

CORRUPTION IN INDIAN JUDICIARY: TIME FOR ACTION

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Equal treatment before the law is a pillar of democratic societies. When courts are corrupted by greed or political expediency, the scales of justice are tipped, and ordinary people suffer. Judicial corruption means the voice of the innocent goes unheard, while the guilty act with impunity."

–Huguette Labelle, Chair of Transparency International (TI), 2007

INTRODUCTION

Corruption within the judicial system is one of the most important reasons for the doggedness of corruption at great extent in India because a corrupt judicial system shields impunity. A corruption-free judicial system is an essential requirement for skirmishing corruption. One of the most urgent priorities in the fight against corruption is making the judicial system itself corruption free. Corruption damages judicial systems and thousands of people across the world are deprived of justice and protection of their individual rights. A well-functioning government, with the citizens' best in mind, requires not only the rule of law, but also an independent judiciary that implement the law equally and impartially.

MEANING AND DEFINITION OF JUDICIAL CORRUPTION

Before we begin any discussion on judicial corruption, it is essential to first define judicial corruption. The concept of corruption emerged from the Latin word *Corruptus* meanings decay or degeneration. In simple sense it means abuse of office for personal or private gain. The *United Nations Convention against Corruption, 2003 (UNCAC)* does not define corruption but it lists certain acts of corruption-intentional active and passive bribery, deliberate embezzlement, trading in influence, abuse of functions and illicit enrichment. However, the list of the corrupt behaviour just mentioned is not exhaustive. Other practices that are considered as corruption in other instruments are extortion, theft, fraud, favouritism, nepotism and

clientelism or other conducts that create or exploit conflicting interests. These conducts are overlapping in some senses and sometimes they fall outside the scope of corruption. *The Civil Law Convention against Corruption*, 1999 explicitly defined the term Corruption as “requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty”. In *International-Anti-Corruption Norris and Standards* the term corruption is not defined but it is provided that bribery is included in the term. On the basis of UNCAC and other international instruments judicial corruption can be understood as an act or omission that profit the judge, court staff or other persons involved in the judiciary and the behaviour leads to inappropriate or unjust court decisions. Such conduct can be e.g. payment or acceptance of bribes, extortion, embezzlement, threats, abuse of the procedural rules or other improper pressure that can affect the independence and impartiality of the judicial outcome by anyone that is involved in the decision-making process.

FACTORS RESPONSIBLE FOR CORRUPTION IN JUDICIARY

Courts are the temple of justice and judges are god of who provides justice to the civilians. But now these days the temple of justice and its gods became corrupts. So many factors are responsible for it like lack of transparency; if corrupt behaviour is allowed to be hidden within complex procedural systems and the court rooms are closed for the press and therefore never communicated to the public, then it becomes easier to get away with corruption and harder to find evidence against it. Another potential factor is absence of technological equipment, such as updated databases to keep record of judgments, Insufficient computer systems may also slow down the court processes which can lead to a higher level of corruption, since paying a bribe might be a way to get first in line. The factors mentioned are not exhaustive. We have to study in detail to find out the real causes for the increasing level of corruption in judiciary :

Appointment system

One of the cause which is responsible for increasing rate of corruption in judiciary is the method of appointment of judges. Judges of High court and Supreme court are appointed through

collegium system which was laid down in The Second Judges' Case¹. This system gave huge powers to the Collegiums of senior judges of the Supreme Court to select and make recommendation to the government for appointments. This means that the opinion of the Chief Justice of India is not enough he has to give his opinion after taking into account the views of his senior colleagues, who are required to be consulted by him for the formation of his opinion. The whole process of appointment of the judges presently followed is entirely ad hoc and capricious; there is no transparency in the appointment process. The process has led to political favouritism when appointments were in the hands of the executive and nepotism when it has been in the hands of the judiciary.

