



# Jus Corpus Law Journal

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## Judicial Accountability: Need for stronger Judicial Accountability in India

Anuncia William<sup>a</sup>

<sup>a</sup>Symbiosis Law School, Hyderabad, India

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*The Legislature, Executive, and Judiciary are the three main organs that constitute the Indian Government and they are responsible for the formation of rules, their application, and adjudication. The main reason behind the allocation of powers specific to these three organs of the government is to ensure that power isn't concentrated in the hands of one person, i.e. the Separation of Powers. This makes sure that there is a sort of accountability in the functions of the government and helps keep a check on the liberties of the people and ensure that they are safe and protected. "In the words of Montesquieu, Constant experience has shown us that every man invested with power is apt to abuse it, and to carry his authority until he is confronted with limits."<sup>1</sup> To make it short and understandable, the establishment of absolute power in one person's hand without any sort of accountability leads to corruption. Corruption is something that has been prevalent in all the governments of countries across the globe and in India it is something that occupies the center stage more often. In the words of Mr. Kofi Annan, the then Secretary-General of the UN "Corruption is an insidious plague that has a wide range of corrosive effects on society. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism, and other threats to human security to flourish."<sup>2</sup> However, the cases of corruption that are being filed against the judges of the court, like the charge of misappropriation of huge amounts of money against the Judge*

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<sup>1</sup> 'Baron De Montesquieu, Charles-Louis De Secondat' (Stanford Encyclopedia of Philosophy, 18 July 2014) <<https://plato.stanford.edu/entries/montesquieu/>> accessed 20 February 2022

<sup>2</sup> 'United Nations Convention against Corruption: Preparatory and negotiating sessions of the Ad Hoc Committee for the Negotiation of a Convention against Corruption' (United Nations : Office on Drugs and Crime, 31 October 2003) <<https://www.unodc.org/unodc/en/treaties/CAC/background/index.html>> accessed 23 February 2022

*Soumitra Sen from the Calcutta High Court, and numerous other judges of small courts to the High Courts and Supreme Court gives rise to the question of “who judges the judges?” The laws passed by the lawmaking body are checked by the legal executive, in the event that it conflicts with the Constitution and is pronounced to be invalid and void. Given this, plainly the legal executive is the gatekeeper of the Constitution and defender of key freedoms. This research paper endeavors to study the need for judicial accountability in India as the lack of accountability would just imply that the general public will lose its trust over the power of the courts and the appointed authorities in conveying a reasonable judgment to an average person.*

**Keywords:** *judicial accountability, corruption, judicial review.*

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## INTRODUCTION

Judges are authorities who observe and practice authority as the basic and fundamental backbone of the legal executive which plays a vital part in depicting the freedoms, obligations, and duties of a common man while also determining the dispersion of assets and direct activities against an element which is likely to include the public authority in itself as well. This is a momentous force by nature and any discrepancy or the inappropriate application of such a force would block an effective conveyance of equity to a common man looking for the respite through the legal executive due to the individual interests of the legal office which only causes a disappointment on the legal arrangement of the country. This implies that the way the force is given to judicial officials must focus on better quality of conduct. The philosophies of Independent Judiciary and Impartial conveyance of Justice are exceptionally interwoven and form the actual essence of the legal executive which indicates they cannot exist without each other. “In the case of *High Court of Judicature at Bombay v Uday Singh*<sup>3</sup> with regards to the maintenance of discipline and avoiding improprieties, the Hon’ble Supreme Court merely opined as follows-*Maintenance of discipline in the judicial service is a paramount matter. Acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity, and character of the officer. The confidence of the litigating public gets affected or shaken by the lack of integrity and character of the Judicial Officer.* This opinion of the Court goes on to indicate the fact that it is highly important that the judge adheres to the ethical and professional standards laid

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<sup>3</sup> *High Court of Judicature at Bombay v Uday Singh* (1997) RLR 558

down by his service and not to mention, the same forms the very crux of judicial service and is very much important in administering justice. Not to mention the Court has also tried to draw a parallel as to what will be the effect, a judgment delivered erroneously, would have upon the general public as a whole while also opining on the fact that the confidence of the public will be at stake.”<sup>4</sup>

