



## Role of Judiciary in Controlling Corruption

**Mayank Gupta**

BA LLB (Hons.) IPU Delhi.

Presently pursuing LLM (Criminal Law) at Vaish College of Law Rohtak

### ABSTRACT

Corruption is a worldwide problem that pervades every industry and society. Thus, corruption is a worldwide problem, and no nation is immune. Those who know how to use the power of money to get what they want, whether it a commercial transaction or a high-paying job, spread corruption from one part of the nation to another. There will be a downward spiral. It's not only the wealthy nations that have corrupt practises; the emerging ones do, too. Both emerging nations and developed nations like the United States, the United Kingdom, and France have been shown to be plagued by systemic corruption throughout history. Corruption has become a hot topic in modern India. For what reason is this happening? Does this mean that India is the only corrupt nation on Earth? Is this unethical behaviour limited to certain nations, or does it occur everywhere? Who among us is not tainted by corruption? To what extent is it acceptable to engage in corrupt behaviour? Which part does the politician play in fostering corruption? How does the judicial system play a part in eradicating corruption? To what extent can media outlets help combat corruption? How can society at large play a part in fighting graft? Who will rid our Indian society of corruption once and for all? These are some of the fundamental issues that researchers have sought to address by looking for potential explanations and remedies for this kind of dishonesty.

**KEY WORDS:** Embezzlement, Fraud, Bad Management, Favoritism, High-Profile Offenders, Justice in India, Legal Reform, and Judicial Activism

### INTRODUCTION

The corrupt practises of ancient Indian kings, who demanded bribes in the form of Nazarana from their subjects, are our legacy. Employers' primary goal in those days was to line the pockets of the ruling class with money from the ordinary people. Moreover, family ties had a significant role in who was appointed to high-level jobs. Typically, a Prime Minister's son would replace his father, as would the son of a governor or a local headman. In other words, the idea of nepotism as a bad thing was completely foreign to people back then, and no term to describe it even existed.

Thus, corruption is not only a problem here at home; it's a worldwide one that has long preoccupied people. But, because of our tragic inability to stem the tide of corruption, it has permeated every sector of society and grown at an alarming rate. Conversely, it would be a false statement to say that certain nations are completely devoid of corruption. Even a little amount of dishonesty makes it impossible for any nation to be perfect.

One issue is linked to the pervasiveness of corruption in the lower courts. When judges for higher courts are promoted from within the ranks of lower court judges and attorneys, as is the case in India, the inevitable rise of corrupt judges to such positions is a given; yet, we are powerless to prevent it unless we take collective action at the grassroots level. As a result, corruption has spread across Indian society. Very little



of human endeavour has been conducted in a vacuum, unsullied by corruption. Corruption has reached the point where it is institutionalised and widely accepted.

In a letter to Sardar Vallabhbhai Patel dated September 1934, Mahatma Gandhi Ji announced his intention to sever all official and physical ties to the Congress, including the original membership, citing the danger of corruption that has crept into the organisation as the driving force behind his decision. Even though the flow of corruption was very limited at the time, it was enough to trouble the Mahatma's unwavering conscience, and he cut off all official ties with the organisation.

Many people from all socioeconomic backgrounds have immoral thoughts and behaviours deep inside their souls. The pursuit of material success and political influence has corrupted the human spirit. Their frustrations and ambitions have clouded their judgement. Corruption was clearly no longer an issue of moral turpitude on the part of lone individuals.

Corruption germinates among the higher echelons of society and then seeps down into the middle and working classes, much like rainfall seeping through cracks in the earth's surface to reach the soil below. The advent of new institutions and practises after independence all contributed to the spread of corruption. With the proliferation of welfare state programmes came the State's acceptance of hitherto unheard-of responsibilities. The government's involvement in the economy grew. More potential for corruption arose as a result of the introduction of regulations, restrictions, licences, and permits. The disease has been exacerbated by the pursuit of political power at all levels. Administration leads to corruption because poor management comes first. The federal and state governments have periodically attempted to combat corruption, but these initiatives have mostly failed. Weakness in the tactics used has led to scepticism that the government is serious about maintaining an honest and transparent system of governance.

