

JUDICIAL REFORMS OF STATE OF MARYLAND IMPLEMENTABLE IN INDIA

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ABSTRACT

"All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary" - **Andrew Jackson**

For any society to develop and progress there has to be equity and justice for all. Especially when we are concerned with a country like India, which is one of the largest democracies in the world the issue needs even more attention. Judiciary is that organ of the system, which as is known provides justice to the citizens is also responsible for the overall development of the society. It is this organ, which keeps a check on malpractices, misadministration and irresponsible actions of the government and administration in one way or the other. However, the problem arises when this organ is infected with the viruses of corruption, professional deviance and maladministration. The issues of white-collar crime in judiciary have been neglected and overlooked since long time. This issue if not tackled sooner might not only spread injustice but also unrest and disbelief in the very soul of the judicial system. We need to first identify the extent, cause and depth of the problem. It is only after this that we shall be able to bring reforms to clean the judiciary of this virus. And to ensure a healthy and righteous development of the society it necessary to ensure that our judiciary remains clean, efficient and effective. As mentioned in Bhagwad Gita, *"While contemplating the objects of the senses, a person develops attachment for them. From Such attachment comes Lust, then anger, illusion, bewilderment of memory and loss of intelligence, and then one falls down into the material cycle of birth and death"* The paper analyses the probable causes of rise in white-collar criminality in judiciary, steps that can be taken to control the same and certain suggestions that can be implemented to make judiciary clean and accountable.

INTRODUCTION

CORRUPTION is the biggest threat for any society especially when the society is large and developing like India. Corruption not only hampers the progress of the society but also creates unrest amongst the members, which in turn can prove futile for the peace, law and order. Judiciary is the organ, which can effectively deal with the problem as it can not only provide solutions to the grievances of the citizens but also by punishing the accused prevent or keep a check on the corruption. However, corruption within the judicial system is one of the most important reasons for the persistence of high levels of corruption in India because a corrupt judicial system shields impunity. A corruption-free judicial system is an essential (although by no means sufficient) prerequisite for combating corruption. One of the most

urgent – and yet most neglected – priorities in the fight against corruption is making the judicial system itself corruption free.

MAJOR CHALLENGES TO FREE JUDICIARY FROM CORRUPTION

There is urgent need today for an effective strategy to rid the judicial system of corruption. The strategy will have to address four major challenges.

First, we do not have an adequate understanding of the nature and extent of corruption in the judicial system, and its possible remedies. There is a lack of transparency about what is being done internally in the judicial system to combat corruption.

Second, we do not have enforceable, statutory standards and definitions on judicial conduct and ethics that define, precisely and accurately, what constitutes corruption in the judicial system. The resulting ambiguity allows corruption to flourish.

Third, there is no effective independent institutional mechanism to combat corruption in the judicial system.

Fourth, key ‘duty holders’ on whom the judicial system depends for its effectiveness and integrity – the Bar, the police and ministerial staff – are notoriously complicit in corruption and, powerful sections amongst them have emerged as a vested interest against much needed judicial reforms. Little wonder that the trickle of corruption cases that manages to wobble its way into courts, ends up being deliberately detained in the judicial system for years, postponing or even defeating accountability.

CORRUPTION IN JUDICIARY-KNOWN OR UNKNOWN

Virtually *nothing* is known authoritatively about corruption in the judicial system – there is lack of transparency and a shroud of secrecy over the issue. The general impression, widely held, and reflected, for example, in a perception survey done many years ago by Transparency International, is that the judicial system is highly corrupt. There has been no systematic study of corruption in the judicial system or research into it. There is no systematic data about the incidence of corruption in the judicial system. Research is impeded by considerable fear of the contempt power of courts.

Equally little is publicly known about steps being taken by the higher judiciary against corruption in the subordinate courts. All High Courts have strong and active (even internally feared) in-house vigilance sections addressing corruption amongst subordinate court judges. These vigilance units are usually staffed by judicial officers on deputation. Complaints received by High Courts against judicial officers and court staff are investigated by these units. Action is taken in a large number of cases by High Courts against court staff as well as judicial officers.

