WHY IS JUDICIAL CORRUPTION INVISIBLE?

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1. Introduction: Just Allegations

At a book promotional event in December 2021, a television anchor asked Ranjan Gogoi, the forty-fifth Chief Justice of India (CJI), "Is there corruption [in] the Supreme Court?"[1] "Corruption is as old as society. [It] has become a way of life-an acceptable way of life," the retired CJI replied.[2] And judges, he added, "don't drop from heaven."[3] In September 2020, Markandey Katju, another former Supreme Court judge, addressed the issue more directly. Testifying for an Indian fugitive at his extradition trial in London, Justice Katju denounced the Supreme Court as "subservient," "spineless," and "servile."[4] Its judges, he alleged, had become prone to "doing [the government's] bidding."[5] Overall, "large number of judges at all levels have become corrupt," he declared, adding, "I guess 50% of judges are corrupt in India."[6]

Gogoi and Katju are among the latest to allege judicial corruption in India. Several other judges, including CJIs, law ministers, and lawyers have advanced similar views in the past.[7] In his Law Day speech on 26 November 2001, then CJI SP Bharucha lamented the corruption among 20 per cent of Indian judges.[8] One of his predecessors, ES Venkatramaiah, excoriated judges, especially High Court ones, for nurturing networks of

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[1] FPJ Web Desk, *His thought process itself raises a lot of doubts': Netizens slam former CJI Ranjan Gogoi for saying 'corruption has become a way of life,* FREE PRESS JOURNAL (Dec. 13, 2021, 09:41 PM), https://www.freepressjournal.in/viral/his-thought-process-itself-raises-a-lot-of-doubts-netizens-slam-former-cji-ranjan-gogoi-for-saying-corruption-has-become-a-way-of-life.

[2] *id.*

[3] *id.*

[4] Government of India v. Nirav Deepak Modi, [2021] 1 UKWMC 55.

[5] *id.* at 122.

[6] *id.* at 124-125.

[7] V. Venkatesan, *The Nine Former Judges Who Spoke of Corruption in the Higher Judiciary,* BAR AND BENCH (Aug. 22, 2020, 5:24 PM), https://www.barandbench.com/columns/nine-former-judges-who-spoke-of-corruption-what-ag-kk-venugopal-hinted-prashant-bhushan-hearing.

[8] TNN, *CHI Dwells on Corruption,* THE TIMES OF INDIA (Nov. 27, 2001, 01:16 AM), https://timesofindia.indiatimes.com/india/CJI-dwells-on-corruption/articleshow/33 7821803 .ems.

influence and profiting from them.[9] Two others, MN Venkatachaliah and JS Verma, the twenty-fifth and twenty-seventh CJIs respectively, asserted that corruption had seeped into the Supreme Court, too.[10] "There are just 25 judges in the Supreme Court in a country with a population of a billion-plus. And even there, some of them turn out corrupt," former CJI Venkatachaliah said in an interview in 2011.[11]

Judicial corruption is an umbrella concept: broadly defined, it entails corruption within the justice system.[12] Judges are only one, albeit a critical, component of that system. Other actors include court officials, police, prosecutors, lawyers, and witnesses.[13] Court officials may demand bribes to expedite, delay, or "lose" files.[14] In India, the Supreme Court and High Court registries have attracted such allegations in administering files.[15] Officials apart, the police and prosecutors may also engage in corruption. The former may refuse to register allegations of crimes or investigate properly; the latter may decline to charge persons or slap them with unnecessarily harsh charges.[16] Again, these are routine occurrences in India.[17] And lawyers and witnesses may also demand bribes to influence case outcomes or perjure in court.[18] Together, they constitute the universe of judicial corruption.

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[9] Asian Human Rights Commission, *South Asia: Truth is a Defence Against Contempt of Court Proceedings in India,* ASIAN HUMAN RIGHTS COMMISSION (Apr. 22, 2015), http://www.humanrights.asia/news/ahrc-news/AHRC-STM-060-2015/.

[10] Anuradha Raman, At Stake, Your Honour, OUTLOOK (Jan. 17, 2011), https://indialawyers.wordpress.com/2011/01/08/at-stake-your-honour/.

[11] *id.* The Supreme Court cun-ently has 33 judges. See Supreme Court (Number of Judges) Amendment Act, 2019, No. 37, Acts of Parliament, 2019 (India).

[12] Transparency International, *Executive Summary: Key judicial corruption problems in* GLOBAL CORRUPTION REPORT 2007: CORRUPTION IN JUDICIAL SYSTEMS xxi-xxviii (Cambridge University Press, 2007); See also Judge Keith Hollis, *Combating judicial corruption - setting the scene: Raising the issues,* 28(1) COMMONWEALTH L. BULLETIN 553-572 (2002).

[13] id. at 21.

[14] See e.g. Edgardo Buscaglia, *Judicial Corruption in Developing Countries: Its Causes and Economic Consequences* 4-5 (UNDP, 2001); Maria Dakolias & Kim Thachuk, *Attacldng Corruption in the Judiciary: A Critical Process in Judicial Reform,* 18 WIS. INT'LL.J. 353, 365 (2000).

[15] See e.g. News, *Anil Ambani's personal appearance: Supreme Court sacks court masters for tampering with order,* BAR AND BENCH (Feb. 14, 2019, 6:59 AM), https://www.barandbench.com/news/anil-ambani-personal-appearance-supreme-court-sacks-court-masters-tampering-order.

[16] Kelly Gier, *Prosecuting Injustice: Consequences of Misconduct,* 33(2) AM. J. CRIM. L. 191-222 (2006); Thomas P. Sullivan & Maurice Possley, *The Chronic Failure to Discipline Prosecutors for Misconduct: Proposals for Reforms,* 105(4) J. CRIM. L & CRIM'GY 882-945 (2016).

[17] Express News Service, *Disabled woman beaten up in Telangana, police refuse to file FIR against accused,* THE NEW INDIAN EXPRESS, (July 29, 2021, 09:04 AM), https://www.newindianexpress.com/states/telangana/2021/jul/29/disabled-woman-beaten-up-in-telangana-police-refuse-to-file-fir-against-accused-2336929.html; India Today Web Desk, *Yogi Adityanath govt orders withdrawal of case against Yogi Adityanath, others,* INDIA TODAY (Dec. 27, 2017, 16:30 PM), https://www.indiatoday.in/india/story/yogi-adityanath-case-withdrawal-against-self-others-1116811-2017-12-27.

[18] Jeetendra Sharma, *Tax officer-lawyer nexus busted, CBI traps duo in bribery case,* ZEE NEWS (Sep. 30, 2021, 17:21 PM), https://zeenews.india.com/india/tax-officer-lawyer-nexus-busted-cbi-traps-duo-in-bribery-case-2398545.html.

This analysis only concerns judges, specifically, corrupt judges-not all "bad" ones.[19] Corrupt judges may engage in criminality over adjudication or administration. Adjudicatory corruption involves specific cases and outcomes: judges improperly deciding cases *because of* extraneous factors. Administrative corruption, in contrast, is linked to the organizational aspects of justice delivery. Exploiting judicial influence to appoint relatives as judges or court officials may amount to administrative corruption.[20] It involves judges, but not in an adjudicatory capacity. This analysis only probes *adjudicatory* corruption in India. Bribes or influence, especially political influence, often abet such corruption.[21] Ministers and bureaucrats, for example, may bully judges with inconvenient transfers, smear campaigns, etc. if they refuse to decide cases in certain ways.[22] I consider both pathways, bribes and influence, in this analysis.

Also, parties may exercise direct (targeted) or indirect (diffused) influence on judges. Threatening a judge with a smear campaign is a case of direct influence. But litigants may also cultivate judges indirectly. Consider a professional standard the Bar Council of India has enunciated to avoid conflict of interest: The rule prevents lawyers from practicing in a court that has their relatives as judges.[23] This prohibition has induced a string of novelties in lawyering in India including an "Uncle Judges Syndrome."[24] A lawyer son, for example, cannot appear in his father's courtroom, but can do so before other judges in that court. Similarly, children of these latter judges can appear before the first judge. This has knitted into a network: "uncle judges" preferring cases argued by their colleagues' sons.[25] The network, in effect, nudges litigants to employ judges' relatives as lawyers to enhance their

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[19] Bad judges are a much larger category that includes abusive, arrogant, impolite, lazy, venal judges. See GP Miller, *Bad Judges,* 83(2) TEX. L. REV., 431--487 (2004).

[20] See e.g. Appu Esthose Suresh, *Gujarat CJ says he lost SC berth because he opposed HC judgeship for CJI Kabir's sister,* THE INDIAN EXPRESS (July 12, 2013, 3:28 AM), https://indianexpress.com/article/cities/ahmedabad/gujarat-cj-says-he-lost-sc-berth-because-he-opposed-hc-judgeship-for-cji-kabirs-sister/ (CJI Altamas Kabir rejected the allegations); DHNS, *Ex-CJI Kabir denies wrongdoing,* DECCAN HERALD (July 24, 2013, 03: 13 AM), https://www.deccanherald.com/content/346710/ex-cji-kabir-denies-wrongdoing.html.

[21] Especially in criminal matters, such bribes and influences raise knotty questions about the effect of judicial corruption. See Ian Ayers, *The Twin Faces of Judicial Corruption: Extortion and Bribery,* 74(4) DENVER L. REV. 1231-1253 (1997).

[22] See Ajmer Singh, *I kept speaking while others didn't: Judge who took on CJI opens up in exit interview,* THE ECONOMIC TIMES (Jun. 23, 2018, 08:53 AM), https://economictimes.indiatimes.com/news/politics-and-nation/judges-can-be-politically-influenced-j-chelameswar/articleshow/64702148.cms?from=mdr; See also Sanjay K. Singh, *Tearful judge opts out of Mulayam's review plea,* THE ECONOMIC TIMES (Mar. 17, 2007, 3:29 AM), https://economictimes.indiatimes.com/news/politics-and-nation/tearful-judge-opts-out-of-mulayams-review-plea/articleshow/1774151.cms?from=mdr.

[23] Bar Council of India Rules, 2009, Ch. II, § 1, R 6.

[24] Suresh Sahni, *Uncle Judges Syndrome And Its Catastrophic Effect,* PUNJAB TODAY (Aug. 29, 2020), https://www.punjabtodaytv.com/english/uncle-judges/; Sanjeev Verma, 'SC, *govt should frame policy on uncle judges issue',* HINDUSTAN TIMES (May 03, 2014, 07:57 AM), https://www.hindustantimes.com/chandigarh/sc-govt-should-frame-policy-on-uncle-judges-issue/story-gLTIvOiLZqRm5ixwrulGyl.html; V. Venkatesan, *Uncles' on Bench,* FRONTLINE (Jan. 14, 2011), https://frontline.thehindu.com/other/article30174072.ece. See also Raja Khan v. UP Sunni Central WakfBoard, (2010) 15 S.C.C. 228 (India).

[25] Leila Seth, On Balance: An Autobiography 408-410 (Penguin India, 2008). Seth's use of gendered language likely reflects the male-dominated reality of litigation in Indian courts.

odds of winning cases. So pronounced is the syndrome that the Law Commission of India, in a report, advocated transferring judges away from High Courts that enrol! their relatives as counsels.[26] This analysis sets aside such forms of indirect influence. Instead, I interrogate the universe of direct, adjudicatory corruption involving both bribes and influence.[27]

Adjudicatory corruption in the Indian judiciary, informed sources assert, is increasingly routine.[28] Still, no Supreme Court judge, sitting or retired, has faced prosecution or suffered conviction on corruption charges. No High Court judge, too, has ever been convicted of such crimes. Why are allegations of such corruption, especially by insiders, so persistent but prosecutions and convictions so absent? This article is a meditation on the invisibility of crimes: How-and why-do crimes become invisible? Drawing upon a framework of invisible crimes, I inspect the parapet the Supreme Court has erected around the judiciary to expand the zone of judicial immunity.29 I posit two arguments. First: by monopolizing the investigative process, deploying its contempt powers, and controlling the information ecosystem, the Supreme Court has veiled judicial, that is, direct, adjudicatory corruption in India. The result is an economy of ignorance: a system that does not acknowledge-or act upon-credible allegations of corruption against judges. Second: this invisibility is imperfect. On (very) rare occasions, allegations against judges do break through and attract prosecutions. This partial visibility, however, is restricted to certain types of collusion, especially those involving judges and private litigants. In contrast, collusion between judges and public officials are conveniently locked away from scrutiny. I enumerate the features of this form of partial visibility and explain why it yields deeper insights about corruption within the judiciary in India.

