

CHALLENGES OF INDIAN JUDICIARY – A CRITIQUE OF JUSTICE DELIVERY SYSTEM AND PUBLIC INTEREST IN CONTEMPORARY TIMES

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Research Article

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ABSTRACT

A corrupt legal system protects impunity; one of the most crucial causes for the persistence of corruption in India is corruption inside the judicial system. A corrupt-free judicial system is a necessary condition for combating corruption. Creating the judicial system corruption-free is one of the most pressing issues in the fight against corruption. Corruption wreaks havoc on court systems across the world, depriving thousands of individuals of their right to justice and safety. A successful government that prioritises the interests of its citizens requires not only the rule of law, but also an impartial tribunal that administers the law in a consistent and fair manner across the board. Corruption jeopardises the core of the legal system as well as the right to an unbiased trial, and it has a major impact on the public's confidence in the court system as a result of this. Bribery is just one element of corruption; another is political corruption, which may be defined and quantified considerably harder. The wide variety of measures allows not just the judiciary system but all the other areas of government to be affected.

Keywords: Corruption, Bribe Judicial Officers, International, Politician, and Civil Society.

CHAPTER I: INTRODUCTION

“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**

Corruption in a civilized society is a sickness similar to cancer that, if not caught early enough, can spread its malignancy throughout the democratic system. It jeopardizes constitutional government and undermines the fundamental foundations of democracy and the rule of law. Illicit interferences with the administration of justice can be brutal, especially when conducted by members of organized crime. These excursions aim towards specified aims, such as the end of a certain case or acquittal of a particular individual. Corruption in the Indian court is widespread: more than 45% of Indians feel the judiciary is corrupt, and outsider evaluations agree. Corruption is not only common in the lower courts, but others allege that it exists even on the highest level. An 8th of the seventeen prior CJIs were corrupt in 2010, formerly the law minister

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claims, and in 2014, a former Supreme Court judge said that “three former CJIs made improper concessions to keep a corrupt High Court judge in office.”

Although judicial independence is necessary for a non-corrupt judicial system, it is not adequate in and of itself since an independent judiciary may be corrupt as well. Judges must also be fair, honest, and well-versed in their fields.² The harmful effects both at domestically and abroad of judicial corruption is hard to exaggerate: The fight against international crime and terrorism is difficult; economic and human growth suffers, and the right to a fair and impartial conflict settlement which has long been acknowledged by people is denied. Thousands of people throughout India are denied service and guaranteed their rights in judiciary corruption.³

A corrupt judiciary, without a doubt, distorts the efficient application of rights and responsibilities. It's difficult to say how far corruption's repercussions extend. However, the adverse effects of corruption in judiciary are hard to overestimate because they cost society such a great deal: it clearly violates the rights of human, prevents the fight against transnational crime, reduces trade bribery isolates communities, economic as well as human development and, above all, leads to the deaths of innocent people.

It excludes people from fair dispute resolution. The results are numerous and severe, and each state's causes varies. However, there are factors that develop models and the detrimental impact on some fundamental values of corruption is evident. Definitions, probable reasons, and impacts of corruption in the judiciary will be provided before an examination of international and regional rules and standards governing it.

1.1 Statement of Problem

Corruption in judicial delivery system is one of major threat against functioning of protection of right due to enormous power that there is no provision to remove the judge easily. There is no provision in constitution to accuse the judge for corruption without the permission of CJI that is one of the biggest loopholes that hides the corrupt nature; sometimes this liberty turns out to be a Pandora Box to the violator of law.

1.2 Research Questions

- What is the nature of judicial corruption in India?
- What are the major factors of judicial corruption?
- What are the ill effects of judicial corruption on the country men?
- What are the strategies to eliminate judicial corruption?

1.3 Objective of the Research

- To study the cause of corruption in Indian judiciary.
- To highlight the consequences of corruption.
- To analyse the judicial corruption and standards in India.
- To focus on ill effects of judicial corruption on rule of law.

² Principles of Good Policing: Avoiding Violence Between Police and Citizens, Justice, (June 15, 2021, 6:07 PM), <https://www.justice.gov/archive/crs/pubs/principlesofgoodpolicingfinal092003.htm>

³ Judicial Corruption Fuels Impunity, Corrodes Rule of Law, Says New Transparency International Report, Transparency, (June 15, 2021, 5:07 PM), <https://www.transparency.org/en/press/20070523-judicial-corruption-fuels-impunity-corrodes-rule-of-law-says-repor>

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1.4 Literature Review

Yashveer Singh in his paper Corruption in Indian Judiciary has focused on the meaning of corruption and factors of judicial corruption. The paper originates from the definition of “abuse of office of personal or private gain”, i.e. widely recognized definition. It gives deep information about the corruption from lower courts to higher courts and causes and reason of corruption in judiciary. The research paper has shown that how to control and spread of corruption in the justice delivery mechanism

Balakrishnan, K.G. in his article Judiciary in India: Problems and Prospects bring forward the arrears and delay in the delivery system. It explained the significance of judicial training and education, alternative methods of delivery of justice and spread of corruption in administrative staff in judiciary system.

