

THE ROLE OF JUDICIARY IN ERADICATING CORRUPTION IN INDIA WITH SPECIAL REFERENCE TO PREVENTION OF CORRUPTION ACT, 1988

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Abstract:

The judiciary should take the lead and take the required actions to stop the corruption threat as the public no longer has trust in politicians or the current system. Regretfully, it has spread to the country judiciary as well. Although the despite the fact that corruption has crept into the judiciary, Indians continue to place their trust in the legal system for unclear reasons. The popular perception of the Indian judiciary is heavily hazy. On the surface, though, it appears to represent the precarious nature of India's democracy. Recent research suggests that this level of uncertainty has grown. However, the Supreme Courts and High Courts use of the judicial review concept and judicial activism is a positive indication that the shortcomings may be corrected. The public awareness, which is the only justification for demanding human rights, the right to openness and good governance, and the right to be free from corruption, led to the Supreme Court of India becoming the Supreme Court for Indians. In this regard, the Supreme Court has made it extremely apparent by its actions that the law is supreme above every individual.

Keywords: Corruption, Judicial power, Scams, Prevention of Corruption Act, Judiciary independence

INTRODUCTION:

The Indian Constitution founders were worried about the type of court that our nation should have at the time the document was drafted. Dr. B.R. Ambedkar addressed this problem raised by the constituent assembly members in the following: The House cannot disagree that our judiciary has to be competent in and of itself, as well as independent of the executive branch. And how can these two items be safeguarded, is the question. First and foremost, we want to know why the founders of our constitution were so concerned with giving the judiciary its own independent organization and establishing its qualifications. It is also necessary to protect the judiciary's independence from the rapidly shifting political, social, and economic landscape. Every discussion of the judiciary's independence includes a discussion of the limitations that

must be placed on both the judiciary as an organization and the individual judges who make up the judiciary court system. A proper mixture of the two is required to guarantee the system operates well. Every time our Constitutional Courts take up the cause of fighting corruption cases involving the "Big Bosses" the authority and operational parameters of the Courts are typically questioned. Every clause in the Indian Constitution and other laws does direct the Justice System to prevent corrupt practices and, if needed, to take stern measures to eradicate any possible harmful corruption from public life in order to guarantee effective governance by the three branches of the State.

OBJECTIVE OF THE RESEARCH:

Corruption has remained a recurring issue for many generations. This is an abnormal human activity linked to the drive for personal

advantage at the price of the public welfare. Corruption encourages unlawful activity, immoral subjectivity, unfairness, injustice, waste, and inefficiency. Irregularities in social behaviour as well as personal behaviour. It shatters the moral foundation of society and erodes the public confidence in the validity of a nations socio-political and administrative structure.

THE GOALS OF THE RESEARCH:

Given the implications of the corruption issue, the following goals are established for the inquiry:

1. To research the true causes of political corruption as well as the causes of corruption in general.
2. To research the laws pertaining to the fight against corruption.
3. To assess the historical background of judicial activity and the judiciary's current role in containing the evil of corruption.
4. To conduct an audit and evaluate the Central and State Government's efforts to eradicate corruption.
5. To offer ideas or proposals to reduce political corruption in India.

RESEARCH QUESTION:

1. Whether judiciary plays a crucial role in combating corruption in India through its enforcement of laws, interpretation of legal frameworks, and imposition of penalties on offenders?
2. The Effectiveness of the Prevention of Corruption Act (PCA) in Mitigating Corruption in India?
3. Strengthening the Enforcement Mechanisms and Enhancing Public Awareness Increases the Effectiveness of the Prevention of Corruption Act (PCA) in India?

REVIEW OF LITERATURE:

Justice Ajit Prakash Shah- After analysing the matter, Hon'ble. Justice. A.P. Shah

presented a report to the Hon'ble. Minister of Laws and Justice of the Government of India. About the suggested changes made to the Prevention of Corruption Act. The Law Commission of India Report No. 254, entitled "The Prevention of Corruption (Amendment) Bill, 2013.

