

**DIMINISHING LEVEL OF DISCIPLINE IN JUDICIARY:
FROM APEX TO THE LOWEST**

Author: Mradul Jain¹

Co-author: Saloni Tejawat²

ABSTRACT

Judiciary is the independent organ under Indian constitution. On the matters of accountability and integrity, public had the utmost faith in it. An independent, impartial and incorruptible judiciary is all the common man wants but, the actions of judges shows that they don't trust each other and most importantly public is now unable to have trust on judges who are considered as the safeguards of the institution of judiciary. It is in context that this article discusses comprehensively about the issues of courts at all the three levels that hampered the integrity and independency of judiciary. The aim of this article is to analyse the recent tussles faced by the judiciary.

KEYWORDS: Press Conference, Judiciary, Judicial Indiscipline

RESEARCH METHODOLOGY

The Researchers utilized an exploratory research system based on past literature from individual diaries, annual reports, daily papers and magazines covering wide gathering of scholastic writing.

OBJECTIVE OF THE STUDY

1. To research about the indisciplined acts of various judges.
2. To study about the recent upheavals in the judiciary.

¹ Student, B.A.LL.B 3rd year, Department of Law, PIMR Indore, Contact-9630860806, mradul1997@gmail.com

² Student, B.A.LL.B 3rd year, Department of Law, PIMR Indore, Contact- 9826016618, sallo.jain97@gmail.com

INTRODUCTION

It has been many decades since we have inherited a well-fortified system of judicial administration from British. Over the years, we have made various adjustments in the judicial administration in order to meet the needs of changing times of the modern India. The judicial system has a very important role to play in ensuring governance to the public and any flaws in judiciary or delivery of justice will hamper the proper functioning of the jurisprudence.

A strong and united judiciary is the sine qua non for a strong and vibrant democracy. If the judiciary of a country is divided and polarized, it will have a direct effect on the very survival of democracy in that country.³ Recently, Indian judiciary is going through a crisis, there have been numerous concerns regarding the Indian courts such as slow pace in processing case, lack of discipline, backlog of cases and influence of politics and social pressure. This paper basically tries to address the issues that are slackening the role of Indian judiciary

1. SUPREME COURT

The highest decision making administrative in the judicial system witnessed unrivalled scenes on 12th January, Friday when four senior most judges came out in the public with accusations against chief justice of India.

In the press conference, letter wrote to CJI by the judges, Justice J. Chelameswar, R. Gogoi, M.B Lokur and K. Joseph, was released with accusations against CJI of judicial indiscipline. They had objected the process of allotment of cases to judges by the CJI, i.e. the master of roster. They also raised the question against the guidelines of appointment of Supreme Court and high court judges.

1.1 Judge Loya's case

Perhaps the most controversial part of the developments on Friday were the comments made by the four judges on the case relating to Judge Loya. Judge Brijgopal Harikishan Loya was presiding over the case relating to fake encounter of Sohrabuddin Sheikh, where Amit Shah, the BJP President was an accused. But Loya died in December 14. Certain surprising facts have been disclosed in caravan magazine regarding mysterious death of Judge Loya, which demanded probe into the case.⁴

³Ujjwal Nikam, A Public Prosecutor, Should The Four Sc Judges Have Dissented Publicly?, The Hindu

⁴ Shocking Details Emerge In Death Of Judge Presiding Over Sohrabuddin Trial, Caravan Magazine

In the year 2014, after the mysterious death of B.H. Loya, Bombay Lawyer's Association filed a PIL before the Bombay High Court and asking the court to set up a commission of inquiry headed by a retired Supreme Court judge.

Meanwhile, Supreme Court intervened and admitted the same case and heard it despite the objections by the lawyers. According to the judges who were appointed for this case, the case was serious and required attention. With the unanswered grievances by the Chief Justice and many more issues about the irregularity in the administration of the court which yet has not clearly come forward to public, the four judges collectively revolted against the administration of the court order and alleged Chief Justice Dipak Mishra of selectively assigning cases to judges of his choice without any rational basis.

