

SPECIFIC SUGGESTIONS ON HOW TO COMBAT CORRUPTION IN JUDICIARY AND MEASURES TO BE TAKEN

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Judiciary in India :

An endeavour is being made to highlight the judicial functioning in India, in the context of increasing cases of judicial corruption and delays in administration of justice. The Indian judiciary has so far gained the public confidence in discharging its constitutional functions. As an institution, the judiciary has always commanded considerable respect from the people of the country. The roots of this high regard lie in the impartiality, independence and integrity of the members of the judiciary. The judiciary in a democratic polity governed by the rule of law stands as a bulwark against abuse or misuse or excess use of power on the part of the executive and protects the citizens against Government lawlessness.

Expressing the need for and importance of judiciary a learned jurist aptly remarks : “middle class people are combating with the Government power through media of the Courts”.

Major Challenges Before the Judiciary :

Today the judiciary has before it two major challenges :

- (i) Judicial corruption; and
- (ii) Delayed administration of justice.

Judicial Corruption :

Judicial corruption, at whatever level, brings disrepute to the judicial order and dishonour to the institution of judiciary and

undermines the faith and confidence, which the public reposes in the administration of justice system. Society regards judges as trustees of human rights, fiduciaries of right and justice, beyond the reach of corrupt might or of other fragilities of indolence, disreputable company or participation in activities which are subversive of impartiality or suggestive of incapacity.

One should not forget that, judiciary is an integral part of democracy and its integrity and accountability are the concern of the entire people. The fundamental rule is that judges must be independent must be reconciled with the equally clean imperative that judiciary must be accountable. What is paramount is democracy not judicial absolutism.

No amount of efforts to tackle corruption in the Courts will be effective unless these are manned by judges who are men of integrity and character.

Causes for Judicial Corruption :

Following are some of the causes of corruption in judiciary :

- (I) Fallible nature of Judges
- (II) Abuse of Discretionary power
- (III) Lack of accountability
- (IV) Lack of Supervisory Control against the judiciary.

Fallible nature of Judges :—As rightly pointed out by Justice Krishna Iyer “Judges are not infallible”. Judges are also human beings

and they are prone to have all the weaknesses like any other individual may have. Judiciary is the watch-dog and Custodian of the rights of the people, but, if such Custodian indulges in errant activities, the question is who will watch them? As aptly remarked by V.R. Krishna Iyer, "who will guard the guards"? Therefore, we need a sound mechanism to over view the functioning of judiciary as a vital organ of democratic fabric.

Abuse of discretionary powers :—It is an undisputed fact that discretionary power is inevitable for the cause of justice or for any legal frame work. However, since there is every likelihood of abuse of discretionary power, it should be guided by established principles and norms. Accordingly, the discretionary power exercised by the Judges should also be based on sound principles, without giving any scope for impartiality or bias.

Lord Camden C.J. in the *Hindson v. Kersey*, case in the year 1765 commented, that "The discretion of a Judge is the law of tyrants. It is always un-known. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is often times Caprice; in the worst it is very vice, folly and passion, to which human nature liable".

Lack of Accountability of Judiciary :—In a democracy every institution is accountable and so does the judiciary. It is pertinent to note that there is no specific scheme of accountability for the judges, either under the constitution (except the scheme of impeachment) or under any legislations.

The method of impeachment is only a limited, complex and difficult task.

Lack of supervisory control against the judiciary :—Of late, the controversy over superiority or supremacy between legislature and judiciary has surfaced again. It should be noted that no organ which is creature of the

constitution can ever claim any superiority over the other. It is the constitution which is supreme and the legislature, executive and judiciary should function only within frame work of the constitution. Further, there should be an effective supervisory and control mechanism with the higher judiciary over its subordinate judiciary, to tackle the cases of corruption.

Suggestions :

Following suggestions are made to curb corruption in judiciary :

1. The judges, the Bar and the Law makers need to think of more effective ways to combat corruption in the judiciary, in co-operation and co-ordination.
2. What need to be urgently established is a mechanism to deal with charges of corruption against judges in the High Courts and the Supreme Court.
3. The remedy of impeachment provided under Article 124(4) has been found to be cumbersome, time consuming. Hence it need to be simplified.
4. The Executive always likes to have the power to select judges, as patronage and post-appointment benefits being important to it. Therefore, the appointment of judges should be made by an independent Body, like the proposed National Judicial Commission. Merit is the first casualty in politically motivated appointments. The executive has consciously been discouraged from monitoring the judiciary on the ground that judicial independence would be impaired.
5. There should be an independent Judicial Commission to investigate complaints against corrupt judges.
6. As rightly recommended by the Law Commission in its 14th Report, an

Indian judicial services system must be introduced for selection of the judges.

7. There should be a code of conduct of judges.

THE SYSTEM OF ELECTION AND ELECTORAL REFORMS IN INDIA

By

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Democracy is a Government by the people, of the people, for the people.” The concept of democracy as visualised by the Constitution presupposes the representation of the people in Parliament and State Legislatures by the method of election¹.

India had a long history in conducting free and fair elections and it did not need any lesson on election system, from other nations². Elections in India are not a new phenomenon or a new concept born in modern time.

Tracing the history of elections and evolution of representative Governments in India, the Election Commission of India observed in its report after the first General Elections in Independent India in 1951-52, that it is known that in some of these republics every adult male member had the right to vote and to be present in the general assembly which decided all public affairs.

With the increase of population and the growing complexities of the social structure it become increasingly difficult for all citizens to assemble at one place for the purpose of deliberation on State affairs and gradually this resulted in the evolution of some kind of representative Government.

The Constitution of India itself provides a Government for the Centre and a Government for the State by conducting elections. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult – suffrage, that is to say, every person who is a citizen of India and who is not less than 18 years of age on such date as may be fixed in that behalf by or under any law made by appropriate legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt practice to be registered as a voter at any such election. Every adult person has responsibility to elect for the formation of good Government to rule the nation³.

A separate election system existed during the British regime, but the new Constitution abolished the communal electoral system which was introduced in the Indian politics by the Government of India Acts of 1909, 1919, and 1935, and introduced element for the natives participating in legislative bodies in British India found its introduction the first time under the Indian Councils Act 1909⁴.

1. *N.P. Ponnuswamy v. Returning Officer, Namkhal*, AIR 1952 SC 64.

2. The “Hindu” news paper. P.1 3rd August 2002.

3. Subsequent for twenty one, by the Constitution (61st amendment) Act 1989.

4. *V.S. Rama Devi and S.K. Mendiratta*. How India votes, election Laws, practice and procedure, first Edn. 2000. P 4.