

## ‘Half Of The Last 16 Chief Justices Were Corrupt’

*The decision to declare assets is a big victory. Supreme Court lawyer Prashant Bhushan tells SHOMA CHAUDHURY what else is rotting in our judiciary*

**It’s great judges have agreed to declare assets. But will it really help? Politicians do it too.**

This decision is very welcome, even if it’s only happened under public pressure. It is proof of the power of public opinion. And even though declaring assets is a relatively minor aspect of judicial accountability, it will help. If a judge misdeclares his assets, there’s a chance someone might know he has particular properties he hasn’t declared, and may point it out. One could then examine if these can be explained within their legal income.

**The debate around judicial accountability has got really hot. Are there watershed events that triggered this?**

Not in my own perception, but I think for the public there were two watershed events – the Chief Justice Sabharwal case (where there was an allegation that Chief Justice YS Sabharwal’s orders to demolish commercial outlets in Delhi directly benefited his sons, who were partners with some mall developers) and the Ghaziabad Provident Fund scam. Both these cases got wide media attention. A 2006 Transparency International report said the judiciary in India is the second most corrupt institution after the police.

**You’ve been at the forefront of the judicial accountability campaign. Why?**

I have been witness to judicial corruption in the courts for a very long time. I know decisions are passed for extraneous considerations, but it’s difficult to get hard evidence of this. There have been highprofile impeachment attempts, for instance, on Justice Ramaswamy, Justice Punchi and Justice Anand. Yet, they all went on to become chief justices. In my view, out of the last 16 to 17 chief justices, half have been corrupt. I can’t prove this, though we had evidence against Punchi, Anand and Sabharwal on the basis of which we sought their impeachment.

**What is the root cause of judicial corruption then, and what are your key demands?**

Our key demand is an institutional mechanism for entertaining complaints and taking action against the judiciary. Nothing exists today. Everyone realises impeachment is impractical. To move an impeachment motion you need the signatures of 100 MPs, but you can’t get them because many MPs have pending individual or party cases in these judges’ courts. In the impeachment proceeding against Justice Bhalla, the BJP declined to sign because LK Advani had been acquitted by him in the Babri Masjid demolition case. Such political considerations prevail all the time. An in-house procedure was set up in 1999, post a chief justices’ conference in 1997, but that too is activated only selectively. For example, the complaint against Justice Bhalla was that he had purchased land worth Rs 4 crore at Rs 4 lakh — approximately — from land mafia in Noida. This was based on a report from the DM and SSP of Noida. This land mafia had several cases pending in courts subordinate to Justice Bhalla. Another complaint was that in the Reliance Power matter, though his son was the lawyer for Reliance Power, Justice Bhalla constituted a special bench while he was the presiding judge in Lucknow. He sat in the house of one the judges at 11pm at night to hear their case and pass an injunction in their favour. We asked Chief Justice Sabharwal to initiate proceedings against Bhalla, but he refused.



**In public interest** Prashant Bhushan has championed the fight for judicial accountability  
**Photo:** SHAILENDRA PANDEY

Similarly, Justice Vijender Jain decided the case of a person whose granddaughter had been married out of his own house. He was a close friend but he still heard and decided the case in this person's favour. The point is, in these cases though very specific complaints were made to the then Chief Justice of India (CJI), he didn't do anything to activate the in-house procedure. All these judges have gone on to become chief justices. Bhalla is still chief justice of Rajasthan; Virendra Jain became chief justice of Punjab and Haryana.

### **What's the answer?**

The first problem is that there is no independent institution for entertaining complaints and taking action against judges. There has to be a National Judicial Complaints Commission — independent of the government and judiciary. It should have five members and an investigating machinery under them. The second problem lies in the Veeraswamy judgment, which ordered no criminal investigation can be done against a judge without prior written permission of the CJI. That's what happened in Karnataka. There was a complaint against several judges visiting a motel and misbehaving with women. When the police officer came, the judges threatened him and said no FIR could be filed against them because they were judges. This happened in the Ghaziabad Provident Fund case as well. The investigation is stumped because the CJI hasn't given permission. We have to get rid of this injunction.

The third problem is the Contempt of Court Act. Today, even if you expose a judge with evidence, you run the risk of contempt. Judges are even seeking to insulate themselves from the RTI. We have to get rid of the Contempt of Court Act — not the whole Act. Disobeying the orders of the court is civil contempt — that should remain. Interfering with the administration of justice is criminal contempt — that too should remain. What needs to be deleted is the clause about scandalising or lowering the dignity of the court, for which Arundhati Roy was sent to jail. Finally, there is the problem of appointments. Earlier, judicial appointments were made by the government, which was bad enough. Now, by a sleight of hand, the Supreme Court has taken the power of appointments to itself. Earlier there were political considerations; now there are nepotistic ones.

### **Again, what's the answer to that?**

We need an independent Judicial Appointments Commission, which is independent and works full time, and follows some systems and procedures. Eligibility lists should be prepared and comparative merits debated and evaluated. You can't just pick judges arbitrarily, and let people know about it only after the deed is done.

### **What are the best practices and conventions elsewhere?**

We should at least have Public Confirmation hearings like in the US. In the Senate Judicial Committee, you have hearings where any public citizen can give evidence about the background of a judge that has bearing on their appointment. This is being fiercely resisted here.

There is still no independent body to process complaints and action against judges

### **Do any counter arguments hold?**

None that I can see. The judges say all this will compromise their independence. Unfortunately, they are equating the independence of the judiciary with independence from accountability. Independence of the judiciary was meant to be independence from the political establishment, not from all accountability.

### **Are there other ways in which judicial corruption manifests itself?**

There are so many. There is Justice Kapadia who decided on the Niyamgiri mining lease case in Orissa. He said Vedanta can't be given the lease because it's been blacklisted by the Norwegian government; but its subsidiary company Sterlite can get the lease because it is a publicly listed company. Justice Kapadia said it's publicly listed because he had shares in it and yet he passed an order in favour of Sterlite! There is a law against judges hearing cases where there is a conflict of interest, but they just bypass it and you can't complain because that would be contempt.

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