“In the case of *High Court of Judicature at Bombay v Shashikant S. Patil*, the Supreme Court opined that *it was stated that dishonesty is the stark antithesis of judicial probity, and A dishonest judicial personage is an oxymoron*. This merely goes on to hold that an act of dishonesty very well falls under the ambit of impropriety and such an act of dishonesty must have been given a wider interpretation rather than restricting the same to that of financial improprieties alone which have been one of the major issues.”<sup>5</sup> “In the case of *Daya Shankar v High Court of Allahabad*, the Supreme Court merely opined that *Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty, and integrity. They cannot act even remotely unworthy of the office they occupy*. This further emphasizes the fact that the Judiciary at the end of the day must make sure that its officers don’t act in a multidimensional manner with their personal interests affecting their caliber of delivering a rational judgment based on what is right as under the eyes of the law. The Court also reiterated the nature of the office the judicial officers hold and not to mention held that the judicial officers cannot act even remotely in contradiction to the aim and the essence of the office they occupy.”<sup>6</sup> To summarize, irrespective of whether a certain case is professional or personal misconduct, the judges must be held accountable for their actions. “One of the prime reasons why the personal capability aspect is given due consideration is that the case of *Daya Shankar* clearly says that a judge cannot do something in his personal capacity and deliver a judgment which is in contrary to the said act or vice versa. For Example, assuming a judge has openly voiced out against sexual harassment in a judgment he or she is expected to adhere to the same in their personal conduct as well. In short, they are supposed to have a single

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<sup>4</sup> *Ibid*

<sup>5</sup> *High Court of Judicature at Bombay v Shashikant S. Patil* (2000) 1 SCC 416

<sup>6</sup> *Daya Shankar v High Court of Allahabad* (1987) 3 SCC 1

standard of honesty and integrity.”<sup>7</sup>While one can address with respect to what might go under the ambit of a particular single norm, the simple test set down under the “*Ethical Standards for Judge Rules, 1999 Rules 1 and 2*”<sup>8</sup> is whether the direction of the adjudicator is of such a nature that it just is demonstrative of unscrupulousness or favoritism in the brain of a sensible and judicious man.”

## JUDICIAL ACCOUNTABILITY - NEED OF THE HOUR

It is important to note that the legal executive being quite possibly the main organ should be given some autonomy and be liberated from any of the indecencies that have been referenced. Further, one must note that an autonomous legal executive is one of the significant provisions of a decent majority rule government which helps for social change and social comprehensiveness. While there are a few arrangements accommodating such an autonomy get that, all things considered, the equivalent truly is quite inadequate while taking a gander at different mistakes annoying the legal executive. Comprehend that when an average person misses out his confidence in the public authority, he moves toward legal executive and legal executive ought to be sufficient, liberated from any encumbrance to its autonomy to convey equity inability to do which the residents will totally lose their trust over the legal executive. Considering the way that the legal officials convey forward the substance of the legal executive, a reasonable man would just anticipate that they should go about as under great confidence and keep up with the principles of the legal executive which is definitively why there should be legal responsibility, for it accommodates the evacuation of and a disciplinary activity against the adjudicators against whom it has been demonstrated that they had submitted a bunch of mistakes. Comprehend that there should be a set of principles planned in order to ensure that the issues relating to indecency can be moved past according to a development of the equivalent. While this idea overall sounds generally excellent in principle, it is pretty much, in some measure in this crossroads helpless to a total disappointment. We see that despite the fact that there are a few records of legal wrongdoing, not a ton of these judges are punished which involves concern. The idea of responsibility must be given

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<sup>7</sup> *Ibid*

<sup>8</sup> *Ethical Standards for Judge Rules, 1999, r 1 & 2*

significance after the arrangement of the adjudicators as well as before the arrangement of them in order to ensure that nothing turns out badly in the organization of equity. Attributable to the distance between an average person and the legal executive it is a lot significant that the legal executive is straightforward in its methodology and also the arrangement cycle ought to be given equivalent significance as that of the assessment interaction.

