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Judicial conduct regulation: do in-house mechanisms in India uphold judicial Independence and effectively enforce judicial accountability?

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ABSTRACT

In India, judicial discipline is exclusively enforced by the judiciary through in-house mechanisms, except for the constitutional removal procedure. The founding justification for in-house mechanisms is that they are indispensable to uphold judicial independence. In this milieu, the paper attempts to answer the following question: do in-house mechanisms in India uphold judicial independence and effectively enforce judicial conduct? The study, by analysing quantitative and qualitative data from 110 subject experts (judges, lawyers, and academics), offers an initial assessment of the implications of in-house mechanisms on judicial independence and judicial conduct regulation in India. The study lays special emphasis on the efficacy of in-house mechanisms in upholding "individual" and "internal" judicial independence. It also assesses the effectiveness of in-house mechanisms in enforcing judicial conduct. It concludes that in-house mechanisms, for both higher and subordinate judiciary, undermine individual and internal judicial independence. They are also ineffective in enforcing judicial conduct.

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I. Introduction

Judicial conduct regulation aims to reinforce judicial independence, impartiality, accountability, and competence; a robust regulatory framework would also enhance public confidence in the judiciary in general and, in particular, in the regulatory process itself. However, there is no one right way of judicial conduct regulation. For example, in England and Wales, there are arm's length bodies to facilitate judicial conduct regulation,[1] whereas, in India, the same job is done mostly by in-house mechanisms. Nonetheless, it is not to suggest that there are no established standards to guide conduct regulation; there are, for example, various international instruments that aim to guide national jurisdictions to establish robust judicial conduct regulation regimes. The international standards, although most of them have no direct effect on a dualist jurisdiction like India,[2] require the stakeholders (i.e. governments

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[1]G Gee, 'Judicial Conduct, Complaints and Discipline in England and Wales: Assessing the New Approach' in R Devlin and Sheila Wildeman (eds), *Disciplining Judges Contemporary Challenges and Controversies* (Edward Elgar 2021) 131.

[2]Although India has been a signatory to most of the international instruments/conventions consulted in this paper, these instruments have not been incorporated into domestic law. Therefore, they are only of persuasive value.

and judiciaries) to comply with the minimum safeguards. For instance, the Bangalore Principles of Judicial Conduct 2002 (hereinafter "Bangalore Principles"), require that regulatory mechanisms must " . . . themselves [be] independent and impartial . . . ".[3] Likewise, the Latimer House Principles mandate that " . . . any disciplinary procedures should be fairly and objectively administered. Disciplinary proceedings which might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness".[4]

In addition to the above-noted procedural safeguards, international instruments guarantee basic rights to judicial personnel facing criminal or disciplinary proceedings in accordance with Article 14 (ICCPR[5]) and Articles 10 & 11 (UDHR[6]); therefore, judicial personnel facing disciplinary or criminal proceedings are entitled to the benefit of the presumption of innocence, a speedy trial, the right to defend oneself, and adequate time and facilities for the preparation of their defence and right to review or appeal.[7] The underlying objectives of these minimum guarantees of fair trial and due process are to uphold judicial independence. In addition, to protect judges from inappropriate influences, international standards require the concerned national institutions to invoke disciplinary measures only in cases of "professional misconduct that are gross and inexcusable and are susceptible to bringing the judiciary into disrepute"[8]; the Latimer House guidelines require an allegation of "serious misconduct"[9] as a precondition to initiate a disciplinary proceeding.

Likewise, there is a growing emphasis on securing the individual and internal judicial independence of judges from pressures arising within the judiciary.[10] The judicial conduct regulation regimes, especially when they are almost exclusively administered by the judges themselves (as in India), have to guard judicial independence from a potential threat that might arise from within: it is "recognised that judicial independence depends not only on freedom from undue external influence but also freedom from the undue influence which might in some situations come from the attitude of other judges".[11] When the senior judges have determinative roles in judicial conduct regulation, not only their "attitude" but also how they apply disciplinary protocols will have implications on how judges perceive regulatory regimes – supervisory or disciplinary powers of senior judges may also impact the performance of junior judges on both judicial and administrative sides. Therefore, unchecked disciplinary power conferred on senior judges might in practice undermine individual judicial independence.

[3]The Bangalore Principles of Judicial Conduct 2002, Preamble.
[4]Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government 2004, principle VII (b).
[5]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
[6]Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III).
[7]See generally, UNHRC, 'Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul' (2014) UN Doc A/HRC/26/32 ('Knaul').
[8]UNGA, 'Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán' (2020) UN Doc A/75/172 [14] ('García-Sayán').
[9]Latimer House Guidelines for the Commonwealth 1998.
[10]On individual independence, see, for example, Consultative Council of European Judges Opinion No. 21, 'Preventing Corruption Among Judges' (9 November 2018) CCJE(2018)3Rev [16]; On internal judicial independence, see J Sillen, 'The Concept of 'Internal Judicial Independence' in the Case Law of the European Court of Human Rights' (2019) 15(1) European Constitutional Law Review 104–133.
[11]Consultative Council of European Judges Opinion No. 1, 'Independence, Efficiency and Role of Judges' (23 November 2001) [CCJE (2001) OP N°1] [16].

There is a growing body of jurisprudence on internal judicial independence developed by the European Court of Human Rights (ECtHR) that demonstrates that judges' subservience to other (senior) judges as a result of the judiciary's internal arrangements would adversely impact judicial independence. For example, if a court president is capable of generating latent pressures resulting in judges' subservience to him/her, it has chilling effects on the internal independence of judges.[12] Against this backdrop, it is necessary to audit the functioning of the in-house mechanisms in India to determine, *inter alia*, to what extent these mechanisms uphold judicial independence and effectively enforce judicial conduct. It is also necessary to examine whether the judicial accountability mechanisms undermine individual and internal judicial independence.

In this milieu, the paper attempts to answer the following question: do in-house mechanisms in India uphold judicial independence and effectively enforce judicial conduct? As the project lays special emphasis on individual and internal independence, the following sub-questions attempt to further contextualize the research question:

(1) Do the in-house mechanisms in India uphold the internal and individual judicial independence of judges?
(2) Do the in-house mechanisms in India adequately emphasize judicial accountability needs?

Though empirical research to answer the above-noted questions is highly desirable, carrying out such research is complicated. The main hurdle is to collect the views of the "regulatees", i.e. the subordinate court judges, on sensitive issues involving their conduct; eliciting their views on how they are being treated by the regulatory regime is also challenging. In an informal system, such as vigilance mechanisms, where the senior judges play a decisive role, the subordinate court judges tread cautiously when responding to such questions, especially when they are questioned by individuals from outside the judiciary.[13] The second challenge is that the views of subordinate judges cannot be the sole basis for assessing the functioning of the regulatory mechanisms, because, as noted already, the regulatory mechanisms reinforce public confidence in the judiciary; thus, it is also necessary to assess the views of other stakeholders of the judicial system – advocates, academics, prosecutors, litigant public and the media. Therefore, the empirical study must assess the views of key stakeholders of the judicial system to determine to what extent the regulatory mechanisms are effectively fulfiling the intended purposes. The present study is a step forward in this direction.

In India, compared with the political executive and legislators, the judges (and the judiciary) enjoy greater public confidence.[14] The fear of political interference in the judicial administration is widely shared by judges, legal academics, and the media

[12] *Parlov-Tkalčić v Croatia* App no 24,810/06 (ECtHR 22 December 2009) [91]; For an extensive discussion on the topic, see Sillen (n 10).

[13] Several of the subordinate court judges refused to take part in the study, noting that they are not allowed to comment about the vigilance mechanisms or provide information relating to the vigilance mechanisms to individuals from outside the judiciary.

[14] Approximately 80% of the respondents in 2009 expressed some degree of trust in the judiciary. See S Krishnaswamy and S Swaminathan, 'Public Trust in the Indian Judiciary: The Power to Transform' in Gerald N. Rosenberg, Sudhir Krishnaswamy, Shishir Bail (eds), *A Qualified Hope: The Indian Supreme Court and Progressive Social Change* (CUP 2019) 132. In 2019, the public trust in the Indian judiciary has come down to 60%: see 'Political Parties most Distrusted, Army, Judiciary Win People's Trust" *The Hindu* (27 March 2019).

alike.[15] Such suspicions have underpinned judicial primacy in matters of judicial appointments, transfer, and conduct regulation. In addition, it is argued that the in-house mechanisms are essential to safeguard judges from frivolous and vexatious complaints from disgruntled litigants and others.[16] It is also believed that in-house mechanisms (for example, the in-house procedure for the higher judiciary) are necessary to avert inappropriate influences from the other branches in disciplining judges.[17] Therefore, in-house mechanisms are considered essential to secure and uphold judicial independence and public confidence.[18] Against this backdrop, the study hypothesizes that the in-house mechanisms in India (for example, the vigilance mechanisms) uphold judicial independence; and that the key stakeholders of judicial administration – judges, lawyers and academics – show a "high level of confidence" in the efficacy of in-house mechanisms in upholding judicial independence. The rationale of the hypotheses is further elaborated in Section II below.

The paper consists of four main sections. Section III, briefly, outlines the research method, statistical scales, and research ethics compliance; it also identifies the limitations of the research. Section IV thematically presents key results drawn from quantitative data and informed by qualitative data. Section V, with the help of statistical and qualitative analyses, tests the hypotheses and answers research questions. Section VI concludes the article. However, foremost, the background of the research is briefly outlined below.

II. Setting the scene: the background of the study and research hypotheses

Every High Court in India has an in-house vigilance cell, headed by a senior district judge. The mechanisms have a remit over subordinate court judges and court staff (including the High Court staff) with respect to allegations of misconduct or corruption. The vigilance cells act as a facilitator for inquiries, investigations, and disciplinary proceedings against judicial personnel. Generally, the cells act as per the directions of the Chief Justice of the High Court, but in some High Courts, there are special committees, consisting of High Court judges,[19] to oversee the handling of complaints and investigations by the vigilance cells. The vigilance cells, where necessary, may conduct various types of inquiries (for example, discreet inquiry, preliminary inquiry, or fact-finding inquiry) with the help of judges holding higher ranks than the judge in question. Likewise, disciplinary proceedings are also conducted by senior judges. In most of the High Courts, minor disciplinary measures

[15] *Supreme Court Advocates on Records Association v Union of India* 1993 (4) SCC 441; *In re Special Reference No. 1 of 1998* AIR 1999 SC 1; *Supreme Court Advocates-on-Record Association v Union of India* (2016) 4 SCC 1; see also, Madhav Aney, Shubshankar Dam and Giovanni KO, 'The politics of post-retirement appointments: Corruption in the Supreme Court? Ideas for India' (2020) <https://www.ideasforindia.in/topics/governance/the-politics-of-post-retirement-appointments-corruption-in-the-supreme-court.html> accessed 20 February 2022.

[16] See, for example, *Ishwar Chand Jain v High Court of Punjab & Haryana* 1988 AIR 1395; Supreme Court of India, 'Report of the Committee on In-House Procedure' (1999) 1–2 < https://main.sci.gov.in/pdf/cir/2014-12-31_1420006239.pdf > accessed 6 March 2022 ("Committee on In-house Procedure").

[17] *Additional District and Sessions Judge "X" v Registrar General, High Court of Madhya Pradesh* 2003(4) SCALE 643 [25] ("*Additional District and Sessions Judge*");*C. Ravichandran Iyer v Justice A.M. Bhattacharjee* (1995) 5 SCC 457.

[18] *Additional District and Sessions Judge* (n 17) [25]; See also Committee on In-house Procedure (n 16) 1–2.

