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WHY BUREAUCRATS DO NOT COMPLETELY FOLLOW THE PRECEDENT OF THE APEX COURT OF INDIA: A CRITICAL ANALYSIS OF JUDICIAL SUPREMACY, EXECUTIVE INERTIA, AND THE ACCOUNTABILITY DEFICIT

-Md Imaran¹

ABSTRACT

According to India's constitutional democracy, the ultimate authority for interpreting laws is the Supreme Court; its rulings are binding under Article 141 for every entity in India. However, even though the constitution makes this a clear requirement, bureaucratic efforts to enforce Supreme Court decisions often will remain unfulfilled (either in their entirety, or on time), or do not receive appropriate enforcement at all. As such, this article will analyze multiple issues that cause bureaucratic non-compliance with Supreme Court decisions, with a focus on the evolution of India's constitutional framework; the development of its public sector administrative processes; and the experiences of other countries. The article summarizes key court rulings, government reports, law commission documents, and recent developments in enforcement of judicial orders, and finds that bureaucratic resistance persists due to a combination of structural, cultural, and legal barriers. The analysis shows the reasons behind non-compliance are not just down to individual behaviour; they also relate to institutional pathologies which are deeply rooted in their histories, such as colonial administrative systems, inadequate systems of accountability, political interference and lack of systematic monitoring of compliance. The article develops a new multi-dimensional framework for improving compliance through legislative reform, innovations in judicial monitoring, civil service accountability indices and technology. The framework's purpose is to connect judicial declaration (the outcome of a legal case) to administrative execution (the actual implementation of the outcome) in order to better support the rule of law and strengthen constitutional governance in India.

¹ 2nd year B.A. LL.B. Student, Asian Law College

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INTRODUCTION

The Constitution of India is built on the idea that the legislative, executive, and judicial branches of government are separate and distinct. The legislative branch creates laws, the executive branch implements laws, and the judicial branch interprets and protects our Constitution and its values. The Constitution mandates in **Section 50** that the state must separate the judicial branch from the executive branch in its public service². The purpose of this requirement is to create an independent judiciary. The Supreme Court's ability to provide binding declarations of law according to **Section 141** is critical to this independent judicial oversight of executive actions.³ Also, **Section 141** refers specifically to "**courts**" and judicial interpretation has found that this section applies not only to courts but to all state entities — with respect to any action, even if it is carried out by an executive agency or its officers and employees, bringing it within the authority of Section 141 to provide binding declarations of law. Moreover, **Article 144** specifies that all state authorities must "**render assistance**" to the Supreme Court in its function as the final interpreter of the Constitution and its values⁴.

The non-compliance with Supreme Court orders by bureaucrats is still a problem despite the strong Constitution framework in India. For example, in the case of **Prakash Singh v. Union of India**⁵, police reform orders were ignored, as were environmental protection duties handed down by the Supreme Court in **T.N. Godavarman Thirumulpad v. Union of India**.⁶ Judicial orders and executive action remain out-of-sync, undermining the ability of courts to give effect to the Constitution. Questions remain regarding judicial authority, how accountable permanent executive officials are, and practical availability of constitutional remedies.

This article explores three related research questions including the following: **(1)** what is the duty of bureaucrats to comply with Supreme Court rulings as established by the Constitution, and what are

² The Constitution of India 1950, art 50.

³ The Constitution of India 1950, art 141.

⁴ The Constitution of India 1950, art 144.

⁵ *Prakash Singh v. Union of India* (2006) 8 SCC 1

⁶ *T.N. Godavarman Thirumulpad v. Union of India* (1997) 2 SCC 267

the consequences of non-compliance with those decisions? **(2)** What are the structural (e.g., bureaucratic), cultural (i.e., public perceptions), and institutional (i.e., laws/policies) reasons behind the continuing gap between the courts' declarations and the implementation of those declarations by the bureaucratic state? **(3)** What kind of reform (i.e., legislative, judicial, and administrative) would improve compliance and enhance the rule of law?

This paper employs a doctrinal and analytical research methodology to explore the topic through an examination of constitutional rules, case law, reports of the Law Commission, and scholarly articles. Additionally, this paper includes a comparison of judicial enforcement in common law jurisdictions such as the United States and the United Kingdom to identify alternative forms of judicial enforcement. Moreover, this paper reviews recent empirical studies and recent changes to provide a more current understanding of compliance with national judges.