1.5 Hypothesis

- Whether judicial corruption hampers the legitimacy of the state.
- Whether there is a need of separate body to look after judicial corruption.
- Whether there is effect of judicial corruption in maintaining transparency.
- Whether post retirement appointments are major cause of corruption.
- Whether the RTI should be applied stringently on judiciary.

1.6 Scope and Limitations

The scope of judicial corruption is to understand the serious problem which erodes the democratic mechanism and constitutional values such as rule of law and having wide idea that how judicial corruption destroys the independence and impartiality of the judiciary through the various causes and consequences arise out of this staid problem.

CHAPTER II: MEANING AND DEFINITION OF JUDICIAL CORRUPTION

“Law and order exist to establish justice and when they fail in this purpose they become the dangerously structured dams that block the flow of social progress.”

~ **Martin Luther King, Jr.**

Corrupts is a Latin word that literally translates as decay or degradation. In its most basic form, it refers to the use of one's position for one's own personal or private gain. Aside from describing specific types of corruption actions, the UNCAC (United Nations Convention against Corruption) also provides a definition for corruption. Examples of these actions include intentional, active, and passive bribery; deliberate muddling; trade influx; abuse of authority; and illegal enrichment, among others. Corruption is not specifically mentioned in the Convention. Despite this, the list of corrupt behaviours mentioned above is by no means comprehensive. Fraud, extortion, and clientelism, as well as other actions that create or use conflicting interests, are all considered to be types of corruption in various instruments. In some respects, these actions are similar to one another, yet they do not always fit under the concept of corruption.⁴

⁴ COL Kuldip S Grewal (Retd), Corruption in judiciary, Tribune India, (June 15, 2021, 8:17 PM), <https://www.tribuneindia.com/news/letters/corruption-in-judiciary-121801>

According to the Civil Law Convention against Corruption of 1999, corruption is defined as "requesting, offering, giving, or accepting, directly or indirectly, a bribe or any other unfair benefit or prospect thereof, which undermines the proper performance of any obligation." While the International Anti-Corruption Norris and Standards are presumed to include bribery, the term "corruption" is not defined in either of them. Corruption in the judiciary is described as an act or omission that is done for the advantage of a judge, court personnel, or other tribunal allies, and which results in erroneous or unjust judgments being rendered in court.⁵

An act or omission by the judiciary that benefits the judge, the court staff, or other persons associated with it and that, in accordance with the United Nations Convention against Corruption and other international treaties, results in incorrect or unjust court rulings is referred to as corruption by the judiciary. Bribes, extortion, humiliation, threats, misuse of procedural norms, or any other indecent pressure on any party participating in the decision-making process that may jeopardise the independence and impartiality of the judicial findings are prohibited.⁶

2.1 Causes of Judicial Corruption

Courts are also known as the temples of justice, and Hon'ble Judges are the gods who serve the people. However, the temple of justice and its gods have become corrupted in recent years. Failure to ensure openness; if corrupt activity is enabled to enter intricate processes and tribunals are closed to the press and never communicated to the public, corruption is simpler and evidence against it is more difficult to uncover. The absence of technology, such as updated databases to keep track of decisions is another significant problem. Inappropriate computer systems can also hold down court transactions that can lead to further corruption, given that acceptance of a bribe is a way of moving ahead. The above requirements are not included.⁷

2.1.1 Appointment System and Corruption In India

2.1.1.1 Early Appointments

Among the factors contributing to the rising prevalence of corruption in the court is the process through which judges are appointed. The Second Judges' Case established an open access collegium system for the appointment of judges to the High Court and the Supreme Court, which is still in use today. Under this system, the Supreme Court's Collegiums of senior judges were granted considerable power to select and propose Supreme Court nominees to the government. This indicates that the Chief Justice of India's perspective is insufficient; he must express his judgement after considering the views of his senior colleagues, whom he must consult throughout the formulation of his decision. The whole process of appointing judges is now carried out on an ad hoc and arbitrary basis; there is no transparency in the process. Political favouritism resulted in cases where nominations were made by the government, while nepotism

⁵ John Hatchard, Cases and Materials Relating to Corruption, (June 15, 2021, 8:35 PM), <https://cvc.gov.in/sites/default/files/Index%20Vol%201.pdf>

⁶ Dr. Vinod Surana, Corruption And Judiciary, Lawyered, (June 15, 2021, 8:59 PM), <https://www.lawyered.in/legal-disrupt/articles/corruption-and-judiciary-dr-vinod-surana/>

⁶ Corruption in Indian Judiciary, Indian Mirror, (June 15, 2021, 9:35 PM), <https://www.indianmirror.com/corruption/corruption-judiciary.html>

occurred in cases where appointments were made by the court.⁸ Appointments to government posts are seen as prestigious and desired by judges because they provide them with the opportunity to continue to influence public policy. As a result of the lack of transparency in the nomination process, it is generally thought to be susceptible to lobbying by judges and internal intrigues within the government.⁹

2.1.1.2 Post-retirement Appointments

“Desire of a post-retirement job influences pre-retirement judgments.”