[19] Shivaraj S Huchhanavar 'Regulatory Mechanisms Combating Judicial Corruption and Misconduct in India: A Critical Analysis' (2020) 4(1) *Indian Law Review* 7.

are imposed by the Chief Justice of the High Court and the decisions on issues involving fitness to the judicial office (for example, removal or compulsory retirement) are made by the full court of the High Court.[20]

The overall administration of subordinate courts is under the supervision and control of the High Courts. The judicial appointment, promotion, transfer, removal and such other service matters are, almost exclusively, dealt with by the High Courts.[21] The High Courts' supervision, including in matters of judicial discipline, is considered to be indispensable to secure the judicial independence of subordinate court judges.[22] However, the critiques argue that in-house mechanisms (the vigilance mechanisms) are ineffective, opaque, informal and arbitrary.[23] The High Courts have failed to reform judicial conduct regulation regimes, though some attempts have been made to expand the vigilance mechanisms by establishing vigilance cells at district levels.[24] In a Chief Justices' Conference, it was also resolved to formalize the vigilance mechanism by making the vigilance officers work under "the direct control of the Chief Justices of the High Courts", to avert the interferences from puisne High Court judges and officials.[25] The proposed reform has proved too inadequate to be effective, as the mechanisms remain vulnerable to undue interference of High Court judges and senior court officers.[26] Even today, the vigilance mechanisms lack autonomy on matters that are integral to judicial conduct regulation, for instance, the preliminary assessment and investigation of judicial complaints. The mechanisms must act either as per the direction of the Chief Justice of the High Court or as per the directions of an administrative judge or a committee of High Court judges.[27]

Most of the High Court vigilance mechanisms in the country follow the rules made for the civil servants in that state – meaning, there are no special rules that address judicial misconduct issues. A few High Courts, for example, the High Court of Gujarat,[28] Himachal Pradesh[29] and Karnataka[30] have special rules with respect to vigilance mechanisms; however, such rules are not comprehensive enough to guide investigations or disciplinary proceedings against judicial officers. As a result, the subordinate judges fear a lack of fair play in vigilance investigations and disciplinary proceedings. Such

[20]The Constitution of India confers administrative autonomy to High Courts. Therefore, important administrative decisions are made by the full court through a formal meeting of all the judges of that high court. For a comprehensive critical analysis of vigilance mechanisms in India, see Huchhanavar (n 19).

[21]Constitution of India 1950, Part VI, Chapter VI. See also *Ashok Kumar Yadav v State of Haryana* (1985) 4 SCC 417.

[22]See, for example, 118th Law Commission of India Report, Method of Appointments to Subordinate Courts, 11 (1986) <https://indiankanoon.org/doc/65851231/> accessed 4 April 2022; See also 116th Law Commission of India Report, Formation of an All-India Judicial Service, 26 (1986) https://lawcommissionofindia.nic.in/101-169/Report116.pdf accessed 4 April 2022; *State of West Bengal v Nripendra Bagchi* AIR (1966) SC 447.

[23]See, for example, Tony George Puthucherril, "Belling the Cat': Judicial Discipline in India' in Richard Devlin and Sheila Wildeman (eds), *Disciplining Judges Contemporary Challenges and Controversies* (eds) (Edward Elgar Publishing 2021) 161; Mohan Gopal, 'Corruption and the Judicial System' <https://www.india-seminar.com/2011/625/625_g_mohan_gopal.htm> accessed 26 June 2021.

[24]See Supreme Court of India, 'Resolutions Adopted in the Chief Justices' Conference 2009', Resolution 5 <https://main.sci.gov.in/pdf/sciconf/cjconference2009resolutions.pdf> accessed 6 March 2022.

[25]ibid.

[26]See generally, Puthucherril (n 23) [159–161]; See also Huchhanavar (n 19).

[27]Huchhanavar (n 19).

[28]The Vigilance Cell (Judicial Department) Rules 1986.

[29]The High Court of Himachal Pradesh has three sets of Rules – (i) The High Court of Himachal Pradesh Officers and Servants (Vigilance) Rules 2002; (ii) the High Court of Himachal Pradesh Vigilance Cell (Disposal of complaints against Judicial Officers) Rules 2002, and (iii) the High Court of Himachal Pradesh Vigilance Cell (disposal of complaints against the officials of the courts subordinate to the high court) Rules 2002.

[30]The High Court (Vigilance Cell) Functions Rules 1971.

fear and lack of confidence of subordinate court judges in vigilance mechanisms are arguably not entirely unfounded. In several cases, the Supreme Court of India has recorded the instances of abuse of vigilance mechanisms[31] and urged High Courts to "protect" judicial officers[32]; on numerous occasions, the courts have recorded the lack of fair play, bias, evidence of personal vendettas and unjustified disciplinary measures against the subordinate court judges through disciplinary mechanisms.[33] There is also anecdotal evidence of High Court judges themselves recognizing flaws in the regulatory regime that are abetting judicial corruption and misconduct in India.[34]

For the higher judiciary (i.e. for the Supreme Court and High Court judges), apart from the rigid removal procedure outlined in the Constitution, there is an in-house mechanism (in-house procedure) to deal with complaints of misconduct or corruption. The in-house procedure has been developed by the SC to address the "yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non-cooperating Judge/Chief Justice of a High Court . . . ".[35] The in-house procedure empowers the Chief Justices of the High Courts and the Chief Justice of India ("CJI") to entertain complaints against High Court and Supreme Court judges, respectively. If the CJI, based on the initial assessment of the case, considers a further probe is necessary, s/he may constitute a three-member committee for that purpose. If the complaint relates to a High Court judge, the committee comprises two Chief Justices of High Courts and a High Court judge; if the complaint pertains to a High Court Chief Justice or a Supreme Court judge, the composition of the committee varies, but it will exclusively consist of judges.[36] On the basis of the recommendations of the committee, the CJI may, *inter alia*, dismiss the complaint or ask the judge in question to resign.[37]

There is extensive academic literature on the judicial regulatory mechanisms in India, especially concerning the removal and in-house procedure for the High Court and Supreme Court judges.[38] The topic has also been comprehensively examined by the Law Commission of India.[39] The overriding academic views on the topic are that the removal procedure, as provided in the Constitution is ineffective[40] and the in-house procedure is too informal, lacks transparency and often fails to safeguard the due process rights of complainants.[41] There is overwhelming evidence to show that the in-house

[31] *Ishwar Chand Jain v High Court of Punjab & Haryana* AIR 1988 SC 1395.
[32] See, for example, *L.D. Jaikwal v State of U.P.* AIR 1984 SC 1374; *K.P. Tiwari v State of M.P.* AIR 1994 SC 1031; *Yoginath Bagade v State of Maharashtra* AIR 1999 SC 3734.
[33] Disciplinary proceedings were held for the alleged judicial error, see *Lunjarrao Bhikaji Nagarkar v Union of India* (2000) ILLJ 728 SC; for more illustrative case law, see (n 42).
[34] P Vikramaditya, *Justice Versus Judiciary: a journey through turbid waters* (Aroo Publications 2014) 112–115; See also *Karrah Parshu Ramaiah v the State of Bihar* Crim Misc 4117 of 2018.
[35] *C. Ravichandran Iyer v Justice A.M.Bhattacharjee* 1995 SCALE (5)142 [42].
[36] Huchhanavar (n 19) 14–24.
[37] ibid 16.
[38] See, for example, S Ranjan, *Justice versus Judiciary: Justice Enthroned or Entangled in India?* (OUP 2021) 47. However, there is limited literature on the high court vigilance mechanisms.
[39] See, for example, 195th Law Commission of India Report, *The Judges (Inquiry) Bill 2005* (2006) < https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-195-the-judges-inquiry-bill-2005-2006/> accessed 4 April 2022 ("195 Law Commission").
[40] See, for example, A Sengupta, *Independence and Accountability of the Higher Indian Judiciary* (CUP 2014) 85–99.
[41] See, for example, Sanjay Jain and Saranya Mishra, 'Scandalizing the Judiciary: An Analysis of the Uneven Response of the Supreme Court of India to Sexual Harassment Allegations against Judges' (2020) 18(2) *International Journal of Constitutional Law* 563–590.

mechanisms are opaque, informal, inefficient and, sometimes, counterproductive[42]; however, no radical reforms have been made. On the contrary, in 2015, the Supreme Court ("SC") ruled that judicial primacy in matters of appointments, transfers and conduct regulation is an essential feature of one of the basic structures of the Constitution: judicial independence.[43] The reform (i.e. the NJAC Act) was held unconstitutional on the ground that it undermined judicial primacy.[44]

Through various pronouncements, the SC also has established the primacy of High Courts in matters (for instance, appointment, transfer, removal, and conduct regulation) concerning subordinate court judges.[45] As a consequence, the regulatory regimes in India, both for the higher and subordinate judiciary (save for the removal procedure as provided in the Constitution), are entirely under the control of the judiciary. Regrettably, however, the judiciary nor the Law Commission of India[46] examined the implications of in-house mechanisms on the individual and internal judicial independence of judges who are being regulated by these mechanisms. It is also unfortunate that the SC, whilst noting international developments since the 1980s in the areas of judicial independence and accountability, has not taken the initiative to assess and reform the in-house mechanisms to be consistent with international standards; the SC has failed to look beyond the "peer-review" approach that, as critiques argue, has almost always failed to fulfil the intended purposes.[47] The Law Commission of India has also erred by overlooking the potential implications of in-house mechanisms on the individual independence of the judges, concluding that "[P]eer review alone satisfies constitutional standards of independence".[48]

The prevailing judicial view that underpins the regulatory architecture is that judicial primacy is an indispensable aspect of judicial independence.[49] The founding rationale that underpins this view is that judicial self-regulation is essential to secure and uphold judicial independence.[50] Such a radical conception of judicial independence conveys the impression that the majority of the judges strongly believe that in-house mechanisms are essential in upholding judicial independence. As noted already, the Law Commission of India also shares this view.[51] Therefore, in light of the normative literature, it is reasonable to hypothesize that the in-house mechanisms in India uphold judicial independence;

[42]See generally Huchhanavar (n 19); Disciplinary proceedings were held for the alleged judicial error, see *Lunjarrao Bhikaji Nagarkar v Union of India* (2000) ILLJ 728 SC; disciplinary action for granting bail, see *Ramesh Chander Singh v High Court of Allahabad* 2007(3) SCALE 559 SC; dismissal based on a baseless allegation, see *Rahul v The State of Maharashtra* 2012(2)ALLMR620; harassment of judges and judicial officers using disciplinary inquiry procedure, see *R.C. Sood v High Court of Judicature at Rajasthan* AIR 1999 SC 707, *Registrar General High Court of Gujarat v Jayshree Chamanlal Buddhbhatti* 2013 (13) SCALE 230; *K.B. Krishnamurthy v the State of Karnataka*, W.P. No. 21,847 of 2004, *Braj Kishore Thakur v Union of India* [1997] 2 SCR 420.

[43]*Supreme Court Advocates-on-Record Association v Union of India* (2016) 4 SCC 1

[44]ibid.

[45]See, for example, *State of West Bengal v Nripendranath Bagchi* AIR 1966 SC 447.

[46]On the contrary, 195 Law Commission (n 39) 10–11.

[47]The peer-review approach entails that when an allegation is made against a judge, such a complaint will only be inquired into or investigated by his/her colleagues or senior peers. The SC has underlined the importance of "peer-review" in *C.K. Ravichandran Iyer v A.M. Bhattacharjee* 1995 (5) SCC 457; See also *Sub-Committee of Judicial Accountability v Union of India* 1991 AIR 1598.

[48]See 195 Law Commission (n 39) 380–383.

[49]The SC *Supreme Court Advocates-on-Record Association v Union of India* (2016) 4 SCC 1 has held that judicial primacy is integral to the basic structure of the Constitution.