1.2 Medical college scam case

Another point made in the letter was what is now being called as "medical colleges scams". Ever since taking charge in August 2017, Chief Justice Mishra, on a number of occasions, had moved cases from one bench to another. The lawyer, Prashant Bhushan representing the "The Campaign for Judicial Accountability and Reforms", a Non-Governmental Organization, filed a petition seeking an independent probe into the alleged scam. This petition was first listed before a bench headed by Justice Chelameswar on November 10. However, the petition was later forwarded to a bench headed by Justice AK Sikri.

The same petition was also filed by Advocate Kamini Jaiswal, which was posted before a two-judge bench which was headed by Justice Chelameswar for urgent hearing. But the Matter required attention, the judge decided to refer the matter to a larger five-judge Constitution bench. Justice Chelameswar made the order stating that the Constitutional bench should be consist of five senior most judges. The petitioner wanted to exclude the CJI Deepak Mishra as he had dealt with the similar cases earlier this year.⁵

On Friday, Chief Justice, announced the formation of a seven-judge bench to hear the Prashant Bhushan's petition, even though it had been clubbed with the similar petition. The 7 judge bench constituted by chief justice of India came down to 5 judges bench because Justice Sikri and Justice Bhushan rescued themselves as they had already been in previous hearing of that case. The bench looked into the conduct of Justice Chelameswar of setting up

⁵KaminiJaiswalvs Union Of India on 14 November, 2017

the 5 judges bench without even consulting with the CJI. The bench restated that the CJI is only the master of roster and has sole authority to decide the quorum of the bench.⁶

Justice Chelameswar's order stating that the Constitution bench to deal with the cases should comprise of five senior-most judges was seen as a direction trespassing the authority of the Chief Justice, which was indirectly nullified.⁷ Because As per the judgment of the three-judge bench in Prakash Chand,⁸ it has further been held that as far as the roster is concerned, which is an administrative function, the Chief Justice is the 'master of the roster' and he alone has the prerogative to constitute the benches of the court and allocate cases to the benches so constituted.

Whatever incident happened on 12th January could have been avoided. Judiciary has the utmost faith of public it is the last ray of hope for common man. If any disputes arises between the judges it is their duty to iron out the differences with amicable discussion on the same. As per the charter adopted by the supreme court in 1999 , restatement of values of judicial life, a complete code of the canons of judicial ethics., states that,

- A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.
- A Judge is expected to let his judgments speak for themselves. He shall not give interviews to the media. to serve as a guide to be observed by Judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice.⁹

The step by the judges to come into public and revalling the problems of the court shows the lack of judicial discipline and violation of court ethics.

JUS IMPERATOR

⁶ The Hindu Explains: 'master of the roster' The Hindu

⁷Explainer: What happened in the Supreme Court on Friday (and what is the MCI bribery case)? Scroll.in

⁸State of Rajasthan v Prakash Chand, (1998) 1 SCC 1

⁹ Restatement of Values of Judicial Life (1999) – CODE OF JUDICIAL ETHICS LAW RESOURCE

2. HIGH COURT

Prior to the tussle of supreme court, high court faced the dilemma when one of the judge started controversies. In the recent years, several judges in various courts of the country have courted controversy with their statements and one of them is Justice Karnan, His actions from his days at madras high court to his transfer to Calcutta high court not only affected the whole Indian judiciary but the nation also.

2.1 The Controversy

Mr. Karnan had a long history of confrontation and conflict with his colleagues in the High Court and many of them were so afraid of his threats and harassment that they wanted to seek voluntary transfer to other High Courts.¹⁰

Mr. Karnan was not only accused of repeatedly harassing his fellow colleagues and threatening them with prosecution, but also of seeking important portfolios so that he could deal with “high potential cases involving influential parties. “The then Chief Justice, M.Y. Eqbal, wrote to the Chief Justice of India (CJI) that on October 8, 2011, “Mr. Karnan made a written request for allotment of work either on the Writ Side or the Criminal Side on a regular basis for which he was allotted bail and anticipatory bail portfolio two days later. Within a few days of his dealing with these matters, the then Chief Justice received oral complaints that Justice C.S. Karnan had granted bail in sensational cases involving State Ministers for other considerations.” There were many complaints that he reserved orders and didn’t pronounce judgments for many months.¹¹

