

Role of the Supreme Court in Curbing the Menace of Corruption in India: An Introspection

Dr. Rathin Bandyopadhyay¹
Aloke Kumar Chakraborty²

I. Prologue:

Judge is not a knight errant roaming at will in pursuit of his own ideal of beauty or goodness. He can not be a silent spectator for the destruction of rule of law behind the smokescreen of legislative or executive supremacy. Some critics are of view that this is judicial activism but in the eye of common people, it is judicial dependence. Such type of judicial dependence has created salutary impact and it has provided safety valve to the general people against the arbitrary action of the executive and legislature. Articles 32, 226, & 141 of the Indian Constitution provides power to higher judiciary for dispensing justice to the widest sense and not to limit it to review circle otherwise judges have never hesitated to perform in the interest of justice what may be called as an act of judicial engineering. The term 'judicial activism' originated from United States of America. In USA, it was derived from the expression 'due process of law' whereas in India, it is the 'procedure established by law'. In India, judicial activism rather termed as judicial dependence, has been emerged due to non functioning or mal functioning of executive and legislative wing of the State. Critics are of view that judicial activism has upset the constitutional scheme of the division of power distributed amongst three organs. In recent time, Supreme Court has become more powerful due to abject failure of executive and legislative wing. Supreme Court has taken proactive role of executive functions because of the fact that the reluctance of legislature and executive to take hard and unpleasant decision. It has encroached upon the jurisdiction of executive, legislative wing and other autonomous institutions. Apex court has also expressed its displeasure over the magnitude of corruption in higher places.

In 1615 Chief Justice Coke of England had ruled that function and power of courts were not only to correct errors but all acts of misgovernance so that no wrong can be done. It is unfortunate that all organs of state are over politicized and unhealthy atmosphere is prevailing in the entire country, the court must act effectively without fear or favor and to ensure that constitution and law of the land are not violated.

1 Associate Professor and Former Head, Department of Law, University of North Bengal, Darjeeling, West Bengal, author may be contacted in e mail: rathinbanerjee@gmail.com
2 Research Scholar in Law, Department of Law, University of North Bengal.

II. Proactive Role:

The then chief justice of Apex court Mr. K. G. Balakrishnan said at national seminar in New Delhi during September 2009 on fighting crimes related to corruption. Sri Balakrishnan favoured statutory provisions for seizure of illegal properties and assets of government officials convicted in corruption matters. He also wanted specialist team of lawyers to ensure that they progressively develop expertise in presenting corruption cases. If public servants amasses wealth at the cost of public, in that case the state is justified in seizing such assets. Sri Balakrishnan further remarked that 'one prominent suggestion is the inclusion of statutory remedy that will enable confiscation of properties belonging to persons who are convicted of offences under Prevention of Corruption Act'. It is said that procedural delay like granting sanction and difficulty in marshalling large number of witnesses were the major hurdles in achieving meaningful convictions. When anti corruption agencies was finding it difficult to grapple with 9000 pending cases due to shortage of designated courts. The prosecution becomes ineffective if the sanction is granted after 6 to 7 years, he said. He expressed deep concern that CBI relies on large number of witnesses in the corruption related matters instead of coming out with solid witness which unnecessarily prolong the trial of cases for more than five years. Instead of having eight to ten witnesses, emphasis should be on hearing on one solid witness to prove the case.

The then Chief Justice of India Mr K. G. Balakrishnan delivered keynotes address of National Summit organized by foundation of national values on 18. 11. 2008 at India Habitat Centre at New Delhi . He said that corruption is the violation of human rights. The question came in the summit i.e. the restoration of national values and whether decision on abstract ideas will serve any constructive purpose. There is clear focus on involving specific measures for instilling values in public as well as private life and impressive list of speakers consist of those who had led by personal example in their respective fields. Mr. Balakrishnan emphasized firstly corruption in public institution and secondly means used for conflict resolution in our society. He has given special emphasis on these two themes in particular since they have direct bearing on the common understanding of citizenship on morality. Corruption is identified with any person or institution who misuses the power and discretion conferred on the same. Ordinary citizen face unnecessary problems in their routine interaction with the government agencies. Practices such as acceptance of favour or misappropriation of public fund have actually come to be described as perks for holding public office and employment. Admittedly the extent of corruption may have link with increasing disparity between pay scale offered in the public and private sector. However, pervasive culture of graft provokes pessimism about the quality of governance.

