

## **Corruption in judiciary It needs to have an Ombudsman of its own by Fali S. Nariman**

".... **CORRUPTION** is another challenge we face both in the government and the judiciary": Prime Minister in his address to Chief Ministers and Chief Justices of High Courts (April 19, 2008)



I belong to a profession where there is the least transparency – clients do not know what mumbo-jumbo their black – coated representatives argue in court and the general run of people cannot understand the long judgments given from the Bench by men and women in robes.

The judiciary – especially the higher judiciary – has put itself up on Cloud Nine, wrapping itself in a cloak of inviolability. How are Judges appointed? Why are they appointed? What are their short-comings? How are these dealt with? This is met with the condescending answer: "It is none of your business to ask us questions – we know what is best for the system".

Any attempt at exposure is visited with retribution in the form of imprisonment or fine for contempt of court. The media – the journalists – find themselves greatly constrained: reminiscent of a story – a true story – related at a conference held in the garden city of Bangalore many years ago. A prominent American journalist there recalled how he had been "cited" by a US court for reporting a pending case in colours too fanciful and garish for the presiding Judge. He brashly told the Federal Judge "We want no accommodation from you. The First Amendment is on our side. We will fight it out." The Judge quietly responded, "Have it your way – but remember, who the umpire is in this battleground"!

Despite one or two recent judgements of our Supreme Court, the umpire in India still has a dark and forbidding countenance

And regrettably – with a few and honourable exceptions – the fraternity of the Higher Judiciary in India tends to stick together when anyone speaks of any wrong doing amongst one of them – even though they themselves are convinced of that wrong doing. There is, what I would respectfully describe as a Spirit of Trade Unionism, that pervades the Higher Judiciary.

I saw this happen when a few years ago there were reports about two or three sitting Judges of one of the High Courts in the South; they had been reportedly "found" by some journalist in a shady joint outside the city. Reports of this were published but were attempted to be scotched. But the Chief Justice of India then

very rightly directed the Chief Justice of another High Court to personally investigate the matter.

When that Chief Justice of the other High Court took on the job, contempt notices had already been issued to a large section of the Press in the city so that they were not quite sure whether if they revealed what they knew to the Inquiry Judge – it may not be used against them!

The so-called “scandal” by that time had blown up out of all proportion – by rumours. Everyone – almost everyone – seemingly knew, but no one would tell. Since the leading newspapers in the country were hauled up for contempt they went to the Supreme Court. I was appointed amicus by the court and a wise Chief Justice – Chief Justice Khare – saw through the veil of secrecy. He passed an order staying all proceedings in contempt.

I am afraid that the media’s role in judicial corruption – so far as India is concerned – has drawn a blank. We have to try different measures to root out judicial corruption.

Stopping work being given to errant Judges is an ad hoc measure. It is time a system of transparent judicial self-regulation is institutionalised – not left to be dealt from case to case, by a group of Judges in a High Court or by a group of Justices in the Supreme Court.

What do you do in when a Judge on becoming CJI and occupying the Office for just there weeks after which he has to retire because he has reached the constitutional age of retirement of 65 gets the Registry of the Supreme Court to place on his board out-of-turn a couple of cases that had been then pending – know as the Vansapati Scam cases – and after a brief hearing holds that there was no case for the accused to answer, and acquits all of them? That’s what he did. That’s what happened – some years ago.

But at that time – more importantly – what was the response of the Supreme Court of India? What did it do? What did the successor Chief Justice of India – Justice Kania do? He did what all right-thinking Judges should do. Without fanfare, he quietly directed that the Vansapati cases in which judgments were already rendered be put up for review and recalled – on merits. He constituted a Bench of three senior-most Judges, had these matters reargued, reheard – and the result was of course a reversal of the judgment – but strictly on merits. The Supreme Court did this all on its own and in open court and it brought great credibility to the functioning of our country’s highest court.

But contrast this with the problem that was faced when very recently – and I say this with a sense of responsibility though with a tinge of great sadness – when a former otherwise very able and very competent Chief Justice who also retired (just before the present Chief Justice took over), had, in a Bench, decision (presiding over that Bench) enforced strictly the development control laws in Delhi.

Premises were ordered to be rigorously sealed, houses were directed to be pulled down that were not in accordance with the rules etc. All this excited much attention but it was all to the good. But then – after a while – there were allegations openly

made in the Press (with documentation) suggesting that there had been more to it than met the eye.

