



INTERNATIONAL CONVENTION ON INDEPENDENCE OF JUDICIARY AND JUDICIAL ACCOUNTABILITY

Shiga Naresh

Ph. D. Research Scholar, Department of Law, Osmania University, Hyderabad.

Abstract

The judiciary occupies a crucial role in society, overseeing the other two branches of government while simultaneously safeguarding individual rights and ensuring justice. In every country, the independence of the judiciary is maintained to protect its autonomy and integrity, which ensures equitable and adequate access to justice for the populace. To achieve this objective, it is essential that the appointment process is fair, supported by a suitable constitutional framework for the removal of judges in cases of misconduct, as well as the transparency of their personal assets, which is vital for tracking their financial growth during their tenure and combating corruption. This document explores these three issues in India and conducts a comparative analysis of the legal framework as outlined in the Indian Constitution, focusing on appointment, removal, and asset declaration in relation to the systems of the United Kingdom, Canada, and the United States. The author also incorporates provisions from other countries that pertain to specific matters where particular legislation is lacking in the aforementioned nations. Furthermore, this document discusses the challenges faced by the Indian judiciary regarding accountability and judicial transparency, identifying the shortcomings in the current system. Ultimately, the author offers several recommendations to address these challenges.

1.1 Fundamental Principles of Judicial Independence

The Charter of the United Nations aims to foster a global community that emphasizes justice, encourages international cooperation, and safeguards human rights and freedoms while unequivocally opposing all forms of discrimination. The Universal Declaration of Human Rights reinforces these ideals by ensuring equal rights under the law, the presumption of innocence, and the entitlement to a fair and public trial conducted by qualified judicial authorities. International treaties concerning economic, social, cultural, civil, and political rights are vital for protecting and realizing these rights. It is important to note that the Covenant on Civil and Political Rights offers safeguards against arbitrary actions. However, a significant gap often exists between the principles outlined in these documents and their actual enforcement. While many countries' judicial systems are founded on these principles, striving for their true application is crucial. Judges are empowered to operate within those frameworks when a judicial system adheres to high standards. Judges are primarily responsible for making decisions that impact individuals' lives, freedoms, rights, employment, and property. The Sixth International Conference on the Prevention of Crime and the Treatment of Offenders, through its¹ 16th resolution, urged the Committee on the Prevention and Treatment of Crime to spearhead the development of legislation concerning the independence and selection of judges, as well as the training and status of judges and legal professionals. In this context, examining the functioning of judges and courts and the various factors influencing their decisions, values, and professional conduct is essential. The fundamental principles designed to safeguard the independence of the judiciary should be embraced by member states and integrated into their legal and governmental frameworks. Judges, law enforcement agencies, the executive and legislative branches, and the general public must also

¹ Manco, E. (2013). The United Nation convention on the rights of the child : Are children "in conflict with law" really protected? : A case study of Republic of Albania's juvenile justice system. <https://doi.org/10.2139/ssrn.2405687>



recognize and implement these standards. While these guidelines are primarily aimed at professional athletes, they are applicable and beneficial for athletes at all levels².

- 1.1.1 Independence of the Judiciary
- 1.1.2 Freedom of Expression and Association
- 1.1.3 Qualifications, Selection and Training
- 1.1.4 Conditions of Service and Tenure
- 1.1.5 Professional Secrecy and Immunity
- 1.1.6 Discipline, Suspension and Removal

1.2 “Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers”ⁱ

1.2.1 The Human Rights Council

The independence of courts, judges, investigators, and legal practitioners is of utmost importance, as highlighted in Articles 7, 8, 9, 10, 11, 2, 4, 9, 14, and 26 of the Universal Declaration of Human Rights by the Human Rights Councilⁱⁱ, along with the Vienna Conventionⁱⁱⁱ. These declarations and ethical guidelines emphasize the necessity of safeguarding these rights. The autonomy of judges is grounded in essential principles, including the Basic Code of Professional Conduct and the Bangalore Principles of Judicial Conduct, as well as the UN Charter and the Law on Access to Legal Aid. The criminal justice system must comply with these standards, ensuring that the Human Rights Commission and the Supreme Court maintain their integrity and independence in administering justice.

1.3 “Draft Universal Declaration on the Independence of Justice (Singhvi Declaration)”^{iv}

The United States has made significant progress in addressing the needs of its citizens, particularly in the realms of justice and infrastructure^v. This progress is reflected in the strategic distribution of resources to bolster the institutional frameworks necessary for ensuring fair access to justice^{vi}.

