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Corruption in Indian Judiciary

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Abstract

Justice Markandey Katju (retd), a former judge of the Supreme Court (SC), on 28th September 2015 while addressing the lawyers of Punjab and Haryana high court claimed that 50% of the higher judiciary consisting of SC and high court judges was corrupt. Katju, a former chairman of the Press Council of India, was addressing lawyers at the Punjab and Haryana high court during a function organised by the Lawyers for Democracy, a young lawyers' group, to mark Shaheed Bhagat Singh's birth anniversary.

“My assessment is that 50% of the higher judiciary has become corrupt,” Katju said, while claiming that he had got a dossier on Chief Justice of India HL Dattu's alleged properties and given it to then law minister Ravi Shankar Prasad and others, but to no avail.

All of us are aware of the fact that the country, which we love so much has been in the clutches and the diabolical jaws of the virus, called corruption. Corruption in India is the main cause of its every failure. Every developmental project and the defense requirements are being over shadowed by the corrupt officials. Even the magistrates who are believed to be the axis of the law are corrupted to such an extent that millions of cases are pending for the last few years.

The corruption in civilized society is disease like cancer which if not detected in time is sure to spread its malignance among the polity of the democracy. It poses threat to the concept of constitutional governance and shakes the very foundation of democracy and rule of law. The purpose of the present study is to evaluate the cases of corrupt judges, suggest some measures to put a check on corruption committed by the judges, judicial officers and employees of the Courts at Supreme Court of India, High Courts, District and Sessions Courts and other courts and tribunals in India. The detection of corruption has become a big problem. This phenomenon surprisingly is not limited to a particular area, city, or country. It is throughout the world. The Constitution also provides checks against misbehavior by judges. Article 124 (4) states that “A judge of a Supreme Court shall not be removed from his office except by an order of the President passed after an address by each house of parliament supported by a majority of the total membership of that House and by a majority of not less than two—thirds of the members of the House present and voting has to be presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity” Similar provisions exist in Article 217 clause 1 (b) for the removal of Judge of a High Court. The detailed process is laid down in the Judges (Inquiry) Act, 1968.

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

Introduction

A non-corrupt judiciary is a fundamental condition for the approval of rule of law and the ability to guarantee basic human rights in society. The judiciary must therefore be an independent and fair body that fights corruption, not the other way around. There are several definitions of corruption, this essay emanates from the definition of ‘abuse of office for personal or private gain’, a definition that is wide but yet well recognized. The factors of judicial corruption are many and often overlapping, but they vary from state to state and must hence be analyzed individually to find the factual reasons for what generates corruption. The effects are detrimental and break down the very core of rule of law and corrupt judges neglect fundamental principles such as equality, impartiality, propriety and integrity. 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

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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.

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.

Objectives to the study

1. To focus on cause of corruption in Indian judiciary.
2. To highlight the sectors of corruption in Indian judiciary.
3. To analyze the India’s rank in judicial corruption.
4. To analyze the judicial corruption and scandals in India.
5. To offer suggestions for reducing corruption in Indian judiciary.

