reply as to what happened to the Judicial Standards and Accountability Bill.

MR. CHAIRMAN: The Minister has given reply that the Lok Sabha was dissolved and hence the Bill had lapsed. This is what he has said.

SHRI RAVI SHANKAR PRASAD: Sir, I am very clear. My answer is in two parts. I have explained factually what had happened to the Bill. But, I have also stated that there were concerns in the elements of judiciary on some of the provisions which impinge upon its independence. Sir, the question of dialogue and consultation is going on. On the larger issue of appointment and need for oversight mechanism, we have clearly insisted and some of those have been addressed by the National Judicial Appointment Commission which, for reasons already stated, was struck down by the court.

SHRI SATISH CHANDRA MISRA: Sir, I wish to ask the hon. Minister one thing. As my learned senior colleague, Shri K.T.S. Tulsi put it, the reply I just wanted to have is this. Sir, the National Judicial Standards and Accountability Bill which the hon. Minister himself explained in his reply has the mechanism and there are certain things which you have appreciated. But, Sir, it was passed by the Lok Sabha; it had not lapsed due to dissolution of Lok Sabha. It could not be passed by the Rajya Sabha. So, since the Lok Sabha was dissolved, the Bill lapsed. Why is the Government not thinking and why is the Government not bringing such a laudable Bill which the hon. Minister himself lauded in his reply itself? You have majority in the Lok Sabha and everybody in the Rajya Sabha will pass it. The mechanism which presently being followed is that wherever there is a substantive complaint against a sitting High Court Judge in some High Courts, they are simply transferred to another High Court and mostly to Allahabad High Court considering it is a big High Court and from Allahabad High Court they are transferred to Lucknow Bench which has a very small number of Judges as if it is a dumping ground.

MR. CHAIRMAN: What is your question?

SHRI SATISH CHANDRA MISRA: So, the entire Bench suffers. Therefore, the specific question I would again ask the hon. Minister is whether the Government is intending to bring this Bill which lapsed due to dissolution of the Lok Sabha again.

SHRI RAVI SHANKAR PRASAD: Sir, I think, I had very clearly conveyed to the House that when we had discussion, there were certain issues on the Bill which were brought earlier by the UPA Government on which they have reservations. And, they have some valid points, because it may impinge upon the independence of judiciary while adhering to the norm of transparency and accountability. This question has

been worked out. But, I would, again, repeat that we are in dialogue with judiciary. And, of late, whenever serious cases of misdemeanour have come to light, the judiciary has responded. It was rarely heard that a sitting Judge of a High Court would be charge-sheeted by the CBI with proper sanction from the Chief Justice of India and the President of India. It is rarely heard that a retired Chief Justice of a High Court would be arrested. Therefore, these are positive moments. I agree with you that there is a need to strengthen the mechanism on which we are working. But, the entire architecture of law needs some further clarity from the judiciary.

MR. CHAIRMAN: This is a matter for detailed discussion, as and when you get an opportunity. We can't sort it out in Question Hour because there are very important issues involved on both sides. We have to keep in mind the sentiments of Judiciary; also, at the same time, what is happening in reality and also the concerns of the people.

श्री शक्तिसिंह गोहिल: सभापति महोदय, मैं माननीय मंत्री जी के जवाब के लास्ट पैराग्राफ से ही सवाल करना चाहता हूँ। इसमें मंत्री जी ने साफ लिखा है कि उच्चतर न्यायपालिका में बृहत् उत्तरदायित्व और पारदर्शिता सुनिश्चित करने के लिए "न्यायिक मानक और उत्तरदायित्व विधेयक" - तो इसका Objects and Reasons आपके जवाब से ही मिलता है कि यह बहुत जरूरी था। जब लोकतंत्र के अंदर न्यायतंत्र के ऊपर थोड़ा सा भी शक होगा, तो पूरा लोकतंत्र खतरे में आ जाता है। आप इस बिल को लेकर आइए। आपके ही जवाब से मैं यह जानना चाहता हूँ कि आपने जब कहा कि एक सिटिंग जज, रिटायर्ड जज...

श्री सभापति: सवाल पूछिए।

श्री शक्तिसिंह गोहिल: एक सिटिंग जज, रिटायर्ड जज सीबीआई के दायरे में आए, तो इसका मतलब यही है कि विधेयक की जरूरत है। माननीय सभापति महोदय, मेरा लास्ट क्वेश्चन यह है कि इसी हाउस के एक Nominated Member, जो सर्वोच्च पद पर रहे हैं, उन्होंने एक स्टेटमेंट में कहा है - हमारे रूल्स में provision है कि कोई भी मेम्बर कोई detail reveal करता है... उन्होंने कहा कि कितना-कितना करप्शन कहां कॉरपोरेट्स का चलता है...

MR. CHAIRMAN: Please; please. I am not allowing a discussion. ...(*Interruptions*)...

श्री शक्तिसिंह गोहिल: इससे डिटेल लेकर आप इन्क्वायरी कराना चाहते हैं या नहीं?

MR. CHAIRMAN: Mr. Minister, do you want to say anything?

श्री रवि शंकर प्रसाद: सभापति महोदय, माननीय सदस्य के इस प्रश्न के बारे में मैंने पूर्व में उत्तर दिया है। सर, मैं एक ही बात कहना चाहूंगा कि इस पूरे विषय के तीन संवेदनशील पक्ष हैं। नम्बर एक - न्यायपालिका में प्रामाणिकता चाहिए, भ्रष्टाचार से मुक्ति चाहिए। नम्बर दो - जो मामले आएँ, उन पर कार्रवाई चाहिए, यह सरकार भी कहती है और कोर्ट ने भी किया है। सर, तीसरा विषय यह है कि इसको किस रूप में लाएंगे? सर, मैंने पहले भी कहा है कि न्यायपालिका में कुछ उनकी जो चिंताएं हैं, उन चिंताओं का एक सार्थक निराकरण करके, क्योंकि हमारी सरकार - हमारे माननीय प्रधान मंत्री जी की अगुवाई में न्यायपालिका की निष्पक्षता और स्वतंत्रता के प्रति हम लोग प्रतिबद्ध हैं, यह हम कहना चाहेंगे।

MR. CHAIRMAN: Question No. 109, Shri Vaiko. I think he had sought leave. So, the questioner is not present.