

The Role Of Indian Judiciary In Eradicating Corruption

Iqramuddin Malik,¹ Abroo Khan¹ & Dr. Ashish Kumar Singhal²

1. Department of Law, Subharti University, Meerut, Uttar Pradesh, India

2. Department of Law, Invertis University, Bareilly, Uttar Pradesh, India
ashish_kumar112000@yahoo.com

Abstract: Judiciary being the guardian of the Constitution, corruption in any form is not at all expected in this organ of government. But to our misfortune this weed has entered the most sacred organ of the government. How far can we go with a Judicial System which is inefficient and cannot protect the rights of the peoples on account of prevailing corruption? Can we afford to ignore the pregnant silence of the people who are the ultimate sufferer of this menace? It is high time for the Judiciary to cull out this menace or else it would be too late. This study is based on the extent of corruption in judicial system as well as in other governmental organization its causes and how to combat this problem the effective decision of Judiciary not only to eradicate corruption in Judicial System but also other organs of government. One of the fundamental rights of humankind is the expectation of reciprocity of treatment in the conduct of one's affairs. This translates into being just and fair, and to be so treated in the courts which are charged with administering justice. In discharging this obligation, the streams of justice must be kept pure and unadulterated, not clogged or polluted.

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1. Introduction

The right to be treated fairly is recognized in international human rights treaties. **The Universal Declaration of Human Rights, 1948** stipulates that every human being is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations of any criminal charge against him. **The International Covenant on Civil and Political Rights, 1966** similarly provides, and the Human Rights Committee has unambiguously held that "the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception". Other international treaties have similar provisions, e.g. the African Charter on Human and People's Rights, the American Convention on Human Rights and the European Convention on Human Rights.

The common thread woven into all of these treaties is the impartiality of the court or tribunal. The objective of every court in the judicial system of any nation is to administer justice by protecting the rights of citizens. Justice can only be achieved by holding the scales evenly which involves being impartial. No party should come to the court with an unfair advantage over the other. Preservation of the integrity of the judicial system is a *sine qua non* of its effectiveness, and this can be tarnished by the corruption of its functionaries no matter how lowly. The whole structure becomes infected resulting in loss of confidence and trust in the persons responsible for safeguarding the rights of a state's citizens. An independent, trustworthy and effective judicial system is an essential pillar of a

democratic state. The judicial system is a guarantor of rights and a mechanism of dispute resolution. It is also crucial in the achievement of good governance. Unfortunately, in many countries and especially in India, the judicial system is not effective but corrupted and inadequate to its right dimension and incompatible with the model as it should be- effective, independent and trustworthy. Judges and court officials are liable on corruption and in many cases they are not doing their job in the face of justice but often in their own interest. Not very long ago, a TV journalist conducted sting operation in a Ahmedabad court and had got warrants issued against the then President of India, the then Chief Justice of India and many others by paying 'bribes' to court officials. This happened in late 2007 and then a bench headed by Chief Justice K.G. Balakrishnan was of the opinion that highlighting and publicising such 'isolated' cases would bring the entire judiciary into disrepute. Corruption is prevalent in India from top to bottom, but now we are coming across so many cases of corruption in the judiciary too that the common citizens are losing their faith on the judicial system. The judiciary in our democracy has been sinking in the morass of inefficiency, corruption and delays.

2. Justice & Equal Human Rights

Global Corruption Report 2007 says that corruption in judiciary is undermining judicial system, denying citizens access to justice and the basic human right to a fair and impartial trial, sometimes even to a trial at all. Petty bribery and political influence in the judiciary erodes social cohesion. The prevalence of corruption in

judiciary is not a secret anymore. Various judges have raised concerns about the same; some have even tried a guess. According to Justice S.P. Bharucha, former Chief Justice of India, around 20 per cent of the judges are corrupt. Another judge, Justice Michael Saldalma of the Karnataka High Court said the percentage is 33 per cent. Justice Saldalma also said that the public perception about corruption in the judiciary is much more important than its actual incidence. A series of scandals in the higher judiciary had recently hit headlines. I am not of the view that other organs of the government are corruption-free. But corruption in the judiciary has the potential to do far more damage to the society than corruption elsewhere. There are several motivating forces behind corruption- greed, ambition, and desire to put one over the other, cumbersome procedure of court proceedings, etc., are some of the many causes of corruption. This paper is intended to understand and define Judicial Corruption, to identify its causes in order to design measures that should be taken to prevent and control corrupt behavior and steps that must be taken to strengthen judicial integrity and getting back the trust and confidence in the Judicial System. So far as judicial activism is concern 'philosophy of judicial decision -making whereby judges allow their personal views about public policy, among other factors, to guide their decisions. Judicial activism is closely tied with personal standpoint of 'liberal' It is basically being more 'activist' or more in turn with 'adding' to the U S constitution rather than merely interpreting it. Additionally, it could be argued that judicial activism is necessary because it is difficult to decide the court cases based on constitution. During the last two posture and come forward to the rescue of aggrieved citizens.