A difficult Impeachment Proceedings

Even when there is overwhelming evidence against corrupt judges, a cumbersome impeachment process impedes their removal. As per the Constitution of India the only means by which a sitting Judge can be regimented for his insidious acts is given under Article 124(4) and Article 217(1) (b) (in case of High Court Judges). Under Article 124(4), the process of impeachment is carried out only on the grounds of proven misbehaviour or incapacity. The Judges Inquiry Act, 1968 states that a complaint against a judge is to be made through a resolution signed either by 100 members of the Lok Sabha or 50 members of the Rajya Sabha to their respective presiding officers. There is a committee consisting of three members comprising two judges one from Supreme Court and the other Chief Justice of India if it is against a High Court judge; and two Supreme Court judges if it is against a sitting judge at the apex court. Investigations are carried out before making a recommendation to the house. If the committee has concluded for the impeachment process to take place, the matter is discussed in both houses. To ensure that the principles of Natural Justice are abided too the accused is given reasonable opportunity, under the principle of "Audi Alterm Partem" to present his side of the case under Section 3(4) of the Judges Inquiry Act. If still unable to prove his innocence, then either the Chairman of the Committee or the Speaker under Section 4 (3) shall submit a report recommending the removal of the Judge to Parliament. After the debate is done and the judge is heard, the house decides to put the motion to vote, a resolution passed by 2/3^{rds} majority in

¹ Supreme Court Advocates on Record vs. Union of India 1993(2)Suppl.SCR659

both houses. This whole process has to be completed in a single session. After the resolution is passed, it is sent to the president who then orders for removal.

It is therefore not difficult to see why the country has so far not seen a single successful judicial impeachment. Since independence, only three judges have ever faced impeachment, all three for misappropriating public funds or accumulating disproportionate wealth. Of those three, in one case the impeachment motion failed, and in the other two, the judges resigned before the motion could go through. In the two latest impeachment efforts in 2014 and 2015, one failed to gather momentum and the fate of the other remains uncertain.

Contempt of Court

The contempt of court can be seen as a means to protect the independence of the court, however it is mostly seen that the court has used this as a means of shielding themselves from any criticism. Contempt is defined as any act that is offensive and critical to the dignity and the authority of courts. Section 2 of the Contempt of Court Act, 1971 defines “Contempt of Court”, “Civil Contempt” and “Criminal Contempt”.

Section 2 reads: “2. Definitions.—in this Act, unless the context otherwise requires,—

(a) “Contempt of court” means civil contempt or criminal contempt;

(b) “civil contempt” means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

(c) “Criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court;
or

(ii) Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”

The definition of criminal contempt is so wide that the judges generally use it to protect themselves not to protect independent working of the judiciary. This is just like a Damocles' sword which hangs over the people and the result of this is that people don't file complaints for misconduct against a judge because of fear of contempt proceedings against them if they could not prove the judge guilty. Section 2 of the Act provides that publication of any matter or doing of an act which scandalises or tends to scandalise the authority of the court is a criminal contempt. The word "Scandalise" has a very vague meaning and has generally been interpreted widely by the courts. It also infringes two important fundamental rights of the citizen, namely, the right to personal liberty and the right to freedom of expression as seen in the Arundhanti Roy Contemptuous Affidavit Case² and Mid day journalists case. Therefore the contempt of court has become a big obstruction in making the judges accountable for their acts.

Absolute power corrupts absolutely

Judicial corruption takes place because except the victims no one knows what goes in the court room. The lawyers say nothing because they know that they will be in front of the same judge in the next week so with this unlimited power judges think that they can do anything they want and whatever they are doing is justified. This behaviour is normal because any one will have same attitude if there is no one to check.

Judges own ideologies and personal affiliations

Judges are public servants, they are hired to administer laws. While money can be motivation for judicial corruption but judges are often corrupted by their own ideology and personal affiliations e.g when a family court judge is a militant feminist then that judge is quite likely to find that the men brought before her are guilty of domestic violence, even when presented with no more evidence.

² AIR 2002, SC 1375, Order dated 6th March 2002

Inaccessibility

The judicial system is very slow, costly and beyond the reach of the ordinary person. It is hard to seek redress as it is very expensive and extra money is often required to oil the wheels of the system.

Slow and inefficient

A large number of cases are pending before the Courts in India which results in delayed judgements. For speedy and favourable judgement people often try to pay bribes. There are a number of works which are not related to the case but fall under the purview of the judiciary like the issuance of affidavits, registrations, issue of bails etc. People often pay bribes to get this work done.