Some judges are retiring just before an election; others are retiring. Judges who retire well before the elections are certain: the administration in power would be given enough time to recompense them with positions on the day of their retirement. This produces two sets of judges: the ones who have a great motive to pander, and the ones who have a weak motivation to pander well before a general election (retiring shortly before such an election). We find that in critical situations, judges with high incentives are more likely to decide for UOI.¹⁰

Moreover, the post-retirement job and positions provided into various statutes is a piece of ice on the cake which tempted judges to involve their mind in corruption and take the assistance of various political body making their personalities sometimes biased and corrupt. They indicate an ideological alignment between a judge and the government.¹¹

Although a case is decided by two judges, the judgment is generally written by one of them. Authorship is a strong signaling technique because it emphasizes and publicizes judges' claims to judgments. Judges with significant incentives are more likely to write favorable decisions in key cases, according to our findings. This conclusion is consistent with the previously stated link between authorship of favorable judgments in major cases and post-retirement appointments. To put it another way, judges who are more likely to be paid after retirement are more inclined to write favorable decisions, and the government appears to encourage this behavior. In a nutshell, Goyal's hunch seems to be correct: “Desire for post-retirement employment impacts pre-retirement judgment.” Nonetheless, this mechanical procedure leaves open the possibility of political appointments, such as those given to Mr. Ranjan Gogoi. He isn't the first judge to be appointed by a politician. The Court is correct to be worried about apolitical nominations to the Supreme Court. However, maintaining judicial independence necessitates careful consideration of the appropriate institutional design to ensure that post-retirement appointments do not generate perverse incentives in judicial decision-making.¹²

⁸ Prashant Bhuhsan, Probing judicial impropriety and corruption, The Hindu, (June 16, 2021, 11:09 AM), <https://www.thehindu.com/opinion/op-ed/probing-judicial-impropriety-and-corruption/article32887628.ece>

⁹ *Ibid*

¹⁰ Judicial Appointments and Judicial Independence, USIP (United States Institute of Peace), (June 16, 2021, 12:23 PM), <https://www.usip.org/sites/default/files/Judicial-Appointments-EN.pdf>

¹¹ SC to examine when corruption allegations against judiciary can be made public, The Hindu, (June 16, 2021, 12:53 PM) <https://www.thehindu.com/news/national/sc-to-examine-when-corruption-allegations-against-judiciary-can-be-made-public/article32374297.ece/amp/>

¹² *Ibid*

2.1.2 Contempt Of Court

The contempt of court can be regarded as a way for the court to maintain its independence, but it is more commonly seen as a way for the court to insulate itself from criticism. Contempt is described as an attack on the dignity and authority of courts and is crucial to them.¹³

“Section 2 of the Contempt of the Court Act 1971 specify Definitions.—In this Act, unless the context otherwise requires,—

- Contempt of court means civil contempt or criminal contempt;
- Civil contempt means wilful disobedience to any judgment, decree, direction, order, writ, or other processes of a court or wilful breach of an undertaking given to a court;
- 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—
 1. Scandalises or tends to scandalize, or lowers or tends to lower the authority of, any court; or
 2. Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
 3. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;
- High Court means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.”

The Hon’ble Supreme Court found Senior Advocate Prashant Bhushan guilty of contempt in Re: Prashant Bhushan & Anr.¹⁴ It ruled that “the Senior Advocate's two tweets were in contempt of court because they undermined the court's authority.”

If, with or without regard to certain situations, an assault is undertaken against an individual judge or the entire court that casts unjustified, diamonds on the reputation of the magistrate, this is known as the court. According to the court, this is required since it causes uncertainty and weakens public confidence in the courts. That is crucial.¹⁵

It also referenced the case of C. K. Daphtary & Ors vs. O. P. Gupta & Ors (1971)¹⁶, in which the court ruled that “any publication designed to hinder the due course of justice or the administration of the law was in contempt of court. It is stated that a slanderous attack on a judge, whether for a judgment or past conduct, would surely erode public trust in the judiciary in our country, and that if public trust in the judiciary is eroded, the administration of justice will suffer.”