In November 2011, he became the first judge of a high court to move the National Commission for SCs and STs, complaining that he was a Dalit was being harassed by his fellow judges and had also called a press conference to accuse his fellow colleague of caste discrimination saying that he “deliberately” touched him with his foot.¹² He was the first judge to barge into the court room of another division bench of the Madras high court while it was hearing a case and declare that he too would be a litigant opposing the choice of certain names of advocates for elevation as judges of the court.¹³

¹⁰Karnan: a long history of confrontation with colleagues, K. Venkataramanan

¹¹ Ibid

¹²The curious case of justice karnan and its implications for higher judiciary- Hindustan Times

¹³ Ibid

He was transferred to West Bengal in 2016 by the Supreme Court. In January 2017, Justice Karnan furnished the Prime Minister with a list alleging that 20 sitting and retired Supreme Court and High Court judges are corrupt.¹⁴

2.2 Justice Karnan Guilty

Justice Karnan issued an order sentencing eight Supreme Court judges to five years of “rigorous imprisonment” and imposed a fine of Rs. 1,00,000 each under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 and the amended Act of 2015. The Supreme Court then ordered justice Karnan to undergo a medical test for which he refused saying he is absolutely normal. Afterwards he was sentenced to six months of 'simple imprisonment' by the Supreme Court for which Chief Justice Khehar said “We are of the unanimous opinion that Justice C.S. Karnan has committed contempt of court, judiciary and judicial process of the gravest nature”.¹⁵

2.3 Evading Arrest

Before the West Bengal Police could arrest him, the controversial judge reportedly left for Tamil Nadu and went underground soon after and neither his personal security nor protocol officials were aware he was going to do so.¹⁶

Other instances

The controversy surrounding Karnan is part of a larger problem in the judiciary rather than a one-off problem. Late in 2016, the Supreme Court initiated contempt proceedings against former SC judge Markandey Katju for his ill-thought-out comments against judges. Multiple judges of High Courts and the Supreme Court have faced accusations of sexual harassment. In 2011, two High Court judges, PD Dinakaran and SoumitraSen, faced impeachment proceedings for corruption and abuse of office, but resigned before removal. NirmalYadav of the Punjab and Haryana High Court also faced charges framed by a CBI court for allegedly receiving a bribe as a sitting judge in 2008.¹⁷

