

challenges on the grounds of unconstitutionality and incompetence, has been misused in many cases to block judicial processes.¹² In the case of anthropologist Myrna Mack, who was allegedly assassinated by a military death squad in September 1990, the Inter-American Human Rights Court was forced to intervene on the grounds that the right to have the case heard by a competent, independent and impartial judge within a reasonable time had been violated by the use of at least 12 *amparo* writs that delayed the process for over three years.

The judicial system has become more open to addressing corruption and transparency over the past few years. There has even been progress, but until the problems are seen as integral and directly linked to issues of career, salary level, internal controls, accountability and elimination of conflicts of interest, any reform will be incomplete.

The recommendations from the Justice Commission are a blueprint for action but the list should be revised to take into account the commitments assumed by Guatemala when it ratified international anti-corruption conventions. Key recommendations that would help reduce corruption levels include:

- Modernisation: adequate distribution of financial resources, elimination of practices of corruption and intimidation
- Professional excellence: improved judicial training and career progression
- Access to justice: development of alternative dispute-resolution mechanisms and recognition of judicial plurality
- Efficiency: oral hearings, use of writs against judicial decisions (*amparos*).

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12 See www.congreso.gob.gt/archivos/iniciativas/registro3319.pdf.

Indolence in India's judiciary

Legal system: Common law, adversarial, plural, federal **Judges per 100,000 people:** 1.3¹
Judge's salary at start of career: US \$3,996² **Supreme Court judge's salary:** US \$7,992³
GNI per capita: US \$720⁴ **Annual budget of judiciary:** US \$45.3 million⁵
Total annual budget: US \$125.3 billion⁶ **Percentage of annual budget:** 0.04
Are all court decisions open to appeal up to the highest level? Yes
Institution in charge of disciplinary and administrative oversight: Effectively independent
Are all rulings publicised? Yes **Code of conduct for judges:** Yes

1 Report of the Committee on Reforms of Criminal Justice System (March 2003) 2 indiabudget.nic.in/ub2006-07/bag/bog4-2pdf (2006) 3 Ibid. 4 World Bank Development Indicators (2005) 5 indiabudget.nic.in/ub2006-07/bag/bog4-2pdf 6 Ibid.

Although provisions for the independence and accountability of the judiciary exist in India's constitution, corruption is increasingly apparent. Two recent decisions provide evidence for this. One, a Supreme Court decision in the 2002 Gujarat communal riots, exposed the system's failure to prevent miscarriages of justice by acquitting persons close to the party in power.¹ The second involved the acquittal in 2006 of nine people allegedly involved in the murder in 1999 of a young woman, Jessica Lal, even though the incident took place in the presence of a number of witnesses. One of the accused was the son of a politician.

India's court system consists of a Supreme Court, high courts at state level and subordinate courts at district and local level. The Supreme Court comprises a Chief Justice and no more than 25 other judges appointed by the president. The Supreme Court has a special advisory role on topics that the president may specifically refer to it. High courts have power over lower courts within their respective states, including posting, promotion and other administrative functions. Judges of the Supreme Court and the high court cannot be removed from office except by a process of impeachment in parliament. Decisions in all courts can be appealed to a higher judicial authority up to Supreme Court level.

'Money power'

Corruption has two manifestations: one is the corruption of judicial officers and the other is corruption in the broader justice system. In India, the upper judiciary is relatively clean, though there are obviously exceptions. Proceedings are in open court and documents are available for nominal payment. The accused is entitled to copies of all

documents relied on by the prosecution free of charge. Copies of authenticated orders can also be made. There is an effective system of correction in the form of reviews and appeals.

In the broader justice institutions corruption is systemic. There is a high level of discretion in the processing of paperwork during a trial and multiple points when court clerks, prosecutors and police investigators can misuse their power without discovery. This has provoked comments on the connivance of various functionaries in the system. 'Criminal justice succumbs to money power,' wrote former Supreme Court Justice, V. R. Krishna.²

The Center for Media Studies conducted a countrywide survey in 2005 on public perceptions and experiences of corruption in the lower judiciary and found that bribes seem to be solicited as the price of getting things done.³ The estimated amount paid in bribes in a 12-month period is around R2,630 crores (around US \$580 million). Money was paid to the officials in the following proportions: 61 per cent to lawyers; 29 per cent to court officials; 5 per cent to judges; and 5 per cent to middlemen.

Loss of confidence

The primary causes of corruption are delays in the disposal of cases, shortage of judges and complex procedures, all of which are exacerbated by a preponderance of new laws.

As of February 2006, 33,635 cases were pending in the Supreme Court with 26 judges; 3,341,040 cases in the high courts with 670 judges; and 25,306,458 cases in the 13,204 subordinate courts. This vast backlog leads to long adjournments and

1 *Zahira Habibullah Sheikh v State of Gujarat*, 2004 AIR SCW 2325; 2004 (4) SCC 158. See also www.frontlineonnet.com/fl2111/stories/20040604003029700.htm

2 *Times of India* (India), 7 March 2006.

3 TI India commissioned the survey conducted by the Center for Media Studies (2005).

prompts people to pay to speed up the process.⁴ In 1999, it was estimated: 'At the current rate of disposal it would take another 350 years for disposal of the pending cases even if no other cases were added.'⁵

The ratio of judges is abysmally low at 12–13 per one million persons, compared to 107 in the United States, 75 in Canada and 51 in the United Kingdom.⁶ If the number of outstanding cases were assigned to the current number of judges, caseloads would average 1,294 cases per Supreme Court judge, 4,987 per high court judge and 1,916 cases per judge in the lower courts. Vacancies compound the problem. In March 2006, there were three vacancies in the Supreme Court, 131 in the high courts and 644 in the lower courts.⁷ Judges cope with such case lists by declaring adjournments. This prompts people to pay 'speed money'.