Another widely held belief is that our governors or rulers try to get rid of corruption but not the people who do it. This is despite the fact that the culprits of corruption in the vast majority of high-profile instances are themselves governors or administrators. Offenders with such high moral standards are likely subject to the "spare the rod and rescue the kid" concept.

During the last several years, evidence has accumulated that corruption has permeated every level of government. Each and every nation's governing body, both political and administrative, is rife with corruption. Yet, it has grown to scary proportions in recent years in India. The great majority of public officials in our nation are corrupt, and this problem affects every level of government from the federal to the state and local levels. Politicians, who need large sums of money to run for office, dictators, who see the public treasury as a place to stash their personal wealth, bureaucrats, who have unchecked power over average citizens because the citizens' needs are always hostages, and the business community, which is constantly engaged in the odious exercise of counting and amassing currency notes with allies and co-sharers of the natio

The people of India have no choice but to vote for and ultimately elect crooked leaders since they have no other options. Several political officials across the board have been caught up in corrupt activities in recent years. In today's political system, the average citizen is often used as a scapegoat. Corruption in politics has far-reaching consequences for all of society. There is a common assumption among voters that the officials they send to Washington and the political parties they support would use their power for the common good. When citizens vote for a government, they grant that body the power to make choices and use resources



that have repercussions for everyone. Politicians, having been granted the power to rule, abuse it for personal gain while forgetting that they, too, are a part of the community they rule over.

People no longer trust politicians and the status quo, therefore it is up to the court to take charge and eliminate corruption. The nation's court system has been tainted as well, unfortunately. In spite of widespread corruption, the people of India continue to put their trust in the judicial system. The public's view of the Indian Judiciary is tainted by widespread doubt and ambivalence. The unclear nature of India's democracy is nonetheless reflected on a surface level. The research suggests that this level of ambiguity has grown in recent years. On the other side, the Supreme Court and High Court's use of judicial review and judicial activism is a promising indicator that wrongs may be righted. The public's growing understanding of why it's important to uphold principles like human rights, freedom from corruption, and government accountability has resulted in the Supreme Court of India becoming the Supreme Court of Indians. The Supreme Court has made it quite apparent that no matter how powerful someone is, the Law is higher than that person.

Stapenhurst and Langseth noticed that elites in corrupt societies often strive to preserve themselves, their position, and their financial riches, which may lead to resources being channelled into non-productive sectors like the police, the military forces, and other organs of social control. Spending on defence will have to come out of the budget for social and economic development. If policymakers prioritise rent collection above investment, the result might be a deterioration of market institutions.

Corruption, several commentators have pointed out, may have beneficial benefits in certain situations, allowing businesses and people to sidestep inefficient legal systems and cumbersome rules. Nevertheless, this argument fails to take into account the wide latitude that politicians and bureaucrats have (especially in corrupt nations) when it comes to the introduction and interpretation of rules that are detrimental to their intended purposes. Corruption, far from being the oil that keeps a strict government running smoothly, is what drives the expansion of unnecessary and arbitrary rules and regulations. The claim that bribery improves productivity by decreasing the time required to obtain permits is likewise dubious.

The liberalisation of India's economy has resulted in less regulation and bureaucracy, helping the country rise to the sixth biggest economy in the world. Despite this, growth has been unequal across socioeconomic classes, contributing to widespread poverty. Corruption is more common in societies when wealth is distributed unequally.

Corruption in India has reached alarming levels in recent years, permeating every level of government, from the highest to the lowest, and from the central to the local. The average citizen has been made a scapegoat in our current political system. People have nowhere else to turn except the impartial courts because they no longer have trust in the status quo. The judicial branch must show leadership and take effective action to combat corruption. The Supreme Court's and the High Court's use of judicial review and judicial activism is a promising sign that injustices will be corrected. Human rights, the right to transparency, decent governance, and the right to be free from corruption are the only things that can make the Supreme Court of India into the Supreme Court of Indians. Article 14 of the Indian Constitution guarantees that everyone is treated equally in the eyes of the law, and the Supreme Court has declared that no matter how powerful a person is, the Law is higher.