CONCEPTUAL AND CONSTITUTIONAL FRAMEWORK

THE BINDING NATURE OF SUPREME COURT PRECEDENT

The power of the Supreme Court to declare the law under Article 141 is one of the most important characteristics of Indian constitutional law. In **Bengal Immunity Co. Ltd. v. State of Bihar**⁷, the Supreme Court explained that “**all courts**” means any court that is located within the territory of India and that when the Supreme Court makes a decision it creates law for the entire country. When the Supreme Court makes a ruling it will have a binding effect on the lower courts as well as on all other authorities within the country, regardless of whether the ruling is or has been decided by reference to the ratio or the obiter.⁸

The requirement for Executives to obey Court Orders is reinforced through Art. 144, which reads: “**all Authorities, whether Civil or Judicial, within the Territory of India shall aid the Supreme Court in carrying out its functions.**” To quote **D.D. Basu**, a prominent constitutional scholar: “**Art. 144 provides for a constitutional duty on all Civil Authorities to provide the Supreme Court with such assistance, as will enable the effective functioning of the Court and the enforcement**

⁷ Bengal Immunity Co. Ltd. v. State of Bihar AIR 1955 SC 661

⁸ See M/s. Goodyear India Ltd. v. State of Haryana (1990) 2 SCC 71, where the Court held that considered obiter of the Supreme Court is binding on all courts and authorities.

of its orders."⁹ Therefore, all persons working in the Administrative System are Civil Authorities for the purposes of Art. 144.

Justice P.N. Bhagwati, in **S.P. Gupta v. Union of India**,¹⁰ articulated the constitutional imperative underlying judicial compliance with characteristic eloquence:

“Arbitrariness is the opposite of the rule of law. The Constitution has given the judiciary the role of interpreting the Constitution and determining whether the executive branch was acting in accordance with the Constitution. If the executive does not follow the judicial order, it will undermine the foundation of constitutional governance”

This pronouncement establishes beyond cavil that executive disobedience of judicial mandates constitutes a constitutional violation of the highest order, imperilling the very foundations of democratic governance.

CONTEMPT OF COURT: THE REMEDIAL FRAMEWORK

Contempt is the legal method used to correct bureaucratic noncompliance with court rulings under the **Contempt of Courts Act of 1971**. Section 2(b) of the Act defines civil contempt as noncompliance with **(i)** a judgment, decree, direction, order, writ or other order of a court, and **(ii)** as a result of an undertaking to the court. Black's Law Dictionary defines contempt as **"the willful disobedience of/pay ignorance of/court rule and court order."**¹¹

The Supreme Court has long established that a governmental department (or agency) that fails to comply with the Court's order is guilty of civil contempt of court and may be subject to penalties (e.g., fines and imprisonment). In **Rama Narang v Ramesh Narang**¹², the Court stated: **"The arm of the Court is long enough to reach those who violate its orders regardless of the violator's official position and/ or status."** As will be demonstrated in later sections of this analysis, however, the contempt jurisdiction has been ineffective as a systemic deterrent because of procedural difficulties; judges often refuse to impose punitive sanctions against public officials; and there is no financial or administrative mechanism to enforce or carry out the contempt statutes.

⁹ D.D. Basu, Introduction to the Constitution of India (22nd edn, LexisNexis 2013) 487.

¹⁰ S.P. Gupta v. Union of India 1981 Supp SCC 87.

¹¹ Bryan A. Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019) 398.

¹² Rama Narang v. Ramesh Narang (1995) 2 SCC 513.

JUDICIAL PRONOUNCEMENTS ON EXECUTIVE COMPLIANCE

Multiple times, the Supreme Court has shown concern about how governments have refused to obey court orders and are being disobedient at times when judges give judicial direction. For example, in the case of **Union of India v R Gandhi**¹³, the Supreme Court referred to an "**increasing number of instances**" of the executive using a judicial order as simply an "**advisory opinion**" and not a "**mandatory order.**" Similarly, in **Common Cause v. Union of India**,¹⁴ the Supreme Court noted that "failure to implement judgements indicates the failure of constitutional machinery and generates contempt" against the authority of the judiciary.

