

Quo Vadis, Your Honour? It is time to fix the judicial conduct crisis before it is too late

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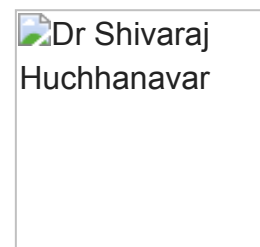
Judicial Accountability

Persistent regulatory failures and continued inactions of the judicial leadership risk inviting heavy-handed and politically motivated reforms that could permanently compromise judicial autonomy under the guise of reform, writes Shivaraj Huchhanavar.



Dr Shivaraj Huchhanavar

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Published on:

09 Jan 2025, 5:27 pm

WHILE the current impeachment motion against Justice Shekhar Kumar Yadav has captured public attention, it merely symptomises a deeper institutional malaise.

Unfortunately, this is neither the first nor the last of such judicial conduct-related controversies. The judiciary has had more than a fair share of such controversies in recent years. However, whenever such controversies unfold, public discourse often fixates on individual controversies and their immediate ramifications, overlooking the fundamental regulatory vacuum that enables such misconduct to persist.

The absence of robust accountability mechanisms has created a permissive environment where judicial impropriety, political and ideological partisanship, and, in some cases, corruption flourish unchecked. Therefore, the judicial conduct crisis that we are witnessing stems not from isolated incidents but from systemic failures in judicial oversight— a problem that demands urgent structural reforms rather than mere case-by-case firefighting, as we can see unfold in the case of Justice Yadav.

In this context, this piece foregrounds some of the systemic flaws that plague the judicial conduct regulation in India and offers recommendations for reform, stressing that implementing some of these longstanding recommendations remains critically overdue.

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The backdrop

The life of a judge is indeed subject to scrutiny all the time. Judges are held to higher standards; they are expected to be independent and impartial and perform their duties with integrity and competence. Judges should adhere to these higher standards even if they are not carrying out their judicial functions: they cannot have two standards, one in the court and another outside the court.

Justice Shekhar Kumar Yadav, 'Hindu' judges and Ambedkar's prophecy.

There are two key reasons why judges are held to higher standards: (a) the acceptability of judicial decisions largely depends upon the trust of the people in the judiciary, and (b) the public trust in the judiciary is itself conditional upon the credibility of the conduct, honesty, integrity, and character of the judicial officer holders.



Notwithstanding the high expectations, judges across judicial hierarchies find themselves at odds with ethical standards more often than we like. However, over the years, the judiciary has done nothing substantial to remedy the vice.

We have not seen any meaningful judicial reform addressing judicial misconduct issues since Independence. After taking over the reins of judicial governance in 1993 through a judicial ruling, the collegium of the Supreme Court was expected to reform the judicial conduct regulation framework. However, expectations have been largely belied.

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Systemic flaws

The constitutional procedure for removing judges has proven cumbersome and ineffective, as demonstrated by the failed impeachment motion against former Chief Justice Dipak Misra. The removal procedure does not address minor judicial misdemeanours that warrant disciplinary measures other than the removal.

To address the flaws of the removal procedure, the Supreme Court has evolved an in-house procedure. However, the in-house procedure has also mostly proven ineffective in regulating judges of constitutional courts.

The in-house procedure has to be put in motion by the Chief Justice of India; therefore, when the allegations are made against the Chief Justice himself, as seen in the case of Justice Dipak Misra, the procedure gets stalled, as there is no provision for the other judges of the Supreme Court to initiate the inquiry.

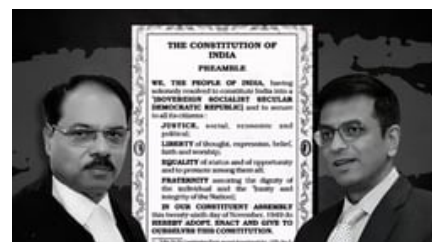
Further, the in-house committees are *ad hoc*; there are no rules guiding their procedure. As seen in the case of the sexual harassment allegation against Justice Ranjan Gogoi, the in-house procedure can be highly opaque. In this case, the complainant alleged that the in-house committee had denied her a lawyer's assistance, and the in-house committee did not even make the inquiry report public. Over the years, the in-house procedure has evolved into a mechanism of the judges, by the judges, and for the judges.

The state of the high court vigilance cells, which handle judicial misconduct and corruption complaints against judicial officers and staff, is even worse. Although almost all the high courts have established vigilance cells, there are no comprehensive rules guiding their complaint-handling processes and investigations.