In this context, the main objective is to develop a comprehensive annual development plan^{vii}. Effective communication across all sectors is essential, particularly concerning the independence of the judiciary, as highlighted in the Singhvi Declaration.

- 1.3.1 Judges
- 1.3.2 Qualifications, Selection and Training
- 1.3.3 Immunities and Privileges
- 1.3.4 Discipline and Removal
- 1.3.5 Court Administration
- 1.3.6 Miscellaneous
- 1.3.7 Assessors
- 1.3.8 Selection of Prospective Jurors
- 1.3.9 Administration of the Jury System
- 1.3.10 Jury Consideration and Deliberation
- 1.3.11 Lawyers Definitions
- 1.3.12 General Principles
- 1.3.13 Legal Education and Entry into the Legal Profession
- 1.3.13 Legal Education and Entry into the Legal Profession
- 1.3.14 Education of the Public Concerning the Law
- 1.3.15 Duties and Rights of Lawyers

² Ibid.



- 1.3.16 Legal Service for the Poor
- 1.3.17 The Bar Association
- 1.3.18 Functions of the Bar Association
- 1.3.19 Disciplinary Proceedings

1.4 “Integrity of the Judicial System The Human Rights Council”^{viii}.

In conjunction with international law, human rights law establishes the essential principles of the rule of law, as stated in Article 26 of the Universal Declaration of Civil and Political Rights^{ix}.

Additionally, the Vienna Convention and its associated Protocols, the Convention against Torture, Inhuman or Degrading Treatment^x, and the International Convention for the Protection of All Persons from Genocide, among other legal instruments, contribute to the comprehensive framework of criminal justice. The United Nations, particularly through the Basic Principles of Justice, independence, and various professional ethical standards, is vital in advancing these objectives. The fundamental principles of justice for victims of crimes and abuses of power^{xi}, along with the standards governing the treatment of prisoners and the operation of correctional facilities, highlight the rights of all individuals, including those with disabilities. The Victims Protection and Defense of Death Penalty Act, along with the Bangalore Principles reaffirmed by Decision 19/31 on March 23, 2012, and the earlier resolution adopted by the Committee in December 2012, emphasize the importance of human rights. There is a broad consensus that the integrity of the judiciary, marked by its independence and impartiality, is crucial for safeguarding human rights and fundamental freedoms, fostering democracy, and ensuring fair justice while upholding the integrity of the courts.

A report from the Special Rapporteur on the Independence of Judges and Prosecutors regarding the operation of military courts was presented to the General Assembly during its twenty-eighth session. This report details the Special Rapporteur’s findings and recommendations, stressing that military courts, where they are present, must operate within the constitutional framework and adhere to human rights law, particularly concerning justice and procedural fairness. It highlights the relevant legal principles.

1.5 “Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World”^{xii}

The United States voiced its dissent against the resolution, which garnered support from a diverse array of nations, including Austria, Benin, Ivory Coast, the Czech Republic, Estonia, France, Gabon, Germany, Ireland, Italy, Japan, Kenya, the Maldives, Montenegro, the Republic of Korea, Romania, Saudi Arabia, the former Yugoslav Republic of Macedonia, and the United Kingdom.

Delegates convened for the Second UN Conference on Crime Prevention and Criminal Justice in Salvador, Brazil^{xiii}, from April 12 to 19, 2010. The main goal of this gathering was to strengthen^{xiv} collaborative efforts to prevent, address, and penalize criminal activities, thereby fostering justice.

The successful development and execution of policies, programs, and training initiatives focused on crime prevention and counter-terrorism necessitate a significant investment of human and financial resources. The United Nations Office on Drugs and Crime must have sufficient resources aligned with its established mandate. We urge Member States and other international partners to bolster their support and collaboration with the United Nations Office on Drugs and Crime, including its regional



and national offices, crime prevention agencies, and UN criminal justice programs. In particular, we advocate for nations to offer technical assistance in the battle against crime.

We acknowledge the essential role of the United Nations Office on Drugs and Crime in providing^{xv} technical support for ratifying and implementing international frameworks designed to prevent and combat terrorism.

We call on the Commission on Crime Prevention and Criminal Justice to enhance the United Nations Office on Drugs and Crime initiatives in gathering, analyzing, and disseminating reliable, accurate, and credible information regarding victimization and global crime trends. Countries are encouraged to collect and analyze this data to identify relevant stakeholders and provide information as requested by the Commission.