The Law Commission of India has put forth extensive findings in its **report 245 (2014)** that address individual judicial orders that have not been implemented. The lack of an effective monitoring and enforcement mechanism for court orders results in a culture of impunity within the executive branch and erodes public confidence in the judiciary. The report recommends that the government establish dedicated enforcement cells in each government department and develop a legislative framework to hold public officials accountable for willfully failing to comply with their duty to comply with court orders.¹⁵

COMPARATIVE CONSTITUTIONAL PERSPECTIVES

Judicial orders are not adhered to & fulfilled by government bureaucracies due to this system being present in many countries including The **United Kingdom**. For example in **M v. Home Office**¹⁶ the decision made by the House of Lords established that ministers of Her Majesty the Queen (Crown) are subject to contempt jurisdiction for failing to comply with Court Orders. The executive is not above the law; any such failures in respect of fulfilling judicial orders may be restrained & punished through contempt proceedings. This observation made by Lord Templeman provides sufficient weight in support of India's constitutional position regarding the implementation of judicial orders.

The Constitution gives Federal courts in the U.S.A., by means of Article III, the authority to create legally binding injunctions, as well as to enforce compliance through various means, including

¹³ Union of India v. R. Gandhi (2010) 11 SCC 1

¹⁴ Common Cause v. Union of India (1996) 2 SCC 752

¹⁵ Law Commission of India, 'Report No. 245: Arrears and Backlog: Creating Additional Judicial (Wo)manpower' (2014) 67

¹⁶ M v. Home Office [1994] 1 AC 377

mandamus and civil fines. This was further established by the ruling of the United States Supreme Court in **United States v. Nixon**¹⁷, when it stated that "neither the doctrine of separation of powers nor the need for confidentiality of high-level communications, standing alone, could provide an absolute, unqualified Presidential privilege of immunity from judicial process." The principle that the Executive is subject to judicial review can be found throughout American constitutional law.

HISTORICAL EVOLUTION OF BUREAUCRATIC CULTURE IN INDIA

COLONIAL ORIGINS AND POST-INDEPENDENCE CONTINUITIES

The administrative culture of modern India has been shaped by its colonial past. The Indian Civil Service (ICS) was established by the British to assist in ruling India and not to provide responsive public service. The purpose of this civil service was to maintain order, collect taxes, and protect Crown property rather than serve as a public service. As noted by **B.L. Fadia**:

Following the end of British colonial rule, much was expected from the Indian bureaucracy in terms of both its authority and its role as a service provider for its citizens. Unfortunately, due to the persistence of the structural and cultural framework that existed prior to Independence, these changes did not happen completely. "The Colonial mindset of hierarchy; emphasis placed on adhering to precedence and procedures, rather than achieving specific results; as well as an inherent respect towards executive power, rather than abiding by the rule of law, all contributed towards the continuing failure of the Indian Bureaucracy's ability to serve the needs of those who live in India".¹⁸

This colonial legacy has resulted in a number of attitudes that are detrimental to the enforcement of court orders. First, in the mind of bureaucrats, court orders are considered to be external impositions rather than constitutional mandates that must be followed. Second, the hierarchical nature of the Indian governmental system encourages deference to political superiors and discourages independent decision-making based on legal obligations. Finally, the lack of a strong culture of legal compliance in

¹⁷ United States v. Nixon 418 U.S. 683 (1974)

¹⁸ B.L. Fadia, Public Administration in India: Theory and Practice (Sahitya Bhawan 2020) 112

the civil service leads civil servants to view compliance with court orders as optional and only when it is convenient for them to comply.

THE ALL-INDIA SERVICES FRAMEWORK AND ACCOUNTABILITY DEFICITS

The constitutional framework that governs the All-India Services (IAS, IPS, IFoS) grants officers important protections, such as tenure security and protection from arbitrary dismissal under **Article 311**. Although this was originally intended to provide independence with respect to the administration and prevent political victimisation of officers, these protections have resulted in a situation where there is little personal accountability for non-compliance with judicial orders.

Civil servants do not have a performance appraisal system that includes compliance with court orders as a separate form of evaluation. There is no legal or administrative means that tracks each individual officer's or department's compliance with judicial orders in any systematic way. As a result, an officer's failure to implement a Supreme Court ruling does not usually impede his or her career development, transfer, or posting. "The Second Administrative Reforms Commission pointed out that 'the lack of a direct link between compliance with the laws of court and evaluation of the performance in the administration occurs because of the creation of perverse incentives within the bureaucracy.'"¹⁹

COMPARATIVE ANALYSIS: UNITED KINGDOM AND UNITED STATES

A comparative examination of bureaucratic accountability frameworks in the United Kingdom and the United States illuminates the institutional deficiencies in the Indian context.

