

Parliament and Supreme Court Must Act

The recent sting operation in Gujarat by Zee TV network exposing corruption in subordinate judiciary has come not a day too soon. For long many knew of corruption in the most hallowed of our institutions, the judiciary, and many more suspected. Chief Justice Bharuchha had the courage to talk about it openly during his tenure. But nothing much was done about it. And many concerned citizens maintained a discreet silence for fear of undermining the credibility and independence of the one organ of state which is the sentinel of our liberties.

But judicial corruption cannot be seen in isolation. The crisis afflicting our state institutions is both deep and widespread. All classes of players – politicians, bureaucrats and judges – are affected, because the crisis is systemic. Good behaviour is not rewarded and indeed is penalized at times; bad behaviour is not only not punished, but is rewarded consistently and extravagantly. Many individual actors in the system, whose integrity is impeccable, are helpless to stem the rot. Positive power to promote public good is severely restricted by structural rigidities, and negative power to plunder and loot is virtually unchecked. This imbalance in the exercise of power is at the heart of our institutional crisis.

Rule of law and self-correcting institutional mechanisms are critical to establish a level playing field in which competition and market economy can thrive. In the absence of rule of law, we create the wrong kind of incentives, and both society and economy suffer. Therefore, in some ways judicial corruption is far more dangerous than plunder elsewhere. If warrants of arrest against anyone could be bought for a price, we can well imagine the depths of depravity into which our state institutions have sunk.

Our judiciary has been a beacon of hope and conscience-keeper of the nation for long. The Constitution lays a great emphasis on the independence and impartiality of the judiciary. We must now convert this challenge into an opportunity and restore integrity and competence in the justice system.

Happily, there are simple and practical responses to this crisis. And many answers come from the best practices adopted by the judiciary itself. For instance, the Bombay High Court removed about 150 judges in subordinate courts on grounds of corruption over the past few years. Corrupt judges and senior officials are known to most knowledgeable citizens, media and honest superior officers. However, all choose to remain silent as the system is rigged in favour of the corrupt. Bombay High Court has broken this vicious cycle by practical steps. The High Court under Article 235 of the Constitution, has the powers of administrative supervision and control over subordinate courts. Usually, the High Court's decisions on disciplinary matters are final. Often, such power has become the source of patronage and petty tyranny. Bombay High Court simply exercised its powers wisely.

The corrupt judges were identified on the basis of personal knowledge, reputation, complaints from the Bar and glaring inconsistencies in judgments. They were summoned and given an opportunity to retire quietly, or face disciplinary action and dismissal with consequent denial of retirement benefits and right to practice as advocates. Most chose to quit quietly. A few who resisted were dismissed. The Supreme Court upheld the High Court's actions on appeal. Later, the High Courts in Rajasthan and West Bengal acted similarly, and weeded out dozens of judges. The Apex Court again upheld these actions.

The Gujarat incident must spur all High Courts into energetic action. In many High Courts, groupism and caste rivalries are enervating the higher judiciary. The Supreme Court must recognize that the malaise is not limited to one corrupt judge exposed, and direct all High Courts to act in a similar manner to weed out corruption in subordinate judiciary. Institutional checks could be evolved to guard against arbitrariness and injustice. If High Courts in Maharashtra, Rajasthan and West Bengal could act, others can act to cleanse judiciary too.

Two more steps need to be taken to promote integrity, impartiality and competence in judiciary at all levels. The High Court judges now are drawn from either the Bar or subordinate judiciary. The competence of higher judiciary is severely eroded. We need to create an Indian Judicial Service (IJS) and recruit judges through a nation-wide competitive examination. Perhaps the one all-India service which is necessary and justified is the IJS. The Parliament should act quickly under Article 312 to create IJS. The IJS officials could form the backbone of the subordinate judiciary at the level of District Judges. Most of the High Court judges can then be drawn from this cadre of competent District Judges. The competence of judiciary will dramatically improve with the brightest youngsters competing to be judges in an all-India service.

We need to take effective steps to ensure rigorous and impartial scrutiny before recruitment into higher judiciary, and removal of corrupt judges. Far too many judges in higher courts are of indifferent calibre and competence. And the failure of Justice Ramaswamy's impeachment amply demonstrated that the Parliament cannot summon the will to remove a tainted judge with two-thirds support. The proposed National Judicial Commission (NJC) should have the powers not only to recommend appointments, but to remove judges in higher courts. The composition of NJC needs to be improved, and the majority must be drawn from outside the judiciary. But whatever be its composition, NJC must have final authority in determining not only appointments, but removals also. Article 124 of the Constitution needs to be amended to this effect.

The economic reform process is promoting competition and reducing corruption by closing avenues of discretion abundantly available in the license-permit-quota raj. But as the incentive structure in our state institutions still remains perverted, corruption is now growing in other, far more critical areas of state functioning. The Telgi stamp scam, the organized leakage of CAT and other question papers, the brutal murder of Satyendra Kumar Dubey, the continuing corruption in revenue departments of the Union and states, and the growing corruption in sovereign areas of state functioning like police and

judiciary are all manifestations of this dangerous shift of corruption. Comprehensive political and governance reforms alone will address this deep-rooted malaise.

The Ahmedabad expose must not be taken as an aberration. It is a symptom of a deep-rooted malaise. Judicial rectitude and effectiveness are vital for our democracy. Speedy and impartial justice is the cornerstone of our economy and society. This sordid episode must serve as a wake up call to strengthen and cleanse our judiciary. The ball is now with the Supreme Court and Parliament.

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