These claims unfold in four parts. Section II introduces a framework of invisible crimes. Building on the analysis proposed by Jupp, Davies, and Francis, I explore the features, sites, contexts, and powers that enable some crimes to become-and remain-invisible.30 Section III applies this framework to judicial corruption in India. I interrogate how the Supreme Court has erected systemic barriers against acknowledging, investigating, and prosecuting allegations of corruption against judges. But this economy of ignorance is a co-creation: key institutions including the executive, the legislature, the media, and the knowledge sector, especially universities, have greased its wheels. Section IV introduces the idea of criminal visibility as an exception. Even invisible crimes, at times, attract sunlight. Reasoning inductively from three case-studies, I unveil the features of partial visibility and explain why they reveal a disconcerting reality about corruption in India. Overall, India's experience underscores the limits of a globally-prized approach to judicial accountability: self-regulation. Section V concludes with a note on why the Indian anxiety over judicial corruption, in effect, is a grand experiment on social epistemology.

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[26] Law Commission of India, *Reforms In The Judiciary- Some Suggestions,* Report No. 230, 9-10 (2009).

[27] This analysis concerns India's higher judiciary that consists of the Supreme Court and the twenty-six High Courts. The lower judiciary including trial courts, civil courts, revenue courts, and other adjudicatory bodies are subject to a separate regime ofrules and supervisory control. See INDIA CONST. art. 227(1).

[28] Venkatesan, *supra* note 7.

[29] Judges are immune from civil and criminal litigation for exercise ofjudicial duties. See Judges (Protection) Act, No. 59, Acts of Parliament, 1985 (India).

[30] Victor Jupp et. al., *The Nature ofInvisible Crimes in Invisible Crimes: Their Victims And Their Regulation, in* INVISIBLE CRIMES: THEIR VICTIMS AND THEIR REGULATION 3-29 (Pamela Davies et. al., MacMillan Press Limited, 1999).

2. Invisible Crimes: An Introduction

Not all crimes become public; some remain concealed. Scholarship in criminology has sporadically underscored this invisibility in several areas including crimes against humanity,[31] environmental degradation,[32] and domestic violence.[33] In 1999, Jupp et al. synthesized these scattered analyses into a general account of invisible crimes.[34] According to them, seven factors are key to understanding the mechanics of criminal invisibility: no knowledge, no statistics, no theory, no research, no control, no politics, and no panic.[35] These features, separately and collectively, create conditions that keep breaches of criminal law veiled.[36] All factors need not apply to every instance of invisibility. Nor do they apply equally: specific acts or events may underscore some factors more than others. These features, in other words, can help illuminate the *relative* invisibility of crimes.[37] Let us consider them in turn.

Some criminal acts stay concealed because victims remain unaware of their status or do not report matters to public authorities.[38] Jupp et al. identified four interlinked factors that enable this concealment. One, the *awareness problem.* Victims may not know that crimes have been committed against them.[39] Consider finance-related crimes. Often, victims do not realize that they have been swindled or that their accounts have been hacked. Two, *normalization process.* Some crimes hide in the open because criminal breaches of law are regarded as normal. Jupp et al. suggested that workers in hazardous industries, for example, "may see themselves as doing a difficult job rather than as victims of illicit health and safety practices."[40] Three, the *problem of ideology.* Ideological moods frame our understanding of specific acts or events as "right", "wrong", "acceptable", "legitimate" and "illegitimate."[41] These lenses can blur-even override-the force of formal law and render crimes invisible. Some acts, in other words, may qualify as crimes but not be "seen" as such. And four, the *collusion problem.* Sometimes crimes stay invisible because victims collude in

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[31] Stanley Cohen, *Human Right and Crimes of the State: The Culture of Denial, in* CRIMINOLOGICAL PERSPECTIVES: A READER (John Muncie et al., 1996).

[32] Nigel South, *Control, Crime and 'End of Century Criminology', in* POLICING FUTURES: THE POLICE, LAW ENFORCEMENT AND THE TWENTY-FIRST CENTURY 104-123 (P. Francis et al., Palgrave Macmillan UK, 1997).

[33] EA Stanko, *Making the Invisible Visible in Criminology: A Personal Journey, in* THINKING ABOUT CRIMINOLOGY (S Holdaway & P Rock eds., 1998); J Mooney, *The Hidden Figure: Domestic Violence in North London,* Centre of Criminology in Middlesex University (1993). See also Richard Quinney, *Book Review: Crimes of the Powerful: Marxism, Crime & Deviance: Crimes of the Poweiful: Marxism, Crime and Deviance, by Frank Pearce. Pluto Press,* 8(1) INSURGENT SOCIOLOGIST 83-84 (1978); John Lea, Crime & Modernity: Continuities in Left Realist Criminology (Sage Publications, 2002).

[34] Jupp et al., *supra* note 30.

[35] *id.* at 5-6.

[36] *id.*

[37] *id.*

[38] *id.* at 6-7.

[39] *id.* at 7.

[40] *id.*

[41] *id.*

the criminality.[42] Employees may accept higher wages as compensation for violating regulations on maximum working hours. Such (informal) arrangements incentivize victims to ignore criminality and avoid reporting them to authorities.

Absence of knowledge incubates absence of statistics-a key feature of invisibility. Official statistics about crimes are a critical resource. They inform political decision-making (especially, legislative responses), operational approaches to detection and enforcement, academic theorizing as to the causes of crime, and media reporting on crime.[43] But a range of factors can collude to produce silences in the data. Official statistics on crime, for example, "start their life 'on the street' - an act is perpetrated which is witnessed and interpreted by a police officer as criminal, or, as is much more likely, observed by a witness or experienced by a victim."[44] But such reports are less likely to acknowledge crimes that occur away from the public gaze and rely on victims' ability and willingness to vocalize them. Even if vocalized, crimes may still escape official reports. Complexity of acts, ingenuity of offenders, and the need for specialized investigative knowledge can fetter police efforts to acknowledge the commission of crimes.45 Surveys, especially victim surveys, can remedy this lack of data, but only to a limited extent. Such surveys rely on interviewers divulging private information and survey methodologies often focus on conventional and visible crimes, not the unconventional and invisible ones.[46]

This combined absence of knowledge and statistics engender five additional features of invisibility. First, no theory. Writing in 1999 and in the British context, Jupp et al. argued that criminological theorizing was overly concerned "with so-called conventional crimes such as street-level crimes and especially crimes committed by juveniles, and a preponderance of explanations in causal terms, especially but not exclusively in relation to individual predispositions and early socialisation within the family."[47] Historically, this approach to criminology-with links to the Home Office, the government department responsible for enforcing criminal laws, and officially sponsored research-has heavily prized statistical associations between criminal behaviors and individual attributes based on official data.[48] And that bias has reinforced the importance of visible crimes.

Second, no research. Invisible crimes do not figure prominently on research agendas. Absence of knowledge-we cannot research what we do not know about, absence of statistics-a long criminological tradition of focusing on categories of crimes and people represented in official data, and absence of theory-especially its role in defining what is problematic and therefore worthy of scrutiny have contributed to this research void.[49] Crucially, Jupp et al. underscore the difficulties of procuring data because "they involve vested interests, often interests which have the power to protect their positions."[50] These interests may deny access, enforce gatekeeping, or obfuscate records.[51] And the politics of

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[42] *id.*
[43] *id.* at 8.
[44] *id.* at 9
[45] *id.* at 10.
[46] *id.* at 10-11.
[47] *id.* at 13.
[48] *id.* at 14.
[49] *id.* at 15.
[50] *id.* at 16.
[51] *id.* at 16-17.

research funding-who gets funding to do what kind of analysis-enables invisible crimes to remain in the shadows.[52]

Third, no control. Poor regulation, control, and enforcement also facilitate criminal invisibility.[53] Often, invisible crimes entail a "close interaction of legitimate and illegitimate activities which not only influences the extent of reporting but also makes detection and control difficult."[54] In business contexts, for example, governments and law enforcement agencies, informed by wider ideological commitments, "are unable or unwilling to make clear distinctions between some forms of enterprising entrepreneurial activity and some forms of criminal activity."[55] Such crimes also encounter additional enforcement-related challenges. Often, they are hard to detect and still harder to prosecute.[56] And these concerns shape investigative agencies' approach towards invisible crimes. Highlighting these considerations, Jupp et al. said: "Not only have agencies ... found it difficult to gain successful prosecutions, but there is also the belief that because of the length and cost of such cases ensuing results are unfair and unsatisfactory for everyone - including the defendants, jurors, judges, victims and taxpayers."[57] And this unwillingness to deploy ordinary criminal procedures, cantered around issues of time and cost, enhances the invisibility of certain crimes.

Fourth, no politics. Politics determines a society's crime-related agenda: what count as crimes, the appropriate rules to prevent them, and the alacrity with which agencies pursue potential rule-breaking. But political agendas often fixate on visible, especially street-level crimes. The authors' analysis of the election manifesto of the two main political parties in Britain revealed that both were preoccupied with ideas of spatiality and visibility.[58] One manifesto, for example, emphasized the people's "right to sleep safely in their homes and walk safely on the streets."[59] Suggested solutions included installing CCTVs, targeting persistent criminals, extending tagging orders, and mandatory sentences for burglars and drug dealers.60 The manifesto made no reference to invisible crimes.

And fifth, no panic. Absence of panic about invisible crimes is linked to its absence of politics. Media reporting has a key role in stoking "moral panic."[61] But concerns that do not register sharply on the political agenda often do not become media headlines. Crucially, even when they do, as the heightened awareness around issues of corporate fraud, corrupt nexus between politicians and businesses, breaches of employment or environmental regulations demonstrate, reports couch these violations in the language of "scandals" or "sleaze," not criminality.[62] Equally, media reports often frame their accounts as "one-offs,"

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52 *id.* at 18.
53 *id.*
54 *id.*
55 *id.* at 19.
56 *id.* at 18.
57 *id.* at 19.
58 *id.* at 21.
59 *id.*
60 *id.*
61 For a general introduction, see Stanley Cohen, Folk Devils and Moral Panics (Routledge, 1972); Stanley Cohen and Jock Young, The Manufacture of News: A Reader (Sage Publications, 1973).
62 Jupp et al., *supra* note 30, 23.

the workings of bad apples rather than the outcome of systemic problems.[63] These approaches assist in deflecting moral panic over invisible crimes.

In a more recent analysis, Davies, Francis, and Wyatt thickened the original argument about invisible crimes and harms in three ways.[64] One, they identified seven sites of invisibility: the body, the home, the street, the environment, the suite, the virtual, and the state.[65] Two, they indexed three sources of power to these sites: the moral and ethical; the institutional and organisational; and the systemic.[66] Three, they underscored the contexts-socio-legal, historical, political and spatial/global-that influence these sites of invisibility and their sources of power.[67]

Consider the three sources of power. Invisible crimes and harms that stem from moral and ethical underpinnings are especially connected to the body and the home.[68] Stigmatized by ideas of "immorality," violence against sex workers and domestic violence, especially violence in same sex households, for example, still remain largely invisible to the legal system.[69] In contrast, institutional and organisational powers enable crimes pertaining to the street, the environment, and the suite to hide in plain sight.7° Racial discrimination by the police-the "disproportionate stopping and searching of ethnic minorities," the authors suggest, occurs in the open, but remains "invisible" to the legal system.[71] A range of formal (investigations into police misconduct by fellow officers) and informal rules (officers refusing to testify against their colleagues) enable such invisibility.[72] In other instances, actors may manipulate the very rules that apply to them. Consider crimes pertaining to the environment. Often, they are invisible because corporations succeed in "manipulating the legal system to adopt regimes of voluntary compliance and self-regulation."[73] Finally, crimes (or harms) in the virtual and state realms can remain invisible because they are scaffolded around forms of systemic power. By deploying discourses linked to ideas of "threats to national security," governments, for instance, can legitimize-or render invisible-widespread state-sponsored violations of the right to privacy caused by improper access to citizens' digital data.[74]

Finally, consider the three contexts of invisibility. Socio-legal contexts enable perpetrators to *actively* shape the content of legal norms to their advantage.[75] But this also entails an element of history, an element of inheritance: actors powerful enough to indulge in such manipulations have traditionally commanded high levels of immunity. Davies et al. argued that the power dynamics that enable such manipulation "may have a long

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[63] *id.*
[64] Pamela Davies et al., *Taking Invisible Crimes and Social Harms Seriously in* INVISIBLE CRIMES AND SOCIAL HARMS 1-25 (Pamela Davies et al., 2014).
[65] *id.* at 13.
[66] *id.*
[67] *id.*
[68] *id.*
[69] *id.*
[10] *id.*
[71] *id.* at 13-14
[72] *id.* at 14.
[73] *id.*
[74] *id.*
[15] *id.* at 17.

precedence and make them particularly resilient to challenge and questioning."[76] Also present is a set of political, economic, and global aspects that influence our understanding of invisible crimes and harms. These aspects command definitional control: They decide what count as crimes (and crucially, what do not), how criminal accountability is enforced, and how definitions and enforcement are legitimized.[77]