Though across the country, a significant (but publicly unknown) number of judicial officers are said to be expelled from service because High Courts have found substance in complaints of corruption against them. However, these actions remain shrouded in secrecy. Therefore, the adequacy of these actions cannot be independently assessed. India is perhaps the only major democratic country in the world that does not have an enforceable set of statutory standards on judicial conduct and ethics. Criminal liability under the Prevention of

Corruption Act is not a substitute for statutory standards on conduct and ethics – the framework for administering a system of conduct and ethics is intended to protect the institution, and is fundamentally different from the criminal law framework in terms of types of wrongdoing, standard of proof and procedural law.

At the initiative of then Chief Justice of India, Justice J.S. Verma – known for his outstanding probity during and after his tenure in office – the full court of the Supreme Court of India adopted in 1997 a broad (and quite gentle) ‘Restatement of Values of Judicial Life’ consisting of sixteen values that should govern judicial conduct. The Restatement was subsequently ratified and adopted by the Chief Justices’ Conference in 1999.

However, the Restatement of Values is only a set of non-enforceable, non-mandatory guidelines, rather than an enforceable law. Its content is very limited, covering three areas in a somewhat cursory manner: some types of conflict of interest, some aspects of engagement with social and political activities, and the acceptance of gifts. The Restatement does not come with an institutional framework for monitoring and enforcement.

There is no corresponding statement of values for judges of the district and local judiciary, who are covered today only by general rules of conduct applicable to civil servants of their state.

ENFORCEMENT ISSUES

The enforcement mechanism to monitor and enforce even the cursory standards that currently exist for subordinate court judges is entirely in-house and non-transparent. Members of the public may file complaints with the High Court. However, the procedure for filing such complaints is not well established. Nor are complainants kept informed about action taken on their complaints. Where corruption is established, it is not clear whether judicial decisions tainted by corruption – which may have wrongly altered rights and obligations – are corrected and if so how. In the absence of clear standards, enforcement of ethical standards amongst judges is often viewed by judicial officers as arbitrary, resulting in a pervasive sense of ‘fear’ amongst judicial officers about the vigilance function.

The framework to counter misconduct by Supreme Court and High Court judges is set out in the Constitution and the Judges Inquiry Act. It provides a narrowly restricted process for holding these judges accountable for mis-behaviour and incapacity, filtered through a stiff requirement for support by Members of Parliament. The Supreme Court of India acknowledged as far back as in 1991 (in connection with judicial review of the impeachment proceedings against Justice V. Ramaswami) that removal of these judges from office is a ‘political process’ by Parliament. The worldwide best practice today is to provide independent judicial commissions that include a mixture of judges, lawyers and members of the public to process complaints against judges and hold them accountable, even while retaining the power of removal in the legislature. India lacks such a state of the art mechanism for its superior judiciary that will protect judicial independence while still ensuring transparency and accountability.

REFORMS IN THE STATE OF MARYLAND

How to reform the judiciary to prevent corruption in the judiciary an illustrative example is the framework for judicial conduct in the State of Maryland in the United States of America. The statutory Maryland Code of Judicial Conduct, based on the model code developed by the American Bar Association, in contrast, covers in meticulous detail a wide range of rules of conduct that judges are legally mandated to follow. A most interesting enforceable, statutory legal obligation imposed on Maryland judges is: 'A judge shall comply with the law, including this Code.'

CODE OF CONDUCT FOR THE JUDGE

All the judges have to follow a set of obligations as prescribed in the code of conduct. Obligations cover matters such as, promoting confidence in the judiciary, avoiding lending the prestige of judicial office, performance of judicial duties, impartiality and fairness, bias, prejudice, and harassment, external influences on judicial conduct, competence, diligence, and cooperation, ensuring the right to be heard, responsibility to decide, decorum, demeanor, and communication with jurors, ex parte communications, judicial statements on pending and impending cases, disqualification, supervisory duties, administrative appointments, disability and impairment, responding to judicial and lawyer misconduct, cooperation with disciplinary authorities, extra-judicial activity, appearances before governmental bodies and consultation with government officials, appointments to governmental positions, use of non-public information, affiliation with discriminatory organizations, participation in educational, religious, charitable, fraternal, or civic organizations and activities, appointments to fiduciary positions, service as arbitrator or mediator, practice of law, financial, business or remunerative activities, compensation for extra-judicial activities, acceptance and reporting of gifts, loans, bequests, benefits, or other things of value, reimbursement of expenses and waivers of fees or charges, reporting requirements and rules governing political activity.