[50]*C. Ravichandran Iyer v Justice A.M. Bhattacharjee* (1995 (5) SCC 457) [35], [479]: "It seems to us that self-regulation by the judiciary is the only method which can be tried and adopted"; 195 Law Commission (n 39) 352; See also Committee on In-house Procedure (n 16) 1–2.

[51]See (n 39).

and that the key stakeholders of judicial administration – judges, lawyers and academics – show a high level of confidence in the efficacy of in-house mechanisms in upholding judicial independence. These directional hypotheses reflect the held view on the topic; the hypotheses are also consistent with the rationale that underpins judicial primacy in India. In addition, to date, apart from doctrinal and analytical research that challenges the efficacy of in-house mechanisms, there is no empirical evidence to suggest that the in-house mechanisms undermine judicial independence; therefore, the hypotheses that best reflect the normative views (i.e. judicial decisions) are more credible.

III. Method

The research data was collected through online surveys and email correspondence.[52] The over-arching objective of the surveys was to gather responses – information, opinions, and perception – from judges, advocates and academics on in-house mechanisms and their implications for judicial independence and accountability. The target groups for the surveys were serving and retired judges, advocates and academics having an adequate understanding of in-house mechanisms.

Selection of subject experts

In India, there is little information on the functioning of in-house mechanisms available in the public domain. The pilot study revealed that even the advocates, (most of the) legal academics and junior judges lack an adequate understanding of the working of in-house mechanisms (for example, vigilance mechanisms).[53] Therefore, advocates and legal academics having expertise and practising experience were invited.[54] In the case of advocates, those practising in the High Court(s) or subordinate courts were preferred over those who practise in the Supreme Court or tribunal judiciary exclusively.[55] Likewise, the study focussed more on collecting the responses from subordinate court judges who are regulated through vigilance mechanisms.[56]

The surveys were conducted between December 2020 and July 2021. The survey template for judges, academics and advocates had 10, 11 and 14 questions respectively. The surveys for judges and advocates covered the following topics:

- the role and efficacy of vigilance mechanisms in upholding judicial independence
- the efficacy of vigilance mechanisms

[52]The data is mainly collected online through SmartSurvey.com and via email. A couple of participants provided the survey responses via WhatsApp as well.

[53]The pilot study was carried out in Madhya Pradesh, Karnataka and Maharashtra.

[54]Efforts were made to collect the data from all across India; therefore, all the potential respondents, having adequate knowledge, experience and expertise, were invited. Except for one high court judge, a district judge, four advocates and two legal academics, none of the participants was previously known to the researcher.

[55]Out of the 53 advocates consulted, 19 practised in the high courts, 16 in the trial courts, and eight concurrently practised both in the high courts and trial courts. In addition, 3 advocates concurrently practised in the SC and HCs, whereas 2 advocates exclusively practised in the SC. Further, 2 public prosecutors also participated in the study; 3 participants were in academia at the time of the survey, though they had practised law previously. Except for 3 participants, all have had more than three years of legal practice.

[56]Except for one judge, all respondent judges have or had served the judiciary as subordinate court judges for more than 3 years.

- monitoring and surveillance of subordinate court judges
- potential abuse of vigilance mechanisms
- merits and demerits of vigilance mechanisms
- exertion of inappropriate influences on subordinate court judges and court staff, and
- involvement of advocates in judicial corruption.

On contested issues such as judicial independence, accountability and conduct enforcement, academic views gain considerable importance as they, to some extent, inform public perception. Against this backdrop, the project aimed to elicit academic views to test the hypotheses. Although the survey templates for judges and advocates were substantially similar, they were phrased and arranged differently to enable the participants to effectively articulate their viewpoints as members of entwined yet distinct professions.[57] The survey template for legal academics was designed differently: the first part of the survey focused on removal and in-house procedures that apply to the higher judiciary. It also included a couple of questions on the transparency and openness of the in-house procedure. The second part had questions on High Court vigilance mechanisms; however, since most legal academics would have limited interaction with vigilance mechanisms, specific questions on the internal dynamics of the mechanisms were avoided.[58] Nonetheless, their views on the effectiveness of the overall functioning of vigilance mechanisms and their implications on judicial independence were elicited. In addition, there were a few demographic questions including name, designation, email, and High Court jurisdiction; these questions, along with the participants' voluntary consent for participation, were mandatory.

In total 110 participants responded to online surveys. The relevant demographic information of the participants is as under:

The number of participant judges: 19 (10 District Judges, 8 other subordinate court judges and a High Court judge)[59]

The number of participant advocates: 53[60]

The number of legal academics: 36[61]

The number of former vigilance officers: 2[62]

[57]The surveys were initially designed to be paper surveys; however, due to the Covid pandemic, field visits had to be abandoned. With a view to conducting online surveys, the survey templates were redesigned, and the number of questions had to be reduced. For this reason, data collected during the pilot study could not be used for the analysis.

[58]Out of 36 legal academics consulted, five hold/held the position of Professor, another five were Associate Professors, 17 were Assistant Professors, two were research scholars and seven others held other academic positions.

[59]Out of 19 judges, 6 judges were retired and the remaining were sitting judges. The judges represented 9 different high courts out of 25 (i.e. the High Court of Patna[3], Delhi[2], Rajasthan[2], Karnataka[2], Punjab and Haryana[2], Bombay[2], Orissa[2], Madras[1], and Allahabad[1]). The numerical noted in "[]" represents the number of participants from that High Court.

[60]The participant advocates represented the High Court of Delhi[9], Madras[6], Karnataka[5], Bombay[5], Allahabad[3], Rajasthan[3], Punjab and Haryana[3], Calcutta[3], Kerala[2], Madhya Pradesh[2], Jammu and Kashmir [2], Guwahati[2], Patna[1], Gujarat[1], Andhra Pradesh[1], and Odisha[1]. Four participants did not mention the high court jurisdiction. In all, the advocates represented 16 high courts (out of 25).

[61]The participant legal academics represented the State of Uttar Pradesh[3], Maharashtra[3], Gujarat[2], Himachal Pradesh [2], Kerala[2], Madras[2], Madhya Pradesh[2], Uttarakhand[1], West Bengal[1], Rajasthan[1], Assam[1], Odisha[1], Karnataka[1], and union territories New Delhi[4] and Andaman Islands[1]. Another 9 participants did not mention the name of a state or union territory that they have represented. In all, the legal academics represented 13 states (out of 29) and 2 union territories (out of 7).

[62]One of the former vigilance officers is presently serving as a High Court judge, therefore, demographic details of the vigilance officers are not disclosed here.

Statistical analysis scales

The 10-point Likert rating scale (i.e. on a scale of 1–10[63]) is used to assess the confidence of respondents in vigilance mechanisms' efficacy in upholding judicial independence. The 10-point scale is interpreted as follows: if the respondent (on a scale of 1–10) grades between –

(a) 1–2: it signifies "no confidence" in the vigilance mechanisms
(b) 3–4: it signifies a very low level of confidence (for short, "very low confidence") in the vigilance mechanisms
(c) 5–6: it signifies a low level of confidence (for short, "low confidence") in the vigilance mechanisms
(d) 7–8: it signifies a high level of confidence (for short, "high confidence") in the vigilance mechanisms
(e) 9–10: it signifies a very high level of confidence (for short, "very high confidence") in the vigilance mechanisms

The initial prediction was that the respondents would award vigilance mechanisms higher points – i.e. not less than 7 (on a scale of 1–10) – signifying "high" or "very high" confidence in the vigilance mechanisms' efficacy in upholding judicial independence. The prediction was consistent with the hypotheses. And considering the overwhelming significance the judiciary attaches to the in-house mechanisms to secure and uphold judicial independence, the initial assumption was strongly justified.

To assess the confidence of each group, the mean value is used to present the analyses, as per the scale presented above. For instance, if the mean value is equal to or less than 2, it is interpreted as the respondents showing "no confidence" in the vigilance mechanisms, and so forth; likewise, if the mean value ranges between 3–4, it is construed as "very low confidence"; if the mean value ranges between 5–6, it is read as "low confidence"; if the mean value ranges between 7–8, it is seen as showing "high confidence"; and, if the mean value ranges between 9–10, it means that the respondents show "very high confidence".[64] A 4-point Likert scale ("strongly agree", "somewhat agree", "somewhat disagree", and "strongly disagree") is used, for example, to examine the potential misuse of vigilance mechanisms. Likewise, to assess the efficacy of the mechanisms, for example, in combating judicial corruption or misconduct, close-ended ("yes"/"no") questions are used.

Limitations of the study

Though the research conclusions are informed by the responses of a good number of subordinate court judges and other stakeholders, the sample size (n = 110), especially for quantitative analysis, is considerably small. For example, the grand

[63]Where "1" meant the mechanism "does not protect at all" and "10" meant "protects to a great extent".
[64]If the mean value is a fractional part of a mixed number, and the fractional part is more than half (i.e. more than 0.50) it is rounded up to the next whole number (for example, 5.55 is rounded as 6) and if it is less than a half, the preceding whole number stays the same (for example, 5.45 is read as 5).

mean value (5.30; n = 100) on the question of vigilance mechanisms' efficacy in upholding judicial independence may not significantly deviate, however, the mean value of judges' response (5.81; std. error 0.78; n = 16) may vary should the sample size increase. Therefore, future studies should increase the size of the data set by recruiting a greater number of subordinate court judges. Another limitation of the study is that it mainly focuses on examining the implications of in-house regulatory mechanisms on judicial independence and accountability; the reforms that aim to strengthen judicial independence and address judicial accountability deficits in India should look beyond judicial conduct regulation regimes. Therefore, themes like judicial appointment, deployment, training, welfare, appraisal, and work conditions should be empirically studied. As already noted in the method section, the COVID-19 pandemic forced some changes in the methodology, as a result, the redesigned questionnaires had fewer questions than previously planned. Future research may aim to generate a comprehensive data set that facilitates academic enquiry beyond judicial conduct regulation.

IV. Results

Regulatory mechanisms for the lower judiciary in India

Judges' views on vigilance mechanisms

(i) Protection from false and vexatious complaints

The judges (n = 16) were asked to what extent (on a scale of 1–10[65]) the vigilance mechanisms protect them from false and vexatious complaints. It was assumed that most of the participants judges would rate vigilance mechanisms highly, however, the responses did not strongly corroborate the assumption: out of 16 judges, 9 (56.25%) did not grade more than 5 on a scale of 1–10. Only 7 participants (43.75%) awarded more than 5. The overall mean was 5.81 (std. error 0.8), signifying the "low confidence" of judges in the vigilance mechanisms' efficacy in protecting them from false and vexatious complaints.

(ii) Misuse of vigilance mechanisms

Critiques of vigilance mechanisms regard the potential misuse of vigilance as a significant flaw.[66] The misuse of the vigilance mechanism at the instance of High Court judges and High Court officials has been substantiated by several SC judgements.[67] The participants were asked if they agree that the mechanisms are susceptible to misuse at the instance of High Court judges or senior officials in the High Court. Close to two-thirds of judges (62.50%; std error 0.28) either "strongly agree" or "somewhat agree" that the mechanisms are prone to misuse (see Figure 1).

[65]Where "1" meant the mechanism "does not protect at all" and "10" meant "protects to a great extent".
[66]Gopal (n 23).
[67]See (n 42).

			Response Percent	Response Total
1	Strongly agree		37.50%	6
2	Somewhat agree		25.00%	4
3	Somewhat disagree		18.75%	3
4	Strongly disagree		18.75%	3

Statistics										
	Minimum	1	Mean	2.19	Std. Deviation	1.13	Satisfaction Rate	39.58	answered	16
	Maximum	4	Variance	1.28	Std. Error	0.28			skipped	0

Figure 1. Critics say that the vigilance mechanism could be misused against the subordinate court judges at the instance of High Court judges or higher officials in the High Court Registry. Do you agree?.