The allegations were to the effect that whilst stopping commercialisation of residential areas this particular retired Chief Justice had three commercial companies owned by his sons running from his official residence in Delhi. The records of the Registrar of Companies bore witness to it. A member of the Bar (dutifully) complained that this was "scandalous" and that since it maligned a former Chief Justice of India, it necessarily tended to lower the image of the judiciary in the eyes of the common man.

The newspaper report was put up before a Bench of two Judges of the Delhi High Court, who promptly issued notice suo motu ("on their own") to the editor of the publication, and to the printer and publisher of the newspaper for scandalising the court – even though it concerned a retired Judge – a Judge no longer in office. Perhaps they were right because stories about what a Judge did whilst he was sitting Judge even when he has retired is really to besmear the image of the Judiciary as a whole.

The newspaper also carried a cartoon by a cartoonist, which depicted the former Chief Justice of India in his robes holding a bag with currency flowing out – with a man sitting on the sidewalk saying: "help – the mall is in your court" – which the Judges of the Delhi High Court also thought was aimed at lowering the image of the judiciary. Of course it was. So the Bench of the two Judges of the Delhi High Court issued notice to the editor, printer, publisher, cartoonist (the whole lot of them) to show cause why action in contempt be not taken.

The matter was bravely argued for the newspaper by one of our courageous senior lawyers Mr. Shanti Bhushan. He said that the material brought on record was ample proof of the fact that the sons of that particular retired Chief Justice were beneficiaries of sealing of commercial premises, and his plea pointed to the impropriety of a Chief Justice sitting on cases and passing sealing orders of premises in which commercial activity was being conducted to promote (as he put it) his own sons businesses.

The Bench of two Judges of the High Court said that "all this tended to erode the confidence of the general public in the institution itself" – besides, they said that "it was a slur on the other Judges of the Supreme Court who were parties to the order passed by the then Chief Justice of India."

Well, when news of this, and of this case got around, please notice the reaction of two distinguished former Chief Justices of India: Justice Verma and Justice Khare. They said openly, and this was widely reported that the facts did require investigation by an independent body – that the former Chief Justice of India must submit to such an inquiry and clear his name.

Regrettably he did not clear his name except for an article he wrote in the Times of India. But how was this individual treated? How does one treat one's erstwhile colleague who has fallen from grace – was he left severally alone by his peers? Regrettably he was not. On occasions when this gentleman was invited to official parties sitting Judges of the court treated him as one of their old trusted senior colleague and dealt with him as if no such allegation had ever been made!

It is a common human failing amongst us all: that we treat all persons with civility – even those who may have indulged in some questionable conduct. Men and women who are otherwise upright in their own behaviour think it bad form to slight someone or ignore someone against whom even credible charges have been levelled.

So to continue with the story the Judges of the Delhi High Court held that clients of Mr. Shanti Bhushan - editor, printer, publisher and the cartoonist – were all guilty of contempt and posted the matter for punishment after ten days. But thank God we have a Supreme Court. Before the matter could be put up for sentencing in the High Court of Delhi, a Bench of two Judges of the Supreme Court (presided over by one of its very senior Judges) admitted the statutory appeal and directed that the punishment imposed by the High Court would not be executed without leave of the Supreme Court – there the matter rests.

But grateful as I am to the Supreme Court, I must confess these are just sporadic fire-fighting measures. In my humble view this is not how judicial corruption in high places should be tackled. There is another way. Such measures have to be institutionalised. And they can be only institutionalised without damaging the general credibility of the judiciary as a body by having in place (with almost immediate effect) an office called the office of “Judicial Ombudsman”.

It can be filled by one, two or three persons – preferably one. The holder of this office would be the recipient of all complaints. The Judicial Ombudsman would make a report in writing, even taking up matters on his own, to the sitting Chief Justice of India with regard to the particular judge – either of the High Court or the Supreme Court – against whom the complaint is made, after making due inquiries, and upon receipt of that report it would be incumbent on the Chief Justice of India to see that no work was assigned to that particular Judge until all the present dilatory processes of the current law of impeachment are gone through.

I believe this is the only way in which we can accommodate the need for keeping clean and bright the image of our High Judiciary.

Once people know that legitimate complaints are being entertained in confidence, they will be made to the authority concerned in confidence. And once they see something is done we will no longer have to see the sorry spectacle of scandalous and un-substantiated allegations being made openly in the press about individual Judges.

*Based on a recent address the writer delivered at the Transparency International's Annual Function in New Delhi.*