

Burn After Reading

BRIJESH PANDEY and **SANJAY DUBEY** track the Supreme Court's lack of urgency in investigating charges of judicial corruption

WHEN SPECIAL CBI judge Rama Jain received an anonymous letter in January 2008, telling her that the provident funds of Class 3 and Class 4 employees of the Ghaziabad court were being siphoned off, she had no idea that she had stumbled onto the biggest judicial scam in the history of independent India.

As she was the designated vigilance officer at the Ghaziabad court, she first conducted an inquiry on her own, which uncovered the involvement of at least three judges and the Central Nazir in the embezzlement of funds. She reported the matter to the Allahabad High Court, which, in turn, ordered a vigilance inquiry. Holding that the report, *prima facie*, had merit, the court directed her to file an FIR.

Central Nazir Ashutosh Asthana was arrested on the basis of the FIR on April 10, 2008. His interrogation revealed that Asthana was not a solo player. He claimed that he was first introduced to the scam by a district judge himself. What followed was so shocking that even the Ghaziabad police was on the backfoot. Asthana confessed that from the Rs 7 crore embezzled, he had given cash and gifts such as airconditioners, refrigerators, expensive clothes, jewellery and furniture to as many as 36 judges, including about 10 High Court judges and one Supreme Court judge. In a sworn statement before a magistrate, Asthana revealed that this fraud had run from 2001 to 2007 with the active connivance of district judges. Every month, Asthana even paid bribes to various judges, from Rs 25,000 to a whopping Rs 1.5 lakh.

When these excerpts from Asthana's confession became public, the public image of the judiciary touched a new low. In perhaps the biggest moment of crisis for the Indian judiciary, Asthana, the main accused, has in turn named judges from the Ghaziabad District Court to the Allahabad High Court, right up to the Supreme Court. This was not all.

These revelations stunned the Ghaziabad police. Clearly out of their depth and (justifiably) wary of taking on the powerful judiciary, they requested the Ghaziabad court to hand over the probe to the CBI. In September 2008, the Supreme Court transferred the case to the CBI, but with a rider: Investigate, but give us a sealed report. The PF scam, as it had come to be known, gave the judiciary a wonderful opportunity to redeem itself in the eyes of the people but the case remained shrouded in secrecy. Cynics then said that the whole matter would be given a quiet burial. Eighteen months after the scam became public and four CBI status reports later, the cynics appear to have had the last laugh.

THE STORY OF A QUIET BURIAL?

Special CBI judge Rama Jain uncovers Rs 7 crore Provident Fund scam during vigilance inquiry

Accused Ashutosh Asthana revealed that he was paying off 36 judges including a sitting Supreme Court judge and 11 High Court judges

Supreme Court directs CBI to investigate, permits interrogation of all involved judges

Several status reports given by the CBI to the apex court

Reports kept secret. Action taken on basis of reports unknown

This delay and secrecy in such a highprofile scam raises various uncomfortable questions for the Indian Judiciary. Legal luminaries believe that this is symptomatic of a larger malaise which ails the judiciary. Says jurist Ram Jethmalani, “The reputation of a judge is more important than the actual fact of his honesty. In fact, if a judge has a bad reputation, even if it is undeserved, he should not be appointed because then nobody will have confidence in his judgements,” adding, “When the judiciary expedites cases concerning the executive branch or even most prominent cases, why is such urgency not displayed here, when the matter is extremely serious. Why this delay?”

A VALID QUESTION. Asthana named 36 judges (a list of which is with TEHELKA). Other than the fact that a few have retired, virtually nothing is known about the fate of the judges of the Allahabad High Court and the Supreme Court judge. Whether or not the apex court is planning to initiate or has initiated, criminal charges against any of the judges — sitting or retired — are questions that only the Supreme Court can answer.

For six years, funds worth Rs 7 crore were embezzled and judges were allegedly bribed

And the apex court should answer, argues former Union law minister and senior advocate Shanti Bhushan. “I don’t appreciate this sealed-cover business except in very rare cases when making something public might be detrimental to the public interest — mainly if there is an army secret. Whether it is the judiciary or the executive, all officers are appointed on the behalf of the people. It is on the people’s behalf that the judiciary exercises its powers. How can you keep investigations in the PF scam secret? The people have every right to know what is going on.”

VN Khare, former Chief Justice of India, concurs. “These kind of things should not be allowed to linger. This shakes the confidence of the people in the judiciary. If there is an allegation or misconduct, it must be inquired into immediately and strict action should be taken against the erring judges. Why should the reputation of most judges suffer for no fault of theirs?”

The biggest question which arises from this scam is the lack of will on the part of the judiciary to rein in errant judges. Let alone the judges named by Asthana, what about the fate of the three Ghaziabad District Judges named by vigilance officer of the district court Special CBI Judge Rama Jain herself? Legal luminaries say this hesitancy on the part of judges to act against fellow judges involved in wrongdoing clearly illustrates the prevailing mindset of the judiciary.