United Kingdom: Although the civil service in Britain is merit based and politically neutral, there are strong frameworks for ministerial responsibility and parliament oversight. If a department does not comply with a court order, the issue may be raised in Parliament through questions, debates or select committee investigations. The Minister in charge will be accountable to the House of Commons; the Minister may also resign or be dismissed from their post if they are found to be in serious non-compliance with a judicial order. In the case of **M v. Home Office**,²⁰ the fact that the Home Secretary

¹⁹ Second Administrative Reforms Commission, 'Ethics in Governance' (Fourth Report, 2007) 89.

²⁰ M v. Home Office [1994] 1 AC 377

was held personally in contempt of court reinforces that no person, regardless of how high their position is, should be beyond being punished by the judicial system.

The U.S. system has several ways to make sure that the bureaucracies will follow a federal court's order. These ways include the federal courts' powers to give out structural orders of injunction and the appointment of special masters to oversee how the orders are to be carried out; the use of mandamus to force a resistant official to act in accordance with the order; congressional oversight, such as conducting committee hearings and controlling appropriations; and private citizens being able to file suit under statutes like the APA. Any agency that does not follow a court's order may face budget restrictions, congressional scrutiny, or negative judicial findings. Each of these has the potential to adversely affect the agency's reputation.

India doesn't have effective measures in place to track how judges behave. For example, there is no government committee that keeps track of what judges do. Another example is that judges rarely receive any consequences for breaking the law. Finally, since current methods of measuring a judge's performance don't encourage judges to follow the law, we can see that there are many structural problems with India's ability to enforce its own laws.

STRUCTURAL AND INSTITUTIONAL IMPEDIMENTS TO COMPLIANCE

THE ENFORCEMENT VACUUM: ABSENCE OF MONITORING MECHANISMS

One of the main barriers to compliance with Supreme Court judgements is a lack of an institutionalised, systematic framework for monitoring compliance by bureaucrats. In contrast to other jurisdictions like the United States, which appoint special masters or monitoring committees to monitor enforcement of complex judicial decrees, Indian courts primarily issue their decisions and do not continue to monitor the enforcement of those decisions; they will typically only be involved in the enforcement when a party has initiated contempt proceedings which may occur many years after the act of non-compliance has occurred.

THE LAW COMMISSION OF INDIA, IN ITS 245TH REPORT, IDENTIFIED THIS ENFORCEMENT VACUUM AS A CRITICAL WEAKNESS

“Existing Contempt Jurisdiction is non-proactive (or only works when someone complains). Without someone complaining, there is no way for the Court to monitor compliance with its judgments unless a party complains. Additionally, there is no requirement that the executive report periodically on compliance with judgments of the Court. The existence of this structural gap between two branches of Government has permitted the bureaucratic inertia of executive (and legal) actions to continue without being checked or addressed.”²¹

There have been cases where The Supreme Court established a method by which to monitor implementation in some extraordinary cases. The **M.C. Mehta v. Union of India Republic**²², established a monitoring committee to oversee regulatory compliance in relation to environmental issues. Similarly, in **Vishaka v. State of Rajasthan**²³, The Supreme Court required that complaint committees be created to provide tools for responding to sexual harassment that occurs at the workplace. Nonetheless, such arrangements for the purpose of establishing ongoing and systemic mechanisms of accountability would be ad hoc and unique.

POLITICAL INTERFERENCE AND CAREER PROTECTIONISM

The way a bureaucrat is impacted by political relationships can create obstacles to following a court's instructions regarding politically sensitive or not convenient issues. These obstacles are manifested in a variety of ways, including the bureaucrat receiving a punitive transfer to a less desirable government unit, being denied a promotion or considered for a high-profile assignment, receiving an adverse entry in the annual confidential report and experiencing social ostracism within the various administrative circles.

The **Prakash Singh** police reform case exemplifies this pattern. In spite of being given detailed instructions by the Supreme Court in 2006 (with full support) for police officers to have set terms, the establishment of State Security Commissions and being protected from political influence, there has

²¹ Law Commission of India, 'Report No. 245' (n 14) 72

²² M.C. Mehta v. Union of India (1987) 1 SCC 395

²³ Vishaka v. State of Rajasthan (1997) 6 SCC 241

been inconsistent and incomplete implementation nearly 20 years later. “In the Commonwealth Human Rights Initiative's empirical research into how police officers (who had attempted to put in place these new policies) were treated by the judicial system, they found that officers who attempted to implement such reforms were systematically marginalised with many transferred to irrelevant posts or denied career advancement”.²⁴

The lack of reliable institutional safeguards for those obeying judicial instructions only promotes a culture of aversion to compliance. Officers weigh their decision-making against the potential for retaliation from the office they work for; therefore, they cannot reason in favor of complying with the court's order as long as there are additional career benefits to not doing so (e.g., they have little to no incentive to obey the court's order).

