



## Tackling Corruption in India's Courts\*

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**Abstract:** *Corruption in Indian judiciary is considered pervasive: over 45% of Indians believe the judiciary is corrupt, a view shared by external assessments. Not only is corruption rampant in the lower courts, some have alleged that this corruption reaches the highest levels. In 2010, a former Law Minister declared that eight of sixteen former Chief Justices of India (CJI) were corrupt, and in 2014 a former Supreme Court judge alleged that three former CJIs made "improper compromises" to let a corrupt High Court judge continue in office.*

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### Introduction

From the Ghaziabad Provident Fund scam to serious charges of misappropriation against the close relatives of former Chief Justice of India K G Balakrishnan and allegations of sexual misconduct against a former Supreme Court judge, instances of financial and moral corruption in our judiciary have become embarrassingly frequent over the years. Exasperated over the systemic rot in Allahabad High Court, the largest High Court in India with 160 judges, the Supreme Court was moved to paraphrase Shakespeare's Hamlet and remark that "something is wrong in the Allahabad High Court".

When questioned about this delicate issue, the present CJI prosaically remarked, "The judiciary is not untouched by corruption". As guardians of the constitution, our judges have admirably protected democratic traditions in our country; but the question remains, who will guard the guards?

Functioning democracies have their internal self-correcting mechanisms through which the executive and

legislature are kept in check by the opposition in the parliament, legislations like RTI and periodic elections. The judiciary has been kept outside the purview of the court of public opinion to ensure its credibility as an impartial arbiter of disputes. But this insulation has created a culture of complacency and inefficiency because the 'rod of punishment' is absent.

For example, even an FIR against a judge can only be registered after the permission of the CJI. This had tragic consequences in the provident fund scam where then-CJI Balakrishnan did not give permission to file an FIR against accused judges for almost two years, by which time the prime accused, Ashotosh Asthana, died in mysterious circumstances. Justice Sen was held guilty of misappropriating funds before he became a judge, when he was an ordinary citizen.

However, once he was appointed a judge, there was no other way to penalise him except through impeachment- a process so inefficient that not a single judge has been impeached in the last 67 years. In the case of Nirmal Yadav (who has the



ignominy of being the first judge to be chargesheeted while still in office), even though a three-judge panel recommended her

prosecution, then-CJI Balakrishnan simply transferred her to a different High Court.

Corruption in Indian judiciary is considered pervasive: over 45% of Indians believe the judiciary is corrupt, a view shared by external assessments. Not only is corruption rampant in the lower courts, some have alleged that this corruption reaches the highest levels. In 2010, a former Law Minister declared that eight of sixteen former Chief Justices of India (CJI) were corrupt, and in 2014 a former Supreme Court judge alleged that three former CJIs made "improper compromises" to let a corrupt High Court judge continue in office. Sadly, the Indian judiciary has shown a predilection to treat every call from the executive or the legislature for greater judicial accountability as an attack on the judiciary's independence. That concern is not altogether unreasonable given the terse history of power battles among the three branches, but it increasingly rings hollow, given the rising reports of corruption in judiciary's ranks.

Indian judges may be nowhere near as corrupt as its politicians; but Indian judiciary, like its counterparts elsewhere, relies on its reputation for fairness, impartiality, and incorruptibility. The courts can scarcely afford any loss of public faith. Hence, it must have been a wake-up call for the judiciary to face wavering public support as it battled the executive and legislature during 2014-15 on the National Judicial Accountability Commission Act (NJAC), which sought to

expand executive's say in judicial appointments and make them more transparent. When the Supreme Court finally struck down NJAC in October 2015, citing the need for absolute judicial independence, the judgment was met with both veiled skepticism and open criticism. Although the current appointment system (in which judges appoint their successors) has been relatively free of corruption allegations, the NJAC debate brought forth long simmering concerns of judicial corruption and worries that even judicial appointment was not above suspicion.

It shakes public confidence in the integrity of the Indian judiciary eroding. Four main issues need addressing in the context of India's judicial corruption:

- **Corruption in lower courts:** India's judicial corruption is a cancer that begins at the lower levels and inches its way up. Spanning 600 district courts and hundreds of subordinate courts, the heterogeneous lower judiciary acts as the primary interface between Indian judiciary and its common citizens. In 2013, 36% citizens reported paying a bribe to the judiciary, a sad reality validated by many senior judges themselves. A 2007 survey that disaggregated bribe recipients showed that 59% of respondents paid bribes to lawyers, 5% to judges, and 30% to court officials for speedy and favorable judgments. The pendency of cases, collusion between lawyers of the defense and prosecution, manipulation of an opaque justice system by court officials, and the political influence in appointments of



lower court judges have created a toxic justice system at the lower levels.