“As the Chief Justice of the United States keeps the Hon’ble Supreme Court in lockdown mode, denying people access to justice under the Constitution,” the first half of the Tweet claimed,

¹³ Corruption allegations in judiciary cannot be contempt, need free speech, Prashant Bhushan tells SC, Scroll, (June 16, 1:15 PM), <https://amp.scroll.in/latest/970557/corruption-allegations-in-judiciary-cannot-be-contempt-need-free-speech-prashant-bhushan-tells-sc>

¹⁴ (CRL.) NO.1 OF 2020

¹⁵ Brahma Prakash Sharma and Others vs. The State of Uttar Pradesh (1954 AIR 10, 1954 SCR 1169)

¹⁶ 1971 AIR 1132, 1971 SCR 76

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according to the court. The tweet was deemed disrespectful by the Court because it attacked the Hon'ble Chief Justice of India in his role as the Chief Justice of India, rather than as a person or an individual. The court decided that the tweet had the potential to erode public trust in the judiciary, which, according to the court, weakens the administration of justice's dignity and authority.¹⁷

“In addition, the Hon'ble Supreme Court of the United States of America said that an assault on the Supreme Court affects not just the confidence of ordinary litigants, but also the trust of other judges on the nation's highest court. In his second tweet, the Court said that the post gives the impression that the Supreme Court has played a particular role in the deterioration of democracy over the past six years, and that this is a criticism of the judiciary as an institution that undermines people's confidence in the court. Specifically, the court said that any effort to undermine the pillars of constitutional democracy, especially the judiciary, must be addressed with an iron fist, as defined by the court.¹⁸”

As a result, this sort of organization does not give a broader horizon for efficacy and democracy, because trust in the court cannot be maintained by shutting down those who point to judicial corruption. Ordinary citizens are unable to utilize contempt of court statutes to reveal judicial corruption in these situations. It is denying the fundamental rights of speech and expression, as democracy needs people's perspectives for expansion and improvement, not for limiting down values and realities, if such is the case.¹⁹

2.1.3 A Difficult Impeachment Proceeding

The procedure for impeachment of judges is governed by Section 4 of Article 124 of the Indian Constitution and Section 6 of the Judges (Inquiry) Act, 1968. "Proven misbehavior or incompetence" is the only basis for initiating such procedures. What's disturbing here is that such limited grounds haven't been stated elsewhere, allowing a wide range of interpretations. A resolution of impeachment is passed in either House of Parliament after such a cause for impeachment has been established.²⁰

This resolution must be moved by the Speaker in the Lower House i.e., the Lok Sabha and the Vice President in the Upper House i.e., the Rajya Sabha, and it must be approved by a simple majority. After the motion is passed, an investigative committee is formed to look into the situation and validate the motion's accusations. The proposal must be approved by a majority of the other House of Parliament based on the inquiry findings. Finally, both Houses must approve the report to the President before a judge may be dismissed. This procedure is quite complex and time-consuming, and it frequently fails to pass. This is made more complex by the fact that the Judiciary's transparency criteria are too strict to obtain assurance on the grounds for

¹⁷ UJJAINI CHATTERJI, Contempt, dignity and fair criticism: What do they mean to courts?, The Leaflet, (June 17, 2021, 10:09 AM) <https://www.theleaflet.in/contempt-dignity-and-fair-criticism-what-do-they-mean-to-courts/>

¹⁸ Review of the Contempt of Courts Act, 1971, PRS Legislative Research, (June 17, 11:32 AM), <https://www.prsindia.org/report-summaries/review-contempt-courts-act-1971>

¹⁹ *Ibid*

²⁰ Manoj Mitta, Why it's so difficult to remove a judge, The Times of India, (June 17, 1:04 PM) <https://timesofindia.indiatimes.com/india/why-its-so-difficult-to-remove-a-judge/articleshow/3460192.cms?from=mdr>

impeachment. In India, no judge has ever been impeached.²¹

Several judges, however, have faced impeachment procedures. It began in 1993 when the impeachment motion against Justice V. Ramaswami failed to win a 2/3rd majority in the Lok Sabha. These procedures were also brought against Justices P. D. Dinakaran, J. B. Pardiwala, Soumitra Sen, and Nagarjuna Reddy, but they were not removed from their positions. Although he offered his resignation before the meeting with such a destiny, Justice Soumitra Sen would have become the first judge in India to be impeached for misappropriating Rs. 33.32 lakhs under his custody; (The Hindu Net Desk, 2017). Judges enjoy a brave position since the procedure of removing them is nearly as complex as executing and crafting laws. As a result, it fosters a sense of excessive control, setting the path for a mind-set conducive to the spread of corruption.²²

- Hut Downing Eyes: Even legitimate allegations against judges, brought confidentially to the CJI, have frequently been ignored.
- Approval of Motion: Prior to a sufficient number of members of Parliament being prepared to sign a motion to impeach the judge, at least two requirements must be satisfied.
- Evidences that are well-documented: Corruption should have been shown by documentary proof, and it should have been a public disgrace.
- Scandalising The Court: The idea that this would embarrass the court is out-dated, and most progressive democracies have abandoned it.
- Counter Actions: Taking him to court for contempt would be futile since he is unlikely to be intimidated.

2.1.4 Judges Own Power And Personal Affiliation

Judges are government employees tasked with enforcing laws. Although money might inspire judicial corruption, the philosophy and personal affiliations of judges are often compromised. If a family court judge is an activist feminist, for example, she will probably determine that the males she has brought to her are culprits, even if no further proof is available.