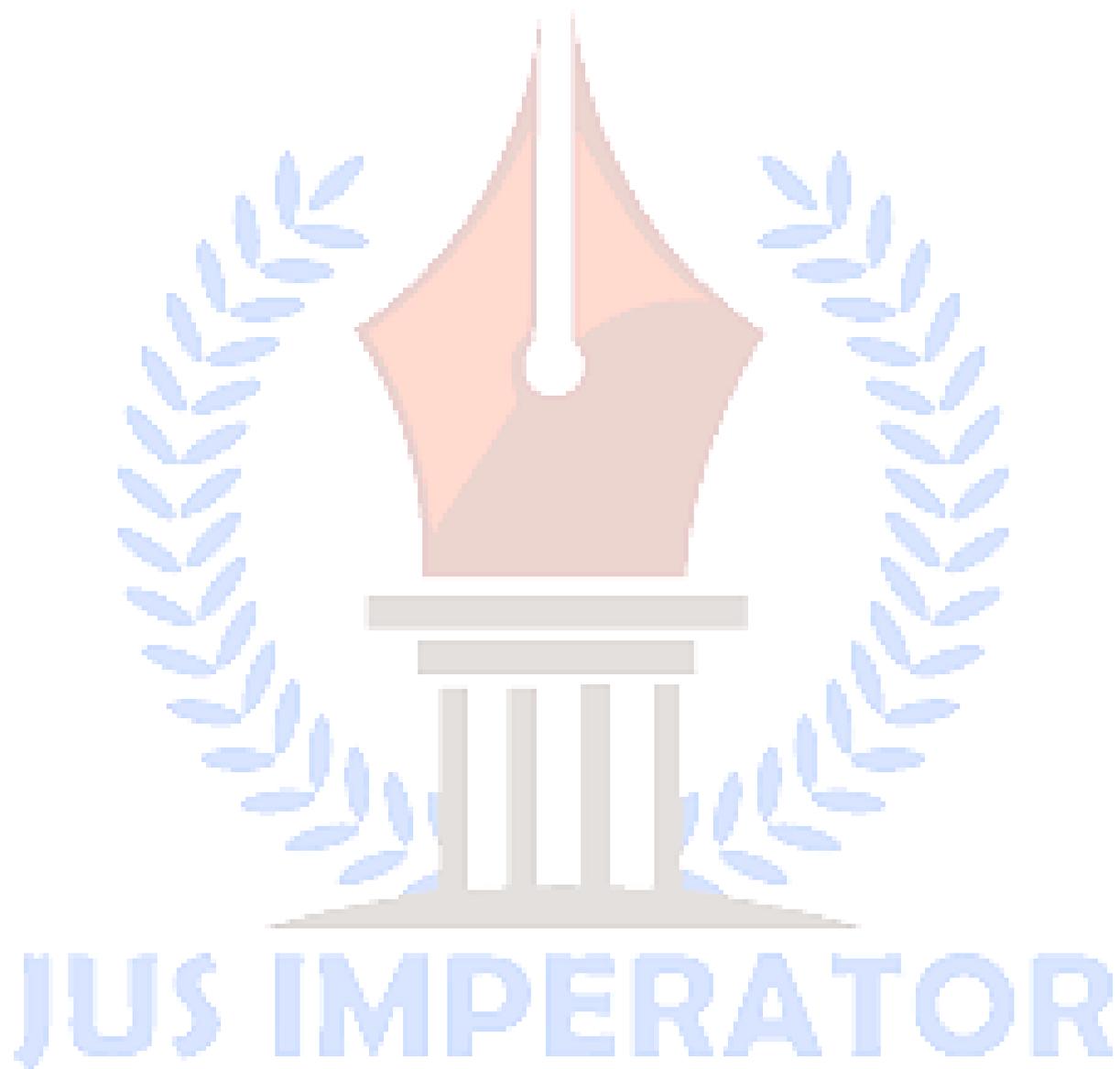
¹⁴ Absconding Justice Karnan retires today: All you need to know about why SC ordered his arrest - Times of India ► The Times of India

¹⁵ SC sentences Justice Karnan to six months imprisonment The Hindu

¹⁶ Absconding Justice Karnan retires today: All you need to know about why SC ordered his arrest - Times of India ► The Times of India

¹⁷ The curious case of Justice Karnan and its implications for higher judiciary- Hindustan Times

The shocking drama created by Justice Karnan was a rampant violation of the Code of Ethics that a judge should obey. His acts show the judicial indiscipline. Credibility is what the judiciary needs but trustworthiness is diminishing among the judges and it is a problem that is afflicting the judiciary. There has been no effort by the judiciary to create a transparent mechanism to discipline judges who overstep the lines of propriety. Those with legitimate grievances against a judge have very little recourse from the judiciary itself.



3. DISTRICT COURT

The incident which depicts the lack of discipline in the district court is the controversy created by an Chief Judicial Magistrate who was transferred from Dhar (M.P) to Shahdol (M.P) in March 2016 which was done purely according to the Transfer Policy(Zone Wise) created by the Hon'Ble High Court.

He outraged against the whole system and alleged that there were rampant violations of the Transfer Policy as several judges weren't transferred according to the policy due to representations made by them and also wrote a letter to the Chief Justice of MP High Court and Chief Justice of India regarding the same.

He then addressed a press conference and said that various orders passes by High Court are balefully affecting the functioning of the District Court and matters of utmost importance are been given to the juniors and there is no respect of juniors. In spite of all these indisciplined acts, he was transferred and promoted as Additional District Judge in Sehora(Dist. Jabalpur). Due to inadequate facilities in Sehora, he was transferred as OSD, Jabalpur High Court.