ENFORCEMENT METHOD

There is a very transparent and independent mechanism in Maryland to enforce these standards. Complaints may be filed by any person with the Maryland Commission on Judicial Disabilities, an independent statutory body, against any judge for violation of the Maryland Code of Judicial Conduct. The simple form in which complaints are to be made may be downloaded from the website of the commission. All complaints are first investigated by the commission's investigative counsel and brought to a judicial inquiry

board, consisting of two judges, two lawyers and three members drawn from the general public who are not lawyers or judges.

The inquiry board investigates each complaint and submits a report, including recommendation, to the commission, which consists of eleven persons appointed by the Governor of Maryland, by and with the advice and consent of the state Senate. They include three sitting judges (one appellate judge, one circuit court judge, one district court judge); three lawyers, each admitted to the Maryland Bar and so engaged for at least seven years; and five public members, *none of whom is a lawyer or active or retired judge*. The commission has the power to investigate complaints against any judge of the Court of Appeals, Court of Special Appeals, Circuit Courts, District Courts, or Orphans' Courts; to conduct hearings concerning such complaints; to issue reprimands to judges; to recommend to the Court of Appeals the removal, censure, or other appropriate disciplining of a judge or, in an appropriate case, retirement.

Anyone can go to the website of the commission to see how many complaints have been filed against judges and the fate of these complaints (<http://www.courts.state.md.us/cjd/>). The site reveals, for example, that 123 complaints were filed against judges in the year 2010 for transgression of the code. Some 75% of the complaints were against judges of the highest tiers of courts. Some 75% of the complaints came from members of the public and 25% from prison inmates – only 3% came from the Bar. Action was taken against six judges for violation of the code of judicial conduct. All the gory details of actions taken against judges (including their names and details of the charges and findings) are available on-line for the whole world to see. This mechanism is over and above the democratic accountability of the judiciary – the Maryland judges are elected to office.

CAN THE REFORMS OF STATE OF MARYLAND ADOPTED IN INDIA - ANALYSIS

Why is it that we cannot have such a transparent mechanism of accountability in India? Three reasons are usually cited. First, that revealing the details of wrongdoing by judges and action taken against them will erode the faith and confidence of people in the judiciary. There is no evidence that this is true anywhere in the world. The Maryland mechanism has been in place now for over 45 years. It has not diminished in any manner either the independence of the judiciary or people's respect for or faith and confidence in the judiciary which remains high.

The judiciary in Maryland – and in other parts of America – is not free from the social ills of bias, racism, prejudice and corruption. What gives confidence to people is not the illusion that their judges are angelic, divine beings who are perfect in every way. We know this is not true of any human institution anywhere in the world. What in fact establishes faith and confidence in the judiciary is a credible and transparent mechanism for accountability that reassures people that the few 'bad apples' are weeded out.

Our judges will be the first to admit that while the vast majority of judges are above board, there are undeniably a few bad apples in the judiciary, not unlike other human institutions in

our country. What is needed today is a credible and transparent mechanism that will reassure the people that these bad apples are being dealt with effectively and swiftly. Such a mechanism is also necessary to protect the fair name of the vast majority of judges and of our judiciary which is today respected all over the world. A lack of transparency is in fact resulting in an overestimation of levels of corruption among judges rather than shoring up confidence in the judiciary.

The second reason cited against a transparent and independent system of judicial accountability is that it will be abused in the realities of our country where we have to deal with political, caste, communal and regional antagonisms that may not be prevalent in western jurisdictions. It is undoubtedly true that the social context of our country is far more complex than that in many other countries. However, a strong and credible accountability mechanism will be able to weed out motivated and frivolous complaints that are also common in other jurisdictions. In most countries some 80% to 90% of complaints against judges made to independent statutory bodies are dismissed at the preliminary stage. If such a mechanism is established in India, we may also find that a large proportion of complaints will end up getting dismissed.

The third reason often cited is that we have a far heavier case load and our judge numbers are also much higher. This is not factually true. Let us compare Maryland (population of 53 lakh) with Himachal Pradesh (population of 68 lakh). Himachal Pradesh had some 1.2 lakh of new cases filed in 2009; whereas Maryland had some 20 times that number: 22 lakh new cases. Himachal has some 120 judges; Maryland has some 275 judges. The per judge new case load of Himachal Pradesh judges is about 1,000 cases; that of Maryland judges is some 8,000 cases. If a larger, more busy judicial system like Maryland can handle a transparent system of judicial accountability, surely so can Himachal Pradesh or any other state in India.