Before his elevation, SC judge D.Y. Chandrachud had flagged Justice Yadav's RSS, BJP links

In many high courts, these cells are entrusted with other administrative responsibilities, leading to excessive workload on top of severe resource constraints. The cells do not have any autonomy— they have to act as per the instructions of the high court chief justice or the respective committee of the high court.

There is no guidance to the general public as to when and how complaints can be filed against judicial officers; most of the complaints get rejected for the want of an affidavit supporting the complaint.



In many cases, the investigation conducted by these cells continues for years. Further, as evidenced in various rulings of the Supreme Court, these vigilance cells are prone to abuse by the judges of the high courts or senior officials in the high court registry. The potential for abuse has a chilling effect on the independence of lower court judges.

Who is to be blamed for this regulatory void?

The judicial leadership echelons at the Supreme Court and high courts bear primary responsibility for this regulatory void and the enduring lack of accountability in the judiciary. While the Parliament has failed to challenge the judicial monopoly in matters of judicial regulation by enacting laws that adequately emphasise judicial independence and accountability needs, the judiciary has successfully thwarted any legislative attempts employing judicial independence as a pretext.



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In *Supreme Court Advocates on Record Association versus Union of India*, the Supreme Court overrode the National Judicial Appointments Commission Act of 2014, holding that it impinges judicial independence. The long-held judicial rationale has been that judicial primacy is the only way to protect judicial independence; as a consequence, the judicial leadership has assumed the determinative role in matters of judicial appointments, transfers and conduct regulation.

However, the judicial leadership has failed to establish robust regulatory institutions to enforce judicial conduct, although the flaws of in-house procedure, as noted already, are all too apparent.

There is a telling usurpation of administrative and supervisory powers by the high courts *vis-à-vis* subordinate courts. The Supreme Court has, over the years, lent an expansive interpretation to Articles 233 to 237 of the Constitution, effectively vesting all regulatory matters concerning lower court judges, namely appointment, posting, promotion, confirmation, fixing of seniority, suspension, disciplinary actions and retirement, in the hands of respective high courts.

The only misleading thing in the Allahabad HC judge's support for majoritarian rule is the use of the future tense

To be clear, the exclusive regulatory domain of the high courts includes disciplinary control over subordinate court judges and staff. This means only the high courts can conduct inquiries and disciplinary proceedings and recommend the imposition of disciplinary measures, namely dismissal, removal, reduction in rank or compulsory.

retirement. Not even the *Lokayukta* or anti-corruption bureaus of the State can investigate corruption cases against judicial officers without the prior approval of the respective high court.

While judicial independence may justify some of these special regulatory protections, the critical question remains: why has the judicial leadership at the high courts not strengthened oversight mechanisms to effectively combat judicial misconduct despite its exclusive remit over the matter?

Moreover, there is a transparency problem as well. None of the high courts disclose how many judicial officers have been investigated, removed or sentenced for misconduct or corruption. The high courts do not publish inquiry reports against the judicial officers nor supply copies of reports to the complainants.

Therefore, the judicial conduct crisis is self-inflicted damage. Having zealously guarded institutional autonomy and successfully resisted any external oversight by invoking judicial independence, the Supreme Court and high courts must now shoulder the blame for the current accountability vacuum.

Their failure to establish robust and transparent disciplinary mechanisms, reluctance to strengthen internal oversight, and resistance to meaningful reforms have created a system where misconduct often goes unchecked and unaddressed. This regulatory paralysis, stemming from the highest echelons of judicial leadership, undermines not just accountability but also the very judicial independence they claim to protect.

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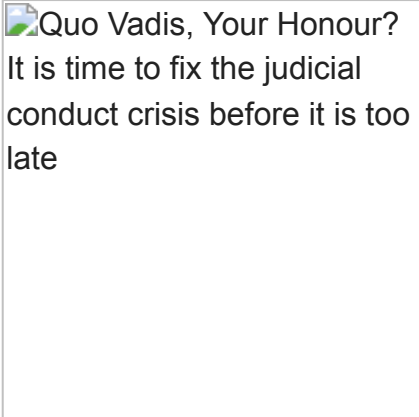
There are no binding codes of judicial conduct for lower court judges and staff.

Is there a way out?

Forsaken commitment to constitutional values among the judges and ethical decadence within the judiciary, as recently evidenced by the conduct of Justice Shekhar Kumar Yadav, cannot be fixed by structural reforms alone.