PREVENTION OF CORRUPTION ACT,1988: OFFENCES AND PENALTIES

The first special law relating to prevention of corruption in India was enacted in 1947, incidentally the year in which India got its independence. However, this law contained number of provisions overlapping with the provisions of the Indian Penal Code, 1860. Consequently, the Prevention of Corruption Act, 1988 was enacted with the object to amend the existing anti- corruption laws with a view to making them more effective by extending the scope and ambit of the definition of public servant and to bring to within its sweep each and every person who held an office by virtue of which he was required to perform any public duty, and it continues to be the main stay of the anti-corruption laws in India. Some important aspects of the Act are as follows:

Sections 7 to 15 are incorporated in Chapter III of the Prevention of Corruption Act, 1988 deals with the offences and penalties. Sections 7 and 13 (1) (d) constitute two different offences. In fact, there are vast differences between two, though both the Sections are meant to curb corruption.

According to this section an offence to be constituted shall contain the following ingredients.

- a) At the time of the commission of an offence the accused must be a public servant or expected to be a public servant.
- b) He must have accepted or obtained or agreed or attempts to obtain any gratification other than legal remuneration which he can lawfully demand or which is permitted by the Government or organization from any person either for

himself or any other person for, as a motive or reward.

Section 8: Using dishonest or unlawful methods to gain satisfaction in order to persuade public servants.

- a) A person must accept or obtains or agree to accept or attempts to obtain any gratification from another person.
- b) Such gratification must have been taken by the accused as a motive or reward for inducing any public servant for the following purposes.

Section 9: Taking gratification for exercise of personal influence with public servant.

- a) A person must accept or obtains or agree to accept or attempts to obtain any gratification from another person either for himself or any other person.
- b) Such gratification must have been taken by the accused as a motive or reward for inducing any public servant by exercising his personal influence for the following purposes

Section 11: A public servant receiving an expensive item without giving the person involved in the proceeding or business they are transacting any thought.

- a) The accused must be a public servant.
- b) Such public servant must accept or obtains or agree to accept or attempts to obtain any valuable thing either without consideration or for inadequate consideration knowingly from any person.
- c) Such person or his relative must
- d) Such public servant shall be punishable with imprisonment which shall not be less than six months and may extend to five years and fine.

Section 13: Criminal misconduct by a public servant.

A public servant is said to have committed an offence of criminal misconduct - If he

- i) Habitually accepts or obtains or agree or attempts to obtain any illegal gratification for doing an official favour or
- ii) Habitually accepts or obtains or agree or attempts to obtain any valuable things either without consideration or for inadequate consideration from any person concerned in official proceedings or business or from his relatives or
- iii) Dishonestly or fraudulently misappropriating or converting the property which has been entrusted to him or kept under his control
- iv) Obtains any valuable thing or pecuniary advantage either for himself or for any other person by illegal or corrupt means or by abusing his position as public servant or holding office as public servant or
- v) Any person on behalf such public servant is or has been in possession of property or pecuniary resources disproportionate to his sources of income and failed to account satisfactorily.

Such person shall be punishable with imprisonment for a term not less than one year but which may extend to seven years and fine.

If any public servant makes an attempt to commit an offence any of the offences laid down under Clause (c) and (d) of Section 13, he shall be punishable with imprisonment which may extend to three years and fine.

ACCUSED PERSON TO BE A COMPETENT WITNESS:

Any person charged with an offence punishable under this Act, shall be a competent witness for the defense and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial.

1. He shall not be called as a witness except at his own request.

2. His failure to provide testimony will not be the subject of remarks from the prosecution or result in any assumption against him or any other defendants in the same trial.