R.K.Shrivastava, Judge of District Court after being appointed as OSD, Jabalpur High Court staged a dharna at the High Court from Aug 1 protesting against his frequent transfers which according to him was clear violation of the Transfer Policy. "During this period, he also wrote a letter to the President of India to conduct a inquiry committee alleging that there were violations of the Two-child Policy which stated that a judicial officer cannot have more than 2 children from Jan 26, 2001. If it is so, he cannot be appointed in public service".¹⁸

He was then transferred to Neemuch on his previous demand as he claimed that his parents are old and he needs to take care of them. He after assuming the charge as Additional District Judge at Neemuch said that he will oppose this action by the High Court.

He then initiated a cycle yatra from Neemuch to Jabalpur as protest to the injustice made by the Hon'Ble High Court.¹⁹

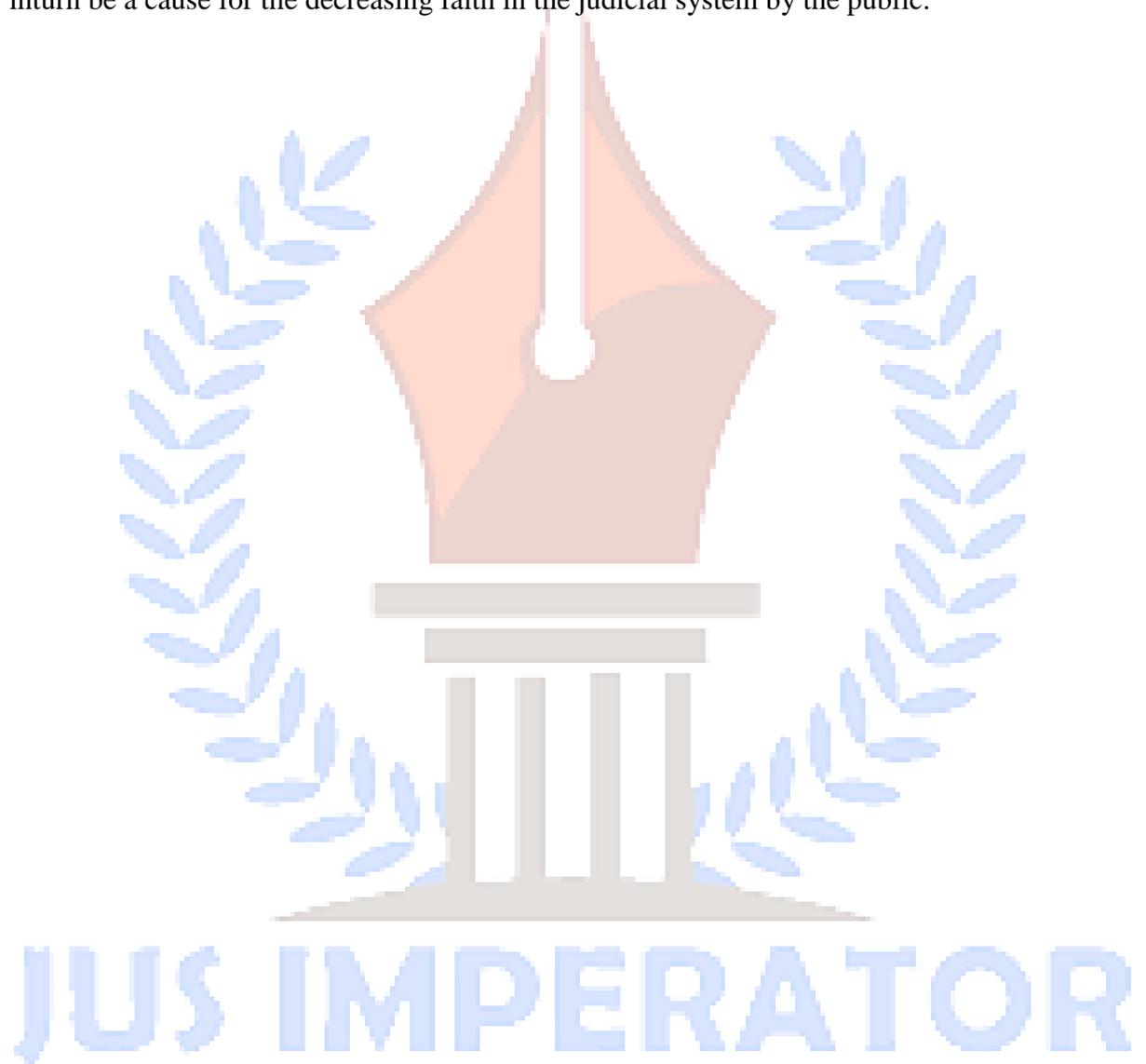
A departmental enquiry had been initiated against the judge during his service as OSD, Jabalpur High Court for his misconduct against the High Court and the administrative