- **Corruption in higher courts:**

The pervasiveness of corruption throughout the lower courts is closely connected to another problem. In a judicial system like India's, where higher court judges are selected from the ranks of lower court judges and lawyers, there is always a possibility of corrupt judges making it to higher courts. This is especially likely when, as in India, seniority becomes the primary 'de facto' criterion for promotion. Once judges have been appointed to higher courts, they can use their expansive "contempt of court" powers to suppress allegations of corruption. Indeed, the Indian judiciary's use of contempt of court proceedings against its detractors is often blamed for reducing to a sullen whisper what should be a democratic debate on judicial corruption. For instance, those who accused the former CJIs of corruption are now battling contempt of court proceedings.

- **Cumbersome impeachment proceedings.**

Even when there is overwhelming evidence against corrupt judges, a cumbersome impeachment process impedes their removal. Under Indian law, either 100 members of the Lower House or 50 members of the Upper House have to submit a signed complaint that is then investigated by a three-member committee comprising two judges

and a jurist; if approved, the matter is debated in both Houses, and must be completed within a single session, or else the whole process must begin again in a subsequent session. 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.

- **Excessive delay:** India has the world's largest backlog of cases, at nearly 30 million. The time between filing and final disposition in extreme cases can be up to 20 years in civil cases and 30 years in criminal cases. A weak infrastructure, chronic judicial vacancies, manual processes, a weak law and order enforcement system, prolonged trials and delayed judgments have been major contributors to corruption at all levels of judiciary. Conscious of the chronic delays, citizens feel compelled to bribe at all stages to hasten the trial process. Worse, the opportunities for illicit gain created by the delays create



perverse incentives to keep the judicial system inefficient.

As with many other issues facing India, the problem of judicial corruption festers not for want of solutions but for lack of will. Several reform commissions, senior judges, and eminent jurists have laid out detailed proposals for reforming the system from the ground up. Some of the key suggestions include improvements to contempt of court and impeachment proceedings, improvement of judicial infrastructure, enforcing integrity codes for judges and lawyers, extending the Right to Information Act to cover the judiciary, opening judicial vacancies to qualified legal scholars, using alternative dispute resolution mechanisms, and introduction of modern technology. However, reforms have been intolerably slow, with the judiciary and executive blaming each other for the delay.

Yet the recent executive-judicial response to the NJAC crisis has shown a promising way forward: Even as it rejected the NJAC, the Supreme Court acknowledged the flaws in the current appointment system and tasked the government to gather public suggestions for its improvement. Within two weeks, more than 3000 citizens sent in suggestions for improving the quality and accountability of India's judicial appointment process. It seems that the judiciary's concerns of another executive incursion and the executive's determination to save face after the NJAC debacle have forced both parties to work together for swift implementation of these suggestions. A similar openness to public suggestions for addressing the key causes of judicial corruption (and their swift implementation) seems to be the best way forward to arrest the perceived slide in the judiciary's accountability and

restore its image of integrity, impartiality, and fairness in the eyes of citizens.

### **Why People Pay Bribes**

#### **1. Favourable judgement**

Recent media reports have shown that it is possible to secure a favourable judgement in a lower court by bribing the judiciary, although the situation radically improves when it comes to the higher courts.

#### **2. Speeding up judgement**

There is a huge backlog of cases in Indian courts which results in delayed judgements. It is quite common for a case to drag on for years. People often have to pay bribes to speed up the process.

#### **3. Other activities**

A lot of non case related work also falls under the purview of the judiciary. This includes the issuance of affidavits, registrations, etc. People often pay bribes to get this work done by a middleman.

#### **4. Obtaining bail**

The judge has a lot of discretion in issuing bail; the guidelines governing this are fairly basic. It is possible to secure bail by influencing the judge in some cases.

#### **5. Manipulating witnesses**

As some recent high-profile cases have shown, witnesses are manipulated through money or force into giving favourable testimony.

### **Suggested Solutions**

#### **Use of Technology**



1. A review of how court records are handled and the introduction of modern tracking methods can eliminate much of petty corruption existing in lower courts
2. Websites and CDs can explain basic law to laymen
3. Court files can be computerized
4. Video recordings of court proceedings should be maintained

#### References

#### Reduce the gap

1. Provide alternative methods of dispute redressal to lighten burden on courts
2. Increase number of judicial officers and number of fast-track courts
3. Create a vigilance cell for redressal of public grievances

#### Making judiciary Accountable

1. Judges must be subject to judicial review
2. Judges must follow a code of conduct
3. Bar associations must act against corrupt members
4. A public body must keep an eye on the judicial system
5. An Indian judicial service must be created
6. The National Judicial Commission should have powers to fire judges
7. Judges should declare their assets and those of their family