## **INDIAN LEGISLATION AGAINST CORRUPTION**



Many laws, both pre- and post-constitutional, as well as those at the federal and state levels, have been enacted to prevent corruption.

### **INDIAN PENAL CODE, 1960**

The Indian Criminal Code, India's primary criminal code, addresses every significant facet of criminal law in India. The term "criminal conspiracy" refers to a plot between two or more people to commit a crime, or to do a legitimate act using illicit methods. It meets the definition when two or more people conspire to do something bad. Anybody found guilty of an attempt to commit a crime under this Code must be punished by imprisonment for life or by imprisonment for a set time, as provided in Section 120 D. When a person dishonestly converts or misappropriates personal property for his own use, they are committing criminal misappropriation and are subject to a fine or jail time, or both, depending on the severity of the crime. If a person dishonestly misuses or transforms property that was entrusted to him in violation of any law, it is criminal breach of trust. The maximum penalty for such an offence is three years in jail, or a fine of up to \$3,000, or both. Under Section 417 of the Indian Penal Code, it is illegal to dishonestly or fraudulently induce another person to surrender or agree to keep property, or to do or neglect to perform any act that may cause damage to another person's mind, reputation, or property.

### **PREVENTION OF CORRUPTION ACT 1988**

When India gained its independence in 1947, the country passed its first anti-corruption law. Yet, there were several instances of duplication between that Act and the Indian Criminal Code, 1860. To that aim, in 1988, the Prevention of Corruption Act was passed to update the country's anti-graft legislation. It goes beyond the definition of a public officer as set forth in the IPC and, with such a definition, it includes office-bearers of cooperative societies that receive government funding, as well as employees of government-funded institutions like universities, banks, and the public service commission. An official who accepts benefits in addition to his salary for performing a public duty faces a jail term of six months. If an official receives anything of value in his official position and does not pay for it or pays too little for it, he faces a minimum of six months in jail and a maximum of five years in prison or a fine, or both. A prior authorization from either the federal or state government is required, however, if you want to prosecute a public officer or public worker.

“The Supreme Court of India held in *M. Karunanidhi v. Union of India* that a public servant decides who will serve as a Minister, Prime Minister, or Chief Minister under clause (12) of Section 21 of the Indian Penal Code, 1860, which is identical to Section 2 (c) I of the Prevention of Corruption Act, 1988. The court ruled in *Habibulla Khan Vs. State of Orissa* that although M.L.A. is not included in the definition of "crime" in Section 21 of the Indian Penal Code, it is included under Section 2 of the Prevention of Corruption Act, 1988”.

As stated in the preamble, fairness should be a priority in all spheres of society and society's institutions, including the political and economic. One of the fundamental ideas in our preamble is the pursuit of social justice. The court has the opportunity to advance social justice by emphasizing it in its rulings. The Supreme Court ruled in *Bandhu Mukti Morcha v. Union of India* that only the court procedure itself may settle the case on the basis of strict legal theory. Emotional arguments must not be considered. The court must stay within the boundaries of its jurisdiction and not interfere with the powers of the administration or the legislature. The Supreme Court's repeated assertions of judicial independence have been cited as a core tenet of the Constitution. While the constitution advocates for a free and impartial court, it does not specify



what that means. Scholars agree that a judge is acting independently of any outside influences when they make their decisions.