¹⁸ <http://www.livelaw.in/persons-two-children-appointed-judges-mp-suspended-dj-seeks-inquiry/>

¹⁹ Ibid

committee of the M.P. High Court found Judge Shrivas guilty and suspended him on grounds of misconduct.²⁰

The act done by Judge Shrivas clearly shows diminishing level of discipline as his transfer was a result of the General Transfer Policy of the High Court and one cannot be transferred to the place he wishes to reside in and it was misconduct on his part as a Judge shouldn't ever come in public and such outrage by a person who is considered as an idol of justice would in turn be a cause for the decreasing faith in the judicial system by the public.



²⁰Judge who staged sit in outside Madhya Pradesh HC suspended, Tribune India

JUDICIAL INDISCIPLINE: OPINION

Controversies surrounding judges have disgraced the judiciary over serious allegations of corruption and sexual harassment, with a sitting High Court judge even being jailed for contempt of court.

Four senior most judges of Supreme Court have raised the concerns about the administration of Supreme Court and its implications on the country. This is the first time Supreme Court Judges have made public the issues of the court. Judicial discipline requires a certain decorum to be maintained, it is not proper to go in public and talk about the disputes. Whatever the differences among themselves they have to sort it out in their chambers only.

On the other hand, the authority of selecting the roster vested in the Chief justice of India has been misused by him as he was assigning the matters of national importance to junior judges which should be dealt by experienced and senior judges of Supreme Court. These acts of judges and CJI shows the lack of transparency, vagueness in functioning of court and most importantly discipline and propriety of judges.