The chief justice of India has exclusive power over case allocation. When the Chief Justice feels like it, he assembles benches and transfers cases. When it comes to assigning certain cases to specific court authorities, there is no established process, method, or criterion. On January 12, 2018, a revolt against India's then-chief judge, Deepak Misra, made headlines. Justices Chalameshwar, Rajan Gogoi, Madan B Lokur, and Kurian Joseph have written to the judge, expressing their dissatisfaction with the case distribution and requesting an explanation.

There was little openness, and the judge assigned cases according to his preferences. This

²¹ Constitution provides rigorous procedure for removal of SC, HC judges, Business-Standard, (June 17, 2:10 PM), https://wap.business-standard.com/article-amp/pti-stories/constitution-provides-rigorous-procedure-for-removal-of-sc-hc-judges-118042001255_1.html

²² List of judges who faced impeachment proceedings, The Hindu, (June 17, 3:33 PM) <https://www.thehindu.com/news/national/list-of-judges-who-faced-impeachment-proceedings/article18578156.ece/amp/>

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causes worry among the judges, and there was a lack of openness. The entire system cannot be described as corrupt; yet, there will be several people that work hard and faithfully to their nature. They maintain the rule of law and administer justice in a fair and unbiased manner. Despite their lack of control over case assignments, they uniformly adhere to a similar school of thought or philosophy while writing their decisions. We frequently find on a bench that, even if the judges reach the same judgment, their reasons for doing so are vastly different.

Knowing and predicting who would provide what sort of justice, the chief justice might utilize this information to his advantage and assign cases appropriately. We can't call it outright corruption, but there's a vacuum here since no judge knows where or how he'll be transferred or whose cases he'll be assigned. Such circumstances arise as a result of a lack of openness and accountability.

A.M. Ahmadi: His daughter, an attorney at the Delhi High Court, raised his eyebrows for "special" treatment from certain judges when he was Chief Justice of India (October 1994-March 1997). When certain bar members sought a decision prohibiting judges' family members from living in the same residence, CJ I had members to fight the move.²³

A.S. Anand: As Chief Justice of India²⁴

- a) An accusation against him stems from a two-decade-old case, in which he was accused of using his position to persuade the subordinate court to rule in favour of his wife and mother-in-law.
- b) While he was CJI, the Supreme Court ruled an inquiry of the CBI following a 2000 disagreement regarding his age. There was no publication of the investigative report. This was caused by the scan copy of "BIG EGOS, tiny men" released by Ram Jethmalani.

Cash-for-job: 3 justices from the Punjab and Haryana High Court requested the aid of R.P. Sidhu, the discredited PPSC chairman, to guarantee that their daughters and other relatives topped the commission's tests. Hon'ble (Mr.) Justice Mehtab Singh, Hon'ble (Mr.) Justice M.L. Singh and Hon'ble (Mr.) Justice Amarbir Singh were judges. Status: The judges were indicted by two investigation committees. Gill and Amarbir Singh renounced M.L.²⁵

2.1.5 Lack of Transparency

The lack of transparency in the Indian legal system is a major issue. The Right to Information Act (RTI) has been repealed the Indian judicial system's scope As a result, The operation of the court, as well as important topics like as there is no information about the quality of justice or accountability.²⁶

²³ Corruption in Indian Judiciary, World Wide Journal of Multidisciplinary Research and Development, MJIF: 4.25 e-ISSN: 2454-6615)

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ Gayatri Rokade, Prof Abhijit Vasmatkar and Prof. Richa Dwivedi, Transparency and Accountability in the Indian Judicial System, Journal of Critical Reviews ISSN- 2394-5125 Vol 6, Issue 6, 2019

2.1.6 Abnormal Power in the Hand Of Judges ²⁷

1. **“In House Procedure:** In order to ensure that all valid allegations of misconduct against judges of the High Court and the Supreme Court be investigated by a committee of judges, the in-house process was established.
2. In accordance with the **Code of Conduct**, the complaint must be investigated by three sitting Supreme Court justices.
3. **Robust Inquiry:** The likelihood of a thorough and credible investigation into a complaint that involves the senior-most puisne judge is low when it involves lesser judges.
4. **Sexual Harassment Complaint:** In the instance of the sexual harassment allegation against the former Chief Justice of India, the in-house committee refused to allow the complainant to be accompanied by her counsel and also refused to allow the proceedings to be recorded.
5. **Missing Report:** Despite repeated requests, the final report, which allegedly exonerated Mr. Gogoi, has yet to be released.
6. **Reconditioning:** In an odd twist of fate, the lady whose accusations were deemed to be baseless by this committee was subsequently restored by the Court of Appeals.
7. **Credibility:** There is a significant question about the reliability of the report as a result of this. A thorough investigation of Mr. Reddy's allegation will be conducted only by retired judges with a high level of credibility.
8. **Committee:** The Hon'ble Chief Justice should convene a competent investigation committee to look into the matter.
9. **Reputation and Mistruths:** This will improve the reputation of the judiciary, dispel myths, and restore the image of the judge who is the subject of the investigation.”