Causes of corruption in Indian judiciary

1. **Inaccessibility:** The judicial system is highly tardy, costly, and beyond the reach of the common man. Normal people find it tough to seek relief, as litigation is costly and time consuming, which is beyond the limits of common people.
2. **Misuse of power:** judges have a lot of discretionary power so the fear always remains that they can misuse their powers.
3. **Difficult Impeachment process:** The Supreme Court of India has ruled that no first information report (FIR) can be registered against a judge, nor, a criminal investigation initiated without prior approval of the Chief Justice of the Supreme Court. Once appointed, a judge of the High Court or Supreme Court cannot be sacked except by a complicated impeachment process, done by members of the Lok Sabha and the Rajya Sabha, the two houses of Indian parliament. Their immunity is reinforced by the fact that the procedure isn’t just cumbersome but also susceptible to political influence. In the 1990s, when the Congress was in power, a motion seeking to impeach Justice V Ramaswami could not be passed by parliament as Congress members of parliament abstained from voting. There have been no other attempts at impeachment in India.
4. **Slow and long process:** India’s legal system has the largest backlog of pending cases in the world – as many as 30 million pending cases. Of them, over four million are High Court cases, 65,000 Supreme Court cases. This number is continuously increasing and this itself shows the inadequacy of the legal system. It has always been discussed to increase the number of judges, creating more courts, but implementation is always late or inadequate. And also due to this backlog, most of the prisoners in India’s prisons are detainees awaiting trial.
5. **Contempt of court act:** On top of all this protection to the judiciary is the power of contempt of Court, which has become potent weapon to suppress public criticism or even honest assessment of the judiciary. While deterring people from making unwarranted attacks on judiciary, the Contempt of Courts Act, has also stifled debate. That’s why judiciary’s conduct is barely discussed or debated in the media.
6. **Lack of transparency:** The big problem facing the Indian judicial system is the lack of transparency. Right to Information (RTI) Act is totally out of the ambit of the Indian legal system. Thus, in the functioning of the judiciary, the significant issues like the quality of justice and accountability are not known properly
7. **Weak bar bench relation:** Bar bench relations play an important role in the administration of justice, the quality of judicial decisions depends on the harmony of the relation between these two authorities. Weak bar association does not protect the rights of their clients while at the other hand, weak judiciary can’t able to do deliver justice to the society, therefore the proper harmony and balance between bar and bench able to combat against corruption.
8. **Weak governments:** from the very beginning there is a hidden conflict between governments and the judiciary, governments does not want strong judiciary

and time to time judiciary had been also prevented governments for her unconstitutional decisions, so this means that if the governments become weaker than the possibility of judicial corruption will increase.

9. **Degradation of nobility and ethical values:** Corruption is caused as well as increased because of the change in the value system and ethical qualities of men who administer. The old ideals of morality, services and honesty are regarded as out dated.
10. **Illiterate and poor people:** The poor and illiterate mens in India with the judicial system leads to his reaction that the court-room is an alien-land where procedures and technicalities, rather than truth and morality, rule. It is hard for an ordinary man to get past the complicated procedures or the middleman exploiting their ignorance to make money.

Why people pay bribe

1. **Favorable judgment:** People pay and offering bribe in court because they thought that by paying bribe it is possible to secure a favorable judgment. Media reports shows that it is possible in lower court's but situation radically improves when it comes to the high court's.
2. **Speedy judgement:** There is a huge backlog of cases in Indian courts which results in delayed judgments'. It is quite common for a case to drag on for years. People often have to pay bribes to speed up the process.
3. **Bail matters:** 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.
4. **Manipulating witnesses:** As some recent high-profile cases have shown, witnesses are manipulated through money or force into giving favourable testimony.
5. **To influence public prosecutor:** The public prosecutor is the master of the case's registered on the basis of F.I.R or State cases. It is possible to influence Public prosecutor by offering bribes.

History of Judicial corruption and scandals in India

- **Mr. Justice Sinha only Judge impeachedz;** In 1949, justice S.P. Sinha of Allahabad High Court was removed under the Government of India Act, 1935, just on the basis of his judgment. That's the only instance of the removal of a judge in India.
- **Chief Justice Mr. K. Veeraswami;** in 1979 Chief Justice of India permitted Central Bureau of India to file case of Dis—proportionate of Income / wealth against Chief Justice Madras High Court Mr. K. Veeraswami (father—in—law of Mr. Justice V. Ramaswami). 30 years elapsed. Sheltered by Courts' easy—go—tactic.
- **Mr. Justice V. Ramaswami** (son—in—law of Chief Justice Mr. K. Veeraswami: Sawant Committee Report had held he is guilty of several charges. In 1991, when SC justice V. Ramaswami was held guilty by judges in nine charges out of 12. Supreme Court of India also upheld guilty of 3-4 charges & recommended to Parliament for further action. Parliamentarians failed in their Duty to Impeach the Sitting Judge of Supreme Court Mr. Justice V. Ramaswami; not rising to the Heights of Eminent Constitution makers; but chose to have unholy alliance with Corruption in Judiciary vis-a-vis Legislature & Government. Supreme Court which upheld Charges of Mis-Behaviour also, we

opine, failed to prosecute him under Contempt of Court Act & relevant Laws. It also failed "To Do Complete Justice" by invoking Article 142. Criminal Judge was allowed to go scot—free; both by Parliament & Supreme Court.