EFFECTS OF JUDICIAL CORRUPTION

"The poor need legal aid, not pressure to pay bribes. They need proof that everyone is equal before the law. They need a system of justice that is fair and unbiased. This is their right."³

The foundation of a well-functioning society is based on the Rule of Law. The Report *"The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies 2004"* defines the rule of law, consisting of procedural, institutional and substantive principles. According to the United Nations, the rule of law refers to "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It ensures observance to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency"⁴.

³ T. Hammarberg, Council of Europe Commissioner for Human Rights, Strasbourg 5 October 2009, CommDH/Speech(2009)9.

⁴ Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

Many of the core principles in Rule of Law depend on the correct behaviour of the judiciary. When the judiciary has lost or is on its way to lose its independence and impartiality, the rule of law has become corrupt and dysfunctional. When a person considers that his or her rights have been violated, where does he or she turn? The obvious answer should be to the courts, but that would be without effect if the courts are corrupt. A corrupt judiciary neglects the very core of the rule of law and some of the fundamental justice principles, through which citizens and their rights are supposed to be protected, namely:

- a) Impartiality and Propriety
- b) Equality
- c) Integrity
- d) Competence and Diligence
- e) Separation of Powers and Judicial Immunity

a) Impartiality and Propriety : A Judge must be independent and impartial. The terms Judicial independence and impartiality have been defined by the Supreme Court of Canada⁵, who stated that "impartiality" refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case while "judicial independence" refers not merely a state of mind or attitude in the actual exercise of the judicial functions, but a status or relationship to others--particularly to the executive branch of government--that rests on objective conditions or guarantees". Even if the two terms represent different values, they are closely interrelated. Impartiality cannot exist without independence. The courts must be impartial, both subjectively and objectively. Subjective impartiality means that no court member should have any personal prejudice, while objective impartiality means that the court must be viewed as impartial by the general public without any reasonable doubts.

Impartiality must exist de facto but also, not less importantly, in the acuity of the public. The confidence of the judicial system will be destroyed if partiality is observed by the general

⁵ Valente v. The Queen, [1985] 2 S.C.R. 673, Supreme Court of Canada December 19 1985.

public⁶. If a judge is seen talking privately with a petitioner in a pending case, people might speculate that the judgment will be ruined by the conversation, even if it had nothing to do with the actual case. It would endanger the propriety and in the long-term, unavoidably destroy the public perception of the judge.⁷ Any gift or favour to the judge or to a member of the judge's family given in order to gain favour in a case therefore distorts the propriety⁸. Judges are human beings with different interests and they have the same rights to freedom of expression, association and assembly as everyone else, but they do have a responsibility to protect their appearance in the eyes of the general public. They must avoid relationships that may question their propriety as a judge. Both professionally and privately, judges must consider propriety and the emergence of propriety.⁹ A judge must, inter alia, live an admonitory life and must behave with self-control in public, also when he or she is not in office. Judges shall also be careful with socialize in with lawyers that often appear before them in court, especially when they are part of a pending case.

b) Equality before the Law

Equality before the law is one of the core principles in a democratic society. Any kind of prejudice before the law is incompatible with everyone's long recognized right to fair and equal treatment of justice, but discriminatory practices are effectively supported by corrupt judges. Judges shall treat everyone equally, regardless of gender, race, sexuality, age, religious beliefs, social background and other such characteristics. Equality is strongly correlated with judges' impartiality and he or she must not give in to prejudices about stereotypes. Such attitudes shall on the contrary be recognized and corrected by the judges. They must also pay attention to, and be familiar with diversity of different kinds in society. Judges shall always refrain from humiliating gestures, statements and other derogatory behaviour and they shall also prevent lawyers from such manners in court proceedings¹⁰.

⁶ UNODC, Commentary on the Bangalore Principles of Judicial Conduct, p. 57.

⁷ *Ibid.* p. 85-86

⁸ *Ibid.* p. 117.

⁹ *Ibid.* p. 95-96.