Figure 1: Mechanics of criminal invisibility

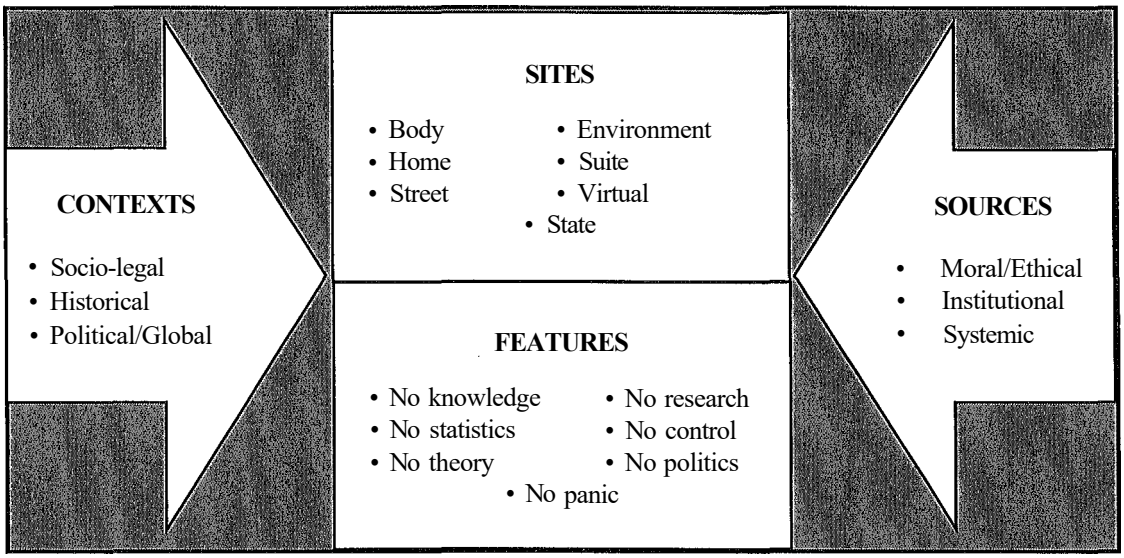

Figure 1 above diagrammatizes the four aspects central to the universe of invisible crimes: sites (where invisibility happens), features (the constitutive elements of invisibility), contexts (how invisibility is legitimized), and sources (the background conditions of power that underpin invisibility). I deploy this framework to develop an account of criminal invisibility within the Indian judiciary. Adjudicatory corruption-related crimes are invisible, I argue, because the Supreme Court has fueled an "economy of ignorance": a systemic control over internal processes and external agencies that prevent publicity and prosecution of corruption allegations. The state, its judicial branch, is the *site* of this analysis. I focus on six *features*-knowledge, statistics, control, politics, panic, research and theory-to explain how the court has constructed this economy. Notice that the Supreme Court is not simply a rule taker; instead, by deploying its power of interpretation, it has reshaped the content of legal rules to conceal corruption within the judiciary. I interrogate how this reshaping has occurred, that is, the socio-legal *context* of this invisibility, and why competing institutions-especially the

[76] *id.* at 18.
[77] *id.*

executive and the media-refuse to challenge it, that is, the institutional *sources* of power that underpin such invisibility.

3. Judicial Corruption in India: Five Steps to Invisibility

This section advances two claims. The Indian Supreme Court has rendered adjudicatory corruption within the higher judiciary invisible. Both actions, especially judicial actions, and inactions, especially from the executive, legislature, and the media have enabled this invisibility. And that has conferred judges a form of general immunity far beyond the limited scope of the Judicial (Protection) Act, 1985.[78]

3.1 Fluid discretion

Transactional judicial corruption, the buying and selling of justice, is a type of white-collar crime.[79] The first element of invisibility-no knowledge about victimization-directly flows from this. Because white-collar "offences are typically concealed within occupational and organisational routines,"[80] victims struggle to know their status as victims. In the judicial context, both location and role enable this invisibility. Consider location: If judges trade judgments for bribes, it necessarily happens away from the public gaze. Litigants who unfairly lose in court usually do not know (or realize) that judges have colluded with others to fix outcomes. And the nature of judicial power intensifies this invisibility. Because judges command wide discretion in interpreting and applying rules and precedents, they can mask-rationalize-their corruption as "novel" or "creative" approaches to adjudication.[81] Usually, victims have no way of telling judges' atypical interpretations from corrupt ones. And proving the latter is still harder.

Alleged injustice to the victims of the Bhopal Gas Tragedy, one of the world's largest industrial crimes, illustrates this difficulty of knowing.[82] On 3 December 1984, toxic plumes from the Union Carbide Corporation's (UCC) pesticide plant in Bhopal turned the city into a gas chamber. Thousands died; untold more suffered hideous lesions.83 Victims litigated multiple claims for damages, both in India and the United States.[84] In 1988, the Supreme

[78] The Judges (Protection) Act, No. 59, Acts of Parliament, 1985 (India).
[79] On the definitions of white-collar crimes, see Gilbert Geis, *The Roots and Variant Definitions of the Concept of "White-Collar Crime", in* OXFORD HANDBOOK OF WHITE-COLLAR CRIME 23-38 (Michael L. Benson et. al., 2016).
[80] Hazel Croall, *White-Collar Crime: An Overview and Discussion in* INVISIBLE CRIMES: THEIR VICTIMS AND THEIR REGULATION 29 (Pamela Davies et. al., MacMillan Press Limited, 1999).
[81] Buscaglia, *supra* note 14.
[82] For a detailed account, see Dominique Lapierre & Javier Moro, Five Past Midnight in Bhopal: The Epic Story of the World's Deadliest Industrial Disaster (Grand Central Publishing, 2002).
[83] See Ingrid Eckerman, The Bhopal Saga Causes and Consequences of the World's Largest Industrial Disaster 94-117 (Universities Press, 2005).
[84] See Arnita Dhanda & Upendra Baxi, Valiant Victims and Lethal Litigation: The Bhopal Case (NN Tripathi, 1990).

Court under CJI RS Pathak heard an appeal regarding the company's civil liability. CJI Pathak nudged the Indian government to settle with the UCC. At a hearing, he told both parties to "start with a clean slate."[85] The government, representing the victims, had originally demanded $3.3 billion in compensation, but settled for a pittance: $470 million. In exchange, CJI Pathak (along with four other judges) absolved the UCC of all civil *and* criminal charges.[86]

Within two months, CJI Pathak was elected to the International Court of Justice to fill a casual vacancy, and he resigned from the Supreme Court to relocate to the Hague.[87] Later, an Indian diplomat once ran into a UCC lawyer in Washington DC. When he congratulated the counsel on the company's win in Delhi, the lawyer revealed that they had been "fortunate to get a good fixer."[88] He did not elaborate any further.[89] If the UCC had managed to buy its verdict in India, the Bhopal victims could not have known about it. Any collusion would have happened in private, and judges could then justify their verdict as a "prudential" approach to judicial discretion.

Indeed, that is what happened. The court's original order finalizing the settlement and relieving UCC from civil and criminal liabilities offered *no* reasons at all-it only listed the outcomes.[90] Three months later, it delivered a second, short order explaining the first.[91] The court mobilized the language of urgency- "compelling need for urgent relief'-to justify its conclusion.[92] Basic questions about "the fundamentals of the law as to the liability of the Union Carbide Corporation" had not been decided, the court admitted.[93] But rather than dilate on the "excellence and niceties of legal principles,"[94] judges opted to perform their "judicial and humane" duty- "secure immediate relief to the victims."[95] So, prudence trumped principles. The victims, though, did not know if the court's prudence had also furthered the judges', especially the CJI's, private interests.

3.2 Criminal Data

A lack of knowledge precipitates a lack of statistics-the second feature of invisibility. We cannot document what we do not know about. Official data reflects this void. The Indian government's annual crimes reports, for example, do not convey data about corruption-

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[85] Edward Gargan, *Settlement on Bhopal Is Accepted,* N.Y. TIMES (Oct. 4, 1991), https://www.nytimes.com/1991/10/04/business/settlement-on-bhopal-is-accepted.html.

[86] Union Carbide Corporation v. Union oflndia, (1989) 1 S.C.C. 674; See also Union Carbide Corporation v. Union of India, (1989) 3 S.C.C. 38. The Supreme Court reinstated the criminal charges some years later, see Union Carbide Corporation v. Union oflndia, (1991) 4 S.C.C. 584, ifl03 (Ranganath Misra CJI).

[87] J. Venkatesan, *After Two Decades Wait, India Looldng to Get Slot in /CJ,* THE HINDU (Jun. 19, 2011, 01:50 AM), https://www.thehindu.com/news/national/after-two-decades-wait-india-looking-to-get-slot-in-icj/article2116222.ece.

[88] Biswanath Sen, Six Decades of Law, Politics and Diplomacy 289-90 (Universal Law Publishing, 2010).

[89] *id.*

[90] Union Carbide Corporation v. Union oflndia, (1989) 1 S.C.C. 674.

[91] Union Carbide Corporation v Union oflndia, (1989) 3 S.C.C. 38.

[92] *id.* at if7.

[93] *id.*

[94] *id.*

[95] *id.*

related charges (or convictions) against members of the judiciary.[96] Filling this statistical hole requires victim surveys, whistle-blowing from the inside, and investigative reporting from the outside. But such surveys suffer from multiple limitations: They require victims who are aware of their status and are willing to vocalize their victimization. In the Indian context, these surveys encounter another hurdle: the sword of the law of contempt.[97]

In 2005, Transparency International India (TII) published a study on corruption conducted by the Delhi-based Centre for Media Studies (CMS).[98] The Centre surveyed a representative sample of Indian households about their corruption-related experiences of- and perceptions about-11 public services in India including the lower judiciary.[99] Based on a composite index, the study concluded that the police, land administration, and the lower judiciary were India's three most corrupt public departments.[100] On the lower judiciary, nationally, 47 per cent of respondents admitted to a "direct experience of bribing" while 81 per cent respondents held a "perception that the department was corrupt."[101] These respondents cumulatively paid a sum of rupees 2,630 crore (approximately USO 584.5 million) to officials linked to the lower judiciary.[102] This included, among other things, bribes for getting cases listed for hearing or securing favorable verdicts.[103] Region-wise, the lower judiciary in the region of Jammu & Kashmir fared the worst: 96 per cent of respondents admitted to paying bribes and 92 per cent held a corrupt perception about it.[104] This was a valuable survey, one that exposed a systemic culture of transactional corruption within the lower judiciary in India.

In May 2006, *Greater Kashmir* a local broadsheet, published two essays based on the CMS study highlighting corruption in that region's lower courts.[105] A magistrate, a member of the lower judiciary, claiming that the pieces were "libelous" and had had the effect of "scandalising the whole system of administration of justice," directed the author, the newspaper, CMS, and TII to explain why action should not be initiated under the relevant contempt law.[106] TII and CMS challenged the notice in the Supreme Court. Only publications that targeted *specific* judges or courts with an intention to scandalize the judiciary, counsel insisted, could invite the court's contemptjurisdiction.[107] But the CMS-TII study did not allege wrongdoing by "any individual Judge or court."[108] Instead, it was a "general study on

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96 See e.g. National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2020: Statistics,* Vol I (2021).

97 The Constitution grants the Supreme Court and the High Courts the power to punish for contempt, see INDIA CONST. art. 129,215; The Contempt of Courts Act, No. 70, Acts of Parliament, 1971 (India) (enumerates the grounds on which courts may hold persons in civil or criminal contempt).

98 Centre for Media Studies, *India Corruption Study to Improve Governance* (Transparency India International, 2005).

99 *id.* at 3.

100 *id.* at 8.

101 *id.* at 9.

102 *id.* at 12.

103 *id.* at 101.

104 *id.* at 137.

105 Transparency International India v. State of Jammu & Kashmir, (2017) 4 S.C.C. 748, 15.

106 *id.* at 16.

107 *id.* at 118.

108 *id.*

governance"[109] that only contained "general allegations"[110] of corruption against select public services in India.

During the hearings, some judges reportedly sympathized with this argument. One judge posed: "How do you understand society? You raise questions; ask people in the society; record their views and then compile it to see how people think ... what is their perception of a particular institution or an issue. Where will research go if this is contempt?"[111] But the court's verdict, its written judgment, recoiled from this stand. Instead, the bench concluded that "contemptuous actions" may be aimed at "more than one court or a large number of courts, all at once."[112] "Where the contemptuous action is of a general nature, and is not aimed at specific Judges or Courts," the bench added, "any one of such Judges or Courts, which perceives that the same is aimed at him" may approach a High Court to initiate contempt proceedings.[113] The interpretation has effectively criminalized statistics about corruption within the Indian judiciary.