LEGAL AND PROCEDURAL AMBIGUITIES

Even where bureaucrats are inclined to comply with judicial orders, they frequently encounter legal and procedural ambiguities that impede effective implementation. These ambiguities take several forms:

Occasionally, the Supreme Court renders decisions that are phrased broadly and aspirationally, and these broad terms require follow-up through either regulatory promulgation or legislative enactment. Agents of the bureaucracy, acting in an environment governed by the principle of "**legal formalism**," often will not begin to implement Supreme Court decisions until they have received "clarification" from someone in a higher up position, or received a legal opinion from the department's legal counsel.

Due to the federal structure in India, there are many cases where several different agencies must work together at all levels of government (state, local, and national) when implementing directives from Supreme Court. In the absence of clear inter-agency coordination protocols, bureaucrats have the option of passing off their responsibilities to one another, thus diffusing responsibility for implementation.

²⁴ Commonwealth Human Rights Initiative, 'Police Reforms in India: A Status Report' (2022) 34-38

Resources limitations are not an acceptable excuse for not complying with your fundamental rights obligations; however, they are a substantive practical barrier to compliance when it comes to implementation of the rights. The Supreme Court has acknowledged this concern in **State of Punjab v. Ram Lubhaya Bagga**²⁵ but held simultaneously that a financial limitation is not a valid justification for violating the constitutional mandate.

Bureaucrats can encounter conflicting statutory obligations, where one directive is from a court order and the other is from an established statute or executive order. If no clear direction is provided regarding the resolution of these conflicting obligations, bureaucracy officers will typically follow the most immediate/concrete/certain institutional obligation—usually an executive order.

THE CONTEMPT CONUNDRUM: UNDERUTILISED AND INEFFECTIVE

While contempt jurisdiction represents the primary legal mechanism for addressing bureaucratic non-compliance, its practical efficacy remains severely constrained. Several factors contribute to this ineffectiveness:

Judicial Reluctance As seen in the courts' treatment of public officials, the courts appear to be quite reluctant to begin contempt proceedings against them. This reluctance appears to stem from concerns regarding comity between the branches of government and problems associated with enforcing contempt sanctions against public officials who are currently employed. Furthermore, this reluctance appears to apply whenever a public official's non-compliance with a court order can be attributed to systemic constraints as opposed to personal misconduct.

In order to show contempt of court, the person must have committed "**willfully disobeyed**" the order of the court. This is hard to prove if the non-compliance is passive, caused by bureaucratic errors or by the institution's own inaction. The official can defend against contempt charges by proving that there was "**an honest effort**" made to comply with the order, however inadequate the effort.

²⁵ State of Punjab v. Ram Lubhaya Bagga (1998) 4 SCC 117V

Courts impose minor fines/short terms in jail as 'sanctions' against a person found /of/ in contempt of their orders. In its **Rama Narang**²⁶ decision, the Supreme Court, in defining /punish an act of contempt/, developed a far less harsh sanction than would have been expected based on established antecedents and it also failed to make any lasting impact upon the actions taken by government/civil bureaucrats as a result of those findings.

A department may choose not to pursue disciplinary action unless there is also a corresponding charge of insubordination against the officer. If either or both of those elements are missing, the officer's career will not be affected and therefore will not deter future violation of their department's rules.

EMPIRICAL EVIDENCE AND CASE STUDIES

PRAKASH SINGH V. UNION OF INDIA: THE UNFINISHED POLICE REFORMS

The **Prakash Singh case** is likely the most documented case of non-compliance with Supreme Court orders over a prolonged period by bureaucrats. “**The Supreme Court issued detailed orders to improve policing in India in 2006 through its Constitution Bench**”.²⁷ Among these orders were called for police officers to be given a fixed term; the establishment of a mechanism in each State to oversee how police are acting (State Security Commissions); separating the function of investigating police from enforcing the law; and establishing Police Complaints Authorities.