III. Judicial Reforms:

There is an urgent need for judicial reforms. Judiciary alone is not

responsible for its reforms. There are so many vacancies pending before different courts right from subordinate courts to different High Courts. It is the primary duty of executive and legislature to fill up such vacancies. It has been observed that in some cases, appointment of High Court Judges, political interference has been taken in to consideration as a result, quality of judges are being ignored. It should be remembered that judiciary will commend respect only if judges are honest, impartial, unbiased and free from corruption. Promotion within judiciary should be made on the basis of quality and excellence rather than quality on the basis of political allegiance. In addition to above deficiencies of executive and legislative wings of the government, there is deficiencies on the part of judiciary. It has been observed that lot of adjournments are allowed by the courts without verifying the veracity of the prayer of the litigants. Adjournments are granted on flimsy grounds as a result, lots of cases are being accumulated in the different courts.

Due to prolong trial of cases, justice has become costly affairs to the common people because litigants have to move from lower court to High Court to get justice after several years. Due to such lackadaisical attitude of courts, litigants are being demoralized and frustrated. They are of view that it is better to bear the burden of injustice rather than to move in the court.

Union cabinet on 05.10.2010 cleared Judicial Accountability Bill to be brought in Parliament. The meeting chaired by Dr Monmohon Singh, Prime Minister of India approved the Bill which provides mechanism for enquiring into complaint against judges of High courts and Supreme Court, lays down judicial standard and requires judges to declare their assets and liabilities. It is stated that any complaint against judges would refer to scrutiny comprising three judges which would be referred to five member judicial oversight committee headed by former Supreme Court judge comprising one Supreme Court judge, Chief Justice of High Court, Attorney General and eminent person to be nominated by President of India, which after investigating can refer the matter to President of India for taking appropriate action against judges. The Bill was formulated after government held consultation with all section of society and takes the judiciary into confidence. At present, there is no legal provision for dealing with complaint filed by public against judges of Supreme Court and High courts. In order to cope up with the demand of society, effective legislation is needed to address the growing concern regarding the necessity to ensure greater accountability of higher judiciary by bringing more transparency, accountability and strengthening the credibility and independence of judiciary.

The above Bill proposed to make provisions for declaration of assets and liabilities by judges within thirty days of assuming office and also lays down certain guidelines for them. The measures assume significance in the wake of recent cases involving allegation of misconduct against judiciary prompting even Apex Court to comment on uncle judges' syndrome in the Allahabad. In another case, Mr. P. D. Dinakaran former Chief Justice of Karnataka High Court is

alleged to have acquired property disproportionate to known source of income though ultimately Mr. Dinakaran has resigned from his post. In other case, Mr. Soumitra Sen., Judge of Calcutta High Court was alleged to have indulged in financial misconduct prior to elevation as High Court Judge in December 2003. After facing Rajya Sabha for impeachment proceeding, Mr. Sen resigned from his post without facing Lok Sabha. It is surprising that the resignation of Mr. Sen has been accepted by the President instead of passing impeachment against him. Unfortunately Judicial Accountability Bill has not been passed by the Parliament even after elapsing one year.