¹⁰ *Ibid.* p. 121-124 and 127

c) Integrity

The definition of Integrity is consists of two components can be found within the definition of integrity, namely judicial morality and honesty. Judges shall always behave honourably, also in their private life. They shall not be involved in fraud or other corrupt behaviour, since it contradicts the very essence of integrity. Integrity is unconditional and necessary for the judiciary to function in a satisfactory way. It is important that judges always consider their behaviour in the eyes of a realistic observer. A judge with high integrity must show it at all times, otherwise he or she can be considered as a hypocrite, and that would damage the court's appearance¹¹. Judges' integrity can be measured from their actual conduct in certain situations¹². Society expects a lot of a judge and he or she must not only be a good judge, but also a good person. A judge must handle the society's high demand of integrity carefully, since "a judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law¹³." The judicial integrity de facto is very important, but so are the parties' and the public perceptions of judges' integrity. Parties standing before the court have to believe in the honesty of the judge. This is as important as the judge's actual knowledge about the law and the independent and impartial interpretation and application of it. Evidently, a corrupt judge cannot be considered honest¹⁴.

d) Competence and Diligence

A problem in many corrupt judicial systems is that the judges lack in competence. They may not have the necessary education, insufficient experience or they may have personality or temperament problems, which makes them unsuitable as judges. Judicial diligence is fundamental for the impartial application of the law; to consider the facts of a case soberly, to decide a case based only on the facts and the law, to act efficiently, and to thwart abuses of the

¹¹ UNODC, Commentary on the Bangalore Principles of Judicial Conduct, p.79-80.

¹² Office of the United Nations High Commissioner for Human Rights (UNHCHR), Rule-of-Law Tools for Post-Conflict States, Vetting: an operational framework. 11.

¹³ UNODC, Commentary on the Bangalore Principles of Judicial Conduct, Preface

¹⁴ 69 Ibid. p. 83.

process¹⁵. Judges must take the responsibility to educate themselves also during their times of office, not only in national law, but also in international norms and standards¹⁶.

e) Separation of Powers and Judicial Immunity

Persons working within the judiciary are not special people but they do hold a special office which implies the responsibility of guarding the independence and requires them to be separate from other governmental institutions. For the rule of law to be reigned, the judiciary's freedom from outside influences is essential. A judge cannot live with the fear of repercussion or revenge when deciding a case. A court can only be accepted as just and fair if the public has its confidence, it is therefore not only essential for the court to be independent but also to appear independent. As the proverb says, 'justice must not only be done, but also must be seen to be done'¹⁷. Therefore, it is important for court staff to refrain from any kind of contact with political parties. The judiciary must be effectively and authentically independent, not only from political pressure, but also from economic and social pressures. Therefore it is important that enough resources are provided so that the judiciary can keep a high quality. It is also important that the judges exercise their judicial powers without interference from other judges or court staff¹⁸.

The appointment procedure of judges is very important when it comes to separation of powers. Politicians may appoint judges who they know will follow their agenda. A judge can then feel threatened and he or she might take decisions that are unlawful in order to please the politician that is responsible for his or her appointment. If the judge decides not to follow the politician's recommendations, he or she might have less future possibilities such as career prospects, appointment to more interesting courts and other promotions. It is a difficult task to balance the necessity to protect the judicial process from distortion e.g. through pressure from the media and to the freedom of the press and the open discussion of matters that may be in the general public's interest. In the light of this, the nature of a judge cannot be too fragile; a judge is a public figure and must accept criticism from the media without letting it affect his or her

¹⁵ *Ibid.* p.129.

¹⁶ *Ibid.* p.134-135 and 137.

¹⁷ F.B. William Kelly, 1995, p. 4.

¹⁸ Central Council of the International Association of Judges, Universal Charter of the Judge, Article 2.

judicial decisions. Immunity does not include the absence of criticism from public office holders concerning their decisions, reasons, and conduct of a case, with reservation from limits fixed by law.

Even if a judge is clearly corrupt and there is loads of evidence, the judicial immunity sometimes makes it hard to impeach a judge. The UN Anti-Corruption Toolkit recognizes that the nature of judges' office needs a certain level of immunity to function properly. It holds that such immunity shall not extend to criminal investigations and procedures, but that improper criminal procedures against judges can threaten their independence. Therefore the UN Anti-Corruption Toolkit advises states that criminal proceedings against judges shall be carried out by independent prosecutors in collaboration with judicial councils in order to secure a correct review. The special responsibility of judges in society is identified and a suggestion is that judges may be discharged from their positions if there is significant evidence to prove misconduct, even if it is not sufficient for a conviction.

