

# 'Judges Bill may need statute amendment'

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*Akshaya Mukul / TNN*

New Delhi: A serious view is emerging in the government that the Constitution be amended before the Judges (Inquiry) Bill, currently with the standing committee of Parliament, is enacted.

A senior government official said some of country's top constitutional experts have pointed out that merely getting the Judges (Inquiry) Bill passed would be ultra vires of the Constitution and could be challenged in the Supreme Court.

Though government is awaiting the standing committee's report, likely to be tabled during the monsoon session of Parliament, it is seriously considering to factor in the view of constitutional experts who are suggesting amendment in Article 124 which relates to the establishment and constitution of Supreme Court as well as talks about the removal of judges. Even Article 218 about removal of high court judges would have to be amended.

Explaining why an amendment was a must, noted constitutional expert Fali S Nariman said, "There is a problem now. You can only get rid of judges of the superior judiciary by impeachment which is basically removal. There is no other method." Therefore, he said some provision must be incorporated in the Constitution for disciplining judges which should be short of removal. He gave the example of how the SC could do little other than transfer a High Court judge caught in extra-legal wranglings.

Nariman admitted there was a big conundrum and it was not easy to deal with the issue. He referred to the "other point of view". "There is a view that once you discipline a High Court or a Supreme Court judge, how do you retain confidence of people in them," he said, adding, "We do not have superman as judges any longer." But he is all for the law and gives the example of the US where almost a similar system has worked successfully.

The present bill suggests two ways to deal with complaints of misbehaviour or incapacity of judges. First, in case all or any of the charges of misbehaviour or incapacity is proved and the National Judicial Council feels it does not warrant removal of the judge, it may issue an advisory against the judge, warn him, withdraw judicial work for a limited time, including the cases already assigned, and request the judge to voluntarily retire and censure him.

The other method is that in case a reference has been made jointly by the Lok Sabha Speaker and Rajya Sabha chairman to the National Judicial Council and charges have been proved by investigation, then an express address praying for the removal of the judge shall be presented to the President by each House of Parliament in the same session in which the motion for removal was made by MPs (100 LS, 50 RS) and referred by the Speaker and chairman.