Sri K.G. Balakrishnan, the then Chief Justice of India has recommended that any judicial officer who is unfit, ineffective and incompetent or has doubtful integrity may be retired from service. In communiqué with Chief Justices of all High Courts throughout India said during December 2009 that "with a view to provide that Judicial Officer who is unfit, ineffective and incompetent may be retired from service even before his continued ability assessed in terms of direction of Apex Court in All India Judges Association Case. It is remarked that if such procedure is implemented in right earnest, such provision will keep deviant behavior besides getting rid of those who are found to be ineffective or doubtful integrity". It has been reported that judiciary best exemplifies the problems of allegation of corruption even in higher judiciary has demonstrated that very little has been done to initiate much needed reforms. Because GPF scam of Ghaziabad District Court, financial misconduct of Justice Soumitra Sen and allegation against Mr. P. D. Dinakaran, former Chief Justice of Karnataka High Court for possession of properties disproportionate to the known source of income have reminded that there is a corruption in higher judiciary and also corruption in the entire judicial system is real and poses clear and present danger for judicial independence. These are few studies that described corrupt practices and analyze the impact entrenched corruption on the development of judiciary demonstrating in our country. Besides, there are other systematic factors such as procedural complexities in the provision of public services, administrative inefficiency and lack of transparency in judicial appointment and in filling vacancies, especially in different High Courts and subordinate courts. This fastens corrupt practices and endangers inefficiency in the administration and dispensing injustice.

Both Mr. K. G. Balakrishnan and Prime Minister made strong pitch on 20.04.2008 in the conference of all Chief Justices and all Chief Ministers of all states throughout India for setting up special courts to tackle quickly on the menace of corruption in public life. Ascertaining that corruption poses challenges to both government and judiciary, Prime Minister and Mr. Balakrishnan suggested establishing special courts to deal with corruption cases effectively in which Prime Minister agreed with that proposal. This exercise, if implemented in earnest way, will instill greater confidence in our justice delivery system at home and abroad. He stressed the need for quick disposal of cases registered under Prevention of Corruption Act, 1988. Despite repeated efforts, allocation of fund

for establishing new courts is not at all encouraging. . After establishing fast track courts, we could dispose of large number of cases and even the number of courts is not sufficient to dispose of all pending cases. Both Prime Minister and Mr. Balakrishnan expressed grave concern over ranges of issues including mushroom pendency of cases in the country, abysmal existing infrastructure of courts and severe problems by setting the judicial architecture and delivery of justice to the common people. While stressing the need for serious judicial reforms at various levels, Sri Balakrishnan demanded higher budgetary allocation to set up new courts to combat pendency of cases by saying the present allotment is grossly inadequate. He said "We have got an independent judiciary. We have received rebuke from public to many things to which we are not responsible". It was further remarked that judiciary has to work under certain limitations. Backing judicial reforms, he said that adequate laws, institutional mechanism and sufficient infrastructure are also needed. For effective judicial reforms, Sri Balakrishnan by his letter dated 07.09.2008 requested Government of India to set up additional special courts to deal with corruption related cases. He has further remarked that national Case Management System has been developed in Bhopal to guard against judicial delays and suggested that government should undertake administrative reforms to deal with monitoring cases in courts registered under Prevention of Corruption Act. Lack of good and proper governance adds to the number of cases coming to courts. Sri Balakrishnan repeatedly stressed for appropriate increase in the number of judges and financial commitments from government for upgrading judicial infrastructure to tackle the problems of judicial delay. For example, if West Bengal is taken as case study, available data indicates that State judicial health is unsound. Immediate remedial and regulatory steps are needed.

IV. View of Apex Court on Corruption:

Apex court urged the courts below to refrain from suspending conviction on corrupt officials saying the brethren enables them to hold on to their officers and harm public interest irreparably and observed that it is necessary that courts should not aid public servants who stands convicted for corruption charges to only hold public office until he is exonerated after adjudication at appellate level. A public servant found guilty of corruption should be treated as corrupted until Apex court exonerates him. Apex court further observed that "the mere fact that an appellate forum has challenged and so go into findings one again should not temporarily absolved him if such public servant becomes entitled to hold office and to continue official act until he is absolved from such findings by suspension of conviction, it is public interest suffers and sometime irreparably". The suspension of conviction impairs the moral of others and erodes the confidence of people in public institution. Supreme Court also added that other honest public servants are compelled to take from proclaimed corrupt officers on account of suspension of conviction; the fallout would be one of shaving the system itself.