(iii) Informal nature of vigilance mechanisms: discreet inquiries and surprise visits and inspections, etc.

The subordinate court judges are subjected to informal surveillance by the High Courts: the court staff, advocates, colleagues, and senior judges are discreetly contacted to seek relevant information or input concerning a judicial officer. Likewise, surprise visits and inspections are carried out by vigilance officers and senior judges to uncover any nonfeasance or malfeasance by judges or court staff. However, the informal oversight could undermine or disrupt the work of a judge; such measures could also propagate insecurities and distrust in judges, affecting their interpersonal relationships with colleagues, senior judges, advocates, and court staff. In this regard, the judges (n = 16) were asked whether the informal oversight affects their judicial or administrative work. A vast majority of judges (62.50%) confirmed that it affects their work. A considerable percentage of judges (43.75%) also felt that they were unnecessarily inquired or questioned or subject to disciplinary proceedings by the High Court or the vigilance officers. A significant minority (31.25%) of judges felt they that are unnecessarily watched or monitored by the High Court or the vigilance officers. These findings substantially diminish the confidence in the hypothesis that vigilance mechanisms uphold decisional independence and administrative autonomy of subordinate court judges.

(iv) Judicial independence and overall performance of the vigilance mechanism

To test the validity of the hypotheses, the participants were asked whether in their view vigilance mechanisms uphold the independence of the lower court judges. Though a good majority of judges (56.25%; n = 16) graded more than 5 (on a scale of 1–10), the mean value

remained below 6 (5.81; std. error 0.78). Even when rounded up to 6, the mean value does not fulfil the critical value to lend strong credence to the hypotheses – it clearly shows "low confidence" of judges in the vigilance mechanisms' efficacy in upholding judicial independence. On the contrary, a significant minority of judges (43.75) graded less than 6, indicating a weak correlation between the hypotheses and the perceptions of the participant judges. Responses to the follow-up questions on the effectiveness of vigilance mechanisms in dealing with judicial misconduct and corruption further diminish the confidence in the hypotheses. Only half of the judges (50%; n = 16) graded more than 5,[68] suggesting the "low confidence" of judges in the efficacy of vigilance mechanisms in dealing with judicial misconduct; the mean value also remained low (5.25; std. error 0.65), confirming a weak correlation between the hypotheses and the views of judges. Moreover, 68.75% of judges (n = 16) did not grade more than 5, indicating that vigilance mechanisms are not very effective in dealing with judicial corruption (mean 5.06; std. error 0.63). A considerable percentage of judges (56.25; n = 16) did not grade more than 5,[69] signifying they were not satisfied with the overall performance of the vigilance mechanism (mean 5.25; std. error 0.6).

On the question of vigilance mechanisms' efficacy in upholding judicial independence, although the mean value remained close to 6 (5.81; on a scale of 1–10) it suggests a weak correlation between the hypotheses and the perception of judges; the data does not bear out a strong inference suggesting a "high confidence" as initially expected. Further, judges' responses on the effectiveness of vigilance mechanisms in dealing with judicial corruption, misconduct and general oversight over subordinate courts significantly diminish the confidence in the hypotheses.

Advocates' views on vigilance mechanisms

As noted earlier, the survey for advocates included additional questions (14 in total). As the vigilance mechanisms deal with complaints of corruption and misconduct exclusively, the conceptual demarcation has become irrelevant and blurred.[70] Therefore, the project uses the term "inappropriate influences" to survey the overall perception of advocates on judicial corruption and misconduct. Likewise, the participants were asked to comment on the role of advocates in judicial corruption and conduct enforcement. They were also asked to comment on the merits and weaknesses of in-house vigilance mechanisms.

(i) Exertion of "inappropriate influences" on judges and court staff

The participant advocates (n = 50) were asked to what extent they agree that judges could inappropriately be influenced. 60% of the respondents either strongly agree or somewhat agree that inappropriate influences may induce judges to decide cases in a specific way (see Figure 2). The respondents who strongly agreed or somewhat agreed were asked how often judges' decisions were inappropriately influenced. A strong majority of advocates (57.89%; n = 38) responded that judicial

[68]On a scale of 1–10 where "1" means "not at all effective" and "10" means "effective to a great extent".
[69]On a scale of 1 to 10 where "1" means "not at all satisfied" and "10" means "highly satisfied".
[70]Two of the former vigilance officers were asked to note, on average, how many judicial officers are prosecuted for corruption per year. One vigilance officer replied "none" and another did not respond.

			Response Percent	Response Total
1	Strongly disagree		18.00%	9
2	Somewhat disagree		12.00%	6
3	Somewhat agree		58.00%	29
4	Strongly agree		12.00%	6

Statistics										
	Minimum	1	Mean	2.64	Std. Deviation	0.91	Satisfaction Rate	54.67	answered	50
	Maximum	4	Variance	0.83	Std. Error	0.13			skipped	0

Figure 2. To what extent do you agree that individual judges can be induced to decide cases in a specific way by exerting inappropriate influences?.

determinations are inappropriately influenced regularly or occasionally (see Figure 3). The findings clearly suggest a strong correlation between the views of advocates and the public perception that judicial corruption is endemic in India.

Transparency International ("TI") has shown that the court staff are more corruptible than subordinate court judges.[71] Therefore, advocates were asked whether the court staff could be induced to treat cases or litigants in a specific way. Over two-thirds of advocates (68%; n = 50) either somewhat agree or strongly agree that court staff can be induced to treat cases or litigants in a specific way by exerting inappropriate influences (std. error 0.14).[72] Those who strongly agreed or somewhat agreed were asked how often can the court staff be inappropriately induced? Yet again a considerable majority of advocates (62.17%; n = 37) noted that the court staff can be inappropriately induced occasionally (35.14%) or regularly (27.03%; std. error 0.16), substantiating TI's findings.

(ii) The role of advocates in judicial corruption, etc.

TI also reported that advocates act as a conduit of judicial corruption in India.[73] To reassess this finding, the participants were asked whether advocates act as an agent (a conduit) of judicial corruption. A considerable majority of advocates (58%; n = 50) either strongly agree or somewhat agree[74] that the advocates act as a conduit of judicial corruption (std. error 0.14). Those who strongly agreed or somewhat agreed were

[71]Transparency International, 'Global Corruption Report: Corruption in Judicial Systems' 215 (2007) < https://images.transparencycdn.org/images/2007_GCR_EN.pdf> accessed 4 April 2022.
[72]Somewhat agree 46% and strongly agree 22%.
[73]Transparency International (n 71) 215.
[74]Somewhat agree 36% and strongly agree 22%.

			Response Percent	Response Total
1	Very Rarely		21.05%	8
2	Rarely		21.05%	8
3	Occasionally		52.63%	20
4	Regularly		5.26%	2
Statistics	Minimum 1 Mean 2.42 Std. Deviation 0.88 Satisfaction Rate 47.37 Maximum 4 Variance 0.77 Std. Error 0.14		answered	38
			skipped	12

Figure 3. If you strongly disagree or somewhat disagree with question (5), please take up the next question. If you somewhat agree or strongly agree with question (5), did this occur.

asked how often advocates act as an agent of judicial corruption. In response, around 61% of advocates agree that advocates occasionally (43.90%) or regularly (17.07%) act as a conduit of judicial corruption (std. error 0.16).

Many subordinate court judges allege that advocates try to intimidate/bully judges by threatening to complain against them to the High Court.[75] Advocates were asked to respond to this. The findings strongly corroborated the allegation. Almost 60% of the respondents (n = 49) either somewhat agree (38.78%) or strongly agree (20.41%) that advocates tend to intimidate judges by threatening to complain (std. error 0.16). A considerable percentage of advocates (47.22; n = 36) also agree that such intimidation occurs occasionally (36.11%) or regularly (11.11%; std. error 0.17).

(iii) In-house mechanisms and protection of judicial independence

To test the hypotheses advocates were asked to what extent the vigilance mechanisms uphold the independence of lower court judges. However, similar to what was found in the case of judges, the findings did not establish a *strong* correlation between the hypotheses and the views of the advocates. A majority of advocates (56.25; n = 48) graded more than 5 (on a scale of 1 to 10), indicating that to some extent the vigilance mechanisms uphold the independence of lower courts; however, as in the case of judges, the mean value remained slightly below 6, signifying a weaker correlation and "low confidence" of advocates in vigilance mechanisms (for further details, see Figure 4).

[75]See, for example, *Court of its own motion v B.D. Kaushik* 1993 CriLJ 336; *R. K. Garg v State of Himachal Pradesh* 1981 SCALE (1) 767.

The advocates' response to a question on the potential misuse of vigilance mechanisms further diminishes the confidence in the hypotheses. Two-thirds of advocates (65%) either somewhat agree (42.86%) or strongly agree (22.45%) that the vigilance mechanisms could be misused against the subordinate court judges at the instance of High Court judges or higher officials in the High Court (for further statistical details, see Figure 5 below).

The responses of advocates on the effectiveness of vigilance mechanisms did not reinforce "high confidence". Only 56% of the respondents (n = 50) either somewhat agree or strongly agree that the vigilance mechanisms are effective in handling issues of judicial corruption or misconduct, whereas 44% of the respondents either strongly disagree (22%) or somewhat disagree (22%), casting doubt on the efficacy of vigilance mechanisms (std. error 0.15).

(iv) Merits of vigilance mechanisms

Advocates were asked to note the merits of vigilance mechanisms. Some of the respondents noted that the in-house mechanisms help maintain institutional integrity, institutional image, public confidence, and confidentiality of judges during the investigation. The respondents viewed that to some extent the mechanism maintains an effective oversight over judicial officers and court staff and reduces the opportunities for corruption and misbehaviour; a couple of participants regarded the vigilance mechanism as "quick". A couple of advocates thought that the mechanism shields judges against baseless and motivated allegations. One advocate noted that the mechanism if it functions properly would instil fearlessness in honest judges, whilst discouraging dishonest judges from engaging in corruption. Another advocate noted that the vigilance officer "is one of the senior-most District Judges waiting in the aisles for getting elevated to the High Court. It can be presumed that he would have the utmost integrity and honesty to conduct a proper preliminary enquiry on receipt of a complaint against a judicial officer". A few respondents noted that there are no merits.