Surveys can identify general patterns of-or perceptions about-corruption in the judicial system. In contrast, investigative reporting can unearth *specific* instances of wrongdoings. But the threat of contempt also imperils this form of data gathering. In 2006, CJI YS Sabharwal faced probing questions when he shepherded a decades-old Public Interest Litigation into a drive against unlawful commercial establishments in Delhi.[114] He ordered the Municipal Corporation of Delhi to seal commercial stores that had been functioning, in some cases for decades, out of residential areas in violation of the city's old Master Plan.[115] Immediately, demand for shopping mall space rose in the capital city. This abrupt market adjustment allegedly profited the judge's sons.[116] Reporters from *Mid Day* unearthed details of a dormant real estate firm that had suddenly stirred into fiscal energy. In the journalists' telling, that firm had deep ties to the CJI's sons and it materially profited from his decisions.[117] Their investigation also revealed details of a premium plot of land in Delhi that the judge's sons had bought with money that lacked any paper trail.[118]

This careful piece of investigative reporting alleged adjudicatory corruption in the Supreme Court. If true, it implied that CJI Sabharwal had misused his office to profit his family. But the Delhi High Court, instead of probing the claims, held the publisher, two editors

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[109] *id.* at ,rL

[110] *id.* at ,r18.

[111] Utkarsh Anand, *Reporting public views on judicial corruption isn't contempt:* SC, THE INDIAN EXPRESS (Feb. 22, 2017, 2:15 AM), https://indianexpress.com/article/india/reporting-public-views-on-judicial-corruption-isnt-contempt-sc/

[112] Transparency International India v. State of Jammu & Kashmir, (2017) 4 S.C.C. 748, ,r18.

[113] *id.*

[114] For an account of the controversy, see Shanti Bhushan, Courting Destiny: A Memoir, Ch. 56 (Penguin Books Limited, 2008); See also Arundhati Roy, Listening to Grasshoppers: Field Notes on Democracy 120-127 (Haymarket Books, 2010); See also Arundhati Roy, *Scandal In The Palace,* COUNTER CURRENTS (Sep. 25, 2007), https://www.countercurrents.org/roy250907.htm.

[115] See MC Mehta v. Union of India, (2006) 3 S.C.C. 399; MC Mehta v. Union of India, (2006) 3 S.C.C. 432.

[116] Sudhanshu Ranjan, Justice versus Judiciary: Justice Enthroned or Entangled in India? 108 (OUP India, 2019).

[117] See also Vitusha Oberoi & MK Tayal, *Sabharwals' Talk Shop,* Mm-DAY (Jun. 26, 2007) http://bp2.blogger.com/_eUfQsEAg4uY/Rvd2yp0brDI/AAAAAAAAACI/eErt44-6uME/s1600-h/injustice+14.jpg.

[118] *id.*

and a cartoonist in contempt for their reporting and contribution.[119] The High Court concluded that the revelations, even though tied only to a former CJI, had tarnished "the image of the Supreme Court" and eroded its confidence among the general public.[120] The defendants received a four-month prison sentence.[121] A decade later, the Supreme Court overturned the High Court's verdict, but only on a point of jurisdiction.[122] CJI TS Thakur concluded that High Courts cannot hold persons in contempt for scandalizing the Supreme Court.[123] Only the Supreme Court, under Article 129, can deal with cases of contempt that undermine *its* image.[124] Judges, in other words, did not exclude investigative reporting that unearths evidence of judicial corruption from the scope of the law of contempt. Rather, they prevented High Courts from taking cognizance of such matters. Consequently, the two main sources of data regarding judicial corruption-surveys and investigative reporting-are fraught with criminal consequences in India.

3.3 Prosecutorial immunity

Criminal invisibility partly rests on how governments and agencies regulate and enforce criminal laws. In some contexts, such laws are difficult to enforce: the boundary between legitimate and illegitimate activities may be blurred; detection may be difficult; evidence may not be forthcoming. These considerations are especially relevant in the judicial context. As explained earlier, because judges command wide discretion in interpreting and applying rules, without direct evidence of bribes or (undue) influence, corruption allegations about them selling justice are difficult to sustain. In the Indian context, additional institutional challenges are in play: The Supreme Court has monopolized the investigative process and signaled its strong reluctance to deploy criminal laws to hold judges accountable.

These challenges emerged in two stages. First, with respect to *allegations* of corruption. In February 1995, Bombay High Court lawyers began mouthing suspicions about a lavish book contract involving AM Bhattacharya, the Chief Justice of that court.[125] In 1985, Judge Bhattacharya had authored a book on Muslim law and the Indian Constitution.[126] After a decade of slow sales, it labored into a second edition.[127] Then, suddenly his authorial fortunes soared. In September 1994, an obscure London-based Roebuck Publishing paid him US$80,000 to acquire the monograph's foreign rights-an utterly disproportionate sum

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[119] Court on Its Own Motion v. MK Tayal, (2007) S.C.C. Online Del 1243 (India).
[120] *id.* at if5.
[121] Abhinav Garg, *Journalists get 4-month jail for court contempt,* THE TIMES OF INDIA (Sep. 22, 2007, 01:05 AM), https://timesofindia.indiatimes.com/india/joumalists-get-4-month-jail-for-court-contempt/articleshow/2391734.ems.
[122] Vitusah Oberoi v. Court on Its Own Motion, (2017) 2 S.C.C. 314.
[123] *id.* at ,r11.
[124] INDIA CONST. art. 129 ("The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.")
[125] Saurav Sen & Lekha Rattanani, *Lucrative Offer for Book on Law puts Bombay Chief Justice in the Dock,* INDIA TODAY (Jun. 19, 2013, 10:49 AM), https://www.indiatoday.in/magazine/indiascope/story/19950315-lucrative-offer-for-book-on-law-puts-bombay-chief-justice-in-the-dock-807034-1995-03-15.
[126] A. M. Bhattacharya, Muslim Law and the Constitution (Eastern Law House 1985).
[127] *id.* 2nd ed., 1994.

for a slim volume of dense legal analysis.[128] The company also had no history of publishing legal research.[129] Instead, its CEO, Sachdev Musafir, the son of an Indian politician, dabbled in lubricants, generators, and engine spares.[130] Whispers began swirling about Judge Bhattacharya's confidant, Parasmal Lodha, and his alleged influence on the chief justice.[131] Asked to explain the outlandish royalty, the publisher mentioned, but did not identify, an Iranian client with a bulk order.[132] But very little about this commercial threesome-a British lubricant trader marketing an Indian book to a classified Iranian buyer-made sense. At least not to the members of the Maharashtra and Goa Bar Council; they passed a resolution demanding the judge's resignation.[133] The Bombay Bar Association followed suit.

In C *Ravichandran Iyer v. Justice AM Bhattacharjee,*[134] the Supreme Court considered the propriety of lawyers "coercing" a judge into vacating his office.[135] The petitioner argued that any "forced resignation" induced by applying "collective pressure" on a judge was "not only unconstitutional but also deleterious to the independence of the judiciary."[136] The Indian Constitution's Article 121 prohibits any discussions "in Parliament" about judges' conduct "in the discharge of [their] duties" except when handling impeachment motions.[137] The provision, in other words, forbids the legislature from dwelling on judges' official performance: Any other forum is fair game. But the Supreme Court reconstructed this bar on *legislative* discussions into a panoptic prohibition. No "forum or group of individuals or associations, statutory or otherwise," Ramaswamy J. held, could "investigate or enquire into or discuss the conduct of a Judge or the performance of his duties."[138] This bar, he added, also applied to the investigative arms under the CBI, the Reserve Bank of India, and government ministries.[139] Crucially, the new bar applied to judges' official performance *and* their "off court" behaviors.[140]

Instead, the Supreme Court invented an "in-house procedure" to process allegations of judicial wrongdoing.[141] Bar associations must gather "specific, authentic and acceptable material" that demonstrates wrongful conduct.[142] They must present the evidence to the

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[128] Smruti Koppikar, *Bar Members Demand Inquiry into Bombay HC Chief Justice Bhattacharjee 's Book Deal,* INDIA TODAY (Jun. 20, 2013, 12:05 PM), https://www.indiatoday.in/magazine/indiascope/story/19950331-bar-members-demand-inquiry-into-bombay-hc-chief-juctice-bhattachmj ees-book-deal-807057-199 5-03-31.
[129] *id.*
Bo *id.*
[131] Koppikar, *supra* note 128.
[132] *id.*
[133] *id.*
[134] C Ravichandran Iyer v. Justice AM Bhattacharjee, (1995) 5 S.C.C. 457.
[135] *id.* at iJ1.
[136] *id.* at iJ3.
[137] INDIA CONST. art. 121.
[138] C Ravichandran Iyer v. Justice AM Bhattacharjee, (1995) 5 S.C.C. 457, iJ20.
[139] *id.*
[140] *id.*
[141] Supreme Court oflndia, *Report of the Committee on In-House Procedure 1-10,* available at https://main.sci.gov.in/pdf/cir/2014-12-31_1420006239.pdf; For a summary, see Tony George Puthucherril, *'Belling the Cat': Judicial Discipline in India, in* DISCIPLINING JUDGES: CONTEMPORARY CHALLENGES AND CONTROVERSIES 170-171 (Richard Devlin & Sheila Wildeman eds., 2021).
[142] *id.* at iJ40.

judge "in camera."[143] Or they may "approach the Chief Justice of that High Court and apprise him of the situation."[144] If allegations are against any High Court chief justice, as it happened with Chief Justice Bhattacharya, lawyers must approach the CJI, the "head of the judiciary of the country."[145] And once the CJI seizes the matter, "the Bar should suspend all further actions."[146] The CJI, Ramaswamy J. concluded, may tender advice, initiate action, or close the matter, but once he decides, "the matter should rest at that."[147] This self-regulatory improvisation deactivated the investigative agencies and rendered allegations of judicial wrongdoing invisible to the latter. The agencies could not see any charges, much less investigate them; that power stood transferred to the CJI. And any breach of this innovation, the court reminded bar associations, could invite charges of contempt.[148] Curiously, until 2014, the Supreme Court kept the precise details of these in-house procedures confidential.[149]

But the court has lengthened the shadows even further by declining to publicize reports of in-house probes or the in-house procedure itself. In *Indira Jaising v Registrar General, Supreme Court of India,*[150] a senior counsel petitioned the court to release its in-house findings against a group of High Court judges.[151] The court declined. Publicizing the findings, CJI Balakrishnan concluded, would "only lead to more harm than good to the institution."[152] Such reports only contain "information from peer judges of those who are accused."[153] They are "wholly confidential,"[154] "purely preliminary in nature, ad hoe and not final."[155] And they do no more than assist CJIs in assessing the veracity of allegations.[156] With no reports available, government agencies, lawyers, and the public cannot tell if CJIs are justified in closing files against judges. This refusal to share enquiry reports (or procedures) illustrates the "no statistics" element of invisible crimes and how discrete elements- "no statistics" and "no control" in this instance-reinforce one another.

Three years before its *Iyer* verdict, the Supreme Court had also monopolized the state's *prosecutorial* powers against judges. In 1976, the CBI had booked K Veeraswami, the Chief Justice of the Madras High Court, on grounds of corruption under the Prevention of Corruption Act, 1947.[157] A First Information Report narrated how the judge's assets had outpaced his lawful sources of income, and that gap surged after he became the Chief Justice.[158] In December 1977, the CBI filed a chargesheet and a trial judge took cognizance

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143 *id.*
144 *id.*
145 *id.*
146 *id.*
141 *id.*
148 See also Brahma Prakash Sharma and Others v. State ofUttar Pradesh, A.I.R. 1954 S.C. 10.
149 Additional District and Sessions Judge 'X' v. Registrar General, High Court of Madhya Pradesh, (2015) 4 S.C.C. 91, if55.4.
150 Indira Jaising v Registrar General, Supreme Court oflndia, 2003 5 S.C.C. 494.
151 *id.* at ,r1.
152 *id.* at if3.
153 *id.*
154 *id.*
155 *id.*
156 *id.*
157 K Veeraswami v. Union oflndia, (1991) 3 S.C.C. 655, ifl6-17 (Jagannatha Shetty J.).
158 *id.*

of the matter. Judge Veeraswami, who had retired by then, approached the Supreme Court asserting that the trial was unconstitutional and void.[159] The court dilated on two issues. First: are judges "public servants" within the provisions of the corruption law? Second: is the government of India the "competent authority" to sanction prosecution against High Court (or Supreme Court) judges?