The above observations have been made by Apex court after setting aside the order of Punjab & Hariyana High Court by staying the conviction of one land revenue officer under section 9 of Prevention of Corruption Act which was applied to this case makes ' illegal gratification by any official act a crime '. With the above observation, Apex Court vacated stay order passed by Punjab & Hariyana High Court made following observations.

“... Corruption by public servant has now reached a monstrous dimension in India . Its tentacles have started grappling even the institutions created protection of public. Proliferation of corrupt public servant could cripple the social order if such men are allowed to continue and manage to operate public institution”.

Supreme Court made it clear that it would not tolerate increasing corruption in the judiciary when for the first time it allowed CBI to interrogate sitting judges of High Court whose names have been cropped up for judges scam. This is the first time in India where sitting judges were subjected to police investigation. According to earlier judgment, *Veera Swami v. Union of India*³, it was held that the need for preserving the independence of judiciary and the fact that Chief Justice of India being the head of judiciary is primarily concerned with the integrity and impartiality of the judiciary, the court has directed that Chief Justice of India is required to be consulted at the stage of examining the question of granting sanction of prosecution. Accordingly Chief Justice of India accorded permission to interrogate sitting Judges of Punjab & Haryana High Court who have been named in the scam. Apex Court bench headed by Dr Arijit Paswat directed CBI to take over proof from Uttar Pradesh Police.

Supreme Court issued direction upon election commission in 2002 to the effect that rule must be framed to get candidates seeking election to Parliament or State legislature to file affidavit on any criminal activities so that general people may think over before giving their choice of electing either law maker or law breaker of the country. Election Commission complied the above direction of Apex Court despite unprecedented political pressure. The election commission was able to generate public awareness over the fact that politicians were acting like criminals and criminals are getting place in the polity.

It is to be mentioned in this connection that where high dignitaries involved in corruption related matters shall be the main focus and it is within the domain of judicial review under Article 32 read with Article 142 of the Constitution of India and it could be effective instrument for achieving the investigative process which is under the control of the executive.

Supreme Court passed judgment in respect of eradicating corruption from the society in *Vineet Narain v. Union of India*⁴. Court held that whenever

3 (1991)3SCC655

4 AIR1998SC889

there is complain of inertia by CBI in matters where accusations are made against high dignitaries, it is within the domain of judicial review under Article 32 read with Article 142 of the Constitution of India and it could be effective instrument for achieving the investigative process which is under control of executive.

Supreme Court attempted to begin the cleansing of Indian political corruption by focusing on two specific institutions within Indian society that required modification. Supreme Court acknowledged that Central Vigilance Commission needed to be given statutory status to ensure the continuance of its efforts. Supreme Court struck down the single directive and advocated Central Bureau of Investigation's surveillance from Central Government Authority by giving Central Vigilance Commission superintendence power over Central Bureau of Investigation. However, Central Government overturned Supreme Court's decision. Central Government passed CVC Act in half hearted manner to comply with the directive passed in Vineet Narain case. Central Government once again retained its power to sanction or stop investigation against high ranking public servants. The language of CVC Act does not implicate the exact challenge presented in Vineet Narain case instead sway court focused on Article 14 i.e. equality of law challenge to the provision of CVC Act that reconsider single directive. Supreme Court in Vineet Narain case had used harsh words about the unfairness present in single directive application. The substance of this order is that CBI and other governmental agencies had not carried out their public duty to investigate the offence and disclosed that none stands above the law so that an alleged offence by him not required to be investigated. Apex Court emphasized "Be you ever so high, the law is above you". The government's prior sanction requirement is in clear violation of courts definition of equality before law because it creates two classes of offenders with no rational basis for the distinction beyond reprehensively protection of one class of public servant. The supreme court's emphasis on the degradation of fundamental rights as the central issue in sway is fitting because corruption in India not only poses a significant danger to the quality of governance but also threaten in an accelerated manner the very foundation of India's democracy and rule of law. Vineet Narain filed his petition against the inaction on the part of the CBI and single directives corruption application as Public Interest Litigation. Apex Court held that corruption free government services constitute respect for fundamental rights.