### **INVESTIGATIONS IN CORRUPTION CASES**

As India is a confederation of independent states, each every state has the exclusive authority to pass laws pertaining to crimes committed inside its borders. Hence, the State authorities are obligated and required to investigate and punish crimes, including corruption charges, that occur within the State's territorial authority. aforementioned Governments, the Indian Parliament also directly administers some regions called Union Territory; the Central Board of Investigation was created by the President of India to investigate any instances of corruption in these Union Territories. The Indian government has created the following institutions to investigate allegations of corruption:

#### **ANTI-CORRUPTION BUREAU OF STATES**

The Anti-Corruption Bureau of States was set up in response to the Prevention of Corruption Act of 1988 in order to examine allegations of corruption on a state level. These police departments are not tasked with any other responsibilities other than the investigation, prevention, and detection of corruption. After conducting their investigation, they file a report with the appropriate authorities so that the perpetrator may be brought to justice.

#### **LOKAYUKTAS**

The Lokayukta, or Ombudsman's Office, was established in numerous states with the express purpose of investigating allegations of corruption against ministers and other public workers.

#### **CENTRAL BUREAU OF INVESTIGATION (CBI)**

The Government of India created the Central Bureau of Investigation (CBI) to investigate crimes, particularly instances of corruption, inside union territory. The Indian Constitution grants the Central Bureau of Investigation (CBI) the authority to investigate any crime on behalf of the state high courts or the country's highest court.

#### **SUPREME COURT ON CORRUPTION CASES**

In the 2G Spectrum case and the Coalgate fraud, the Supreme Court issued public notices in 2014 and 2012, respectively, that political governance and executive administration conspiracy had acted. In the case known as "Coalgate," the Supreme Court annulled the permits for 214 out of 218 mines on the grounds that the permits had been issued illegally and arbitrarily and that the bidding procedure had not been conducted in a transparent manner. There were only four licences awarded, two each to Coal India Limited (CIL) and National Thermal Power Corporation (NTPC), and the instruction required the licensee to pay Rs.295 per tonne of coal taken from the blocks, as well as the same amount for the coal previously mined from the blocks. The Supreme Court issued a number of directives in 2G Spectrum Fraud (2010) to facilitate a thorough probe of a certain minister and other government officials. The Supreme Court of India had to decide two questions in the case of Vineet Narain v. Union of India: first, whether judicial review would be an effective instrument for activating the investigation that was under the executive's purview, and second, whether there is any judicial remedy for such a situation. The Supreme Court has published several recommendations on judicial integrity, shown outstanding judicial acumen, and developed many new concepts to facilitate successful inquiry by state authorities. The Supreme Court ruled in State of Madras v. A. Vaidyanatha Iyer that until shown otherwise, it is to be assumed that Iyer accepted or received the gratification at issue as a bribe. But, the law has evolved to state that, first, the accused must be shown to



have sought the satisfaction beyond a reasonable doubt, and second, after the demand of gratification has been established, the function of statutory presumption comes into play. The accused's need for satisfaction is a necessary element in forming accusations, and without it, they cannot be brought.

### **TRIAL BY SPECIAL JUDGES ONLY**

Section 3 of the Prevention of Corruption Act of 1988 specifies that only Special Judges may preside over trials involving offences under that law. To become a Sessions Judge (SJ) or Additional Sessions Judge (ASJ), one must first be a senior judicial official in good standing, have a law degree, and have worked as an attorney for at least seven years before being considered for appointment. All candidates are subjected to a rigorous test before a final decision is reached. An ASJ might expect to be elevated to Sessions Judge status after 15–20 years on the job. Daily trial proceedings before Extraordinary Judges are mandated under the Act. According to Section 5 of the Act, the court may award clemency, but only if the offender "makes complete and accurate disclosure of all facts and circumstances pertaining to the commission of such crime and all people engaged in the same," including the judge.

The judicial branch has the weighty duty of preserving the rule of law via the adjudication of disputes and the interpretation, construction, and application of the laws of the nation.

Many of the problems and economic downturns the country has been experiencing in recent years have been traced back to corruption. In spite of the crisis caused by the fall in oil prices, the widespread impunity in many economic areas as a consequence of corruption is quite concerning.

Numerous experts have suggested that corruption is associated with stealing from the public treasury, engaging in bribes, or forging official documents, all of which undermine public trust in government.