We express our support for the Commission for the Prevention of Crime and Criminal Justice initiative, which facilitated a thematic discussion on preventing the trafficking of cultural property. We also support the recommendations the Group of Experts on Open-Ended International Governance put forth during their meeting in Vienna from September 24 to November 26, 2009. We urge the Commission to give careful attention to these matters, particularly the necessity of regulating the sale of cultural objects to combat illegal activities.

Countries that have yet to implement the necessary measures are strongly urged to take prompt and effective actions to prevent, prosecute, and penalize such offenses by utilizing all available resources. It is also essential to enhance international collaboration and provide technical support in this area, particularly concerning the restoration and restitution of cultural heritage, while adhering to relevant international frameworks, especially the United Nations Convention on Transnational Organized Crime.

The increasing complexity at the intersection of transnational organized crime and emerging illicit networks is widely acknowledged. Member States are encouraged to participate in cooperative initiatives, including information sharing, to tackle this evolving form of transnational crime effectively.

The significant threat posed by criminal activities, especially those detrimental to the environment, is recognized. Member States are urged to strengthen their legal frameworks, policies, and practices related to domestic crime and criminal justice. Additionally, Member States must enhance international cooperation, provide technical assistance, and share best practices in this area. The Crime Prevention and Criminal Justice Commission and relevant agencies are encouraged to evaluate the extent of this crisis and identify effective strategies for its resolution.

1.6 “Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers”^{xvi}

The Human Rights Council

The prison system is a crucial component of the overall criminal justice framework. While the importance of the United Nations Standards and Norms for the Treatment of Prisoners is acknowledged, it should not be assumed that these standards are the only foundation for developing or reevaluating national policies on the treatment of incarcerated individuals^{xvii}.



A thorough understanding of the prison system's function is vital within the broader criminal justice context. Familiarity with the standards and guidelines established by the United Nations is essential for effectively shaping and assessing national policies related to prison management^{xviii}.

The Commission on Crime Prevention and Criminal Justice should consider creating a permanent intergovernmental expert group. This group would promote the exchange of best practices across various national and international legal systems. Additionally, it would aim to revise existing regulations to comply with the minimum standards set by the United Nations Commission on the Conduct of Prisons, thereby strengthening efforts in correctional research and adopting best practices. The group would also continue to assist the Commission in its future endeavors^{xix}.

The Prosecutor's Office must carry out its duties fairly, consistently, and efficiently to build public trust and protect human rights. This commitment is crucial for improving the equity and effectiveness of the criminal justice system^{xx}.

Maintaining the independence and impartiality of the judiciary^{xxi} and the autonomy of the legal profession is essential for achieving the 2030 Agenda, particularly the 16th Sustainable Development Goal, which highlights the importance of establishing accountable and inclusive institutions at all levels.

1.7 "Policy Frame work for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System"^{xxii}

A major conference occurred in Geneva, Switzerland, from February 23 to 25, 2000, where the Center for the Independence of Judges and Lawyers (CIJL)^{xxiii} developed a policy framework to combat corruption and ensure judicial impartiality. The event drew representatives from various countries, including Australia, Bangladesh, Canada, Egypt, France, India, Indonesia, Malaysia, Nigeria, Palestine, Senegal, Sri Lanka, Uganda, and the United States. Among the notable participants were the United Nations Special Rapporteur on the independence of judges and lawyers, current and former high-ranking judicial officials, distinguished legal scholars, and representatives from international financial institutions.

By the conclusion of the conference, a detailed policy framework was established.

The integrity of the judiciary is essential for maintaining a democratic society. The judiciary protects the rule of law and human rights, which requires its operations to be free from political influence. The judiciary must operate independently and impartially.

The judicial system is recognized as one of the most respected legal frameworks worldwide. Established protocols, factual evidence, and accepted legal standards must be rigorously followed to maintain judicial impartiality. Any deviation from these principles suggests corruption within the judicial system.

Research by the Center for the Independence of Judges and Lawyers (CIJL) reveals that threats to judicial integrity continue in nine of the 48 countries studied. Judges and lawyers reported 919 instances of judicial misconduct across 30 nations. Additionally, this issue is emerging in six more countries, while CIJL noted a need for more relevant data from 13 countries.



The components of this political framework are detailed as follows

“This approach is considered the most effective way to tackle the current issue; it is seen as the best course of action, and he acknowledges that some methods may have negative consequences.”

“Promoting a societal culture that condemns corruption within the judicial system.”

The constitutional provisions regarding corruption in the judiciary are articulated as follows:

“The integrity of the judicial system is jeopardized by reckless actions to undermine judicial officials. This includes the solicitation or acceptance of bribes by judges or court staff. Such violations are punishable under national law, specifically:

1. Corruption;
2. Fraud;
3. Misappropriation of funds;
4. Willful destruction of legal cases;
5. Intentional alteration of court documents.