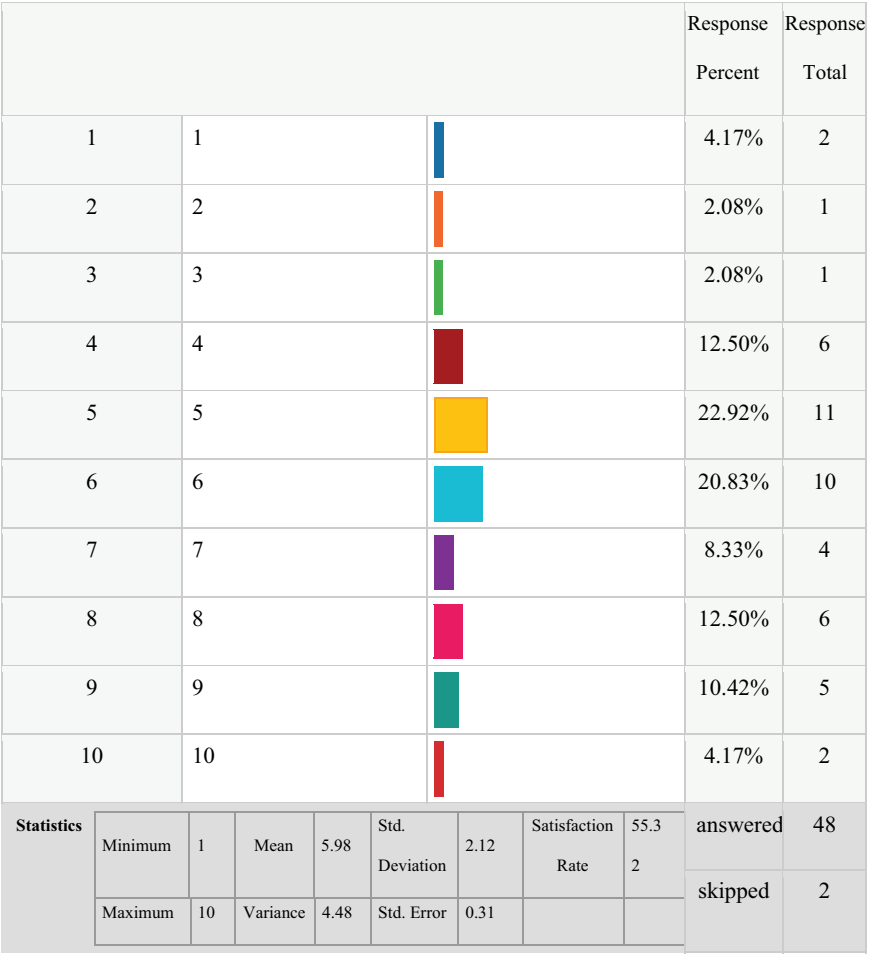
(v) Weaknesses of vigilance mechanisms

Most of the advocates noted that the vigilance mechanisms exert undue influence, interference and threaten the decisional autonomy of judges; some alleged that the mechanisms act with ulterior motives[76] and bias, and several others noted that the mechanisms are non-existent, non-transparent, and ineffective and are "plagued by delay". Some of the respondents noted that the mechanisms do not strictly comply with the rules. Some alleged that the mechanism harbours cronyism, cover-up, and acts as a veil.

One former High Court judge [now an advocate of the SC] described the weaknesses of vigilance mechanisms as under:

> . . . It takes enormous time - to be precise many years . . . while the corruption charges are being enquired into the officer continue getting . . . benefits and in some cases superannuates as well! The Judge of the courts is reported to influence the outcome in favour of the corrupt on caste and other considerations . . . [The] weakness of the vigilance wing of a [high] court

[76]One participant noted that "Sometimes, the vigilance officer eliminates a contender for elevation as a judge of the High Court by initiating an enquiry against that officer."



		Response Percent	Response Total
1	1	4.17%	2
2	2	2.08%	1
3	3	2.08%	1
4	4	12.50%	6
5	5	22.92%	11
6	6	20.83%	10
7	7	8.33%	4
8	8	12.50%	6
9	9	10.42%	5
10	10	4.17%	2

Statistics									
	Minimum	1	Mean	5.98	Std. Deviation	2.12	Satisfaction Rate	55.32	answered 48
	Maximum	10	Variance	4.48	Std. Error	0.31			skipped 2

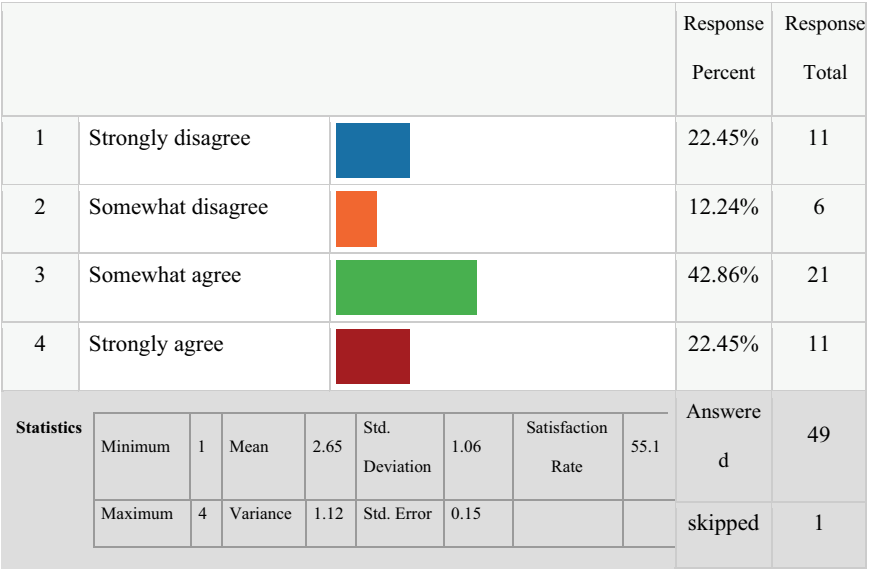
Figure 4. On a scale of 1–10 (where "1" means "not at all" and "10" means "to a great extent"), please check the box to indicate your response as to what extent the vigilance mechanism upholds the Independence of lower court judges in India.

> is [that it is] not being allowed to function freely. My personal experience says that due to the shackles of working under High court judges, the section [the vigilance mechanism] appears demoralized and has turned out.

Legal academics' view on in-house mechanisms

(i) Effectiveness of vigilance mechanisms

The legal academics were asked to what extent the High Court vigilance mechanism is effective in combating judicial corruption. Most of the respondents (60%; n = 35) did not grade more than 5, suggesting that vigilance mechanisms are not very effective in dealing with judicial corruption (std. error 0.34). The mean value also remained low (5.17, the lowest among all three groups of respondents), signifying a weak correlation between the hypotheses and views of the academics. Even with respect to judicial misconduct, over half of the



		Response Percent	Response Total
1	Strongly disagree	22.45%	11
2	Somewhat disagree	12.24%	6
3	Somewhat agree	42.86%	21
4	Strongly agree	22.45%	11

Statistics								
	Minimum	1	Mean	2.65	Std. Deviation	1.06	Satisfaction Rate	55.1
	Maximum	4	Variance	1.12	Std. Error	0.15		

Answered	49
skipped	1

Figure 5. Critics say that the vigilance mechanism could be misused against the subordinate court judges at the instance of High Court judges or higher officials in the High Court Registry. Do you agree?.

respondents (52.77%) graded less than 6, and the mean value also remained below 6 (5.5; std. error 0.36), denoting the "low confidence" of respondents with respect to the effectiveness of vigilance mechanisms in enforcing judicial conduct. Almost all the respondents (91.66%; n = 36) either somewhat agree or strongly agree that vigilance mechanisms could be misused against the subordinate court judges at the instance of High Court judges or higher officials in the High Court Registry (std. error 0.1; see Figure 6).

(ii) Upholding judicial independence

Amongst the three groups of respondents, academics have shown considerable "low confidence" in vigilance mechanisms' efficacy in upholding judicial independence; most of the respondents (61.11%; n = 36) did not grade more than 5 (on a scale of 1 to 10[77]), demonstrating "low confidence" in the vigilance. The mean value also remained considerably low (5.06) suggesting a weak correlation between the hypotheses and the views of legal academics.

(iii) The role of advocates in judicial corruption

Most legal academics (88.67%; n = 35) either strongly agree or somewhat agree that advocates in India act as a conduit of judicial corruption (see Figure 7).

[77]Where "1" means "not at all" and "10" means "to a great extent".

			Response Percent	Response Total
1	Strongly agree		22.22%	8
2	Somewhat agree		69.44%	25
3	Somewhat disagree		5.56%	2
4	Strongly disagree		2.78%	1

Statistics										
	Minimum	1	Mean	1.89	Std. Deviation	0.61	Satisfaction Rate	29.63	answered	36
	Maximum	4	Variance	0.38	Std. Error	0.1			skipped	0

Figure 6. Critics argue that the High Court vigilance mechanism, as it is an informal and in-house apparatus, could be misused against the subordinate court judges at the instance of High Court judges or higher officials in the High Court Registry. Do you agree?.

The removal and in-house procedure for the Supreme Court and High Court judges

A good majority of the respondents (52.78%; n = 36) think that the removal procedure, as provided in the Constitution, is ineffective (std. error 0.08). Most of the respondents (77.78%; n = 36) conclude that the in-house procedure is ineffective in tackling judicial corruption (std. error 0.07). Likewise, a strong majority of respondents (61.11%; n = 36) also find the in-house procedure not effective in dealing with judicial misconduct cases (std. error 0.08). The legal academics were also asked if they are satisfied with the transparency, openness and accountability measures that in-house committees follow. Most of the respondents (77.78%; n = 36; see Figure 8) answered negatively, signifying their dissatisfaction (std. error 0.07).

Suggested reforms

Judges

The participant judges were asked to suggest reforms to strengthen the vigilance mechanism. Quite a few recommendations were made, some notable ones are thematically presented below.

(i) Strengthening vigilance setup

A number of judges suggested that the "vigilance [mechanism] should be restructured to function as an effective body". They recommended that judicial officers with integrity and honesty should be appointed as vigilance officers. The judges who merely follow the

			Response Percent	Response Total
1	Strongly agree		42.86%	15
2	Somewhat agree		45.71%	16
3	Somewhat disagree		8.57%	3
4	Strongly disagree		2.86%	1

Statistics									answered	35
	Minimum	1	Mean	1.71	Std. Deviation	0.74	Satisfaction Rate	23.81		
	Maximum	4	Variance	0.55	Std. Error	0.13			skipped	1

Figure 7. Critiques say that the advocates often act as a conduit (an agent) of judicial corruption, do you agree?.

instructions of senior judges ("yes men" or "favourites") should not be appointed as vigilance officers. The judges also urged that vigilance officers must be objective, competent, and professional, and they should not act "without ascertainment of facts". Some of the judges observed that there should be a separate law regulating vigilance mechanisms; and that there should be rules to guide the vigilance mechanism.

(ii) Complaints and inquiries

Judges noted that despite clear guidelines from the CJI to dismiss complaints that are not supported by an affidavit, the vigilance mechanisms continue to initiate inquiries based on such complaints. It was also revealed that anonymous complaints are inquired into, and disciplinary actions are taken against judicial officers, at the discretion of the vigilance officer. The judges recommended that false and vexatious complaints should not be inquired into, and judicial officers should not be asked to respond to unsubstantiated complaints. One of the judges proposed a "well determined and specific policy" on complaints to avert the abuse of discretionary power by vigilance officers, without impeding judicial independence. Another judge observed that

			Response Percent	Response Total
1	Yes		22.22%	8
2	No		77.78%	28

Statistics									
	Minimum	1	Mean	1.78	Std. Deviation	0.42	Satisfaction Rate	77.78	Answered 36
	Maximum	2	Variance	0.17	Std. Error	0.07			skipped 0

Figure 8. In terms of transparency, openness, and accountability, are you satisfied with the way in which the in-house committees work?.

> . . . complaints requiring clarification should only be sent for comments [of a concerned judge]. The process needs to be balanced. So that the honest officers also do not feel discouraged and corrupt officers are not spared. Scrutiny of the complaint needs a thorough preliminary assessment to take the final call. [The disciplinary inquiry] should not be a routine thing.

(iii) High Court officials and senior judges

The views of some of the judges reflect their discontent with senior judges and High Court officials. One judge urged that "higher-ups must not look [at] the judicial officer on caste basis to proceed against the officer". The "High court is not at all objective in dealing with [the] district judiciary. They are being punished for *bonafide* judicial order[s]. District judiciary works in [an] environment of fear of Bar and High Court, unwholesome for the system", noted another judge. Another judge recommended that " . . . the officials in vigilance [department] need to be frequently changed. The High Court officials . . . should be rotated with subordinate courts". One judge called for "an independent authority under the exclusive control of Chief Justice [of the High Court]" to deal with judicial complaints. Judges also demanded transparency and adherence to the principle of natural justice in disciplinary proceedings. One judge recommended that higher courts ensure that the vigilance mechanisms work fairly, fearlessly, and independently. No judge should pressurize or bully the officer heading it for any extraneous reasons.