Corruption is a problem in today's society regardless of one's faith, gender, age, political affiliation, or the nature of one's occupation or the organisation being investigated. The government of President Muhammadu Buhari has made combating it a national priority in order to bring about the kind of lasting change that is so needed.

Insecurity, rampant corruption, and the apparently endless fuel and electricity shortages are the urgent worries, as President Buhari pointed out in his inaugural address.

He pledged that the Federal Executive under his watch will not interfere with the powers of the Legislative or Judicial branches of government in Nigeria's pursuit of democracy's goals. The enforcement agencies will be tasked with upholding the law as written. The government will be reformed and reconstructed so that it is more efficient and helpful to the population. We'll be putting the responsibility on their shoulders to work honestly to bring about system stability.

It's clear that the administration values the independence of the court and expects it to preserve constitutional limits and the rule of law. The court plays a crucial role in the fight against corruption that threatens to bring the country to its knees.

“Weak government institutions, low salaries and poor working conditions in the civil service with few if any incentives and rewards for efficient performance, a lack of openness and transparency in public service, and a lack of genuine and concerted efforts to combat corruption by governors and the governed are all contributing factors, he said.

According to Section 6 (6) of the 1999 Constitution of the Federal Republic of Nigeria as amended, the principal responsibility of the Judiciary is to interpret and apply the law in the settlement of disputes between people and organisations, as well as between persons and the government and its agencies”.



In addition to deciding cases and interpreting legislation, the judicial branch is also responsible for monitoring executive branch acts, safeguarding civil liberties, and preserving the rule of law.

“Hon. Justice Mustapha Akanbi, the first Chairman of the Inter-American Commission Against Corruption (ICPC), was credited with elaborating on the role of the judiciary in the fight against corruption, stating that judges must be fair, just, and must not allow themselves to be influenced by extraneous considerations, and that they should stand above corruption and always be true to their judicial oath”.

It was rumoured that President Buhari's administration was having trouble recruiting qualified judges to staff new anti-corruption tribunals. The inadequacy and ineffectiveness of existing laws in matching the sophistication, complexity, and quantity of such crimes is another critical issue subjugating the efforts of the court in the battle against corruption.

Hence, the legislature must revise current laws and adopt new ones to represent the abhorrence of Nigerians for the cankerworm of corruption, as well as change constitutional provisions such as Section 29 (2) and (3) and Section 135 (2) "Evidence Acts," in order to help the corruption battle.

In short, for the rule of law's sake, the judicial branch of government must start acting legitimately and refrain from any and all unfavourable conduct. Without a shadow of a doubt, judges are the most visible and pivotal people in the legal system and the delivery of justice.

As a result, anti-corruption organisations in Nigeria like the Independent Corrupt Practices Commission (ICPC), Economic and Financial Crimes Commission (EFCC), and others need to adhere to constitutional guidelines and lend their support to the judicial branch when it comes to deciding and interpreting laws regarding corruption.

According to Hon. Justice Pius Olayiwola Aderemi's report on judges' contributions to the fight against corruption, judges need ongoing training in areas like the European Financial Crimes Commission (EFCC), the International Consortium for the Prosecution of Corruption (ICPC), money laundering, cybercrime, and other related offences.

## CONCLUSION

There is sufficient legislation in India to prevent public sector corruption. There is no part of corruption or corrupt acts by public workers that is not addressed by the Prevention of Corruption Act, 1988. India has also signed the UN Convention against Corruption in addition to this Act (UNCAC). Coequal and distinct branches establish the balance among one another, which in turn reduces the possibility for abuse of power and corruption, which is the only rationale for having a democratic government. Nonetheless, the theory of separation of powers allows for the independent judiciary to be accepted under any and all circumstances. Judiciary's role as a watchdog on the other branches of government depends on its ability to maintain its own autonomy. It guarantees that all State organs operate within their constitutionally defined spheres of responsibility. Judiciary is the guardian institution. The separation of powers is safeguarded by the independent judiciary, which also protects the Constitution.

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**Corresponding Author**

**Anudeep Shah\***

Research Scholar, Maharishi Arvind University, Jaipur