3. He won't be asked questions or required to respond to them if they suggest that he is a bad person or that he has committed or been found guilty of an offense other than the one for which he is charged, unless

The evidence that he has committed or been found guilty of the offense in question is admissible evidence to show that he is guilty of the offense. He has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve amputations on the character of the prosecutor or of any witness for the prosecution, or He has testified against everyone else accused of the same crime.

NEED FOR THE INDEPENDENCE OF JUDICIARY:

A fundamental tenet of democratic governance is that the existence of equal and distinct branches functions to counterbalance each other, therefore mitigating instances of power abuse and corruption. This notion may appear to be self-evidently true, but in actuality, it causes us to consider how the division of powers may be more or less powerful depending on the situation. Nonetheless, the necessity of an independent court is recognized by the theory of separation of powers in all of its guises.

CONSTITUTIONAL INTERPRETATION:

The creators of the document were aware that there might be ambiguities with its provisions in the future, therefore they made sure the judiciary would be autonomous and capable of providing accurate interpretations. Clauses of the constitution in a way that resolves any ambiguity, but this interpretation

must be objective, meaning it must be free from pressure from any entity, such as the executive. The other institutions may exert pressure on the court to interpret constitutional provisions in a way that suits them if the judiciary lacks independence. The primary responsibility of the judiciary is to construe the constitution in accordance with the norms and constitutional philosophy.

CONSTITUTIONAL PROTECTION TO JUDICIARY INDEPENDENCE:

Our Constitution's founding authors shown unwavering caution and compelling prediction with precision on human nature and likely aberrations in government, and as a result showed extreme caution when securing the judiciary's independence by including the following clauses into the Indian Constitution.

SECURITY OF TENURE:

The Supreme Court and High Court justices of our Constitutional Courts have set terms of office. They can only be removed from office by a presidential decree, and even then, only on the basis of demonstrated incompetence and mis-behaviour. Additionally, a majority of all members of each House of Parliament must approve a resolution to that effect, as well as a majority of those who oppose it. The number of house members present and voting is less than two thirds. There has never been a case involving the removal of a Supreme Court or High Court judge using this clause due to the complexity of the procedure.

SALARIES AND BENEFITS:

The Second Schedule to the Constitution sets out pay and benefits that are directly charged to the Consolidated Fund of India or the State in question and are not subject to parliamentary action. Unless there is a financial emergency as defined by Article 360.

AUTHORITY TO PUNISH FOR CONTEMPT:

Any individual who exhibits contempt may be punished by the Supreme Court or the High Court. According to Article 129, the

Supreme Court has the authority to penalize for contempt of court. Similarly, Article 215 established that the authority to punish for contempt of itself rests with each High Court.

NO RIGHT TO PRACTICE:

A person who has served as a Supreme Court judge is prohibited from practicing law in India in any court or before any authority under Article 124 (7).

JUDICIARY AND EXECUTIVE SEPARATION:

One of the Directive Principles of State Policy, found in Article 50, mandates that the state take action to keep the judiciary and executive apart in state-run public services. The item concealed beneath the Ensuring the judiciary's independence from the executive branch is a Directive principle. According to Article 50, there would be an independent judiciary that is not subject to governmental authority. Before taking office, Supreme Court and High Court justices are required to swear an oath to uphold the laws and the Indian Constitution. This oath implicitly recognizes the concept of constitutional sovereignty. Thus, the Indian Constitution places a great value on the judiciary's independence. Being free from the influence and authority of the executive is crucial. The judges impartiality and fearlessness in rendering their decisions are crucial for maintaining individual liberties. Every democratic nation uses a variety of strategies to protect the judiciary's independence and, by extension, individual freedom. To guarantee the independence of the court, the United States of America developed a system of separation of powers. Regarding the impact of checks and balances on corruption, it has been noted that in a presidential system, a split government with distinct political parties controlling the legislative and executive branches effectively achieves a separation of powers. Even in presidential systems, there is no effective separation of powers when there is a unified government. However, this can be somewhat restored by having an accountable judiciary; Additionally, divided governments with elected

rather than appointed Supreme Court justices report lower levels of corruption; and finally, the impact of an accountable judiciary is greater in situations where the government is unable to control itself.