Due to the passing of 20 years, the status of compliance is still highly unsatisfactory. According to a 2023 Status report filed with The Supreme Court, only 17 states enacted new police laws as mandated by the Supreme Court; however, even in those states, the implementation of several vital provisions regarding fixed tenure and immunity from political interference are still not implemented. An Annual Review of the Commonwealth Human Rights Initiative established that there are significant amounts of bureaucratic resistance to the **Prakash Singh**²⁸ mandate, evidenced in:

²⁶ Rama Narang v. Ramesh Narang (1995) 2 SCC 513

²⁷ Prakash Singh v. Union of India (2006) 8 SCC 1

²⁸ 'Status Report on Implementation of Prakash Singh Judgment' (Filed in WP (C) No. 310 of 1996, 2023)

- The failure to provide information on rules and regulations for implementing legislative requirements;
- Lack of establishment or improper operation of State Security Commissions;
- Regular violations of established tenure provisions through covered transfers;
- Non-constitution of Police Complaints Authorities or inadequate functioning.

Explanations for not complying with a bureaucratic process have been "**no state regulations**," "**waiting for political sign-off**," "**not having the money/resources**," and "**administrative emergencies**." Although these reasons seem rational on the surface, they cover a larger cultural resistance to changes that could disrupt existing power structures within the agency.

OLGA TELLIS V. BOMBAY MUNICIPAL CORPORATION: RIGHTS WITHOUT REMEDIES

In **Olga Tellis v Bombay Municipal Corporation**,²⁹ the Supreme Court made a significant ruling establishing that the right to earn a living should be considered a fundamental part of an individual's right to live as set out in **Article 21 of the Constitution**. The court ruled that pavement dwellers could not be removed from their homes without alternative accommodation being provided, nor could such removal occur without due process, and directed the State to prepare a resettlement/rehabilitation scheme for people who were removed from their homes.

Following this pronouncement from the court showing compassion, hundreds of thousands of people living in poverty in urban environments have been forcibly evicted over the next several decades in violation of the principles outlined in **Olga Tellis**. Mayors and other municipal officials have evicted urban dwellers at the request of politicians pushing urban beautification projects and have failed to provide alternate housing or comply with their obligations to follow the procedure required by law. The bureaucratic justification for such actions is that the decisions of the courts are duly "noted" but overridden due to "administrative necessity." This represents a culture in which courts do not enforce their own orders and is one of the themes discussed in this paper.

²⁹ Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180

T.N. GODAVARMAN THIRUMULPAD V. UNION OF INDIA: ENVIRONMENTAL GOVERNANCE AND COMPLIANCE DEFICITS

Ongoing since 1995, **Godavarman** litigation features the highest level intervention by Supreme Court with respect to environment. A series of Court Orders have required protection of forests, regulation of mining operations and establishment of monitoring systems; however, there are persistent difficulties with government compliance.

State departments & pollution control boards- key state bureaucracies in carrying out the implementation of the Courts environmental orders- continually state they cannot meet compliance obligations due to lack of resources, staffing issues, and poor infrastructure. While these issues may have some validity to them; independent assessment, however, indicates that institutional disinterest and commercial interest facilitation are also very significant contributors to the compliance shortfall.³⁰

CONTEMPORARY DEVELOPMENTS: ANURADHA BHASIN V. UNION OF INDIA AND THE LIMITS OF COMPLIANCE

In the case of **Anuradha Bhasin v. Union of India**,³¹ the Supreme Court's 2020 ruling clarified the law surrounding the validity of Internet shutdowns and limitations on Internet access.

The Court determined that Internet shutdowns must be temporary; they must not exceed the time necessary to serve their purpose; and they must be subject to court oversight. The Court also ordered the government to release copies of the orders restricting Internet access.

Although mechanisms to publish orders of the government have been established, reports indicate that internet shutdowns cited to continue occurring where they arguably do not meet the proportionality standard established by the Court. Bureaucratic officials are in the hierarchy of compliance with executive orders of internet shutdowns also frequently communicated verbally or via informal channels. This illustrates the continuing tension between judicial oversight and executive authority in India's administrative culture.

³⁰ See generally Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India* (3rd edn, Oxford University Press 2022) ch 8.

³¹ *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637.

CONTEMPORARY REFORMS AND EMERGING MECHANISMS

LAW COMMISSION RECOMMENDATIONS

Many reports by the Law Commission of India have tackled the issue of court orders not being complied with. In particular, the **Commission's 245th Report (2014)** made the following recommendations:

- That each government department have a dedicated implementation cell to ensure that court orders are being complied with;
- That service rules be amended to create a separate ground(s) for disciplinary action against those who purposely do not comply with court orders;
- That there be a legislative framework that holds officials personally liable for not complying with a court order in a manner that puts a litigant at a disadvantage; and
- That there should be a centralised online portal that will allow tracking the status of compliance with Supreme Court decisions.