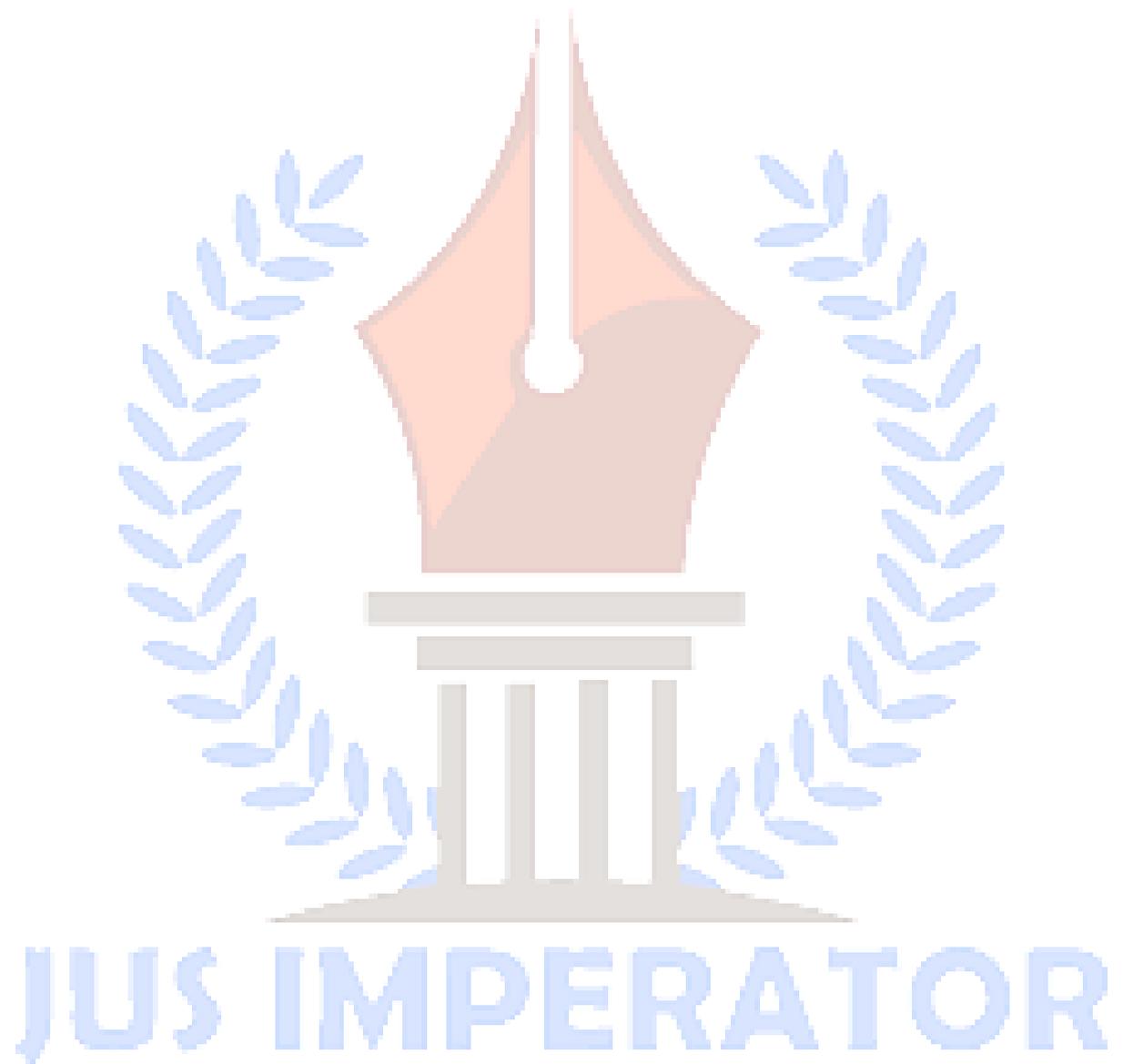
Justice Karnan's weird behaviour embarrassed the judiciary he represents. The Supreme Court took into account various letters written by Justice Karnan against the judges of Madras High Court as well as Supreme Court. Justice Karnan's issues with his colleagues give rise to the longstanding need for an effective judicial accountability law in India.

India along these lines, needs to make critical strides if we somehow want to save the higher judiciary from losing the fight for public perception on legal defilement.

There is currently no mechanism short of impeachment to discipline judges. Therefore, various cases of legal unfortunate behavior have gone unpunished and awful judges have never been removed of the legal. Most importantly, there is unquestionably a requirement for a statutory instrument that unmistakably characterizes legal wrongdoing that misses the mark regarding impeachable conduct.

So, a statute must be drafted to guarantee that the legislative or executive body has no part to play in disciplining the judges because it would best be served if judges take the errand of

disciplining their brother judges unto themselves. In any case, this must be done straightforwardly and not under a smoke screen.



REFERENCES

- UjjwalNikam, A Public Prosecutor , Should The Four Sc Judges Have Dissented Publicly?, The Hindu
- Shocking Details Emerge In Death Of Judge Presiding Over Sohrabuddin Trial, Caravan Magazine
- KaminiJaiswalvs Union Of India on 14 November, 2017
- The Hindu Explains: ‘master of the roster’ The Hindu
- Explainer: What happened in the Supreme Court on Friday (and what is the MCI bribery case)? Scroll.in
- State of Rajasthan v Prakash Chand, (1998) 1 SCC 1
- Restatement of Values of Judicial Life (1999) – CODE OF JUDICIAL ETHICS LAW RESOURCE
- Karnan: a long history of confrontation with colleagues, K. Venkataramanan
- The curious case of justice karnan and its implications for higher judiciary- Hindustan Times
- Absconding Justice Karnan retires today: All you need to know about why SC ordered his arrest - Times of India ► The Times of India
- SC sentences Justice Karnan to six months imprisonment The Hindu
- Absconding Justice Karnan retires today: All you need to know about why SC ordered his arrest - Times of India ► The Times of India
- Judge who staged sit in outside Madhya Pradesh HC suspended, Tribune India