- **A.M. Bhattacharjee:** The chief justice of the Bombay High Court was forced to resign in 1995 after it was found that he had received Rs.70 lakh as book advance from a publishing firm known to have links with the underworld.
- **Ajit Sengupta:** In 1996 the Calcutta High Court judge made it a routine to issue ex parte, ad interim stay orders on anticipatory bail pleas from smugglers having links with the Mumbai underworld. He was arrested in 1996 for FERA violations after retirement.
- **A.M. Ahmadi:** When he was Chief Justice of India (October 1994-March 1997), his daughter, a lawyer in the Delhi High Court, caused eyebrows to be raised for getting "special" treatment from certain judges. When some members of the bar sought a resolution banning lawyer relatives of judges from staying in the same house, the CJ I got members to defeat the motion.
- **A.S. Anand:** As Chief Justice of India. (a) He was accused of using his position to get the subordinate judiciary to rule in favour of his wife and mother-in-law in a suit that had been barred by limitation for two decades called as Tangled Plot. Also read Ram Jethmalani's "BIG GOS, small men ". (b) Supreme Court, while he was CJI, directed a CBI probe after a dispute arose over his age in 2000. The investigation report was not made public. This arose due to scan copy published in Ram Jethmalani's "BIG EGOS, small men ".
- **Justice Arun Madan-Sex for acquittal:** In November 2002, Sunita Malviya, a Jodhpur— based doctor, alleged that a deputy registrar of the Rajasthan High Court had sought sexual favours for himself and for Justice Arun Madan to "fix" a case in her favour. Justice Mr. Arun Madan. Case of Lady Sunita Malviya. In this case status: A committee set up by former CJI G.B. Pattanaik found prima facie evidence against Madan, who does not attend court anymore. Judge Resigned
- **Cash-for-job:** Three judges of the Punjab and Haryana High Court sought the help of disgraced PPSC chief R.P. Sidhu to ensure that their daughters and other kin topped examinations conducted by the commission. Judges were M.L. Singh, Mehtab Singh Gill & Amarbir Singh Status in this case: Two inquiry panels indicted the judges. Gill and Amarbir Singh have resigned M.L. Singh continues, though no work is allotted to him.
- **Three Judges Mysore Sex Scandal (alleged):** On Sunday, November 3, 2002, three judges of the Karnataka High Court, along with two women advocates, allegedly got involved in a brawl with a woman guest at a resort. The police arrived but reportedly didn't take action. Judges are N.S. Veerabhadraiah V. Gopalagowda & Chandrashekaraiiah. Status in this case: The three-judge inquiry committee appointed by the CJI filed its report. Gave clean chit.
- **Sumit Mukherjee scandal:** In march 2003 Delhi High Court Judge Resigns: Suspected of collusion with