The Penal Code, 1860 enumerates a list of officeholders who qualify as "public servants" in India.[160] It includes "Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions."[161] In 1964, Parliament amended the code after a committee suggested expanding the definition of judges to all persons discharging any kind of adjudicatory functions under the law.[162] In *Veeraswami,* Judge Shetty, writing for the majority, concluded that the Penal Code (and its parliamentary history) offered a categorical answer to the first question: "The expression 'Every judge' ... indicates *all Judges* and all Judges in *all courts.* It is a general term [that ... cannot] be narrowly construed."[163]

The second issue proved trickier. Under the 1947 Act, a public servant could be prosecuted only with the sanction of the "authority competent to remove him from his office."[164] In India, High Court and Supreme Court judges stand removed from office "by an order of the President" after both houses of Parliament impeach them on "the ground of proved misbehaviour or incapacity."[165] The power to remove them, in other words, vests with Parliament: that is, the President, the Upper House, and the Lower House *together.*[166] Shetty J. held that this multi-member body "could not have been intended to be the sanctioning authority" under the anti-corruption legislation.[167] Instead, he emphasized the president's role. Because removals take effect "by an order of the President," this authority, he concluded, was competent to sanction prosecution of appellate judges.[168] But in India's parliamentary system, presidents, ordinarily, act on the aid and advice of the council of ministers, the *political* executive.[169] This bothered Shetty J. "The executive may misuse the power by interfering with the judiciary,"[170] an apprehension, he concluded, was "not unfounded or unjustified."[171] So he entrusted the CJI, the person "primarily concerned with the integrity and impartiality of the judiciary," with the power to grant sanctions.[172] Authorities, Shetty J. commanded, shall not register criminal cases or commence prosecution against High Court or Supreme Court judges without the "advice of the Chief Justice of India."[173] In

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[159] K Veeraswami v. Union of India, (1991) 3 S.C.C. 655, 113 (Jagannatha Shetty J.).
[160] The Indian Penal Code, No. 45, Acts of Parliament, 1860, §21.
[161] *id.* §21, cl. 3
[162] The Anti-Corruption Act, No. 40, Acts of Parliament, 1964, §2 (India).
[163] K Veeraswami v. Union of India, (1991) 3 S.C.C. 655, 135 (Jagannatha Shetty J.) (emphasis added).
[164] The Prevention of Corruption Act, No. 2, Acts of Parliament, 1947, §6(1) (c) (India).
[165] INDIA CONST. art. 124(4); See also Judicial (Inquiry) Act, No. 51, Acts of Parliament, 1968.
[166] INDIA CONST. art. 79.
[167] K Veeraswami v. Union of India, (1991) 3 S.C.C. 655, 143 (Jagannatha Shetty J.).
[168] *id.* at 152.
[169] INDIA CONST. art. 74.
[170] K Veeraswami v. Union of India, (1991) 3 S.C.C. 655, 152 (Jagannatha Shetty J.).
[171] *id.* at 159.
[172] *id.* at 160.
[173] *id.*

Veeraswami's case, a cautious government had consulted with the CJI before prosecuting him.[174] The Supreme Court hoisted that courtesy into a constitutional canon.

Cumulatively, *Iyer, Veeraswami,* and *Jaising* have reshaped the field of criminal procedures for the higher judiciary in India. State agencies, by themselves, can no longer register cases, investigate allegations, or prosecute errant judges; the CJI's approval is mandatory at each step. Outwardly, all High Courts now house police stations within their premises: They serve as nodal points for recording complaints against judges and officials.[175] But this rarely-used bureaucracy has added an extra layer of invisibility, in effect, concealing corruption-related crimes within the judiciary from all outsiders.

3.4 Political Impunity

The control (or regulatory) aspects of criminal invisibility have abetted a culture of impunity. In *Veeraswami,* Shetty J. insisted that "no law [provides] protection for Judges from Criminal prosecution."[176] Perhaps so. But in practice, judges *are* protected from prosecution, and that leads us to the "no politics" aspects of the analysis. In India, the judiciary by its actions and the legislature and the executive by their inactions forbid judicial wrongdoing from galvanizing into an issue of public salience. And avoiding-even preventing-criminal accountability is a key strand of this strategy.

In *Iyer,* the petitioner had approached the Supreme Court against Judge Bhattacharya (respondent 1), the local bar council and association (respondents 2-4), constitutional authorities (respondents 5-7), and various investigative agencies including the CBI (respondents 8-10).[177] He sought a direction to the CBI to probe the allegations against the judge.[178] The Supreme Court, however, only issued notices to respondents 2-4. By the time the matter was heard, Bhattacharya had resigned as the Bombay High Court as its Chief Justice. And the Supreme Court did not summon him; it evinced no interest in identifying the facts behind his suspiciously large book royalty. Instead, Ramaswamy J. noted that the High Court Chief Justice "had already demitted office" and commended that as a "precedent" in future cases.[179]

The Supreme Court has wrenched judges from the sovereignty of criminal law and procedure in India. The "do not investigate or prosecute without the CJI's approval" rule has abbreviated into a "do not prosecute" pact. Instead, resignations have become the only form of accountability. But not all tainted judges resign, and the Supreme Court, it appears, has adjusted its expectations accordingly.

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[174] *id.* at 59.

[175] For a description of the methods different High Courts in India use to investigate corruption allegations against judges, see Shivaraj S. Huchhanavar, *Regulatory mechanisms combating judicial corruption and misconduct in India: a critical analysis,* 4(1) IND. L. REV. 47-84 (2020).

[176] K Veeraswami v. Union oflndia, (1991) 3 S.C.C. 655, 58 (Jagannatha Shetty J.).

[177] *id.* at 3.

[11s] *id.*

[179] C Ravichandran Iyer v. Justice AM Bhattacharjee, (1995) 5 S.C.C. 457, 42.

Katju J., whose testimony about judicial corruption I discussed earlier, has described his experience of (informally) probing a High Court judge.[180] In 2011, CJI SH Kapadia received several complaints against a High Court judge, and he requested Katju J., his colleague in the Supreme Court, to look into them. A probe revealed a list of agents who were allegedly colluding with that judge to accept bribes from litigants. Katju J. forwarded the details to the CJI and, in his telling, India's intelligence agencies later confirmed his assessment.[181] Despite this evidence, the CJI did not recommend any action. Instead, the High Court judge continued in office and retired in due course.[182] This happened, Katju J. says, because disclosing corruption within the judiciary, some have come to believe, is "unwise and even dangerous."[183]

Governments and parliaments have internalized this judicial will to invisibility. The *Iyer* and *Veeraswami* rules only apply to *sitting* justices; agencies do not require approval to prosecute retired judges. In *Veeraswami,* Shetty J. underscored numerous precedents on this point.[184] But governments have extended the "do not prosecute" pact to retired judges, too. The case of PD Dinakaran, the one-time Karnataka High Court Chief Justice, is a good example. While in office, he faced allegations of criminal misconduct: holding assets beyond his verified sources of income.[185] Threatened with impeachment, he resigned. Immediately, his alleged corruption was forgotten; no agency probed him again.[186] CJI Sabharwal, the subject of the *Mid Day* investigation, enjoyed a similar fate. After he retired in 2007, the Delhi-based Center for Judicial Accountability and Judicial Reform requested the CBI to lodge a First Information Report and investigate the judge (and his family).[187] His decisions had directly benefitted his sons and their business partners, and that, the Center alleged, "amounted to offences."[188] Again, the CBI ignored the evidence.

Parliament, too, is apathetic about the judiciary's creeping monopoly over probes into-or prosecutions of-errant judges. This apathy is an exception. In others matters, most notably on judicial appointments, Parliament *has* challenged the Supreme Court's approach to constitutional interpretation. In 1994,[189] and again in 1998,[190] the Supreme Court, for example, conferred "primacy" on the CJI and a small cohort of puisne judges on judicial

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[180] The Print Team, *Justice Markandey Katju on why shoving corruption by judges under the carpet won't help,* THE PRINT, (Mar. 6, 2018, 07:02 PM), https://theprint.in/pageturner/excerpt/shoving-corruption-by-judges-under-the-carpet-wont-help-justice-katju/39641/.

[181] *id.*

[182] *id.*

[183] *id.*

[184] K Veeraswami v. Union of India, (1991) 3 S.C.C. 655, 662 (Jagannatha Shetty J.); See also CR Bansi v. State of Maharashtra, (1970) 3 S.C.C. 537; KS Dhamadatan v. Central Government, (1979) 4 S.C.C. 204 (India); AR Antulay v. RS Nayak, (1984) 2 S.C.C. 183 (India).

[185] Ranjan, *supra* note 116, 97-98.

[186] See Prashant Bhushan, *The Dinakaran Imbroglio: Appointments and Complaints against Judges,* 44 ECON. & POL. WKLY 10-12 (2009). Outlook, *Justice P D Dinakaran Resigns as Sikkim Chief Justice,* OUTLOOK (Jul. 29, 2011, 8:28 PM), https://www.outlookindia.com/newswire/story/justice-p-d-dinakaran-resigns-as-sikkim-chief-justice/729420.

[187] Nagendar Sharma, *Jurists go After Sabharwal,* HINDUSTAN TIMES (Nov. 29, 2007, 2:25 AM), https://www.hindustantimes.com/india/jurists-go-after-sabharwal/story-wXZqXIDEqzanTWv89jxCsK.htm1.

[188] *id.*

[189] Advocates-on-Record Ass'n v. Union of India, A.I.R. 1994 S.C. 268 (India).

[190] *In re: Appointment and Transfer of Judges,* A.I.R. 1999 S.C. 1 (India).

appointments.[191] Since then, India has had a judiciary-led method of judicial appointments. In 2014, the Narendra Modi government and the opposition benches united to amend the Constitution and partially reclaim the power to appoint superior judges.[192] (In 2016, the Supreme Court invalidated that constitutional amendment.[193]) MPs, though, have rarely displayed an analogous will to challenge the court on matters of crime and punishment within the judiciary. Instead, they have alchemized the Supreme Court's "do not prosecute" pact into a "do not discuss" agenda. Since May 1996, only on two occasions has the lower house discussed "judicial corruption" or "corruption in the judiciary" in India: 19 February 2009[194] and 28 December 2011.[195] And this parliamentary reticence, too, has preempted the issue of judicial corruption from galvanizing into a topic of political (or electoral) salience.

3.5 Self-censorship: Media and Academia

Styles of media reporting are critical in stoking-or tempering-moral panic about invisible crimes. Often, crimes hide in the open because the media is reluctant to report on them. Legacy media houses especially remain diffident about reporting corruption within the judiciary.[196] Concerns about contempt I discussed in the context of surveys and investigative reporting equally apply to day-to-day reporting.[197] But the media has also internalized the "ignore the evidence" and "do not discuss" agendas of the executive and the legislature respectively. These agendas enable the media to perform what Stanley Cohen, in the context of human rights violations, once called the *"sociology of denial:* how information is known but its implications are not acknowledged."[198]

Consider the case of IM Quddusi, a retired High Court judge, the CBI arrested in September 2017 on a conspiracy charge.[199] The government had banned a medical college

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[191] For analysis of these and other appointment-related decisions, see Arghya Sengupta, Independence and Accountability of the Higher Indian Judiciary 13-62 (Oxford University Press, 2019).

[192] The Constitution (Ninety-Ninth Amendment) Act, 2014 (India); National Judicial Appointments Commission Act, No. 40, Acts of Parliament, 2014 (India).

[193] Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 4 S.C.C. 1 (India). For analysis of the decision, see Rehan Abeyratne, *Upholding Judicial Supremacy in India: The NJAC Judgment in Comparative Perspective,* 49 GEO WASH. INT'L L. REV. 569 (2017); Madhav Khosla, *Judicial Accountability and Independence, in* RE-FORMING INDIA: THE NATION TODAY (Niraja Gopal Jayal ed., 2019}.

[194] Lok Sabha Debates, *Fourteenth Series,* Vol. XXXVII, 373-422 (Feb. 19, 2009).

[195] Lok Sabha Debates, *Fifteenth Series,* Vol. XXII, 7-124 (Dec. 28, 2011).

[196] On legacy media, see Doris Graber and Gregory Holyk, *The News Industry, in* THE OXFORD HANDBOOK OF AMERICAN PUBLIC OPINION AND THE MEDIA 89-104 (Robert Shapiro & Lawrence Jacob eds., 2011).

[197] Samanwaya Rautray, *Supreme Court to examine if reference to alleged corruption in judiciary would per se amount to contempt,* ECONOMIC TIMES (Aug. 11, 2020, 08:07 AM), https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-to-examine-if-reference-to-alleged-corruption-in-judiciary-would-per-se-amount-to-contempt/articleshow/77475245.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

[198] Stanley Cohen, *Human Rights and Crimes of the State: The Culture of Denial,* 26(2) J. OF CRIMINOLOGY 97-115, 98 (1996) (emphasis added).