The recommendations strongly reflect the inadequacies of vigilance mechanisms and dissatisfaction of judges[78] about the functioning of the High Court vigilance, strongly deprecating the hypothesis that the vigilance mechanisms uphold individual and internal judicial independence of the subordinate court judges.

[78]One judge found the present mechanism "quite effective".

Advocates

"Transparency" topped the list of suggestions offered by the advocates. The participants also recommended adequate autonomy to the vigilance mechanisms. In this regard, one of the respondents noted as follows:

> . . . this mechanism [the vigilance mechanism] can be used against the subordinate judicial officers by the High Court judges or the High Court registrars if they [judges] don't abide by their orders or any unofficial need . . . the higher judiciary completely controls the subordinate judiciary in various ways . . .

The advocates also recommended that the vigilance mechanisms should be unbiased and protect the independence of subordinate courts and use the oversight powers proportionately. Unsurprisingly, speedy disposal of complaints, immediate action, and regular monitoring of subordinate courts were also recommended.

Suggestions of legal academics on vigilance mechanisms

Like the advocates, the academics also recommended independent, transparent, accountable, and robust mechanisms for judicial conduct regulation. They also called for objectivity in the treatment of subordinate judges by the mechanisms. A couple of participants demanded that the findings of vigilance mechanisms be made available online.

Comments and suggestions of legal academics on the in-house procedure for the higher judiciary

As noted above, questions relating to the efficacy of the removal and in-house procedure for the higher judiciary were asked only to the legal academics. Along with the open-ended questions, the survey questionnaire provided a comment section to elicit a detailed responses from the participants. Likewise, four respondents (3 advocates and a former High Court judge) have also responded to the same descriptive questions on the removal and in-house procedure for the higher judiciary. Therefore, the analysis in the following sections is based on the descriptive responses of 36 legal academics, 3 advocates and a former High Court judge (in all, 40 responses).

(i) Effectiveness of the removal procedure

The removal procedure is too slow, lacks transparency and there is no provision to prevent the judge facing the removal motion from exercising his or her judicial functions. Even when a judge is convicted of misconduct or corruption, party politics in parliament may sabotage the process of removal (for example, *Justice Ramaswami case*[79]), observed one participant. "Though independence of [the] judiciary is really important, making the removal almost impossible, [it] does not really serve the independence", noted another respondent.

(ii) Effectiveness of the in-house procedure

[79] *Sarojini Ramaswami v Union of India* 1992 4 SCC 506.

The respondents noted that the in-house procedure lacks transparency; some participants condemned the in-house procedure as informal, a cloak and "farcical". Another participant noted that the in-house committees consist of an exclusive coterie of judges, without participation from laypersons or "distinguished jurists". A former High Court judge noted that "in some cases, the politics of caste, regional bias, and things like these may find favour with the members [of the in-house committee] to wantonly put an honest judge in trouble". Another participant viewed that there is a lack of genuine interest within the judiciary to address issues of judicial corruption and misconduct, therefore, unless there is a public outcry, the judiciary does not act. Conversely, a couple of respondents opined that the in-house procedure is not entirely ineffective.

(iii) Recommendations to reform the in-house procedure

The complaints against the High Court and the Supreme Court judges should be expeditiously inquired into, and disciplinary actions should be taken without undue delay. One participant, whilst supporting the NJAC Act (which was struck down by the SC) observed that "setting up the National Judicial commission was a small step in the right direction . . . I feel that the power of judicial review, if not abused on such occasions, overstretched to create a safety shield for judges as regards their misdeeds". Another advocate made key suggestions to strengthen in-house mechanisms: (i) even when the judge facing the allegations retires or resigns, the investigation and the removal procedure should continue; and (ii) once an investigation committee is formed, it should not be reconstituted till the final conclusion of the proceedings, even if one of its members is elevated to the SC.

(iv) Transparency, openness, and accountability of in-house mechanism

The majority of the respondents commented that the in-house mechanisms are opaque and obscure. One respondent commented that "[T]he in-house committee must take issues concerning transparency, openness, and accountability more seriously . . . " A High Court judge proposed constitutional amendments to create a transparent, accountable body of imminent persons to deal with judicial conduct regulation.

(v) Suggestions to improve judicial accountability

The participants urged reforms in the judicial appointments process. Some felt that there is a need for legislative reforms with respect to judicial conduct regulation and accountability. One participant noted that

> [T]here is an urgent need for an independent oversight body free from the dictates of all the three wings of the government to enquire, investigate and deal with matters of judicial misconduct and corruption. The garb of independence of the judiciary can no longer be used by the judiciary to thwart such mechanisms created to ensure judicial accountability.

V. Analysis

Out of 110 respondents, 100 of them graded the vigilance mechanisms on the question of whether the vigilance mechanisms uphold the judicial independence of subordinate court judges. Out of 100 respondents, 11 graded less than 2 (on a scale of 1–10) signifying that they show "no confidence" in vigilance mechanisms. 18 respondents graded between 3–4, signifying "very low confidence"; 38 respondents graded between 5–6, indicating "low confidence"; 20 respondents graded between 7–8, signifying "high confidence" and only 13 graded between 9–10, demonstrating "very high confidence". Out of the total number of respondents (100), two-thirds of respondents (67) did not grade more than 6, clearly indicating their "low confidence" in vigilance mechanisms. The grand mean value of all responses, across three groups, remained low (5.62), confirming the "low confidence" (see Figure 9).

Therefore, the hypotheses that the vigilance mechanisms uphold judicial independence of subordinate court judges; and that the key stakeholders – judges, lawyers, and legal academics – show a "high level of confidence" in the efficacy of in-house mechanisms in upholding judicial independence have no sufficient empirical evidence to support. On the contrary, a strong majority of respondents (62.74%; n = 51, judges, and academics; mean value 5.13) showed "low confidence" in vigilance mechanisms' efficacy in combating judicial corruption. And, more than half of the respondents (51.92%; n = 52, judges, and academics; mean value 5.36) showed "low confidence" in vigilance mechanisms' efficacy in dealing with judicial misconduct. Further, most of the respondents (74.25% = 62.50% of judges, 65% of advocates and 91.66% of academics; n = 101) either strongly agreed or somewhat agreed that vigilance mechanisms can be misused against subordinate court judges. In addition, a strong majority of judges (56.25%; n = 16) do not think that the vigilance mechanism protects them from false and vexatious complaints.

In this milieu, it is necessary to examine the implications of in-house (vigilance) mechanisms on the individual and internal judicial independence of judges. It should be noted that the respondents were not directly asked to respond to questions on the implications of the in-house mechanisms on individual and internal independence for a key reason – internal judicial independence, though a key aspect of judicial independence, is yet to emerge as a normative concept in India; the distinction between the individual and internal judicial independence is, to a great extent, blurred.[80] In India, individual independence is not adequately emphasized from a regulatory perspective, whereas internal judicial independence is a vanishing point of jurisprudence. Therefore, with a view not to superimpose the conceptual distinctions on the respondents, they were asked to respond on the overall functioning of the vigilance mechanisms, which would help assess the implications of the mechanisms on individual and internal independence. In answering the research question, the following subsection analyses the functioning of vigilance mechanisms in light of the standards outlined in various international instruments.

[80]More particularly, "internal judicial independence" has not been emphasized by courts or the Law Commission. Even the academic literature on the topic is limited.

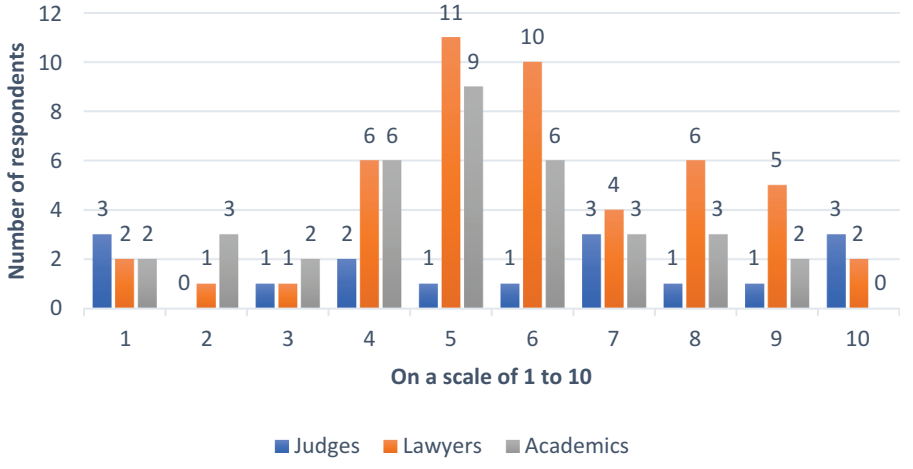


Figure 9. Overall confidence of the subject experts on the vigilance mechanism.

Do the regulatory mechanisms in India uphold internal and individual judicial Independence?

As briefly discussed in the Introduction, the international standards and best practices require the judicial conduct regulation regimes to be independent, impartial, and competent. The regulatory regimes should have a robust institutional framework, and they should follow a clear disciplinary procedure; the conduct rules should be applied and enforced fairly and consistently.[81] It is also important that the regimes themselves are transparent and accountable. Contravention of any of these standards would impinge individual or internal judicial independence. In the following sub-sections, the functioning of the in-house mechanisms is briefly audited against these international standards.

Independent and impartial regulatory mechanisms

In India, the in-house mechanisms for both higher and subordinate judiciary are administered exclusively by senior judges. As a result, the mechanisms lack any semblance of being independent, also calling into question their impartiality.

Presently, in some High Courts, the vigilance mechanisms work under the direct control of the Chief Justices of the High Courts to avert the interferences from puisne High Court judges and officials.[82] However, this reform is not consistent with international standards, as it does not confer any autonomy to vigilance mechanisms. Further, the High Court Chief Justices are from outside that High Court. They lack adequate understanding of the local judicial environment and tend to rely on local judges of that High Court. Therefore, in reality, the vigilance mechanisms are susceptible to the undue influence of the local High Court judges. It is needless to say that such conditions are not conducive to individual and internal judicial independence.[83]

[81] See generally García-Sayán (n 8) 20–21.
[82] ibid.
[83] As noted in Section IV above, close to two-thirds of the judges (62.50%; std error 0.28) either "strongly agreed" or "somewhat agreed" that the vigilance mechanisms are prone to misuse.

Institutionalized approach

The vigilance mechanisms in India aim to abate judicial corruption and enforce judicial discipline through disciplinary sanctions and informal oversight over the subordinate court judges. The aim is too ambitious for the informal and ill-structured mechanisms. For instance, the Rajasthan High Court has 1026 subordinate court judges functioning in its jurisdiction,[84] but to oversee these judges there is only one Registrar (Vigilance) supported by the administrative staff. When necessary, with the permission of the Chief Justice of the High Court, the vigilance officer can take the assistance of other judges, but the officer has to discharge the regular vigilance functions within the constraints of the High Court's resources. The resource constraints are common, most of the High Court Vigilance Cells have less than 3 vigilance officers to assist Registrar (Vigilance) in the discharge of anti-corruption, judicial conduct regulation, and vigilance functions.[85] As noted in the results section, not all High Courts have established District Vigilance Cells; even in High Courts where there are district vigilance cells, they deal only with complaints against court staff. The complaints against judges are forwarded to the High Court.[86]

Like the vigilance mechanism, the in-house procedure for the higher judiciary is informal and *ad hoc*: a three-member in-house committee is constituted by the Chief Justice of India as and when a credible complaint is filed. It is in this context, as already noted in the previous section, that some participants have condemned the in-house procedure as "farcical", a safety shield for judges as regards their misdeeds. To address these concerns, the regulatory mechanisms must be institutionalized; they should comprise representatives from the Bar, civil society, laypersons, and judges.