- Property Developers. Raids by CBI on corrupt higher officials in Delhi Development Authority (DDA), found Draft Judgement-N-Court Records
- **Tehika Magazine:** In September 2009, the Supreme Court lawyer Prashant Bhushan, in an interview to Shoma Chaudhury of Tehika magazine, said “half of the last 16 chief justices were corrupt”. The comment invited the apex court’s contempt. Now, Bhushan’s father, the noted jurist Shanti Bhushan has joined issue.
 - **Eight chief justices were corrupt:** On 17th September 2010 the former Law Minister Shanti Bhushan on Thursday created a sensation in the Supreme Court when he moved an application accusing eight former Chief Justices of India of "corruption", and dared the court to send him to jail for committing "contempt of court". The eight allegedly corrupt CJIs feature among a list of 16 prepared by Bhushan-comprising Justices Ranganath Mishra, K N Singh, M H Kania, L M Sharma, M N Venkatachalliah, A M Ahmadi, J S Verma, M M Punchhi, A S Anand, S P Bharucha, B N Kirpal, G B Patnaik, Rajendra Babu, R C Lahoti, V N Khare and Y K Sabharwal. Terming eight among the list as "definitely corrupt", Bhushan put their names in a sealed cover and submitted it to the Supreme Court and virtually dared it to open it and read out the contents. The veteran lawyer, who became famous by successfully arguing for setting aside the election of Indira Gandhi in 1975.
 - 58 MPs of the Rajya Sabha moved a motion for impeachment of Calcutta High Court Judge Soumitra Sen for his involvement in financial misappropriation. Probe panel was set up by Rajya Sabha chairman Hamid Ansari in February 2009. It was headed by SC judge Justice B Sudershan Reddy and had as its members Punjab and Haryana High Court Chief Justice Mukul Mudgal and noted Jurist Fali S. Nariman. The Committee said the charges were duly proved.
 - **Soumitra Sen:** A former judge at the Kolkata High Court became the first judge in the India to be impeached by the Rajya Sabha, the Upper House of the Indian Parliament for misappropriation of funds. Justice Sen has been bearing the allegation for appropriating Rs 32 lakh as a court—appointed receiver in 1993 in a lawsuit between Steel Authority of India Limited (SAIL) and Shipping Corporation of India over supply of fire bricks.
 - **Nirmaljit Kaur:** A High Court judge: Uttarakhand High Court Justice Sells for Only 15 Lakhs! Rs 15-lakh parcel. In August 2008, a parcel containing Rs 15 lakh, allegedly meant for Justice Nirmal Yadav of the Punjab and Haryana high court, had been handed over to Justice Nirmaljit Kaur. On November 11, 2010, the high court had given the nod for justice Yadav’s prosecution.
 - **Paul Daniel Dinakaran Premkumar:** was the Chief Justice of the Sikkim High Court. The charges framed by the probe panel include: possessing wealth disproportionate to the known sources of his income; unlawfully securing five Housing Board plots in favour of his wife and two daughters; entering into transactions prohibited and punishable under the Benami Transaction (Prohibition) Act, 1988; acquiring and possessing agricultural holdings beyond the ceiling under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961; illegal encroachment on government and public property to deprive Dalits and the poor of their right to livelihood; violation of the human rights of Dalits and the poor; illegal construction in breach of the town planning law and planning permit; misuse of official position to unlawfully secure property and facilitate other illegal acts for personal gain.
 - **Justice A.K. Ganguly:** sexual harassment case, Sexual assault case intern harassment case, Supreme Court, West Bengal Human Rights Commission, crime against women, sexual harassment at workplace: Stella James, who graduated from NUJS Kolkata this year and now works at the NGO Natural Justice, Lawyers for Communities and the Environment, wrote about an alleged incident of physical, sexual assault by an unnamed, retired Supreme Court judge in late 2012. In a post that was published on the blog of the NUI S Journal of Indian Law and Society on 6 November, she wrote about trying to come to terms with her experience of 24 December 2012, Christmas Eve, ironically against the backdrop of the then—ongoing Delhi gang rape protests.: Ganguly gets Centre’s clean chit in intern case: Justice (retd) Asok Kumar Ganguly: The ministry of home affairs (MHA) has cleared the air about Justice (retd) Asok Kumar Ganguly, saying there is no case against him. It has referred to the Delhi Police’s feedback that there isn’t adequate evidence to lodge an FIR against Justice Ganguly and no probe is on against him.
 - **Justice Swatanter Kumar-Case of sexual harassment:** The woman lawyer who has accused Justice Swatanter Kumar of sexual harassment moved the Supreme Court on asking that the defamation case filed by the retired judge against her and some media houses be moved out of Delhi in view of the “institutional bias operating in his favour”. The woman has cited Justice Kumar’s status in the legal fraternity, and said she was “hopelessly in a subordinate position” with respect to him in the legal battle pending between them in the Delhi High Court. The petition stated that Kumar, presently chairperson of the National Green Tribunal, has worked as a judge of the high courts of Delhi, Punjab and Haryana, and Bombay, besides serving as a judge of the Supreme Court. The woman has claimed that she was a law intern when the alleged incident occurred.
 - **Justice karnan case:** In march 2017 Supreme Court, in a rare move, has initiated contempt proceedings against Justice C S Karnan, a sitting judge of the Calcutta High Court, and has restrained him from hearing cases. Contempt proceedings were initiated because he had levelled allegations of corruption against several judges of the Supreme Court and high courts without substantiating his claim with any evidence. He had written letters to the chief justice of India and even to the Prime Minister with a series of allegations against 20 high court judges. He also alleged that illegal money was recovered from some high court judges after the government announced demonetization.

Transparency International's Corruption Perception Index

In 2016 India ranked 79th out of 176 countries in Transparency International's Corruption Perceptions Index, compared to its neighbors Bhutan (26th), Bangladesh (145th), Myanmar (136th), China (79th), Nepal (131th), Pakistan (116th) and Sri Lanka (95th). In 2013, India was ranked 94th out of 175 countries.