[199] Online Desk, *CBI books former Orissa HC judge IM Quddusi in corruption case,* THE NEW INDIAN EXPRESS (Sep. 21, 2017, 12:42 AM), https://www.newindianexpress.com/nation/2017/sep/20/cbi-books-former-orissa-hc-judge-im-quddusi-in-corruption-case-1660135--1.html.

from recruiting new students because of its poor facilities and regulatory noncompliance. The college, run by Prasad Education Trust, wanted to get the ban reversed. Through middlemen, it approached Quddusi, by then a retired judge, who promised to "get the matter settled in the Supreme Court through [his] contacts."[200] Phone intercepts recorded Quddusi and his alleged collaborators discussing bribing a certain "captain" to secure a favorable order from the Supreme Court.[201] "Our captain right now has influence all over India and he can get anything done," one person was overheard bragging.[202] A separate transcript had a person saying: "The work will be done not just 100% but 500% but ... first money has to be paid," adding that the captain can get any work done over the next "14-15 months."[203]

Only Supreme Court judges, indeed, only CJIs, command influence "all over India," and their tenures are commonly indicated in months. The media, especially the legacy media, widely reported the transcripts, but did not chase the obvious: Who was the "captain" who, over the next "14-15 months," could guarantee outcomes of cases "all over India"? Media outlets, to borrow Cohen, had crucial bits of information but avoided acknowledging their implications.[204] What should have induced moral panic about alleged corruption in the Supreme Court instead remained a hushed affair.[205] And here, too, the threat of the law of contempt of courts holds.[206]

The taboo attitude towards corruption within the judiciary has also slipped into Indian research institutions. I can attest to this from experience. In 2016, the director at a Delhi-based institution for graduate legal studies with close ties to the Supreme Court invited me to present "any of your current works in progress" at one of their weekly seminars. I offered to present the findings of an empirical piece of research on corruption in the Supreme Court.[207] Suddenly, slots, I was informed, were no longer available to present my research. In 2017, my co-authors and I accepted an invitation to present that same paper at a research-intensive private university in the National Capital Region in India. The event brochure, we realized on the day of the conference, had purposefully abbreviated the title of our paper-Jobs for Justice(s): Corruption in the Supreme Court of India-and omitted the

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[200] *id.*

[201] Neeraj Chauhan, *Ex-judge Quddusi, associate spoke using code words: CBI,* HINDUSTAN TIMES (Jan. 10, 2020, 8:28 AM) https://www.hindustantimes.com/india-news/ex-judge-quddusi-associate-spoke-using-code-words-cbi/sto1y-9bXaRZAYrbgRyQMUJbETjJ.html

[202] *id.*

[203] *id.*

[204] India also has an online news and analysis ecosystem, and its ethos are (somewhat) distinct from the legacy media houses. This media tends to be bolder in its analysis. On the Quddusi affair and its alleged connection to the Supreme Court, see Prashant Bhushan & Cheryl D'souza, *The Curious Saga of How the Chief Justice of India Handled Two Medical College Cases,* THE WIRE (Feb. 2, 2018), https://thewire.in/health/curious-saga-chief-justice-india-handled-two-medical-college-cases.

[205] Apurva Vishwanath, *What happens when corruption scandals hit the Supreme Court? Nothing,* THE PRINT (Nov. 9, 2018, 4: 12 PM), https://theprint.in/opinion/off-court/what-happens-when-corruption-scandals-hit-the-supreme-court-nothing/147528/.

[206] The Supreme Court has agreed to analyze when corruption allegations against judges may be made public, see Legal Correspondent, SC *to examine when corruption allegations against judiciary can be made public,* THE HINDU (Aug. 17, 2020, 15:20 PM), https://www.thehindu.com/news/national/sc-to-examine-when-com1ption-al1egations-against-judiciary-can-be-made-public/article3 23 74297 .ece.

[207] I had proposed to present a worldng version of a co-authored draft. Madhav Aney, Shubhanlmr Dam and Giovanni Ko, *Jobs for Justice(s): Corruption in the Supreme Court of India* 64(3) J. L. & ECON. 479 (2021).

"offending" part. As the session began, organizers informed speakers and the audience that all recording devices had been deactivated to enable a "frank exchange of ideas." Soon after, we accepted another invitation to present the paper at one of Delhi's leading economics schools. A day before the event, staff contacted us to request an alternative, less "troublesome," title for the paper.

This reluctance to conduct-or engage with-research that probes corruption within the judiciary is especially pronounced in Indian *law* schools. Their hesitance to support research on judicial corruption rivals the media's unease about reporting on their findings. The administrative design of these institutions can partly explain this. All National Law Universities in India have Supreme Court and High Court judges on their executive, academic, or finance councils.[208] They also act as ex-officio chancellors of these universities.[209] And judges are intimately involved in appointing vice-chancellors and, at times, academic staff too. Unsurprisingly, these law schools have not-and are unlikely to-become sites for critical research on judicial corruption in India.[210]

The current state of scholarship attests to this. There is a general lack of scholarly work in this field,[211] but even when authors engage with the theme of judicial corruption, they demonstrate little desire to go beyond the obvious.[212] Once again, fear of breaching the law on contempt may explain this reluctance. In early 2011, Hans Dembowski, a German sociologist, published an ethnographic account of environmental litigation in India, especially in the Calcutta High Court, and its impact on reshaping the public sphere.[213] One chapter introduced a "thick description" of the day-to-day operations of the High Court[214] and documented its "reputation [for] inefficiency and corruption."[215] In an unusual ethnographic move, the author named allegedly corrupt judges on the bench.[216] Predictably, the author, the publisher, Oxford University Press (OUP), and other defendants were slapped with a contempt of court petition.[217] OUP responded with an unconditional apology and red-lighted

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[208] National Law School of India University, Bangalore *Governing Bodies,* available at https://www.nls.ac.in/about/governing-bodies/; NALSAR University of Law, *Governing Bodies,* available at https://www.nalsar.ac.in/governing-bodies. The WB National University of Juridical of Juridical Sciences, Kolkata, *Governing Bodies,* available at https://www.nujs.edu/nujs-governing-bodies.html.

[209] See e.g. The National Law School oflndia Act, No. 22, 1986, §7(1); The West Bengal National University ofJuridical Sciences Act, No. 9, 1999, §7(1).

[210] On the linl(between "knowledge institutions" and constitutionalism, see Vicki Jackson, Knowledge Institutions in Constitutional Democracies: Preliminary Reflections, 7 CAN. J. COMP. & CoN'T. L 156-221 (2021).

[211] Studies on corruption usually avoid issues ofjudicial corruption, see e.g. Arvind Verma & Ramesh Sharma, Combating Corruption in India (Cambridge University Press, 2019); Stuart Corbridge, *Corruption in India, in* ROUTLEDGE HANDBOOK OF INDIAN POLITICS 222-229 (Atul Kohli & Prema Singh eds., 2012).

[212] See e.g. C Raj Kumar, Corruption and Human Rights in India: Comparative Perspectives on Transparency and Good Governance 118-121 (Oxford University Press, 2011).

[213] Hans Dembowsi, Taking the State to Court: Public Interest Litigation and The Public Sphere In Metropolitan India (Oxford University Press, 2001).

[214] *id.* at 182-206.

[215] *id.* at 186.

[216] *id.* at 188-192.

[217] Hans Dembowski & Rudiger Korff, *Stealth Censorship: How the Calcutta High Court is Suppressing a Sociological Book on Public Interest Litigation,* 7 SOCIO-LEGAL REV. 71, 72-73 (2011).

the book's domestic and international distribution.[218] Except for a few copies sold soon after its release, it remains unavailable in university libraries and not fully accessible to the academic world or the larger public.[219] Meanwhile, more than two decades after it began, the contempt case against the author is *still* pending in the High Court.[220] Curiously, the German-based researcher has never been officially notified or summoned to appear.[221] In an autobiographical account, the author later described his (enduring) brush with India's contempt law as a form of "stealth censorship."[222]

3.6 The Impact of Invisibility: Two Changes

Cumulatively, these elements reveal why adjudicatory corruption in the Indian judiciary, especially in the Supreme Court and High Courts, remains concealed. In their original analysis, Jupp et al., had proposed a (mostly) *passive* account of invisibility. Some crimes were invisible because of *inactions:* someone did not know or record or research or control or politicize or cause panic. In their follow-up analysis, Davies et. al. developed a fuller account, adding "sources of power" that underpin-enable-such invisibility and the "contexts" that influence them.[223] This Indian example elucidates this thicker version of criminal invisibility. Both actions and inactions, scaffolded by forms of institutional and organisational powers and a socio-legal context, have boxed corruption within the Indian judiciary into invisibility.

The Supreme Court has hoarded key levers of institutional accountability, inventing, in the process, an "in-house" system of inquiry. But it mostly prefers to ignore allegations about-and direct evidence of-corruption within its ranks. This is akin to Davies' example about institutional power that has rendered racial discrimination by police agencies invisible. The police, they argued, were "rarely questioned" and mechanisms for accountability, until recently, were weak."[224] Besides, it was common practice for fellow officers to investigate allegations of police misconduct, and they rarely crossed the "thin blue line" to "uncover racist, sexist, or abusive" colleagues.[225] In India, though, the court did not achieve this invisibility alone: the executive, the legislature, the media and the knowledge sector have passively enabled it. The executive, by its refusal to investigate or prosecute retired judges, has extended the shadows. The legislature and the (legacy) media, by their refusal to discuss judicial corruption, have aggravated it further. With the media, a strong socio-legal influence-the courts' willingness to deploy their contempt jurisdiction-is in play. In their telling, Davies et. al. highlighted types of *informal* socio-legal influences that incubate invisibility: public agencies' refusal to share crime-related data; funding agencies' reluctance to support certain types of research etc. In India, courts, with close ties to the law school ecosystem have indirectly encouraged a lid on certain types of research activities. But the

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218 *id.*
219 *id.*
220 *id.*
221 *id.*
222 *supra* note 212.
223 Davies, *supra* note 64, at 7.
224 *id.* at 14.
225 *id.*

Indian example also illustrates a type of formal and punitive influence: contempt of court. The Delhi High Court, anxious to preserve the opacity of the judicial process, demonstrated this when it sentenced *Mid Day* journalists and a cartoonist to prison.

"Virtually *nothing* is known authoritatively about corruption in [India's] judicial system," an author once exasperated.[226] This analysis-featuring an eclectic mix of Uudicial) actions and (executive, legislative, and media) inactions-explains how that state of unknowing came to be. This eclectic mix has incited two fallouts. First, the judiciary has nurtured an economy of ignorance: a systemic influence over competing institutions that prevents allegations of judicial corruption from becoming public or being prosecuted. This economy, acting as an extra-legislative process, has expanded the scope of the Judicial (Protection) Act, 1985. That legislation bars civil or criminal cases against judges "for any act, thing or word committed, done or spoken" in discharging their duties.[227] But the law does not exempt judges from criminal laws: Like everyone else, they too must observe the laws of crimes, including anti-corruption regulations.[228] The Indian Penal Code 1861, for example, outlaws "corruptly or maliciously" pronouncing reports, orders, verdicts, or decisions which judges know are "contrary to law."[229] Similarly, the Prevention of Corruption Act 1988, modernized in 2018 to match global standards,[230] proscribes public servants (including judges) from procuring any "undue advantage" to perform their duties-or as "reward" for performing them.[231] Equally, the public cannot induce officials with advantages to perform their duties-or reward them for performing their duties.[232] But the universe of judicial interpretations and executive, legislative, and media practices have recast this set of anti-corruption rules. Contrary to the 1985 Act, judges now command immunity from potentially criminal acts, not just official ones.

Second, this immunity has informally amended the Constitution.[233] India's Constitution confers expansive immunity only on two offices: presidents and governors. Article 361 immunizes presidents, as heads of the union, and governors, as heads of states, from all "criminal proceedings whatsoever"[234] and "arrest or imprisonment"[235] during their term in office. These office-holders, in other words, command immunity for any actions-including crimes-during their terms in office. By deploying the elements of criminal invisibility, the Supreme Court has perched judges alongside presidents and governors in

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[226] G. Mohan Gopal, *Corruption and the judicial system,* SEMINAR (Sep. 2011), https://www.india-seminar.com/2011/625.htm (emphasis in the original).

[227] *id.* §3(1).

[228] *id.* §3(2). For a comparative analysis of judicial immunity for decisions rendered in court, see Mauro Cappelletti, *"Who Watches the Watchmen" A Comparative Study on Judicial Responsibility,* 31 (1) AM. J. COMP. L.1, 10-17 (1983).

[229] The Indian Penal Code, No. 45, Acts of Parliament, 1860, §219.

[230] The Prevention of Corruption Act, No. 49, Acts of Parliament, 1988 (India). See also The Prevention of Corruption (Amendment) Act, No. 16, Acts of Parliament, 2018 (India).

[231] The Prevention of Corruption (Amendment) Act, No. 16, Acts of Parliament, 2018, §7 (India).

[232] *id.* §8.

[233] On informal constitutional amendments, see e.g. Carlos Bernal, Foreword—Informal Constitutional Change: A Critical Introduction and Appraisal 62(3) AM. J. COMP. L 493-513; Craig Martin, The Legitimacy of Informal Constitutional Amendment and the "Reinterpretation" of Japan's War Powers, 40 FORDHAM INT'L L. J. 427 (2017).