## THE PERCEPTION OF THE PEOPLE TOWARDS JUDICIARY

Judiciary forms an integral part of any fair government because it portrays equity and is a tool in the custody of the constitution to save the essence of a majority rules system. Legal executive frequently forms an important role as a specialist of social change in India which is attributable to the responsibility that it is the force of translation of constitution. Again, with its landmark decisions, the legal executive demonstrated that it is a specialist of social change. “In the case of *Golaknath v the State of Punjab* where the Supreme Court has held that the fundamental rights cannot be amended by the Parliament while however, the Parliament passed the 24th Amendment to merely contradict the judgment of the court where the constitution was amended such that the parliament has the right to amend any part of the constitution, including the fundamental rights, this amendment would then go on to make it such that several fundamental rights are altered which have a grave impact upon the society as a whole which led to changes in the society (Say with regards to the Repeal of the Right of Property).”<sup>9</sup> “In *Bandhua Mukti Morcha* case the Supreme Court merely sought to claim the right so as to abolish the concept of bonded labour which has been a grave social evil that has been prevalent in the Indian Society. This was one of the prominent cases where the Supreme Court had used its activism in matters regarding legal aid of the poor and the abolishment of bonded labour which are important dimensions in the abolishment of the concept of bonded labour as a whole in the Indian Society which is social transformation indeed.”<sup>10</sup> The above are some of the basic examples, which prove that the courts in Indian Society form a pivotal role in safeguarding the interests of the general public. The central issue is that when there is a

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<sup>9</sup> *Golaknath v State of Punjab* (1967), AIR 1643

<sup>10</sup> *Bandhua Mukti Morcha v Union of India and Ors* (1984), AIR 802

crossroad, the indecencies will not cause any impact or would cause an unhealthy effect on the interests of the general public.

## **CONCLUSION**

The way that freedom might require some impedance shows that there are different standards for example impartial and reasonable trials, more significant than the previous and these goals can be accomplished distinctly through a responsible legal executive. Autonomy ought to be utilized distinctly as a way to accomplish this end and not an end in itself. In case of responsibility isn't treated in a serious way we can observe a risky nexus between degenerate appointed authorities and legislators which will bring a finish to the majority rules system. It is pertinent to register that the responsibility of the legal executive is different from the other two organs, namely the legislature and the executive. The definite principle of the workplace warrants separate handling and this is for the benefit of the country. The principal role of the judiciary is to administer quick equity and provide relief to the defendant through which public trust can be preserved. With regards to the way the judiciary operates in the Government, it is important to acknowledge the effect that judicial integrity has on the same, especially when it comes to the respect and integrity with which it is being viewed. To guarantee that majority rule government is working appropriately, one needs to ensure that there must be a concrete system that ensures legal accountability so that the people trust the system and confide in it because this is their basic right.

## **SUGGESTIONS**

1. There should be an assessment framework for the judiciary that will set guidelines concerning how an ideal legal executive is set to work while contrasting it and the said legal executive close by. This will be especially gainful in recognizing the legal conduct and critical to keep up with the principles of a legal executive. The Indian Government should carry out the Performance Evaluation framework with the end goal that it advances straightforwardness just as a feeling of responsible obligation in the legal executive and advances personal growth.

2. There should be disciplinary measures that are to be ordered by an enactment to such an extent that it calls for reprimand alone as well as by the day's end likewise attempts to underscore upon the gravity of the mistakes submitted
3. There must be a complete system of rules and regulations that monitor the conduct of the judicial officers and any action that isn't in line with these rules must be taken seriously and the said judicial officer must be held accountable for the same.
4. Note that there must be a severe disciplinary authorization to such an extent that the issues and offenses are under tight restraints pretty much without fail. Such authorization must be carried out by a body that is free from the involvements of the executive, legislature, or judiciary in order to ensure complete autonomy and freedom to operate in a way that the judicial officers who violate the law would be held accountable for their actions immediately.