Given the absence of adequate standards, institutions and statistics, it is impossible to make any well founded assertion about the nature of corruption in the Indian judicial system. From anecdotal evidence, however, it may safely be concluded that the biggest cause of corruption in the Indian judicial system is found in the Bar. To be sure, the Indian Bar boasts of many legendary figures who are truly world class lawyers, and have contributed immensely to the rule of law in India. However, there is no one who will deny that vast sections of those who are enrolled as advocates are not carrying on the profession consistent with established professional standards.

No Bar amongst major countries in the world today is as poorly regulated – in terms of entry, supervision of conduct and sanctions – as the Indian Bar. Judicial corruption is virtually impossible without the involvement of advocates. Effective ethical regulation of the Bar is therefore essential, if the Indian judicial system is to be made corruption-free. Bar reform has stalled in India in the face of the emergence of the Bar as a powerful group that has a vested interest in injustice – the agitation of the Bar against the efforts to rationalize the power to arrest is a sad example of the perverse role of sections of the Bar in India today.

The police, witnesses, accused, and court staff are all duty holders in the judicial system. They bear equal responsibility with the Bench and the Bar to ensure that the judicial system works with integrity to enforce anti-corruption laws. Their roles and responsibilities in the

judicial system are also poorly defined and regulated. Perjury, for example, is rarely punished.

Against this background of the weaknesses of the entire judicial system's regulation of ethical conduct, including the Bench and the Bar, it should come as no surprise that the Indian judicial system has almost entirely failed to discharge its required role in holding corrupt officials accountable. Whereas India is considered one of the countries with the highest prevalence of corruption in the world, it is quite remarkable that the country has one of the lowest numbers of corruption cases filed in the judicial system.

Hardly 4,000 cases were filed under the Prevention of Corruption Act in the entire country in 2009 – including all cases filed by the CBI and anti-corruption and vigilance departments of all the states. The CBI itself hardly files 300 or so cases on bribery and disproportionate assets in a year. Most of these involve petty corruption by holders of petty offices. The low number of cases being filed for corruption is evidence that cases involving large-scale corruption are not being filed in courts and the kingpins of corruption are going scot-free without being held accountable.

The handfuls of corruption cases that are filed in court face long delays. A delay of up to 17 or 18 years is not unusual. By the time the appellate stage is concluded, punishment is rare. Instead, the process has itself turned into the punishment, which benefits those who have violated the law because they escape formal punishment; but unjustly punishes those who are innocent. For the innocent, eventual acquittal is no compensation for the wreckage caused to their lives by the cruelty of the process. Delays arise from a variety of machinations indulged in by duty holders at all stages – during investigation, prosecution and trial. The poor quality of investigation is a major reason for delays in trials. Overworked and underpaid prosecutors are not given the tools necessary for effective prosecution and in some cases their own role is often believed to be corrupted.

There is also a large agenda of legislative reform needed to strengthen the effectiveness of legal measures against corruption in India. This is beyond the scope of this essay.

CONCLUSION

It would be quite easy to fix these problems, and to put in place a transparent, accountable and sensible regulatory framework, based on international standards and experience, consisting of ethical standards and institutions that would enforce high standards of ethics and conduct on all the duty holders of the Indian judicial system – Bench, Bar, police, ministerial staff, witnesses and accused – and make the judicial system corruption proof/corruption free (not in the sense that no one would be corrupt in the judicial system, but in the sense that no one would be corrupt in the judicial system and be able to get away with it).

In turn, a corruption-free judicial system that would hold the corrupt accountable on a timely basis would be a 'game changer' in the overall fight against corruption. This reform would, however, diminish the impunity enjoyed by the corrupt in a weakly regulated judicial system that we have today. Powerful vested interests in the Bench, the Bar and the executive are blocking much needed reforms of the judicial system. Only strong public opinion can

overcome their resistance. The message must go out very clearly – without the judicial system making itself corruption free, India will never be able to effectively combat corruption. Public opinion needs to demand that the Indian judicial system must be made transparent and accountable to the people of India.

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