Corruption within the judiciary does not require categorizing judicial decisions as corrupt. An investigation by an independent, reasonable, impartial, and competent observer is sufficient to determine the presence of misconduct.

Facilitating Public Awareness

In the fight against corruption, it is crucial to engage the public in identifying and addressing the shortcomings of the judicial system. This initiative should focus on educating citizens about the^{xxiv} role of civil society in advocating for marginalized groups. Collaborative efforts can strengthen the capacity to effectively tackle corruption cases within the judiciary, thereby reducing its prevalence. As a result, the justice system must take a proactive approach to identifying and exposing corruption as it occurs. The existence of independent and accountable media is essential for raising public awareness.

Indicators of Corruption of the Judicial System

Courts should take a proactive approach in their interactions with the media concerning all facets of the justice system. Indicators of systemic corruption are critical signals that demand prompt action to address urgent issues, thereby warranting an investigation into the level of corruption within the justice system.

National and International Legislation

Assessing the national legal framework alongside international standards is essential to confront these challenges effectively.

1. Market regulation
2. Prosecution related to conventional arms

Additionally, judicial officials must be held accountable for their financial interests and responsibilities, promoting transparency and integrity in their financial transactions. Implementing disciplinary measures that uphold ethical standards within the judiciary is crucial. A trustworthy and impartial judiciary is vital for reducing opportunities for corruption, as external influences can jeopardize judicial independence and compromise merit-based decisions.

Eliminating Contributing Causes to Corruption

Reforming the foundational structure of the justice system directly affects individual cases. This system is intended to efficiently allocate resources to the public and communities, supported by a



responsible budgeting process for distribution and internal operations. The goal of addressing corruption allegations is to encourage judges and their associates to clarify the details of their actions, even without definitive evidence of misconduct. Furthermore, it is essential to enhance procedural protocols to improve efficiency.

Allegations of widespread corruption within the judicial system have raised serious concerns about its integrity. An independent investigation into these accusations is crucial to guarantee that judicial processes meet established standards of fairness. Legal education is vital in promoting an understanding of the ethical aspects of law within a comprehensive legal framework. This educational approach aims to prepare legal professionals with the skills needed to navigate ethical standards effectively. Additionally, comprehensive legal training offers practitioners the chance to discuss the ethical challenges in the legal field. The significance of nurturing strong family relationships is also recognized in this context. Legal professionals have a significant duty to maintain the judicial system's impartiality. Participation in corrupt activities within the legal sphere is unacceptable, and tackling public corruption should be a top priority.

Legal institutions are responsible for upholding high professional standards and ensuring appropriate consequences for all members. Protecting the integrity of the legal system is essential for maintaining its impartiality and ensuring fair treatment for all individuals. Neglecting these principles threatens the rule of law and undermines the democratic foundations upon which the legal system is established.

Conclusion

Judicial independence holds immense significance in a constitutional democracy. Judges are responsible for safeguarding human rights and upholding the rule of law, which is crucial for maintaining the tenets of constitutional democracy. To fulfill this role, it is essential for courts to adhere to the principles of judicial independence. International law provides a practical definition of judicial independence, outlining five key elements that every legal system should uphold: (a) impartiality; (b) objective case assessment; (c) elimination of bias; (d) political independence; and (e) operation without fear.

International law encompasses both 'hard law,' which includes enforceable regulations on judicial independence, and 'soft law,' which consists of guidelines for maintaining judicial independence. This legal framework allows for the respect of these regulations and guidelines in various ways across different national legal and constitutional systems, without necessitating the creation of specific jurisprudential models or the enforcement of particular mechanisms and procedures to govern judicial behavior. Evaluating whether a country's judicial rules and mechanisms align with international law requires a comprehensive and meticulous examination of the relevant rules and mechanisms in relation to international standards.