Implementing these recommendations would greatly improve the accountability framework, but action by both the legislature and executive has yet to occur regarding these proposals.

JUDICIAL INNOVATIONS FOR ITEM MONITORING

In some situations, the Supreme Court has used new methods for monitoring compliance with its orders. An example of this would be the **M.C. Mehta v. Union of India**³² case where the Court created an independent committee of experts to monitor compliance with its environmental mandate. A second example would be the **Prakash Singh case** where the Court periodically reviews states' compliance and issues additional orders to the states that fail to comply.

³² M.C. Mehta v. Union of India (1987) 1 SCC 395.

As of October 2023, the most recent ruling issued by the supreme court in **Common Cause v. Union of India**³³ placed requirements upon the Election Commission of India requiring them to report back on their compliance with electoral reform requirements. While these are good legal advances, they are likely to continue to be exceptions rather than standard procedures. There is presently no way of establishing an overall method for monitoring compliance with the election laws.

TECHNOLOGICAL INTERVENTIONS AND TRANSPARENCY INITIATIVES

With the rise of Information Technology (IT), new opportunities exist to increase compliance transparency in the judicial system. The National Judicial Data Grid, developed by the Supreme Court e-Committee, provides access to pending and disposed cases in real time. By extending this platform to track compliance status on final decisions (e.g., bench warrants; court orders; etc.) there would be increased public accountability of the bureaucracy responsible for implementing those decisions.

The "**Judgment Watch**" project by The Vidhi Centre for Legal Policy is an example of civil society projects that monitor the execution of important Supreme Court decisions. Although valuable, these initiatives cannot replace the institutional mechanisms for implementing decisions.

COMPARATIVE LESSONS: THE UK'S COMPLIANCE FRAMEWORK

There are useful examples from the experience of the United Kingdom that can help the people of India. In the **United Kingdom, the Civil Service Code** states clearly that civil servants should "follow the law and support the administration of justice." There is also a registry, maintained by the Cabinet Office, which keeps track of all court judgements against the British Government, and if a department continues to ignore judicial orders or court rulings, this could lead to a parliamentary inquiry being started.

The UK's precedent of **M v. Home Office** also shows that even high-ranking executive officials are subject to contempt jurisdiction and this, along with the doctrine of ministerial responsibility, has a very strong effect on encouraging government compliance by means of bureaucratic incentives to comply.

³³ Common Cause v. Union of India (1996) 2 SCC 752

A PROPOSED FRAMEWORK FOR ENHANCING COMPLIANCE

The research conducted previously has led to the proposal of a multidimensional approach to deal with bureaucracy's failure to comply with Supreme Court rulings, including changes in legislation, new ways of dealing with the law through courts, reorganising government agencies, and using technology to improve their processes.

LEGISLATIVE REFORMS

The Parliament must create legislative measures regarding compliance with Supreme Court and High Court rulings. These measures would include:

- mandating compliance units in each government agency and public authority;
- requiring periodic reporting on compliance with court orders;
- creating a rebuttable presumption of "willful noncompliance" if a department does not comply with a court order within specified timeframes;
- establishing an Arbitration Section with authority to investigate noncompliance with court orders and recommend that noncompliant parties be disciplined; and
- modifying existing legislation to allow for an increase in the potential for sanctions against bureaucrats who fail to comply with court orders (including, but not limited to, civil fines recoverable from salary).

Conduct Orders for the All India Services (1968) and parallel State Conduct Orders should be revised to clarify that non-compliance with court orders would be viewed as misconduct and result in disciplinary procedures. Performance appraisals conducted annually should include a section specifically addressing compliance with courts; documentation on performance evaluations would negatively affect individuals' promotions or placement.

JUDICIAL INNOVATIONS

The Supreme Court and the High Courts shall create specific Compliance Monitoring Cells which will be responsible for tracking compliance with significant judgments of the Court. The Compliance

Monitoring Cells shall maintain electronic records of compliance information, issue periodic reminders to defaulting officials regarding their non-compliance, and to recommend that contempt proceedings be instituted if warranted.

In cases with a lengthy history of complex or systemic reform, the courts should regularly appoint monitoring committees or special masters to monitor the implementation of the reform. The costs of monitoring the implementation of the reform shall be borne by the defaulting office or official.