CHAPTER III: CONSEQUENCES OF JUDICIAL CORRUPTION ON PUBLIC

3.1 Consequences of Judicial Corruption On Public

“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.”

Judiciary and legal professionals are affected by corruption in their duties and responsibilities. Corruption also has an effect on the public's confidence in the justice system and judicial institutions' abilities to defend rights, among other things.

Official corruption has a substantial detrimental influence on the future efficiency of government, in addition to the bad impact on the general public's sense of social fairness. According to Homans (1974), every human group member's relative standing is defined by the "group's assessment" of the individual's contribution to the relevant social field/area. Homans continues, "Changes in an individual's relative wealth-related position without a perceived shift in his social contribution would be met with open hostility by the rest of society" (e.g., Envy may result in social wealth reprisals and even total devastation.). Corrupt acts result in a rise in the financial status of those who pay and receive bribes that is "socially unjustifiable," according to the ordinary citizen's view of what constitutes a "equitable hierarchy" of social

²⁷ Probing Judicial Impropriety and corruption, Vision IAS, (June 18, 2021, 12:08 PM) <https://www.visionias.net/2020/10/the-hindu-notes-19th-october-2020.html>

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status. This goes against the public's notion of what a "equitable hierarchy" of social rank entails.²⁸

Ordinary citizens are not concerned with the delivery of government benefits when they are denied access to public services because they are unable to pay a bribe or other unlawful charge. Instead, he chooses to stay deafeningly quiet. Citizen are often forced to seek out alternate community-based channels for obtaining services as a consequence of the increased cost of providing public services that are imposed by corrupt practises inside the public sector (e.g., Alternative systems for conflict settlement, such as neighbourhood councils). In contrast to the state's court system, the alternative private procedures that are employed in these communities do not have the power to set precedent in some legal disputes that have implications for the whole community, as does the state's court system (e.g., human rights breaches or constitutional issues).²⁹

In order to increase economic efficiency, it is tempting to think that paying a bribe would result in the removal of bureaucratic red tape. However, there is a misconception since the individual who is able and willing to give the bribe may stand to gain financially from corruption. The social environment, on the other hand, is negatively affected by decreasing economic output, as previously mentioned. As a consequence of the widely held belief that resource distribution is controlled more by corrupt practices than by output, and as a result, it is fundamentally inequitable, this has occurred.³⁰

This creates an environment in which people may feel compelled to engage in illegal wealth transfers in order to get access to government benefits, perhaps at the expense of more productive pursuits. As a result, current corruption has the effect of decreasing future production, resulting in reduced efficiency over time.

Every action has an equal and opposite reaction, according to Newton's third rule of motion theory. Life, like everything else, continues to grow all around us. This postulate is essential in terms of physical limitations, but it may also be applied to other domains. Almost everything we do, from our behaviours to our judgments to our cognitive processes, is governed by the same law of cause and effect. As opposed to this, when there is widespread corruption in the Indian judiciary, the consequences are felt across the whole country, not only by those who were directly engaged in the crime.

3.1.1 Sheer violation of Rule of Law

It has been known since the beginning of civilisation that there are principles of the rule of law in place. Similarly, our legal system is founded on these principles to a considerable extent. There are three main precepts established by this document: national sovereignty, equality of all people before the law, and the need of creating courts to guarantee that the law is obeyed. For the legal system to remain intact, it is critical that it conform to the ideals of the rule of law. Otherwise, the system will become corrupted. The supremacy of the law is jeopardised, however, when judges, authorities, and lawyers act unethically in the administration of justice. Also lost is the nuance of equal treatment under the law if bribes are used to tamper with

²⁸ Edgardo Buscaglia, *Judicial Corruption in Developing Countries: Its Causes and Economic Consequences*, Hoover, (June 18, 2021, 2:07 PM), <https://www.hoover.org/research/judicial-corruption-developing-countries- its-causes-and-economic-consequences>

²⁹ *Ibid*

³⁰ *Ibid*

evidence, influence witnesses, grant favourable verdicts, or expedite bail procedures, among other things. There is no doubt that the rule of law is not being applied in the manner that it was intended. This not only represents a breach of the rule of law and raises issues about human rights, but it also serves to promote prejudice towards certain groups of people. It alters the nature of the nation, transforming it from democratic to authoritarian. Constitutionally empowered officials act in direct contravention of the Constitution's Core Principles. They should be removed from their positions immediately. It brings the nation as a whole into disrepute and attempts to conceal its responsibilities under the pretext of judicial independence.