References

1. Resolution adopted by the Human Rights Council 23/6. The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its twenty-third session (A/HRC/23/2), Chapter I, available at: https://www.icj.org/wp-content/uploads/2014/03/UN-Human-Rights-Council-independence-of-the-judiciaryiresolution-A-HRC-RES-23-6-2013-eng.pdf/*. also available at URL: https://digitallibrary.un.org/record /108406/files/E_CN.4_Sub.2_1985_18_Add.1-EN.pdf Fetched: 3/4/2020 12:54:26 PM.
2. Brandon And Ashley Wright Of Hamburger Mary's And The Big Four, Llc Found Guilty Of Violating Human Rights. <https://therevolutionarytimesnews.com /2023/03/05/brandon-and-ashley-wright-of-hamburger-marys-and-the-big-four-llc-found-guilty-of-violating-human-rights/>.
3. Available at: https://www.icj.org/wp-content/uploads/2014/03/UN-Human-Rightsiii Councilin dependence- of-the-judiciary-resolution-A-HRC-RES-23-6-2013-eng.pdf/*. Fetched: 5/15/2021.
4. Available at: https://www.icj.org/wp-content/uploads/2014/03/SR-Independence-ofivJudges-and -Lawyers-Draft-universal-declaration-independence-justice-SinghviiivDeclaration-instruments- 1989-eng.pdf/*. Fetched: 5/15/2021.
5. ^vNpower is now RHJCP – FG – Nyscinfo. <https://nyscinfo.com/npower-is-now-rhjcp-fg/>.
6. Available at: https://www.icj.org/wp-content/uploads/2014/03/SR-Independence-ofviJudges-and-Lawyers-Draft-universal-declaration-independence-justice-SinghviviDeclaration-instruments- 1989-eng.pdf/*. Fetched: 5/15/2021.
7. Pérez-Fernández, L., Conde, J. L. B., & Pérez, M. Á. S. (2017). Decision support system to decrease warranty and intangible costs in automotive industry. *Procedia Manufacturing*. <https://doi.org/10.1016/j.promfg.2017.09.176>.
8. Human Rights Council Twenty-fifth session Agenda Item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Resolution adopted by the Human Rights Council 25/4, available at: https://www.icj.org/wp-content/uploads/2014/10/HRC-resolution-25-4-integrity-judicial-system.pdf /* . Fetched: 12/15/2020 10:19:30 AM.
9. Easar, F., Azizi, H., Rahmani, K., Moradi, M., Taieb, R., & Faqiryar, W. N. (2023). Education in Afghanistan since 2001: Evolutions and Rollbacks. https://www.ssoar.info /ssoar/bitstream /document/85341/1/ssoar-2023-easar_et_al-Education_in_ Afghanistan _ since_2001.pdf.
10. O'Rourke, C. (2018). Bridging The Enforcement Gap? Evaluating The Inquiry Procedure Of The Cedaw Optional Protocol. *The American University Journal of Gender, Social Policy & the Law*, 27(1), 1-30.
11. Madina, I. G., Bilbao, G., & Bermúdez, Á. (2018). Recognizing Victims of Political Violence: Basque Literary Narratives as an Ethical Tool. *Studies in Conflict & Terrorism*. <https://doi.org/10.1080/1057610x.2018.1452808>.
12. Available at: https://www.icj.org/wp-content/uploads/2015/01/Salvador_Declaration_E.pdf/*.



13. Co-op, innovation vital in fighting crime – Neeraj Bhushan. <https://neerajbhushan.com/2010/04/13/co-op-innovation-vital-in-fighting-crime/>.
14. Afrika vuka – Afrika Vuka. <https://afrikavuka.org/tag/afrika-vuka/>.
15. (2009). Political declaration and plan of action on international cooperation towards an integrated and balanced strategy to counter the world drug problem. <https://core.ac.uk/download/187738420.pdf>.
16. Human Rights Council, Thirty-fifth Session, (June 6–23, 2017), Agenda Item 3 Resolution adopted by the Human Rights Council on June 22, 2017; 35/12. available at: <https://www.icj.org/wp-content/uploads/2018/11/HRC-res-independence-Judges-2017.pdf>/*
Fetched: 5/15/2021.
17. A/71/348. United Nations A/HRC/RES/35/12 General Assembly Distr.: General (July 10, 2017) Original: English A/HRC/RES/35/12 2.
18. Ibi
19. Berenson, S. K. (2018). Judicial Ethics and Conduct: Chapter 1 Introduction and Overview. Social Science Research Network. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3339009.
20. Available at: <https://www.icj.org/wp-content/uploads/2015/04/CIJL-Policy-Framework-for-preventing-and-eliminating-corruption-and-ensuring-impartiality-of-the-judicial-system-2000.pdf>/*. also available at [4a7837af2.pdf](https://refworld.org/docid/4a7837af2.pdf) (refworld.org)/*Fetched: 5/15/2021 5:46:00 AM
21. Holdings: CIJL bulletin. :: Library Catalog. <https://catalog.lib.uchicago.edu/vufind/Record/10982099/Holdings>
22. Al-Gahtani, S. (2024). Saudi Arabia's Journey toward a Renewable Future. *Energies*, 17(11), 2444.