According to Asia Pacific Business and Technology Report: The Judiciary: A pillar of democracy- in dire need of reforms. The Indian judicial system is independent and impartial. Rather, this is the only pillar of Indian democracy.

Justice P. Sathasivam former Chief Justice of India:

Answered in an interview about corruption in judiciary the former chief justice gave affirmative answer for this question and told, I should fairly admit that the judiciary is not untouched by corruption. When we take the oath as judge, we swear to be fair and impartial in all our judicial functions. However, on some occasions in the past, few judges have willfully dishonored the oath by adopting to corrupt practices. The solution for eliminating this disorder lies in the hands of the litigants. The litigants must take the responsibility for bringing into light such occurrence by making a grievance petition before the Chief Justice of respective High Courts and also to the Chief Justice of India. If a prima facie case is made out through the preliminary enquiry, then the judge should not feel hesitant to adopt the prescribed procedure under the mandate of Constitution.

Corruption widespread in India, says US report from Washington."

There is widespread corruption in India in all levels of the government including judiciary, said a US Congress-mandated report. "Corruption was widespread," said the annual Country Reports on Human Rights Practices for 2013 released by US Secretary of State John Kerry. According to the report, though the law provides criminal penalties for official corruption, the Indian government did not implement the law effectively, and officials frequently engaged in corrupt practices with impunity. "Corruption was present at all levels of government. The CBI registered 583 cases of corruption between the months of January and November.

As per report, "The Central Vigilance Commission (CVC) received 7,224 cases in 2012. Of those, 5,528 were received in 2012 and an additional 1,696 remained from 2011. The commission recommended action on 5,720 cases" "The CVC operated a toll-free hotline to lodge complaints and a web portal to share information. NGOs noted that bribes typically were paid to expedite services, such as police protection, school admission, water supply, or government assistance." These Judicial Officers have been vested with the discretionary powers for delivering justice to the people as per law of the land and using their good conscience. While handling the cases some of the judges are influenced through some known or unknown persons for their petty pecuniary gains.

Judicial corruption at International Level

Widespread bribery of judges around the world and inappropriate political interference in legal systems deny

millions their right to a fair and impartial trial, or any trial at all, says the global anti-corruption group Transparency International.

Suggestions for reducing corruption in judiciary

1. Use of technology

- 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.
- Websites and CDs can explain basic law to laymen.
- Court files can be computerized.
- Video recordings of court proceedings should be maintained.

2. Reduce the gap

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

3. Making the judiciary accountable

- Judges must be subject to judicial review.
- Judges must follow a code of conduct.
- Bar associations must act against corrupt members.
- A public body must keep an eye on the judicial system.
- An Indian judicial service must be created.
- The proposed National Judicial Commission should have powers to fire judges.
- Judges should declare their assets and those of their family.
- Introduce Judicial Inquiry and Audit Research Department to enquire into how, due to corrupt practices, cases are multiplied or delayed.
- Contempt of Court Act should be removed or it should be strictly implemented in letter and spirit against corrupt Magistrates, Judges who want only abuse the power.

4. Take special measures

- Appoint Special Citizen Judges (upto age 75) to work on Saturdays/Sundays, and during Holidays, in the High Courts and Supreme Courts. And, they should be paid according to their quality and outputs.
- There should be morning Courts from 7.30 to 10.30 AM and Evening Courts from 6.30 to 9.30 PM in all courts to clear the backlog deliberately piled up due to corrupt practices. Senior Citizens, like the retired principals, professors, teachers, engineers, managers, law officers, post masters, known social workers, should sit there and dispose of cases efficiently with the help of Law, Social Work, Journalism students assisting them.
- Extending the Right to Information Act to cover the judiciary.
- Opening judicial vacancies to qualified legal scholars.

Conclusions

On the basis of above research it that conclusion has been drawn how the corruption has been spread and how to control. 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, create a 'National judicial commission' to bring transparency in judiciary, 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.

We see that in spite of all the advancements in information and communication technologies changing the life of the people of the country dramatically, the India legal system still looks like a domineering and pretentious British vestige appearing to belong to an elite class away from the people and the country. As a matter of fact, the present system of justice is totally out of place and out of time and tune with democratic procedures and norms that please only a certain section of the society with vested interests. Therefore, there is an immediate need to restructure the entire judicial system to make it answerable to the needs of a democratic, progressive society.

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