The judiciary should earnestly strengthen the regulatory mechanisms concerning judicial appointment, supervision, conduct regulation and education to halt the free-falling standards of judicial conduct.

Regulatory measures such as calling for further details, close-door meetings, or close-door reprimands by the Supreme Court Collegium are inadequate. If anything, such measures only show how toothless our regulatory mechanisms are. Therefore, the

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judicial leadership should go beyond informal, *ad hoc*, and meaningless regulatory measures. Quick and easy fixes will not serve the purpose.

Can the basic structure doctrine provide a remedy for the global democratic crisis?

It is time for concrete and enduring structural reforms. There is enough constitutional leeway for the judiciary to create robust arm's length bodies to enforce higher standards of judicial conduct. Such bodies should have wider participation beyond judicial leadership.

The reforms should clearly prescribe the regulatory regimes' remit, composition and investigation procedures. They should be exclusive and permanent regulatory institutions and not *ad hoc* and in-house mechanisms that could succumb to pressures from within.

There is a need for a graded disciplinary sanction policy proportionate to the severity of the misconduct. More importantly, they should have transparent regulatory procedures and processes. Above all, there should be accountability measures to prevent the abuse of regulatory powers by such arm's length bodies in the form of review or appeal procedures.

The proposed regulatory mechanisms must be responsible for enforcing judicial conduct codes. In this regard, it is indispensable to revisit the Restatement of Values of Judicial Life of 1997; although the Supreme Court has adopted the Restatement, it is not a comprehensive code.

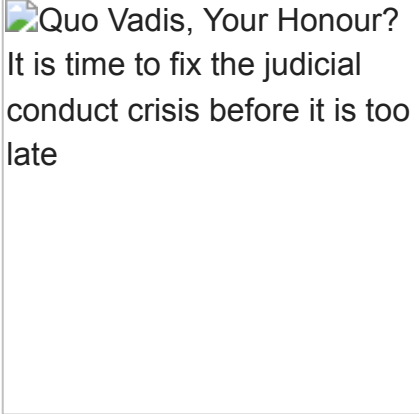
The scope of the 16 guidelines laid down in the Restatement is too limited; they do not sufficiently regulate the judge's conduct in the age of social media, live streams and artificial intelligence. More worryingly, there is no mechanism to enforce these guidelines.

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Moreover, protecting judicial independence at the cost of accountability, transparency and public trust is unsustainable.

There are no binding codes of judicial conduct for lower court judges and staff. Judicial officers are taught the Bangalore Principles of Judicial Conduct of 2002, which is an international model code of judicial conduct that has no direct effect unless adopted by the respective high courts.

Many states have civil service (conduct) rules, but these rules do not effectively address judicial misconduct. In this regard, high courts must formulate judicial conduct rules that effectively address the needs of the judicial office. Additionally, alongside the conduct

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codes, interactive and practice-oriented conduct manuals and guides must be devised to supplement the codes; adequate training should also be imparted to help judges cope effectively with real-life situations.

Therefore, comprehensive judicial conduct codes, aligned with the Bangalore Principles and common law best practices, should govern higher and lower judiciary. A code of conduct for the high court and subordinate court staff is also essential.

Dhananjaya Yeshwant Chandrachud: The New Right liberal


Moreover, various tribunals should also be brought within the remit of the codes adopted by the high courts. Similarly, informal judicial institutions like Lok Adalats, court-annexed mediation, conciliation and arbitration proceedings also need adequate attention with respect to judicial conduct enforcement and accountability.

These initiatives will foster integrity, impartiality, independence, professionalism and accountability within the judiciary, ensuring the administration of justice in a manner that upholds constitutional values and also public trust.

Although the judicial conduct crisis has no easy fixes, it is not a problem without solutions. However, the key impediment to reform thus far has been the judiciary's overzealous approach to safeguarding judicial independence; judicial primacy or judicial self-governance approach is not the only way to safeguard judicial independence.

Moreover, protecting judicial independence at the cost of accountability, transparency and public trust is unsustainable. Therefore, judicial leadership should let go of the overzealous approach to judicial independence and find lasting solutions to fix the judicial conduct crisis before it is too late.

Persistent regulatory failures and continued inactions of the judicial leadership risk inviting heavy-handed and politically motivated reforms that could permanently compromise judicial autonomy under the guise of reform. Therefore, it is time to fix the judicial conduct crisis with lasting structural reforms instead of case-by-case firefighting.



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