Clear procedure and objective criteria

All three groups of respondents – judges, advocates, and academics – clearly indicated that the in-house mechanisms often fail to act objectively, acting "without ascertainment of facts", and on unsubstantiated and anonymous complaints. There is thus a lack of well-defined procedures to guide the mechanisms and those involved in judicial conduct regulation. The procedural void entails uncertainty and inconsistency in the functioning of the mechanisms; or worse, the procedural ambiguity could threaten the individual independence of a judge, as an ill-defined and poorly conducted disciplinary proceeding would subject a judge to undeserving consequences. In this regard, it is noteworthy that the respondents themselves have emphasized the need for a comprehensive legal framework to regulate judicial

[84]National Judicial Data Grid: Court Judge Report <https://njdg.ecourts.gov.in/njdgnew/?p=disposed_dashboard/info_mang> accessed 4 July 2021.

[85]For example, the High Court of Jharkhand, Chhattisgarh, Patna, Kerala, Orissa, Jammu and Kashmir, Sikkim, and Himachal Pradesh have only Registrar (Vigilance) to facilitate judicial conduct enforcement and vigilance functions. See Supreme Court of India, 'Resolutions Adopted in the Chief Justices' Conference 2015', Item no 20, 1185–1222 <https://main.sci.gov.in/pdf/sciconf/Resolution%20adopted%20in%20the%20Chief%20Justices%20Conference,%202015.pdf> accessed 6 March 2022 ("2015 Resolutions").

[86]ibid Item no 20 1185–1222.

conduct. Similarly, international standards also prescribe that the disciplinary process and procedure should be established by the law[87] and the disciplinary process should be carried out expeditiously and fairly.[88]

The implementation measures also recognize the victim's right to complain against judicial misconduct.[89] It is pertinent to note that the United Nations Convention against Corruption 2003 (UNCAC), under Article 13(2), also mandates that State parties take appropriate measures to permit the public to report incidences of corruption, including anonymously where appropriate.[90] Article 33 of the Convention also requires the State parties to protect individuals reporting incidences of corruption from any unjustified treatment.

The practices of vigilance mechanisms concerning anonymous complaints contravene article 13(2) and Article 33 of UNCAC. The CJI's direction to all High Courts[91] that vigilance mechanisms do not entertain anonymous and pseudonymous complaints against subordinate court judges is inconsistent with UNCAC. To discourage judicial corruption, stakeholders must be encouraged to file complaints against judicial personnel on the condition of anonymity and confidentiality. At the same time, to protect the judges from false and vexatious complaints, anonymous complaints should be thoroughly investigated before calling for a response from the judge in question. Hence the current practice should change.

However, it is important to ensure that judges under investigation are afforded due process rights "bearing in mind the vulnerability of judges to false and malicious allegations of corruption by disappointed litigants and others".[92] The disciplinary processes must thus be applied fairly and consistently; the disciplinary sanctions should follow the principle of proportionality.[93] Besides, the parties should have the right to appeal to an independent body. The in-house mechanisms in India lack most of these safeguards, endangering individual judicial independence and eroding public confidence in the system. Two of the vigilance officers who took part in the study also confirmed that the complainants have a limited role in the process of disciplining judges.[94] They are not updated on the outcomes of the investigation, and cannot ask for a copy of the vigilance officer's report. Consequently, the process spawns the perception that the mechanisms only serve the interests of the judges, and act with the sole purpose of protecting the image and reputation of the judiciary.

[87]See, for example, García-Sayán (n 8) [87].
[88]Knaul (n 7).
[89]Judicial Integrity Group, *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (Zambia 2010) [15.2].
[90]United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2439 UNTS 41 ("UNCAC") art 13(2).
[91]Chief Justice of India, Circular D.O. No. CJI/CC/Comp/2014/1405 (3 October 2014) <http://karnatakajudiciary.kar.nic.in/Circulars%5Ccircularrps86.14.pdf> accessed 6 April 2022.
[92]See United Nations Office on Drug and Crime, 'Technical Guide to the United Nations Convention against Corruption', 51 (2009) <https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf> accessed 4 April 2022.
[93]ibid 84.
[94]One vigilance officer noted that "After a preliminary inquiry, if it is ordered by [the] High Court to initiate disciplinary proceedings then the enquiry officer calls the complainant to record his statement. After [the] statement of [the] complainant before enquiry officer, he has no particular role."

Adequate emphasis on individual and internal judicial Independence

The in-house mechanisms are designed fundamentally to secure the independence of the judiciary. However, regrettably, the understanding of judicial independence in India mostly revolves around institutional independence. There is inadequate emphasis on the internal judicial independence of judges, who are subjected to these ill-structured, poorly functioning, informal, opaque, and subordinate mechanisms. One of the subject experts rightly noted that "I feel that the power of judicial review, if not abused … is overstretched to create a safety shield for judges as regards their misdeeds". The SC held in *Indira Jaising v Registrar General, Supreme Court*[95] ("*Indira Jaising*") that the in-house procedure is meant exclusively to act on behalf of the CJI and is "only for the purpose of satisfaction of the Chief Justice of India",[96] such that the report of the in-house committee is "purely preliminary in nature, *ad hoc* and not final".[97] Then one has to ask, why the Parliament should wait for the inquiry to be completed by an in-house committee; it can invoke the provisions of the Judges Inquiry Act 1968 and appoint an inquiry committee of its own.[98] More importantly, why should the complainant and the concerned judge appear before the in-house committee which has no legal or constitutional basis to exist in the first place, let alone enquire into an allegation against a High Court or Supreme Court judge?

The in-house procedure was intended to be a middle course between a rigid and long-winded constitutional procedure[99] and the absence of regulatory mechanisms to deal with misconduct issues that do not raise fitness to the judicial office question. The very creation of the in-house procedure was extra-constitutional. It was done with the understanding that the SC or the CJI has no disciplinary powers over the puisne judges of the SC or the High Court judges.[100] What was needed then and even now is that the in-house procedure should be institutionalized and formalized; the mechanism should function openly and transparently. It should not be administered solely by the CJI. This is because, quite contrary to what has been asserted by the SC in *Indira Jaising*,[101] the CJI, through in-house procedure wields considerable supervisory powers over the puisne judges of the SC and High Court judges. For instance, based on the report of the in-house committee, the CJI may withdraw judicial work from the judge, advise the judge to retire or request Parliament to initiate the removal procedure or dismiss the complaint.[102] Therefore, such consequential decisions should be made by a body of individuals representing the judiciary, legal profession and civil society. Further, the Supreme Court or the CJI have not laid down minimum standards that the in-house committees should follow (other than vaguely proscribing that principles of natural justice shall be adhered to) to avert potential abuse of power or perception of such abuse by the in-house committee or by the

[95] *Indira Jaising v Registrar General, Supreme Court* 2003(4)SCALE643 [3]. In this case, the SC ruled that the Chief Justice of India, through in-house committee, exercises "moral authority [the CJI] cannot be made [the] subject matter of a writ petition to disclose a report made to him" ("*Indira Jaising*").

[96] ibid [3].

[97] ibid.

[98] From *Indira Jaising* it is clear that even when the in-house committee finds a concerned judge guilty of misconduct, as its findings have no legal value, the Parliament has to constitute an inquiry committee under the Judges Inquiry Act 1968, if it wishes to investigate the complaint for the purposes of the removal.

[99] *C. Ravichandran Iyer v Justice A.M. Bhattacharjee* (1995) 5 SCC 457 [42].

[100] ibid.

[101] In *Indira Jaising* (n 95) [2] the Supreme Court stated that "In our constitutional scheme, it is not possible to vest the Chief Justice of India with any control over the puisne judges with regard to conduct either personal or judicial."

[102] Committee on In-house procedure (n 16) 2–6.

CJI himself. The lack of procedural safeguards inhibits the impartiality of the in-house committee; it also spawns the perception of abuse not just by judges facing the in-house committee, but also by the complainant.[103]

As noted already, the lack of a comprehensive legal framework is also a key concern of vigilance mechanisms. Moreover, the vigilance mechanisms have multiple roles besides being a judicial conduct regulator; the mechanisms play a critical role, for example, in the inspection of courts, performance evaluation of judicial officers and in the maintenance of records of income, assets, and liabilities of the judges.[104] The mechanisms may also deal with investigation and inquiry with regard to "defalcation, criminal breach of trust and such other irregularities in the district courts".[105] The vigilance reports are also sought when decisions concerning promotion, transfer, confirmation, and continuation of judicial officers are made by the High Courts.[106] The vigilance mechanisms additionally have a role in matters of judicial appointments,[107] posting, promotion, transfer, confirmation, fixing of seniority, suspension, disciplinary actions, reduction in rank, and compulsory retirement. Yet, there are no checks and balances in place to avert potential abuse of power by the vigilance mechanisms. The aggrieved judge can only approach the same High Court on the judicial side, creating an unhealthy intersection of administrative and judicial powers of the High Court that engender the perception of bias. This again implies that the administrative and supervisory arrangements of High Courts lay insufficient emphasis on the individual and internal independence of subordinate court judges.

In India, the subservience of subordinate court judges is built on the administrative and hierarchical relationship – as evidenced by survey responses, these administrative and supervisory relationships are having chilling effects on the individual and internal independence of subordinate court judges. Therefore, to prevent abuse of power and improper influence by senior judges in India, a clear set of standards, procedures, and robust accountability mechanisms should be established. Individual and internal independence of subordinate court judges are cardinal to judicial individualism and decisional autonomy; the conduct regulation regimes should not override these values, except in accordance with the law.

Transparency in judicial conduct regulation

The UNCAC requires the State parties to put in place anti-corruption measures that improve transparency, accountability, and access to information about the anti-corruption authority.[108] As the Special Rapporteur rightly noted, "transparency in the judiciary must be guaranteed so as to avoid corrupt practices that undermine judicial independence and public confidence in the justice system".[109] The Kyiv

[103]"Woman who Accused CJI Gogoi of Harassment Pulls out of [the] Inquiry, says Atmosphere Frightening' *Hindustan Times* (1 May 2019).
[104]See Huchhanavar (n 19).
[105]See 2015 Resolutions (n 85) Item no 20 1213; it is also pertinent to note that a considerable percentage of judges (56.25; n = 16) did not grade more than 5, signifying they were not satisfied with the *overall performance* of the vigilance mechanism (mean 5.25; std. error 0.6).
[106]ibid 1185–1222.
[107]In some high courts, the vigilance mechanisms verify the antecedents of the candidates selected for judicial offices, see Huchhanavar (n 19).
[108]UNCAC (n 90) arts 5, 7, 9, 10, and 11.
[109]See Knaul (n 7) [39], [8].

Recommendations also require that "transparency shall be the rule for disciplinary hearings of judges . . . The decisions regarding judicial discipline shall provide reasons. Final decisions on disciplinary measures shall be published.[110] However, India's in-house mechanisms are inaccessible: adequate information on the filing of complaints and the disciplinary reports are not available to the public, and rules guiding the vigilance mechanisms have not been published. To enhance transparency in judicial conduct regulation, it is necessary that the freedom to seek, receive, publish, and disseminate information concerning judicial corruption, misconduct, and the mechanisms responding to these issues be promoted.[111]

To conclude, judicial conduct regulation practices in India are inconsistent with international standards and fail to uphold individual and internal judicial independence.

Do the regulatory mechanisms in India adequately emphasize judicial accountability needs?