In *Delhi Development Authority v. Skipper Construction (P) Ltd* case, the Supreme Court said that the major source of agony in present society is the accumulation of wealth possessed by public servants which have been acquired by corrupt and illegal means. Due to such activities of corrupt public servants, parallel economy is running which has caused obstruction to the growth of national economy. Due to such corrupt practices, state fund is diverted in

different means.

In the above case, the Apex Court further made following observation:

“... A Law providing for forfeiture of properties acquired by holder of public office including the offices or posts in the public sector, corruption by indulging the corrupt, illegal acts and deals, is a crying necessity in the present time of our society. The law must extend not only to ...as does Smugglers and Foreign Exchange Manipulators Act, 1997.... the properties acquired in the name of holder of such property but also to properties held in the name of his spouse, children or other relatives and associates. Once it is proved that the holder of such office has indulged in corrupt acts, all such properties should be attached forthwith. The law should place the burden of proving that the attached properties were not acquired with the aid of monies/ properties received in the course of corrupt deals upon the holder of the property as does in SAFEMA whose validity has been upheld by the Apex Court in the aforesaid decision of the larger constitution bench. Such a law has become an absolute necessity, if the canker of corruption is not to prove the death knell of this nation. According to several perspectives of observers, indeed, it has already reached near fatal dimensions. It is the Parliament to act in this matter, if they really mean business”.

It is a mandatory requirement under Section 197 of Criminal Procedure Code and Section 19 of Prevention of Corruption Act, 1988 that sanction to prosecute public servant is necessary. Sanction to prosecute is made as condition precedent for the code for cognizance of an alleged to have been committed by the public servant. Failure to place before the competent authority all the relevant materials vitiate the sanction. Before giving sanction to prosecute public servant, competent authority has to apply his mind without any influence and it is not mere formality. Supreme Court in *R. S. Nayak v. A. R. Antuly*⁶ to be initially held above observations and further held that the expression office in the three sub clause of section 6 of Prevention of Corruption Act, 1988 would clearly denote that office which public servant misused or abused for corrupt motive for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by competent authority, entitling to remove him from that office which he has abused. This interrelation between the office and its abuse, if severed would render Section 6 devoid of any meaning and this interrelation clearly provides a clue to the understanding of the provision of Section 6 providing for sanction by competent authority which would be able to judge the action of public servant before removing ban by granting sanction for taking any cognizance

6 AIR1984SC684:1984CriLJ613

of the offence by the court against the public servant. Therefore it unquestionably follows that the sanction to prosecute can be given by the authority competent to remove public servant from the office which he has misused or abused because that authority alone would be able to know whether there has been misused or abused of the office by the public servant and not same rank outside.

Supreme Court in *Lalu Prasad Yadav v. State through CBI Patna*⁷ held that the validity of sanction under Sec 19 of Prevention of Corruption Act, 1988 and Section 197 of Criminal Procedure Code stand on different footing because in cases covered under Prevention of Corruption Act, 1988, sanction is of automatic in nature but cases related to Section 197 of Criminal Procedure Code, the substratum and basic feature of the case have to be considered whether alleged act has got any nexus to the discharge of duties.

Supreme Court in *Prakash Singh Badal v. State of Punjab*⁸ held that Section 197 of Criminal Procedure Code provides protection to the responsible public servant against the institution of vexatious criminal proceeding for offences alleged to have been committed by public servant while discharging official duties. It is the intention of the legislature that to provide protection so that they work in good faith while discharging official duties.

It was further held by the court in the above case that so far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of Criminal Procedure Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in the discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the condition and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression; no court shall take cognizance of such offence except with the previous sanction. Use of words 'no' and 'shall' make it absolutely clear that bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred.