The degree of delays and corruption has led to cynicism about the justice system. This erosion of confidence has deleterious consequences that neutralise the deterrent impact of law. People seek shortcuts through bribery, favours, hospitality or gifts, leading to further unlawful behaviour. A prime example is unauthorised building in Indian cities. Construction and safety laws are flouted in connivance with persons in authority. In the words of former chief justice J. S. Anand in 2005, 'Delay erodes the rule of law and promotes resort to extra-judicial remedies with criminalisation of society . . . Speedy justice alone is the remedy for the malaise.'⁸

Recommendations for reform

Reforms to combat corruption in the judiciary must take into account all the components woven into the legal-judicial relationship, including the investigating agencies, the prosecution department, the courts, the lawyers, the prison administration and laws governing evidence. These issues are addressed in the 2003 report of the Committee on Reforms of the Criminal Justice System, known as the Malimath Committee, whose recommendations are still under consideration. Some of the measures could play a pivotal role and may have a salutary effect upon the justice system as a whole.

- **Increase the number of judges** Not only should the number of judicial officers be increased, existing vacancies must be filled more promptly to prevent the case backlog from further increasing. The Supreme Court recommends that the existing ratio of judges should be raised from 12 per million people to 50 in a phased manner over five years.⁹ The Court has also directed central and state offices to fill all vacancies in high courts and the subordinate courts.¹⁰
- **Judicial accountability** While there is a rhetorical commitment to improving accountability in the judiciary, there is no effective mechanism for ensuring it. Following a 2003 constitutional amendment, a Judges Inquiry Bill was proposed in 2006 that would provide for a national judicial commission empowered

⁴ *Hindustan Times* (India), 19 March 2006.

⁵ From the report of the conference and workshops on 'Delays and Corruption in Indian Judicial System and Matters Relating to Judicial Reforms', organised by TI-India and Lok Sevak Sangh, in New Delhi, 18–19 December 1999.

⁶ Committee on Reforms of the Criminal Justice System ('Malimath Committee Report') (Bangalore: Ministry of Home Affairs, March 2003).

⁷ *Hindustan Times* (India), 19 March 2006.

⁸ Letter to the Prime Minister of India on 7 April 2005, reproduced in *South Asia Politics*, vol. 5, no. 1 (2006).

⁹ *All-India Judges Association & Others v Union of India*, 2002 (4) SCC 247.

¹⁰ *Tribune* (India), 6 April 2006.

to impose minor penalties upon errant judges.¹¹

- **Codes of conduct** The higher judiciary initiated the adoption of a code of conduct for judges, called the Restatement of Values of Judicial Life, at the Chief Justices Conference of India in 1999.¹² The document includes conflict of interest guidelines on cases involving family members, and conduct with regard to gifts, hospitality, contributions and the raising of funds. The Bangalore Principles of Judicial Conduct were adopted in 2002, but the judicial system has yet to provide legal support to them.
- **Court record management** Introducing technology to manage court records has had some success in enabling the Supreme Court to reduce its backlog since 1998 by bundling cases that seek interpretation on the same subject. The government set up an e-committee in October 2005 under the chairmanship of Supreme Court Justice G. C. Bharuka to formulate a five-year plan for the computerisation of the justice-delivery system. It will provide computer rooms in all 2,500 court complexes, laptops to 15,000 judicial officers, and technology training to judicial officers and court staff. It will also provide a database of new and pending cases, automatic registries, and digitisation of law libraries and court archives. It promises video-conferencing in the Supreme Court and all high courts; digital production of under-trial prisoners so that they do not have to be brought to court for extension of remand; and distant examination of witnesses through video-conferencing.¹³
- **Recruitment** At present public service commissions at state level recruit the lower judiciary. There is a need for an 'All-India Judicial Service', with recruitment at a countrywide level and higher standards of selection.¹⁴ This would improve the quality of the lower judiciary, as reiterated in a decision of the Supreme Court in 1992,¹⁵ but no further move has been made.
- **Financial and administrative authority** The judiciary is critically short of funds for basic infrastructure. Court buildings, judicial lock-ups, prosecution chambers, spaces for witnesses, the computerisation of records, supply of documents, etc., all suffer from inadequate funding. Though the judiciary is an important entity, its finances are controlled by the legislature and implemented by the executive. In deciding expenditure, the judiciary has no autonomy. 'The high courts have the power of superintendence over the judiciary,' wrote the Chief Justice, 'but they do not have any financial or administrative power to create even one post of a subordinate judge or of the subordinate staff, nor can they acquire or purchase any land or building for courts, or decide and implement any plan for modernisation of court working.'¹⁶

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11 *Times of India* (India), 7 March 2006.

12 Justice R. C. Lahoti, 'Canons of Judicial Ethics', National Judicial Academy, occasional paper no. 5 (2005). See nja.nic.in

13 See Justice G. C. Bharuka, 'Implementation of Information and Communication Technology in Indian Judiciary', newsletter of National Judicial Academy, vol. 2, no. 2 (2005).

14 Although this stipulation was incorporated in the 42nd amendment to the constitution (article 312) in 1977, it has not been implemented.

15 *All India Judges Case* AIR 1992 SC 165.

16 Newsletter of the National Judicial Academy, op. cit.