The continuing mandamus doctrine, created by the **M.C. Mehta cases**, should be implemented in all cases requiring ongoing judicial oversight. The courts shall keep jurisdiction over the matter until there has been sufficient compliance with the judgment; at which time the courts can finally dispose of the matter.

ADMINISTRATIVE REFORMS

The Department Of Personnel And Training will create a performance appraisal system for civil servants that includes a requirement to comply with judicial orders and such compliance will be publicly available on a comprehensive metric basis (i.e., measurable, finite, weighted and annual) to enable civil servants to evaluate their performance.

The Government shall establish a mechanism to protect civil servants who faithfully perform their duties under judicial judgement(s) against political retribution. The Central Administrative Tribunal and State Administrative Tribunals shall have jurisdiction to consider and adjudicate any matter relating to the punitive transfer or adverse action taken against a civil servant as a result of that civil servant's performance of a duty in compliance with a judicial directive.

Judicial compliance shall be included as an element of the operational curriculum within the Department Of Personnel And Training at all levels from new hire to ongoing training. Curriculum shall include training modules focused on the obligation of the Constitution, the consequence of being in contempt and the necessity of complying with judicial orders to ensure the rule of law.

TECHNOLOGICAL INTERVENTIONS

Judicial Compliance Portal A centralised online portal must be created for courts, litigants, government departments and the public to gather up to date information on large number of judgments and their associated compliance status. The judicial compliance portal will allow for the electronic submission (filing) of compliance reports and provide a mechanism for the tracking of all compliance report deadlines. Additionally, the portal will allow for public scrutiny of the performance of bureaucrats in terms of compliance with court orders.

Automated Alerts and Escalation Automatic alerts should automatically notify relevant higher authorities and courts of non-compliance from compliance report deadlines through the portal's automated alert mechanism. If persistent non-compliance occurs, the alert and escalation protocols will ensure that the appropriate level of government and the court are made aware of the persistent non-compliance.

CIVIL SOCIETY AND PUBLIC ACCOUNTABILITY

Many civil society organizations and academic institutions can improve their ability to monitor judicial compliance through systematic research and analysis. The Supreme Court's ruling in **State of Uttarakhand v. Balwant Singh Chaufal**³⁴ recognizes that public interest litigation is one means by which an executive branch can be held accountable to its citizens. Similar principles should guide how civil society engages in the monitoring of judicial compliance.

The **Right to Information Act, 2005** provides a mechanism for citizens to seek access to information related to the implementation of court orders. Public authorities should begin to proactively disclose information related to their compliance with court orders through their websites, which will reduce the need for citizens to submit individual requests under the Right to Information Act.

CONCLUSION

Constitutional governance in India faces a major obstacle due to the continuous discrepancy between the authority of judicial rulings and administrative action. The Supreme Court holds all government

³⁴ State of Uttarakhand v. Balwant Singh Chaufal (2010) 3 SCC 402

offices in India accountable for following its rulings (under Article 141), but the reality of what actually occurs in administrative actions regularly falls short of the Constitutional standard established by the Supreme Court. This paper has argued that this "failure to comply" arises not simply from the "wrongdoings" of individual bureaucrats, but rather from deeply entrenched cultural and structural characteristics. Specifically: (1) An inherited colonial system of administration that lacks accountability; (2) the absence of systematic methods of monitoring; (3) the vulnerability of "compliant" officers to political interference; and (4) the failure of existing remedies for contempt.

To close the compliance gap, we propose employing multiple strategies: (i) reforming legislation; (ii) innovating judicial practices; (iii) restructuring administrative processes; (iv) modernising through technology. We will describe these strategic options within the context of developing a new legislative framework that includes: (1) Judicial Compliance Act; (2) dedicated compliance monitoring cells; (3) performance-based accountability; and (4) technology to enhance transparency.

At the end of the day, constitutional adjudication is only as effective as the executive branch's willingness to comply with judicial orders. Courts have the final say on upholding constitutional law and need to be diligent in providing oversight on the administrative branch's actions. In addition, the executive branch must internalise **Justice Y.V. Chandrachud's** statement from **ADM Jabalpur v. Shivkant Shukla**³⁵ that "No person—however high—is above the Constitution and the law." Until this concept becomes part of the mindset of bureaucrats, the difference between what courts say and how the administrative branch acts will continue to hamper the rule of law in India's constitutional democracy.

³⁵ ADM Jabalpur v. Shivkant Shukla (1976) 2 SCC 521 (dissenting opinion of Chandrachud J)