JUDICIAL CORRUPTION: TIME FOR ACTION

Despite having economic reforms, increased transparency, E-governance tools, corruption in public life continues to grow in our country. Intact, corruption and good governance go hand in hand in India; so controlling corruption is a tough task in India. Corruption has affected the entire system of our country like cancer disease. It may not be possible to entirely eliminate corruption at all levels, but it is possible to control it within tolerable limits. For this it is essential that the mechanism which provides justice to the people must be first free from corruption. Therefore a time has come to take action against corruption is making the judicial system itself corruption free. Following are the few solutions which help in combating corruption from judiciary.

1. To solve the problem of corruption in process of appointment there is need to establish a new independent constitutional body. The consensus is made to create the National Judicial Commission for the purpose of recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court, Chief Justices and other Judges

of High Courts, its functions, procedure to be followed by it and for matters connected therewith or incidental thereto¹⁹.

2.It is high time that the Contempt of Courts Act be amended. In this regard following suggestions are given:

- a) Accused should be given reasonable opportunity to defend himself according to law.
- b) Cases of contempt should not be tried by courts but by an independent commission of concerned district.
- c) The Act should be amended to remove words, ‘scandalizing the court or lowering the authority of the court’ from the definition of criminal contempt.

3.National Judicial Oversight Committee(NJOC) must be created to look into complaints against Supreme court and High court judges and to impose minor penalties or to recommend their removal also.

4.Judicial corruption is virtually impossible without the involvement of advocates .Effective ethical regulations of tha Bar is therefore essential , if the Indian judicial system is to be made corruption free.

5.The police, witnesses,accused and court staff are all duty holdres in the judicial system . They bear equal responsibility with the Bench and Bar to ensure that the judicial system works with integrity to enforce anti curruption laws.

6.India has the world's largest backlog of cases . The time between the filling and final disposition in extreme cases can be up to 20 years in civil cases and 30 years in criminal cases . Pro longed trials and delayed judgements have been major contributors to corruption at all levels of judiciary. Citizens feel compelled to bribe at all stages to hasten the trial process.

7.Right to information is the chief safeguard against corruption. When the people have the right to know what exactly they are doing then there is less chances of corruption.

¹⁹ Raja Ramchandran “Judicial supremacy and the collegiums”,
http://indiaseminar.com/2013/642/642_raju_ramachandran.htm l(Accessed on 21/12/13)

8. Restatement of values of judicial life-code of conduct: The conference of Chief Justices of all High Courts was held on 3rd and 4th December, 1999, where all the Chief Justices unanimously resolved to adopt the “Restatement of Values of Judicial Life”. This would serve as a guide to be observed by the judges, essentially for an independent, strong and respected judiciary in the impartial administration of justice. Some of codes that must be followed are –

- Judges should not conduct election to any office of club, society or other associations
- A judge should not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.
- A judge should not speculate in shares, stocks or the like.

9. Alert civil society: The merits of accountability are being well recognized in the society today and this is taking the shape of campaign against corruption and for judicial accountability. It is a well-accepted fact that it is the common man who is the main consumer of all judicial decision; therefore they have the full right to have a clean Judiciary.

10. Role of Media: With the technological advances of the 20th century and those anticipated in the 21st, media has become a most potent weapon in eradication of corruption. Earlier media had always been silent because of the threat of the Contempt of Court Act, but with the amendment of this Act, it seems that the freedom of expression will not be infringed. Working without any fear or restraint a free media is the best check on excess of any kind by anyone or entity having the potential and the inclination to inflict excess.

11. Judges, like other constitutional functionaries must face the law if they depart from or deceive the law.

CONCLUSION

“Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together”.

-Daniel Webster

Very true lines are said by Daniel Webster that justice is an essential part of man's life on earth. Without justice a man cannot live a civilized life. He indulges in crime if he has to face injustice which ultimately affects the peace and security of the country. Therefore the mechanism i.e. judiciary which provide justice must be free from corruption. Corruption has increasingly become complicated and difficult to handle. The fight against it is a continuous process. The need of the hour and order of the day is to control corruption. Corruption is an existing challenge which is faced by every citizen of India. The problem of corruption in judiciary can be solved by legal reforms, public participation and awareness, coordination of efforts and capacity building and when there is effective national and international cooperation. Prevention is better than cure so we ourselves prevent us to indulge in corruption so one day we definitely achieve in anti-corruption struggle.