2.1. Case Study on Corruption

In a number of case, subsequent to the Maneka Gandhi case, the judiciary interpreted the constitutional provision in its wider possible meaning meaning to protect basic civil liberties and fundamental rights. During this period, our judiciary developed the concept of social action litigation and public interest litigation by discarding the traditional and self imposed limitations on its jurisdiction. For the first time Justice Krishna Iyer in Bar Council of India case, advocated the liberal interpretation of locus Standi in public interest litigation. He observed that in a developing country like India, public oriented litigation better fulfills the rule of law if it is to run close to the rule of life. Although on the one hand Judiciary has touched almost every aspect of life through judicial activism whether the case of bonded labour, rehabilitation of freed bounded labour, payment of minimum wages, juvenile offenders, child labour, illegal detention, torture and maltreatment of police lock-up, implementation of various provisions of

the constitution, environment problems, the court took cognizance of each case and laid down various judgments to protect the basic human rights of each and every member of society, but on the other hand there is need of transparency in itself (judiciary). To sum up we can say that there is vast change in judicial process but on various points judiciary is silent whether the promotion of judges in High Court or Supreme Court, the responsibility of giving information under the right to information act., the corruption of judges Is there no need of activism in this era? No doubt law regulate the society, but some time society also regulates the law. Is there need of the procedure of public opinion how judiciary should do their function through judicial activism? As it is clear changing aspiration of people also affects law. Constitutions, courts, and other part of judicial system are made for common people. In the view of Justice Y. V. Chandrachud observed "it is really the poor, starved and mindless millions who need the court protection for securing the enjoyment human rights". So being some need of more activism in judiciary, Judicial activism has played an important role in human life.

3. Literature review

There is no dearth of literature available indicating the presence of corruption in the Indian Judicial System and its negative impact on a civil society. V.R. Krishna Iyer in his book *Off the Bench* has analyzed the various corrupt practices prevalent in the Indian courts and has also pinned the impact of corruption in tarnishing the image of judiciary. In an article written by former justice Rajinder Sachar, titled "Judiciary should welcome National Judicial Council" he emphasized the magnitude of corruption in the Indian Judicial System and the need for judicial accountability to check this sorry state of affair. *The Global Corruption Report, 2007*, by Transparency International, a leading world NGO, states the pervasive character of judicial corruption and its causes. It has also recommended various measures that must be adopted to combat judicial corruption. All these and like works on the subject point to the presence of corruption in the judicial system. The various causes have been also discussed and measures recommended to check this menace. However in recent times this problem has gained enormous magnitude and reached alarming heights. Reports in the news media about the prevalent corruption in the judicial system appear more often now. But to our misfortune this weed has entered the most sacred organ of the government. How far can we go with a Judicial System which is inefficient and cannot protect the rights of the peoples on account of prevailing corruption? Can we afford to ignore the pregnant silence of the people who are the ultimate sufferer of this menace? It is high time for the Judiciary to cull out this menace or else it would be too late.

4. Discussion

This study is based on the extent of corruption in judicial system as well as in other governmental organization its causes and how to combat this problem the effective decision of Judiciary not only to eradicate corruption in Judicial System but also other organs of government. Corruption in the Judiciary has led to the decay of people's faith in the judicial system and until checked and curbed would result in the destruction of rule of law.

- This research study aims to assess the presence, locations and extent of corruption in the judicial system.
- To understand the perceived reasons for corruption.
- To assess the intensity and impact of corruption on people and to elicit suggestions from the public to combat corruption.
- To get an insight of the measures being taken to ensure the independence of each organ in its own sphere and also simultaneously working as checks and balances for each other.

The study is based on doctrinal as well as non-doctrinal method of research. The Judicial System is entirely familiar with the importance of how the public perceives their conduct, behaviour and role. It is vital to the integrity of the justice system not only that judges are fair, but they are also seen to be fair. The same can be said of corruption perceptions and reality can be equally important when it comes to public trust.

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Correspondence To: Dr. A. K. Singhal, HOD in Law, Invertis University, Bareilly, India.
Phone-8057285583
E-Mail-ashish_kumar112000

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