Separation of powers is not allowed under constitutional systems founded on the idea of parliamentary sovereignty. Both in India and England, this is somewhat the case. For in India, the ideas of constitutional sovereignty and parliamentary democracy are combined. The Indian Constitution uses a variety of methods to guarantee the judiciary's independence in accordance with the constitutional and parliamentary sovereignty concepts. Furthermore, it is well acknowledged that judicial supervision or overview serves as a crucial check against the misuse of governmental power. Judicial independence and constitutional review are two crucial elements of this monitoring role that have been identified by the literature. Nonetheless, research at the national level suggests that the constitution's rigidity plays a significant role in determining how successful constitutional review is. It is still unclear if constitutional scrutiny and judicial independence serve as effective barriers against a particular kind of official abuse of power: corruption in government.

It is encouraging to learn that, during a Rule of Law Convention in September 2014, former Chief Justice of India R.M. Lodha firmly said that the independence of the judiciary is non-negotiable. He noted that the growth of an independent judiciary needed combat corruption and stated that judges should not be coerced or manipulated in an attempt to win their favour. They also stated that it is the duty of the judiciary's members to maintain an atmosphere free from corruption. The public belief that the judiciary will stand up for them in the event that the administration commits any wrongs stems from its independence.

COALGATE SCAM:

The Supreme Court only spared four licenses that were awarded in favour of Coal India Limited (CIL) and National Coal Corporation, cancelling 214 licenses of 218 coal mines and ordering the mine owners to cease operations and leave the property within six months. Thermal power company (NTPC) and mandated that the licensee pay Rs. 295 for each tonne of coal they remove from the ground. In addition, they must pay the same price per tonne for the coal they have already taken out of the blocks. The highest court said in a historic decision in August 2014 that the block licenses were illegitimate and capricious, and that a clear procedure for submitting bids had not been adhered to. The allocation of the coal block through the government disbursement channel suffers from legal problems and arbitrariness, as does the full allocation according to recommendations made by the Screening Committee in 36 sessions on July 14, 1993. There is no adequate procedure, the Screening Committee has never been transparent, and it has never been consistent. A court led by Chief Justice R.M. Lodha stated, It has applied mind, it has acted on no material in many cases, relevant factors have rarely been its guiding factors, there was no transparency and guidelines have seldom guided it. The coal's distribution blocks to different firms had been at the heart of the fraud that became known as the Coalgate an audit report from 2012 claims that the scandal cost the exchequer Rs. 1.86 lakh crores.

CONCLUSION:

The research experience indicates that corruption has become an enduring challenge in people's lives, causing widespread feelings of national sorrow and embarrassment. This is because corruption in public services is unfair, discriminatory against the poor, hinders development, and discourages investment. The patronage of powerful and responsible individuals and large-scale industrial entrepreneurs perpetuates corruption in its

many forms, including bribery, nepotism, and illegal gratification, even in the face of widespread resentment and even condemnation from the victimized and harassed common people. The public interest when the severity of actual corruption occurrences is compared to theory, and theory accepts the practical expectations. It is discovered that the abundance of anti-corruption regulations is beset with flaws and inadequacies to combat the growing corruption monster. The judiciary has been using its sword solely to hurt small scale worms and only becoming angry at the uncontrollable sharks because it is appalled by the way public services are crumbling and the officialdom's indifference. Even though the judiciary's magnanimity was shown in its early years of independence, the latter years of India's independence reveal the judiciary's resolute desire to combat corruption in all of its manifestations and sizes. Although it might not be able to completely eradicate the cancer of corruption, some legislative and administrative actions are required to mitigate the negative effects of corruption because the current Anti-Corruption Laws have been determined to be insufficient and even faulty in some areas.

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