³¹

3.1.2 Impartial Forum

The judiciary is intended to be a representation of fairness and objectivity. The former is useless if the latter is not there. On paper, in the form of the Indian Constitution, and figuratively, in the figure of Lady Justice of the Supreme Court, this has been reinforced. A blindfolded lady holding a beam balance immediately conjures up images of justice and the judicial system in our imaginations. The Indian court has likewise inherited this old idea. In popular culture, Lady Justice is often associated with the concepts of law, justice, equity, and judicial institutions. Its roots may be traced back to Greek and Roman mythology, where Themis is a Greek Titaness connected with the goddess Artemis. Lady of Divine Order, Justice, Law, Natural Law, and Tradition is her title. The sign of the blindfold symbolises impartial judgements or choices that are not influenced by money, politics, fame, or celebrity, among other things, and are made without prejudice.. It basically says that while deciding whether someone is innocent or guilty, the law should not be affected by any bias on the part of the jury (Indian Law Watch, 2017). ³²

Although the concept of impartiality in the court is stressed and emphasised again, corruption continues to be a problem in the system. It infringes on the rights of people to seek fair and unbiased justice. Every time one of the law's principles is violated, citizens look to the courts for guidance and redress. If the courts do not function diligently, the public loses faith in the judiciary, and there is no other institution that can restore the public's confidence in the judiciary in such a scenario. In a democratic society, the rights and well-being of the people must take precedence above all other concerns, regardless of their importance. The rights of individuals are being jeopardised in the name of democracy in this case, rather than the other way around.

3.1.3 Deliverance of Justice

All of the principles that the judiciary is based on include integrity, diligent effort, prudence, social security, public interest, competence, and honesty. From the ordinary man to the Hon'ble Chief Justice of India, everyone must be able to recognise the presence of these traits and to

³¹ Jindal Stainless Ltd. & Anr. v. State Of Haryana & Ors. on 11 November, 2016

³² Director David F. Levi, Bolch Judicial Institute, What Does Fair and Impartial Judiciary Mean and Why is it Important? (June 18, 7:09 PM), <https://judicialstudies.duke.edu/2019/11/what-does-fair-and-impartial-judiciary-mean-and-why-is-it-important/>

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draw the link between them and the legal system in which they live and work. In order to prevent corruption, everyone from judges to lawyers to court employees to criminals to politicians to witnesses must do all they can to prevent it.³³

The court is often considered as the watchdog over the Constitution. Yet, in order to fulfil their little duties, they are forced to pay government officials? Indeed, the judgement is based on the amount of money given by the parties who are fighting it in court, rather than on the facts and circumstances of the case or on the application of law in the particular circumstances. Judges have developed courage as a result of their responsibilities. There is no mechanism in place to hold people accountable. Furthermore, it seems that the legislative and judicial branches have been merged into a single entity. Officials in the judiciary act in a way that benefits the legislative branch in order to gain political advantage for themselves. As a consequence, the judiciary has been influenced to some extent as a result.³⁴

The judiciary, on the other hand, has not been held responsible to the people who are meant to be its beneficiaries. The idea of separation of powers has been rendered completely inapplicable. In an age characterised by judicial corruption, the concept of justice has lost its significance. As a result, justice has taken on a distorted aspect, and judgments have been reduced to a commodity that can be bought and sold at will.³⁵

3.1.4 Economic Injustice

In India's court of law, monetary resources play a major role in the spread of corruption. There are ramifications to this. Judges are lavishly compensated in order to prevent them from falling prey to corruption. They may also take advantage of additional benefits offered by the government. To begin with, it is concerning to observe a propensity for bribery among individuals who have significant financial resources on their side.

On the other hand, those who may have a strong case but lose because the other side has abused the system are being treated unfairly, and they should be compensated accordingly. The fact that they pay the hefty court fees and follow all of the rules and regulations does not prevent them from being stripped of the penalties and judgments that should have been given to them. Because they are the ones whose rights have been jeopardised due to their inability to bribe the machinery in place, those from lower and medium income groups bear the most burden as a result of this situation. There is an obvious difference between the two statements. The same inequalities are hindering the development of our country's economy.³⁶

³³ Grannis, Mark Andrew. "Safeguarding the Litigant's Constitutional Right to a Fair and Impartial Forum: A Due Process Approach to Improprieties Arising from Judicial Campaign Contributions from Lawyers." *Michigan Law Review*, vol. 86, no. 2, 1987, pp. 382–419.

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ Sharma, G. S. "ECONOMIC JUSTICE AND THE INDIAN CONSTITUTION: SOME IMPLICATIONS OF THE 'BONUS' CASE." *Journal of the Indian Law Institute*, vol. 8, no. 3, 1966, pp. 457–464. JSTOR, www.jstor.org/stable/43949915. Accessed 21 June 2021.

3.1.5 Failure of the Constitution

The Indian Constitution was drafted over a period of two years, eleven months, and eighteen days. In its most basic form, it is a comprehensive handbook that educates the Government on principles of governance while also granting people certain security rights. As a consequence, strict adherence to the constitution is in the best interests of the whole country.

Those who came before us in the freedom struggle conceptualised the thoughts and cries of our ancestors.