[234] INDIA CONST. art. 361(2).

[235] *id.* art. 361(3).

the constitutional scheme. They are, in effect, immune from accountability for any crime, especially corruption, during their terms in office. So, the informal Article 361 now includes presidents, governors, and judges. But this judicial immunity has collapsed into impunity. The executive's reluctance to investigate and prosecute credible allegations of corruption against retired judges implies that accountability systems do not apply to judges ever-not in office, not out of office. With presidents and governors, criminal immunity is time-limited: They are immune while in office. But Supreme Court and High Court judges, it seems, command immunity from corruption-related crimes *for life.* These informal legislative and constitutional amendments are a direct result of the invisibility of crimes within the judiciary.

This criminal invisibility, however, is imperfect. Occasionally, allegations of judicial corruption break through, become public knowledge, and invite prosecutions. The next section develops an account of this form of partial visibility. Beginning with case-studies, I inductively identify its features and argue that it is limited to allegations that involve judges and *private* litigants. In contrast, judicial collusion with public authorities, especially ministers and bureaucrats, remains locked away. And this hierarchy may explain why the executive and the legislature are reluctant to challenge the Supreme Court's economy of ignorance.

4. Imperfect Invisibility: Why Some Types of Corruption Risk Exposure

This section moderates the central claim about the invisibility of judicial corruption in India. The invisibility is imperfect: On (very) rare occasions, judges do face prosecutions. Three High Court judges, for example, are currently on trial. I introduce these exceptional cases and distill from them key facets of partial visibility.

4.1 Prosecuting Corrupt Judges: Three Exceptions

- **Case 1:** In March 2003, the CBI, while investigating Delhi Development Authority (ODA) staff, encountered files that implicated Shamit Mukherjee, a High Courtjudge.[236] He had allegedly colluded with ODA officials and a private litigant to fix a case. The bureau approached CJI VN Khare with the incriminating evidence, and the latter had Mukherjee resign.[237] Soon after, the CBI charged him under the anti-corruption law.[238]

- **Case 2:** In August 2008, a comedy of errors caused corruption in the Punjab & Haryana High Court to become public. A defendant allegedly bribed a prosecutor to fix a criminal matter.[239] Part of the payoff was meant for Nirmal Yadav, a High Court judge hearing the case. But the prosecutor's clerk bungled the drop: He delivered the bribe to another

[236] Amulya Gopalakrishnan, *Judge in a Corruption Case,* FRONTLINE (May. 23, 2003), https://frontline.thehindu.com/other/article30217061.ece.
[237] Ranjan, *supra* note 116, 106.
[238] Nagendar Sharma, *A Judge Blows his Top,* HINDUSTAN TIMES (Jan. 4, 2010, 10:50 PM), https://www.hindustantimes.com/india/a-judge-blows-his-top/story-o1mwFXENRZ7NPYPRq6ktIN.html.
[239] Ranjan, *supra* note 116, 110.

judge.[240] Surprised by the unsolicited cash, this latter judge alerted the police. A Supreme Court in-house probe confirmed the mix up.[241] In 2011, CJI SH Kapadia sanctioned prosecution against Judge Yadav, and the CBI charged her the same day she retired.[242]

- **Case 3:** In September 2017, Allahabad High Court lawyers approached CJI Dipak Misra with a complaint against one Judge SN Shukla.[243] Prasad Education Trust, a private litigant, had allegedly bribed him to secure an illicit remedy. A Supreme Court in-house inquiry found the allegations credible.[244] CJI Misra nudged the judge to resign, but he refused.[245] Meanwhile, the CBI completed a preliminary enquiry, and the CJI, in response, authorized a criminal complaint against Shukla.[246] In December 2021, the bureau formally charged him.[247]

These three cases constitute the full list of (superior) Indian judges under prosecution for alleged corruption on the bench.[248] So far, none has been convicted; as of mid-2022, the trials remain in progress. Still, these cases illuminate the limits of the idea of criminal invisibility I advanced earlier. Corruption within the higher judiciary *is* occasionally visible and this limited (or partial) visibility commands four features: accidental (form); assorted (reactions); arbitrary (resolutions); and asymmetrical (scope).

First, the partial visibility is (mostly) *accidental.* In two of the three cases, evidence emerged accidentally. Consider Judge Mukherjee. The CBI was investigating ODA staff when it stumbled upon information against him. Similarly, Judge Yadav's alleged deal with a prosecutor became public because a clerk mishandled the bribe. These episodes confirm insiders' sense of corruption within the judiciary but they do not reveal its full scope. It is

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[240] HT Correspondent, *Cash at Judge's Door: Justice Nirmaljit Kaur to be Examined on Feb 29,* HINDUSTAN TIMES (Dec. 22, 2015, 11:34 AM), https://www.hindustantimes.com/punjab/cash-at-judge-s-door-justice-nirmaljit-kaur-to-be-examined-on-feb-29-three-witnesses-turn-hostile/story-UsqPgNYXJnAH70CUvMo4SK.html.

[241] Ranjan, *supra* note 116, 110-111.

[242] Express News Service, *History Made on Justice Yadavs Retirement Day,* THE INDIAN EXPRESS (Mar. 5, 2011, 1:54 AM), https://indianexpress.com/article/cities/chandigarh/history-made-on-justice-yadavs-retirement-day/.

[243] Scroll Staff, *MCI Bribery Case: Allahabad HC Judge Goes on Leave, Faces Axe as CJI Misra Acts on Panel Report,* SCROLL.IN (Jan. 31, 2018, 10:17 AM), https://scroll.in/latest/867020/mci-bribery-case-allahabad-hc-judge-goes-on-leave-faces-axe-as-cji-misra-acts-on-panel-report.

[244] *id.*

[245] *id.*

[246] Scroll Staff, *CJI Ranjan Gogoi Allows CBI to File Corruption Case Against Allahabad High Court Judge,* SCROLL.IN (Jul. 31, 2019, 1:53 PM), https://scroll.in/latest/932354/cji-ranjan-gogoi-allows-cbi-to-file-corruption-case-against-allahabad-high-court-judge.

[247] PTI, *CBI chargesheets former Allahabad HC Judge S.N. Shukla in corruption case,* THE HINDU, (Dec. 17, 2021, 03:23 AM), https://www.thehindu.com/news/national/other-states/cbi-chargesheets-former-allahabad-hc-judge-sn-shulda-in-corruption-case/article37973400.ece.

[248] One other judge, IM Quddusi, has been charged. But he was charged for acting as a middleman after he had retired as a High Court judge. See Aditya AK, *Former HC Judge IM Quddusi Arrested by CBI in Medical College Graft Case,* BAR AND BENCH (Sep. 21, 2017, 8:12 AM), https://www.barandbench.com/news/im-quddusi-arrested-cbi.

misleading to treat *these* episodes as an exhaustive account-the sum total-of all corruption within the Indian judiciary. Because *Iyer* and *Veeraswami* have barred agencies from actively probing judges without the CJI's consent, a systematic accounting of judicial corruption is unlikely. Instead, India will likely stumble from one accidental disclosure to the next.

Second, partial visibility has induced *assorted* reactions. What should judges do when confronted with allegations of corruption? Remain in office, withdraw temporarily, resign-or something else? Currently, no law (or convention) regulates accused or undertrial judges. So, judges have responded differently. In 1995, Chief Justice Bhattacharya of the Bombay High Court dithered initially, but ultimately resigned.[249] In 2003, Judge Mukherjee resigned, but attempted to retract his resignation a day later.[250] It was too late by then: The President had already accepted his resignation.[251] In contrast, a stubborn Judge Shukla refused to resign.[252] Instead, he earned a full pay for no work until his retirement.

Judges of the higher judiciary, the Constitution says, stand removed from office only if they are impeached by both houses of Parliament "on the ground of proved misbehaviour or incapacity."[253] No alternate way of-or reason for-removing them exists. A judge who is accused of, prosecuted for, or convicted of a crime, legally speaking, can continue in office. In *Veeraswami,* Shetty J. acknowledged this statutory void, and encouraged judges to "voluntarily withdraw from judicial work and await the outcome of [any] criminal prosecution."[254] He added: "If [a judge] is sentenced in a criminal case he should forthwith tender his resignation unless he obtains stay of his conviction and sentence [and] shall not insist on his right to sit on the Bench till he is cleared from the charge by a Court of competent jurisdiction."[255]

Third, partial visibility has bred *arbitrary* resolutions. Two levels of arbitrariness are manifest. One level concerns different CJIs addressing the same complaint differently. Consider the case of Judge Yadav. In 2009, a Supreme Court inquiry confirmed that the bungled bribe was meant for her.[256] Still, CJI KG Balakrishnan declined to sanction prosecution.[257] But things changed after SH Kapadia became the new CJI in 2011. He reversed his predecessor's decision and directed the CBI to prosecute the judge.[258] Two CJIs, in other words, had administered the same allegation and inquiry report differently: one refused sanction to prosecute, the other granted it. Neither explained their decision publicly.

Another level of arbitrariness concerns the same CJI applying different standards to similar accusations. Earlier, I described how Katju J., in 2011, at CJI Kapadia's behest, investigated allegations of corruption against a High Court judge and unearthed evidence of

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[249] C Ravichandran Iyer v. Justice AM Bhattacharjee, (1995) 5 S.C.C. 457, if5-6.
[250] Amulya Gopalakrishnan, *Judge in a Corruption Case,* FRONTLINE (May 23, 2003), https://frontline.thehindu.com/other/article3 0217061.ece.
[251] *id.*
[252] Scroll Staff, *supra* note 237.
[253] INDIA CONST. art. 124(4).
[254] K Veeraswami v. Union oflndia, (1991) 3 S.C.C. 655, ,r53 (Jagannatha Shetty J.)
[255] *id.*
[256] Ranjan, *supra* note 116, 110-111.
[257] *id.* at 112.
[25s] *id.*

bribery.[259] These allegations and evidence were similar to the Yadav case. But this time CJI Kapadia refused to act, instead, letting the judge complete his term in office.[260] The same CJI, in other words, had administered similar allegations (and evidence) against different judges differently: one was charged with corruption, another retired honorably. In *Sub-Committee on Judicial Accountability v Union of India,*[261] the Supreme Court discussed the position of a judge under impeachment: Should they be denied judicial work? With statutory rules missing in this regard, the court invited the CJI "to find a desirable solution ... to avoid embarrassment to the learned Judge and to the Institution."[262] The same interests-personal and institutional-come into play when CJIs decide whether to approve or deny permission to prosecute. But experience suggests that they strike these balances arbitrarily: at times institutional interests trump personal ones; other times, personal considerations prevail.

Fourth, partial visibility has an *asymmetric* scope. Only certain types of judicial corruption-those involving judges and private litigants-attract sunlight. Judge Mukherjee had allegedly done deals with a hotelier (and petty public officials). Judge Yadav had allegedly accepted a bribe to "settle" a criminal matter against an accused, a private citizen. Judge Shukla had allegedly granted an illicit remedy to an educational trust, a private litigant. Accidental disclosures, in other words, have always involved judges and *private* litigants (or petty officials). This is unsurprising: The executive branch in India, especially ministers and bureaucrats, controls the investigative and prosecutorial complex.[263] Ministers oversee all matters connected to police appointments, transfers, and discipline.[264] And this heavy grip has nurtured a deeply partisan force and diminished-likely destroyed-the possibility of probing corruption between judges and high public officials.

Consider, for instance, allegations against former CJI Ranjan Gogoi. In March 2020, critics panned his decision to accept a nominated seat in Parliament within months of retiring from the Supreme Court.[265] Many alleged that the appointment was a *quid pro qua:* The Narendra Modi government had rewarded his loyalty on the bench with a retirement post.[266] An indignant Gogoi denied those charges.[267] But with investigative agencies, especially the CBI, directly under ministerial control, a deal between the former CJI and ministers, even if

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[259] Print Team, *supra* note 177.

[260] *id.*

[261] Sub Committee on Judicial Accountability v. Union oflndia, (1991) 4 S.C.C. 699, 1112.

[262] *id.* at 1112

[263] See e.g. David H. Bayley, *The Police and Political Order in India,* 23(4) ASIAN SURVEY 484-496 (Apr., 1983).

[264] See e.g. Rishikesh Bahadur Desai, *Political interference is the biggest issue, say police personnel,* THE HINDU (Jun. 04, 2016, 00:00) https://www.thehindu.com/news/national/karnataka/Political-interference-is-the-biggest-issue-say-police-personnel/article14383531.ece; Gaurav Vivek Bhatnagar, *'Make Police More Accountable, Free of Outside Influence',* THE WIRE (Aug 29, 2019), https://thewire.in/government/police-accountability-influence-biases-autonomy.