The subordinate judiciary in India suffers from accountability overload and multiple accountabilities disorder (too many account holders) while the higher judiciary lacks adequate accountability measures. However, this subsection briefly argues that in some areas, there are accountability gaps even with respect to the lower judiciary, indicating an inadequate emphasis on judicial accountability as a concept and also as a mechanism.

Accountability of account-holders

The Special Rapporteur rightly observed that "accountability presupposes the recognition of the legitimacy of established standards, clear mechanisms and procedures established by law, and clear rules on the authority of the supervising parties".[112] Therefore, judicial personnel, at all levels, must be held accountable to established standards through independent mechanisms in accordance with the law. However, senior judges in India (for example, the Chief Justice India) are not held accountable. Out of the last 5 Chief Justices of India, 4 have faced allegations of corruption or misconduct, but none of them has faced formal inquiry.[113] The Chief Minister of Andhra Pradesh accused the current CJI, Justice Ramana, of influence peddling, bias, and impropriety. However, the complaint was dismissed by the then CJI, based on the in-house committee findings. The entire proceedings, including the report, remained confidential,[114] with the investigation being buried "on due consideration".[115] Further, despite numerous allegations against

[110]Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia 2010 [26].
[111]This is one of the mandates of the UNCAC (n 90) art 13.
[112]See Knaul (n 7) [48]-[49].
[113]For a detailed discussion of allegations concerning Justice Misra, Khehar and Gogoi, see Huchhanavar (n 19).
[114]'SC dismisses Andhra CM's Complaint Against Next Chief Justice NV Ramana after in-House Inquiry' *Scroll* (24 March 2021) <https://scroll.in/latest/990457/sc-dismisses-andhra-cms-complaint-against-next-chief-justice-nv-ramana-after-in-house-inquiry> accessed 6 July 2021.
[115]ibid.

the sitting High Court and Supreme Court judges of corruption, none of them has successfully been investigated under criminal law and been brought to book.[116]

Unlike subordinate court judges, the High Court and Supreme Court judges are not subject to performance evaluation. The rate of disposal, quality of judgements, jurisprudential consistency, and conduct of a judge in the court and outside are not a subject matter of assessment.[117] There is also no accountability for High Court Judges and Chief Justices who abuse disciplinary powers. In quite a number of cases, the vigilance mechanisms were misused to harass the subordinate judges, but there is no accountability framework in place to address these issues. The judicial leadership often evade the accountability conundrum by citing judicial independence as a pretext or by highlighting the constitutional gaps that they do not want Parliament to address, asserting that legislative measures would undermine judicial primacy.[118] India's judicial accountability problems are not a result of unintended omissions of the framers of the Constitution or incompetence of Parliament but are a result of masterly inactions and evasions of judicial leaders.

Judicial accountability: looking beyond judges

A judicial accountability regime, to be effective, must be comprehensive. The accountability of court staff, advocates, and prosecutors is indispensable to combating judicial corruption and addressing judicial conduct issues. Transparency International reported that 77% of the respondents in India described the judicial system as corrupt.[119] In 2005, the Centre for Media Studies (India) reported that bribes were paid to court personnel in the following proportions: 61% to lawyers; 29% to court officials; 5% to judges; and 5% to middlemen.[120] The International Bar Association reported that 40% of the respondents in India perceived a high incidence of bribery within the judiciary; 36% of respondents reported having paid a bribe to the judiciary; 73% thought that corruption was a problem in India. The respondents perceived acts of corruption as being initiated by judges (7%), prosecutors (7%), and court personnel (7%). There was no data on lawyers.[121]

The findings of Transparency International, the International Bar Association, and this study suggest that there is a strong correlation between the conduct of advocates and court staff and instances of judicial corruption. Therefore, the accountability regimes should not only focus on judges. With respect to court staff, the High Courts should establish a robust accountability mechanism; the

[116]In theory, police can investigate criminal complaints against high court and Supreme Court judges, with necessary permission from the CJI (see *K. Veeraswami v Union of India* (1993) 3 SCC 655), but this has not been very effective. One of the reasons is that even the allegations of corruption are investigated by the in-house committees and the committees' reports become infructuous for various reasons, even when the judge is facing credible allegations, for example, the judge in question may retire and resign pending the investigation.

[117]Bad appointments, courtroom misbehaviour, and poor quality of judgement have been the problems, but there is no accountability regime to address these concerns. See, for example, 'SC Frowns Upon 'Cut-Copy-Paste' Order of Orissa HC' *The Tribune* (5 March 2021) <https://www.tribuneindia.com/news/nation/sc-frowns-upon-cut-copy-paste-order-of-orissa-hc-221042> accessed 4 April 2022.

[118]*Supreme Court Advocates on Record Association v Union of India* WP(C) No. 13 of 2015 (Supreme Court, 16 October 2015).

[119]Transparency International (n 71) 12.

[120]ibid 215.

[121]'The International Bar Association Judicial Integrity Initiative: Judicial Systems and Corruption', 51 (2016) < https://www.ibanet.org/MediaHandler?id=F856E657-A4FC-4783-806E-6AAC6895D37F> accessed 4 April 2022.

present in-house mechanisms are ill-equipped to deal with corruption or misconduct at the ministerial levels. There should be a separate code of conduct for the court staff – at present, there is no conduct code for both subordinate court judges and staff. With regard to advocates, the professional regulators have proved to be ineffective in addressing the judicial corruption emanating from or facilitated by the members of the Bar. Therefore, the judiciary, the bar, and Parliament should address the accountability deficit. Dialogues between three institutions – the bar, the bench, and the legislature – are essential to spearhead the radical changes (for example, the creation of independent disciplinary mechanisms for advocates), without compromising the independence of the bar. The relevant provisions of the Advocates Act 1961 should be amended to create independent regulatory bodies having representations from the bar, bench, and civil society, both at the state and central levels.

Institutional accountability

The judiciary, as an institution, must be open to external scrutiny, for example, by media, civil society, academia, parliament, and the bar. For this purpose, it should make available relevant information about the courts, judges, and the judiciary through its websites, periodical reports, and account statements. Both parliament and state legislatures should have access to relevant information concerning budget utilization, annual expenditure statements, judicial workload, and funding allocation; in essence, the legislative body as an account holder should have access to all the information to satisfy itself whether the executive branch has made adequate resource allocation; and also, to assess whether the judiciary has made optimal utilization of the resources allocated to it. Though the principal responsibility of judicial administration lies with the judiciary and the executive branch, the legislative branch should be in a position to assess the performance of the other two branches in this regard. Such oversight and working relationship between three branches of the government is missing today both at the national and state levels.[122] The lack of extensive institutional interactions on the issues concerning judicial administration has also diminished the role of the other two branches of the government in holding the judicial branch to account. Conversely, the judiciary also loses opportunities to raise its concerns and demands before the other two branches, leading to a communication gap, poor planning, and execution.

[122]There are regular ceremonial meetings between the executive and the judiciary, which yield no fruitful outcomes. The issues concerning pending judicial appointments, creation of new posts and infrastructural concerns of the judiciary have been raised in these meetings, but the state of affairs has remained the same. For critical reviews of gaps in judicial planning, see National Commission to Review the Working of the Constitution, 'A consultation paper on the financial autonomy of Indian judiciary', chs 8, 9 and 11 (2001) <https://legalaffairs.gov.in/sites/default/files/Financial%20Autonomy%20of%20the%20Indian%20Judiciary.pdf> accessed 4 April 2022.

Internal judicial accountability

The High Courts have no internal accountability mechanisms that can address the grievances of judges and court staff in relation to judicial appointments, transfer, and promotion. Almost every concern or grievance or communication (for example a leave application) of a subordinate court judge is routed through his or her senior judges in a hierarchical order to the High Court.

Justice P Devadass describes the duties of a district judge with respect to interaction with the High Court in the following terms:

> The High Court is the controlling body. Such controls are exercised by the High Court over the district judiciary through the Hon'ble Portfolio Judges of the concerned District. The District Judges *must maintain continuous interaction with the Hon'ble Portfolio Judges* and *apprise them of all the activities and developments related to courts in the district*. He must place *various requirements, such as staff, new court, building and furniture requirement*, etc. to the High Court also with the knowledge of the concerned Portfolio Judge.[123]

The "duties" enumerated by Justice Devadass are a fraction of "duties" that the district judges are expected to perform; therefore, the emphasis is not on what a district judge is required to do, but on how they are expected to perform their duties – it is through the Portfolio judge [a High Court judge responsible to oversee the courts in a district]. This is a *modus operandi* for a district judge, a senior member of the subordinate courts. For judges subordinate to the district judge, their communication should go through the district judge – the cobweb of administrative hierarchies would be overbearing for a junior judicial officer. Though streamlining and rationalization of internal arrangements and accountability protocols is the need of the hour, the lack of internal mechanisms to abate and remedy the abuse of supervisory or disciplinary powers is a major concern. This is because the institutional judicial independence, as interpreted by the courts in India, does not permit non-judges (or outsiders) to oversee the internal arrangements of the judiciary. Therefore, the judiciary has to reengineer its administrative processes and procedures and supervisory roles to reconcile the conflicting dimensions of individual and internal judicial independence on the one hand and institutional judicial independence on the other. The other alternative is to let the administrative and supervisory arrangements of the judiciary be overseen by an independent body – having wider representation from relevant stakeholders.

Other concerns about individual judicial accountability

In India, complaints of judicial corruption are not investigated under the criminal law; the fear that the executive branch would use anti-corruption agencies to impinge judicial independence partly underpins this practice. There are other justifications as well, for example, even if the complainant has alleged a criminal offence, nevertheless, the High Court, as a disciplinary authority, has to inquire into the matter for disciplinary purposes. However, the UNCAC mandates State parties criminalize judicial corruption and

[123]See Justice P. Devadass, *Effective District Administration* (Tamil Nadu State Judicial Academy 2013) 49 (emphasis added).

sanction/sentence judicial personnel as per the criminal law[124]; simple disciplinary measures are thus inadequate to abate corruption. The UNCAC also requires the State parties to criminalize other forms of corrupt behaviours, for example, influence peddling,[125] abuse of functions,[126] and illicit enrichment.[127] These criminal offences must also be enforced against judges. Likewise, adequate protection for whistle-blowers and due regard for anonymous complaints are also essential to encourage court staff, subordinate court judges, and advocates to complain against higher echelons in the judiciary.

It is clear from empirical evidence and critical analysis of the accountability measures and mechanisms in India that the regulatory mechanisms do not adequately emphasize judicial accountability needs. The legal framework is not comprehensive, it is uneven and mechanisms that enforce accountability are weak, opaque, informal, and lack independence.

VI. Conclusion

The empirical evidence rejects the hypotheses that the in-house mechanisms in India uphold judicial independence; and that the key stakeholders of judicial administration – judges, lawyers, and academics – show a "high level of confidence" in the efficacy of the in-house mechanisms in upholding judicial independence. On the contrary, empirical evidence demonstrates that there is a weak correlation between the hypotheses and the views of the respondents. The evidence also shows that the regulatory mechanisms and the in-house procedure for the higher judicial fail to uphold two essential facets of judicial independence: individual and internal independence. Moreover, the evidence and critical analyses demonstrate that the regulatory mechanisms are not effective in enforcing judicial accountability (i.e. judicial conduct). Therefore, the vigilance mechanism is not fit for the purpose. Its functioning endangers judicial independence; it impedes other modes of accountability of judges (for example, through the parliamentary procedure) and erases public confidence in the regulatory process itself.

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[124]See UNCAC (n 90) ch III; See also UNHR, Concluding observations of the Human Rights Committee: Yemen (23 April 2012) UN Doc. CCPR/C/YEM/CO/5 [17]; Knaul (n 7) [78], [14].
[125]See UNCAC (n 90) art 18(1).
[126]ibid art 19.
[127]ibid art 20.

Notes on contributor

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