“I know of a retired Chief Justice of India who is one of the most honest judges I have ever seen. It’s difficult to imagine a more honest person. However, when a responsible minister made complaints to him against a corrupt High Court Judge, he did not grant permission for an investigation because he felt that as the head of the judicial family, it was his job to protect judges, be they corrupt or not,” says Shanti Bhushan. Ram Jethmalani chips in sarcastically, “This is the reason why judges call each other ‘brother judge.’”



When the judiciary expedites cases concerning the executive branch or even most prominent cases, why is such urgency not being displayed in this matter?

RAM JETHMALANI, *Jurist*

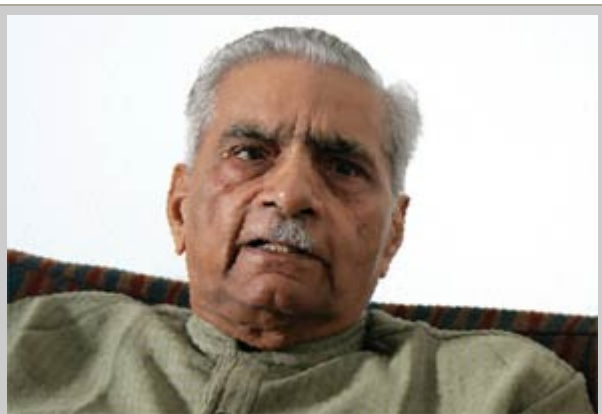
IT IS not only cases like the PF scam which taints the image of the judiciary, but also the extreme reluctance on the part of the judiciary to be open and transparent. Reams and reams of paper

have gone towards pious exhortations by the judiciary asking the government to refrain from corruption and work in an efficient manner. But sadly, no judge has held forth at length on the need for the judiciary to refrain from corruption. Even attempts to exercise the Right to Information with respect to the office of the CJI came a cropper as the CJI's office was always declared out of bounds. It took a historic verdict by the Delhi High Court to declare that the office of the CJI was not immune from accountability and outside the purview of the RTI Act. Senior lawyers and retired chief justices feel that if the judiciary is not transparent or accountable, it only means that they are trying to hide something. Justice Khare feels, "Judges are more accountable than other persons because they hold a very high post. The very existence of the judiciary is based on the faith of the common man in it. If that faith is not there, how can the judiciary function?"

What incenses them is the behaviour of the government with regard to the Judges' Assets Declaration Bill which the government tried to introduce in 2009. The opposition erupted in protest and forced the government to defer the bill. Jethmalani terms the government's approach to this bill as a "conspiracy of corruption". "The government is scared to take on the judiciary. It's clear that the executive wants to cosy up to the judiciary." Agrees retired CJI V N Khare, "Why should there be any hesitancy to declare assets at all on the part of judiciary? The whole episode is beyond me." In a recent development, the Supreme Court has reiterated before the Delhi High Court that the CJI's office is outside the purview of the RTI Act.

No judge holds forth at length on the need for the judiciary to refrain from corruption

Another assault on the public image of the judiciary is the Dinakaran episode. Currently, judges are appointed to the Supreme Court by the Supreme Court Collegium, a group of judges chaired by the Chief Justice of India. When Chief Justice Dinakaran of the Karnataka High Court was elevated to the Supreme Court, the state Bar and legal luminaries rose up in protest because the Collegium appeared to have dismissed, or, at least, not have considered the serious allegations of corruption against him. According to Senior Advocate Soli Sorabjee, "The Dinakaran episode shows that the Collegium is not working satisfactorily. You must have a national commission for judges which should be made up of judges, eminent jurists and senior government officials. This council should have the power to get independent information and evaluate it."



Corruption charges are swept under the carpet by the judiciary. But this has given a shield of total immunity to the judges, who think they can get away with anything

SHANTI BHUSHAN, *Former law minister*

Shanti Bhushan feels that as judges are extremely busy with hearing cases, there should be a full-time commission whose sole function is to pick judges for the High Court and the Supreme Court and feels that the commission should also have its own bureau of investigation. They should not be dependent on either the local police, who might be afraid to investigate judges, or on an overburdened CBI.

But all this is very hard to achieve. Jurists feel that the judges of the higher courts have converted themselves into a union of sorts and are trying to protect each other. "Their approach is to sweep every allegation under the carpet. Don't allow the public to know about it. Let the public believe that our judiciary is very honest. But this has been counterproductive. It has given a shield of total

immunity to the judges and they think they can get away with anything. This has led to an increase in corruption in the judiciary," states Shanti Bhushan. Time and again, opportunities have arisen for the judiciary to reinvent itself in a new avatar. And time after time, it has failed. Caesar's wife, they say, should be above suspicion. Whatever the cost it might take to ensure it.