The most significant Judgement was delivered by the Supreme Court very recently in *Dr. Subramanian Swamy v. Dr. Monmohan Singh and Another*, Civil Appeal No.1193 of 2012 (Arising out of SLP© No. 27535 of 2010, popularly known as 2G Spectrum Case, where in Justice A.K. Ganguli along with Justice G.S. Singvi has held as following and that seems significant for prosecution of public servants against whom allegation of defalcation or embezzlement of fund is brought and initiation of persecution is required after obtaining sanction from the appropriate authority:

7 iv(2006)CCR328(SC)

8 (2007)1SCC1

"I may not be understood to have expressed any doubt about the constitutional validity of Section 19 of the P.C. Act, but in my judgment the power under Section 19 of the P.C. Act must be reasonably exercised. In my judgment the Parliament and the appropriate authority must consider restructuring Section 19 of the P.C. Act in such a manner as to make it consonant with reason, justice and fair play.²² In my view, the Parliament should consider the Constitutional imperative of Article 14 enshrining the rule of law wherein 'due process of law' has been read into by introducing a time limit in Section 19 of the P.C. Act 1988 for its working in a reasonable manner. The Parliament may, in my opinion, consider the following guidelines:

- a) All proposals for sanction placed before an Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under section 19 of the P.C. Act must be decided within a period of three months of the receipt of the proposal by the concerned authority .
- b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit.
- c) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit.

The question came before constitution bench of Supreme Court in *P. V. Narasimha Rao v. State through CBI/SPE*⁹ whether a Member of Parliament enjoys immunity from being prosecuted under Article 105(2) or Article 105(3) of Constitution of India. It was held that Article 105(2) of the Constitution of India provides protection to the Member of Parliament for being prosecuted in the court of law in respect of taking bribe but such protection does not extend to the bribe givers, The object of such protection is to provide opportunity to enable Members of Parliament freed of the fear of being made answerable on that account in the court of law.

It was further held in the above case that alleged bribe takers are

protected under Article 105 (2) of the Constitution of India from being prosecuted in court of law in respect of charges sought to be made out against them but the immunity does not extend to the bribe givers and the prosecution against them must go ahead. The criminal prosecution against alleged bribe givers must, therefore, go ahead for breach of Parliament's privileges and its contempt, Parliament may proceed against the alleged bribe takers.

V. Epilogue:

Every people are of view that corruption is deep rooted in Indian governing system. It is a fact that we have made considerable progress so far economy is concerned but lagged behind in respect of honesty and transparency. As per Transparency International report 2010, India stands 9th amongst most corrupt nation. We should not forget that burning issue like corruption has not been taken into consideration by any governments and it is also surprising that no political parties are interested to curb the menace of corruption. Due to such attitude of government, judiciary has come into picture to curb the menace of corruption. Corruption is the violation of human rights. Due to non functioning of legislative and executive wing, judiciary has to take proactive role. Some people are of view that it is judicial activism but in the eye of common people, it is judicial dependence. Such type of judicial dependence has created a salutary impact and it has provided a safety valve to general people against arbitrary action.

With the help of judiciary, corruption related cases such as various scams, scandals of political executives and bureaucrats have been exposed and offenders have been brought to book, which has created faith amongst ordinary people. We should keep track of the fact that Apex Court has taken money laundering, tax evasion to the tune of crores of rupees, business of illegal arms, 2G spectrum scam and terrorist acts very seriously. Hasan Ali who is alleged to be a biggest tax evader, is being trialed and Apex Court asked as to why present government should not be brought under the purview of POTA, as it has provided protection to him. It is most surprising that both legislature and executive often forget that all organs of states are under obligation to provide justice to the people in general. Due to non functioning of these organs, judicial dependence has been increased. It is indispensable that nation must have judges who are independent and constructive. It is to be noted in this connection that Public Interest Litigation is the legal weapon created by the judiciary to provide effective relief to the masses belonging to have not groups, who have not been able to approach the costly justice delivery system due to lack of awareness and incapacity. For that reason, with this effective tool, vast masses can knock the temple of justice.