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Topic- Official Deviance: Judicial

Sub-Topic- Causes of Deviance in Court: 1. Delay in Justice, 2. Inaccessibility, 3. Misuse of power, Restatement of Values of Judicial Life: Code of Conduct.

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Official Deviance: Judicial

The government of India has three organs, the legislative, the executive, and the judiciary and the constitution provide separation of powers to each branch as they perform their functions independently. The judiciary, acts as an impartial watchdog but it does not have the power to make any law. It can only interpret the laws passed by the law-makers under the constitutional framework and give its verdicts accordingly. But when corruption spreads in society, the governance begins to degrade implying loss of integrity and efficiency.

Deviance is any behavior that violates social norms, and is usually of sufficient severity to warrant disapproval from the majority of society. Deviance in the judiciary not only decreases the courts' credibility as corruption fighters, but it also shakes the faith of the public in the courts' impartiality. The corruption is an evil that destroys all the judicial functions, such as dispute resolution, law enforcement, etc.

The present scenario of corruption in India has been depicted by *Justice A.K. Ganguli* in **Subramanian Swami v. Dr. Manmohan Singh, AIR 2012 SC 120** in following words: "Today corruption in our country not only poses a grave danger to

the concept of constitutional governance, it also threatens the very foundation of Indian Democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of socialist, secular, democratic republic. It cannot be disputed that where corruption begins, all rights end. Corruption devalues human rights, checks development and undermines justice, liberty, equality, fraternity which are the core values of our Preamble. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such fashion as to strengthen the fight against corruption.

Corruption has been rampant in judiciary. There are many causes for its spreading in Indian judiciary. Some reasons are given below:

1. Judiciary of India depends on inputs and other material facts to decide the merits of a case. These are thoroughly analyzed by judges and judgment is pronounced. An old saying goes “garbage in, garbage out.” If the judges allow false testimony to be recorded as evidence, can true justice really be delivered in such cases?

2. The Indian judicial officers are very smart. When dishonest lawyers tell their clients to make false statements or submit false affidavits, a judge can see through this game being played in their courts. However, one rarely notices courts ordering the registration of a case of perjury. Inaction against wrong doers will

invariably encourage others to commit such illegal acts in the courts. Serious consideration needs to be given to the fact that the initiation of criminal cases against perjurers would result in long-term gains. Fear of registration of cases for perjury will discourage false litigants / witnesses thus leading to a reduction of cases in courts.

Causes of Deviance in Court

The number of cases pending is huge in the Indian judicial system. Delay in justice provides a sufficient time to criminal to manipulate the witness and destroy the evidence to pay the bribe. In our country the number of pending cases is counted in millions and it can take 20 years for a decision³³.

1. Delay in Justice

Delay in justice without no any sufficient reasons disturbs the whole judicial functions and forms injustice. Justice delayed means justice denied. The ineffective preventive action, slow and ineffective trials, slow and improper investigation and outdated laws, lack of implementation of laws and complex procedure of the courts are also become the main reasons for leading corruption in the judiciary of India.

2. Inaccessibility

The judicial system is become so dilatory, costly, and out of the access of the poor and common citizens of India. The public of India are losing their trust from the judiciary. The court's proceeding is so tough out of understanding of the

litigants and the dishonest advocates take disadvantages and make money from the litigants.

3. Misuse of power

There are other examples of Metropolitan Magistrates issuing bailable arrest warrants against individuals of whose identities he has no idea, in return for an inducement. A Metropolitan Magistrate in Ahmedabad issued bailable arrest warrants against the President of India in return for an inducement of Rs. 40,000.

Restatement of Values of Judicial Life: Code of Conduct

The conference of Chief Justices of all HCs was held on 3rd and 4th December, 1999, where all the Chief Justices unanimously resolved to adopt the “Restatement of Values of Judicial Life”. This would serve as a guide to be observed by the judges, essentially for an independent, strong and respected judiciary in the impartial administration of justice. Some of codes that must be followed are:

- Judges should not conduct election to any office of club, society or other associations.
- A judge should not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.
- A judge should not speculate in shares, stocks or the like.

Sources

1. <https://www.quora.com/What-are-the-Legal-professional-deviance>
2. <https://www.scribd.com/doc/11531903/Professional-Deviance>
3. www.cliffsnotes.com › deviance-crime-and-social-control
4. <http://www.livemint.com/Specials/gtKxByVZpA6u7QGcKKpKjP/Corruption-in-Judiciary.htm>
5. <http://www.sabhlokcity.com/2010/01/corruption-in-the-indianjudiciary/>
6. https://sg.inflibnet.ac.in/bitstream/10603/258834/11/11_chapter%207.pdf
7. [file:///C:/Users/MY%20DELL/Downloads/11_chapter%204%20\(1\).pdf](file:///C:/Users/MY%20DELL/Downloads/11_chapter%204%20(1).pdf)
8. The Hindustan Times, 17th February 2002.
9. Subhash C. Kashyap, “The Citizens and Judicial Reform: Under Indian Polity, (2003),
10. N. V. Paranjape: Criminology, Penology Victimology, 2018
11. Ahmad Siddiqui: Criminology & Penology, 2011
12. understanding corruption and promoting transparency social issues in India
13. Restatement of Values of Judicial Life (Adopted by Full Bench of Supreme Court on May 7, 1997). http://www.judicialreforms.org/files/restatement_of_values_jud_life.pdf

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