The Constitution recognised the need for a strong, impartial agency to monitor the behaviour of the people and the government. The Federal Bureau of Investigation was created under the Constitution. The organisation also realised that this energy needs to be self-contained and undisturbed by outside influences. As a consequence, our forefathers established a strong and independent judiciary to safeguard our nation. It is clear that these abilities are being abused. Our liberties, our country, and those who have given their lives to provide us with a democratic atmosphere in which to strive and flourish have all been desecrated. When people's rights are falsely protected and their rights are vandalised, as is the situation in the United Kingdom, fundamental rights are jeopardised. As a result, this practise defeats the objective of providing individuals with fundamental rights such as freedom of expression, the ability to criticise and scrutinise government, and creating policies that promote public welfare and security..³⁷

Equality, liberty, and justice are the three pillars on which the interests of the people are built. It fosters the development of the country and the advancement of society in a favourable environment. As a result, the court has failed to carry out its contract mandate. Dr. B R Ambedkar, Chairman of Law Commission and one of the most significant contributors to the numerous steps taken toward public welfare, responded that the right to enforce one's fundamental rights before the Supreme Court, which would be enshrined in Article 32 and falls under the jurisdiction of the Honourable Supreme Court, is the most important article in the Constitution. Indian judiciary, on the other hand, is rife with corruption, which is widespread. As a consequence, the judiciary has become stalemated, and the public has lost confidence in it. Naturally, if the most important part of the Constitution fails to fulfil its duties and perform its responsibilities effectively, the whole Constitution will be rendered ineffective..³⁸

CHAPTER IV: CONCLUSION AND SUGGESTIONS

In order to become a more transparent, accountable, and less politically influenced institution, India's court system, which serves as a temple of justice and one of the country's democratic foundations, must change. While executing the law is straightforward, delivering justice is more complicated, and striking a balance between the two is very difficult. Judges, on the other hand, have been entrusted with these responsibilities, and lawyers must work with judges to ensure that justice is delivered effectively.

There is appropriate machinery and administration that must be in place to ensure that the Indian judiciary does not become involved in corruption, and stringent measures must be implemented to ensure that the rule of law is not violated and that there is no personal affiliation or interest in the matter or property in question. With the passage of time, it has become

³⁷ Balakrishnan, K.G. "JUDICIARY IN INDIA: PROBLEMS AND PROSPECTS." *Journal of the Indian Law Institute*, vol. 50, no. 4, 2008, pp. 461–467. *JSTOR*, www.jstor.org/stable/43952173 . Accessed 21 June 2021.

³⁸ *Ibid*

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necessary to create a process to guarantee more openness in order to restore public trust in our chief justice and the legal system. Chief justices themselves have become targets of suspicion under a variety of headings.

The process of impeachment is long and drawn out, and it is obvious that it does not work in practise, allowing the judiciary an abnormal and huge amount of authority to operate according to their whims and fancies, as is the case in the United States of America. The process of impeachment is time-consuming and complex; in fact, only one judge has ever been removed from office throughout history.

There is a significant need, and the most obvious of them is to put a stop to the practise of appointing retired judges to positions in government. In spite of this, it seems that neither governments nor judges are enthused about this practise. These appointments become a significant source of politics and avarice as they vie to stay in power and reap the advantages of socio-economic-political privileges. In their quest for fulfilment, they occasionally band together with political parties to achieve their goals. In this regard, former Chief Justice R.M. Lodha has suggested a policy that would see departing judges continue to receive their salaries or comparable pensions in order to reduce the attractiveness of posts such as these. The appeal, on the other hand, is concerned with more than just monetary recompense. Judges are drawn to these posts because of the influence they have on policy choices in the country. Judges who are motivated by monetary incentives have more possibilities for financial gain.

“The Chief Justice of India's (CJI) office will be covered by the Right to Information Act, 2005 (RTI Act) because the CJI is a public authority under the RTI Act, but the Supreme Court argued that the RTI Act's right to know was not absolute and had to be weighed against the judges' right to privacy,” the Hon’ble Supreme Court of India's (SC) Constitution Bench ruled. Public interest, on the other hand, is not defined anywhere in the Constitution.

As a result, the Contempt of Courts Act is long overdue for an update, and certain modifications are urgently required. Currently, the Act casts a gloomy light on democracy and freedom of expression, as it prevents people from exercising their right to free speech and expression because they are entangled in the strong web of contempt of court. As a consequence, the Act portrays democracy and freedom of speech in a negative light. They are using it as a powerful weapon to conceal their unethical acts.

In order to combat corruption, the legal system must be freed of corruption. The time has therefore come to liberate the legal system from corruption.

Being a judicial aspirant myself I understand that the Indian judicial system has gone through numerous waves of ups and downs as per the dynamics of time, this critical analysis lays down a perspective from an individual eye and can differ from person to person. Belonging to the rich history and strong principles we tend to go back to conservative ways which cause loopholes; although, with changing times, the upcoming generation has evolved the judicial system and lay down different perspectives. These loopholes, hopefully, will be blocked by bringing together both old and new ideas in harmony, because change occurs with experience and contemporary ways. From one's point of view/perspective, I've suggested certain ways.

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