[265] Sruthisagar Yamunan, *Ex-Chief Justice Gogoi's Nomination to Rajya Sabha is Tragic Blow to Judicial Independence in India,* SCROLL.IN (Mar. 17, 2020, 10:10 AM), https://scroll.in/article/956394/ex-chief-justice-gogois-nomination-to-rajya-sabha-is-tragic-blow-to-judicial-independence-in-india.

[266] The Wire Staff, *'Quid Pro Quo': Opposition Slams EX CJI Ranjan Gogoi's Nomination to Rajya Sabha,* THE WIRE (Mar. 17, 2020), https://thewire.in/politics/cji-ranjan-gogoi-rajya-sabha-opposition.

[267] India Today Web Desk, *Ram temple verdict and Rajya Sabha seat a quid pro quo? Ex-CJI Ranjan Gogoi answers,* INDIA TODAY (Feb. 11, 2021, 5.45 PM), https://www.indiatoday.in/conclave-east-2021/story/ram-temple-verdict-and-rajya-sabha-seat-a-quid-pro-quo-ex-cji-ranjan-gogoi-answers-1768316-2021-02-11.

it existed, could not be probed.[268] Investigators and prosecutors obey-and are accountable to-those same ministers. Unsurprisingly, India has *never* witnessed credible inquiries into claims of judicial corruption involving high public officials. And this underscores the asymmetry of the partial visibility: some types of corruption allegations are beyond investigative possibilities and accidental disclosures.

These facets of partial visibility, cumulatively, nuance the original idea about the economy of ignorance in three respects: origin (who invented it), motive (what fuels it), and impact (how well has it achieved its stated goal). I turn to these nuances next.

4.2 Economy of Ignorance: A Reinterpretation

First, origin. Five features of criminal invisibility-no knowledge, no statistics, no control, no politics, and no panic or research, I argued, have induced an economy of ignorance and veiled judicial corruption in India. The Supreme Court has cultivated this economy by hoarding oversight powers with the CJI and aggressively deploying the law of criminal contempt, both against journalists and researchers. But the features of partial visibility, especially its asymmetric scope, unmasks a crucial detail. Judges did not invent the economy; instead, it has *long existed.* The economy has been motoring with clinical agility, hiding alleged corruption between judges and high public officials for long. With ministers controlling investigative and prosecutorial authorities, that type of corruption was always invisible. And the Supreme Court in *Iyer* and *Veeraswami* expanded the economy of ignorance to private liaisons. Originally, the economy only concealed illicit judicial ties with public (ministerial) litigants. After *Iyer* and *Veeraswami,* it conceals illicit judicial ties with both public and private litigants. Judges, in other words, stretched the economy's reach rather than create it. This explains why reversing the two precedents-wrenching the CJI's power to conduct in-house inquiries or sanction prosecution against judges-is unlikely to unwind the economy of ignorance. Judges who unlawfully liaise with private litigants may occasionally face corruption probes and prosecution, as the Mukherjee, Yadav, and Shukla episodes demonstrate. But that economy will continue to preserve judges who play ball with high public officials. Those deals, if any, are safe.

Second, motive. I suggested that judicial action and executive, legislative, and media inaction fuel the economy of ignorance. Executive inaction, for example, entails agencies declining to pursue evidentiary leads or prosecute retired judges. The Quddusi transcripts demonstrate this. The CBI overheard alleged conspirators bragging about one "captain" in the Supreme Court with influence "all over India" for the next "14-15 months" and offering "500%" guarantee of "favourable judgments."[269] Cowed by the threat of criminal contempt, the media did not pursue the obvious questions. But neither did the CBI: Investigators and their ministerial overseers avoided ferreting out the "captain" who was alleged colluding to fix cases from the Supreme Court. (At least the CBI did not publicly reveal the outcome of any such probe.) Similarly, with retired CJI Sabharwal. Despite a thick paper trail allegedly linking the judge's decisions from the bench to his sons' commercial

[268] Ross Colvin & Satarupa Bhattacharjya, *A "Caged Parrot" -Supreme Court Describes CBI,* REUTERS (May. 10, 2013), https://www.reuters.com/article/cbi-supreme-court-parrot-coal-idINDEE94901W20130510.
[269] Chauhan, *supra* note 198.

interests, the CBI declined to prosecute him and his family. This inaction appears puzzling. What explains it?

Diligent probes into judges risk (unwittingly) exhuming embarrassing ties, that is, embarrassing to the political executive. Such probes also risk needling-provoking-judges into divulging ties. Understandably, the executive desires a lid on such disclosures. And ignoring evidentiary leads between judges and *private litigants* is the price it pays for that. Executive inaction, therefore, is grounded in the asymmetry of partial visibility. That asymmetry explains why inaction is logical, not puzzling. The economy of ignorance, in effect, represents an expedient middle: Keeping one set of illicit ties hidden, namely, public ones, demands overlooking evidence of criminality in another set of ties, namely, private ones.

Third, impact. Both *Iyer* and *Veeraswami* belabored the importance of judicial independence in India. *Iyer* made 12 references to "judicial independence" and "independence of judiciary." *Veeraswami* clocked 18 such references. In contrast, neither decision mentioned "judicial accountability" or "accountability of judiciary" even once. In *Iyer,* the court batted for a broad arc of independence: not just from "executive pressure or influence" but "any other pressure and prejudices … [including those] acquired and nourished by the class to which the judges belong."[270] And "self-regulation by the judiciary," it held, was "the only method which [could] be tried and adopted" to maintain that broad expanse of judicial independence.[271] In the Indian context, self-regulation has meant snuffing out all agencies and entrusting CJIs with the sole authority to decide if errant judges deserve probes and prosecution. Keeping these decisions in-house, judges implied, would better achieve judicial independence. But the accidental, assorted, arbitrary, and asymmetrical features of partial visibility betray the limits of this self-regulatory model. Three decades have elapsed since the Supreme Court instituted this new system. No superior judge has resigned *because of* an in-house inquiry, and only two judges-Yadav and Shukla-have been prosecuted because of such inquiries.[272] This slim record underscores the new system's damaging impact. Instead, of ensuring independence from executive influence, the self-regulatory model has enabled the judiciary's independence *from* accountability.

This revised account lends clarity to the central issue in this analysis: an economy of ignorance has rendered judicial corruption in India invisible-one the Supreme Court did not create but expanded upon. Central to that economy is a self-regulatory instinct: an insistence on confining key decisions (involving errant judges) to in-house, in-camera procedures. This form of self-regulation is a much-vaunted model: International codes, anti-corruption organizations, and the academic literature prize the system. In October 1982, the International Bar Association, for example, adopted the Code of Minimum Standards of Judicial Independence at its Nineteenth Biennial Conference in New Delhi.[273] On matters of judicial removal and discipline, the Code counselled an "in camera" procedure[274] and a

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[270] C Ravichandran Iyer v. Justice AM Bhattacharjee, (1995) 5 S.C.C. 457, 't[lO.

[271] *id.* at 35.

[272] AP Shah, *A Manifesto for Judicial Accountability in India,* THE WIRE (Jul. 29, 2019), https://thewire.in/law/cji-ranjan-gogoi-supreme-court-judiciary.

[273] International Association of Judicial Independence and World Peace, *New-Delhi Standards 1982 New Delhi Code of Minimum Standards of Judicial Independence* (1982).

[274] *id.* §28.

tribunal "composed predominantly of members of the Judiciary."[275] Besides, the "head of the court," the Code instructed, "may legitimately have supervisory powers to control judges on administrative matters."[276] A year later, in June 1983, the global legal fraternity congregated in Canada for the First World Conference on the Independence of Justice, and adopted the Montreal Universal Declaration on the Independence of Justice.[277] That declaration, too, endorsed a self-regulatory model: "confidential" probes at the initial stage;[278] processed by "a court or a board predominantly composed of members of the judiciary and selected by the judiciary;"[279] and "in camera" hearings, unless requested otherwise.[280] Similarly, Transparency International, in its *Global Corruption Report 2007,* has championed self-regulation as a "best practice" to police judicial corruption.[281] Disciplinary rules, the report said, must "ensure that the judiciary carries out initial rigorous investigation of all allegations."[282] And this fascination with self-regulation is equally pronounced in extra-judicial and scholarly analyses.[283] Implicit in this appeal is an innate trust about judicial competence in handling misconduct allegations. The judiciary, the argument goes, is better suited to interrogate corruption (and misconduct) within its ranks than other actors in a legal system. The Indian experience, however, exposes the limits of this self-regulatory model and the implicit trust that scaffolds it. Rather than ensure competent assays into allegations, judicial self-regulation in India has fueled an economy of ignorance that has *prevented* such investigations and rendered crimes invisible.[284]

5. Conclusion

An economy of ignorance has (mostly) veiled judicial corruption in India. Its main drivers include a sturdy grip on investigative and prosecutorial discretion, a controlled information ecosystem, and an aggressive use of contempt powers. Assisted by these elements, the

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[21s] *id.* §31.
[276] *id.* §32.
[277] International Association of Judicial Independence and World Peace, *New-Delhi Standards 1982 New Delhi Code of Minimum Standards of Judicial Independence* (1982).
[278] *id.* §2.32.
[279] *id.* §2.33a.
[280] *id.* §2.35; See also International Association of Judicial Independence and World Peace, *Mount Scopus International Standards of Judicial Independence* (2015); International Association of Judicial Independence and World Peace, *Bologna and Milan Global Code of Judicial Ethics,* (June, 2015).
[281] supra n. 12 (Corruption in the Judicial System) at xxvi.
[282] Id. at xxvii.
[283] See e.g. Judge J Clifford Wallace, *Resolving Judicial Corruption While Preserving Judicial Independence: Comparative Perspectives,* 28(2) CAL. W. INT'L L.J. 341, 350 (1998); Irving Kauffman, *Chilling Judicial Independence* 88(4) YALE L. J. 681, 712 (1978). For comparative perspectives on models of self-regulation, see Richard Devlin & Sheila Wildeman, *Introduction: disciplining judges - exercising statecraft, in* DISCIPLINING JUDGES: CONTEMPORARY CHALLENGES AND CONTROVERSIES 1,6 (Richard Devlin & Sheila Wildeman eds., 2021).
[284] This concern is not unique to India. Judicial conduct commissions in the US, for example, deliberately include judges, lawyers, and lay persons to prevent the commissions from acting as protective rackets. See James Alfini et al., *Dealing with Judicial Misconduct in the States: Judicial Independence, Accountability and Reform,* 48 S. TEX. L. REV. 889, 892 (2007).

judiciary has turned its disciplinary process, to adopt Cappelletti's resonant phrase, into a "pure instrument of 'corporate' control."[285] Other branches including the executive and the legislature, the media, and the knowledge sector have enabled the process with their inactions and apathy. The economy's two vital moments appeared in 1991 *(Veeraswam1)* and 1995 *(Iyer)* respectively. Cumulatively, they have wrought a devastating impact on the judiciary. Until 1994, only a couple of CJIs had faced corruption allegations.[286] Since 1994, *at least* 10 CJIs-likely more-have faced credible allegations.[287] Restricting decision-making to in-house procedures and obsessing with self-regulation, contrary to the Supreme Court's stated justification, has not enhanced judicial accountability. Instead, it has enhanced avenues for-and allegations of-judicial wrongdoing. The economy of ignorance, in effect, is a great Indian experiment on social epistemology: Should one revise their beliefs when confronted with contradictory beliefs of a large peer group?[288] On judicial corruption, the Supreme Court is clear: no. Despite a rising chorus of allegations, it remains inflexibly wedded to a "there is no corruption" stand. For the court, the widespread belief about corruption in the judiciary *is* the problem, not corruption itself. And its solution has been to unleash its criminal power of contempt to enforce the court's official stand, silence the press, and muzzle critical research.

"If experience demands a presumption that a judge will seize every opportunity presented to him in the course of his official conduct to line his pockets," Justice William Rehnquist once said about US judges, "no canon of ethics or statute regarding disqualification can save our judicial system."[289] In India, experience demands a presumption that the Supreme Court is adamantly opposed to competent probes into corruption and misconduct allegations against judges. Whether any canon of ethics or statute regarding accountability can save the system is still an open matter.[290] Unwinding the economy of ignorance and saving the system, ultimately, requires both attitudinal and institutional changes. And two aspects of institutional design are key here. One: Who should initially screen complaints against judges? Currently, the authority rests with judges: the much-hyped self-regulatory model. But it has not worked. India needs an alternate system and a new cast of characters to perform that role. Two: Who should formally investigate judges? Again, the authority rests with judges, especially CJIs: The discretion to summon in-house juries vests solely in them. This, too, has not worked. An alternate system is urgently needed. Misgivings about the executive's control over the police and the prosecution are real and justified. The challenge is to develop new regulatory models that defy quick partisan capture. Without those innovations, the economy of ignorance will

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[285] *supra* note 226, at 48.

[286] Atul Dev, *In Sua Causa,* THE CARAVAN (15 Aug. 2020), https://caravanmagazine.in/excerpt/prashant-bhushan-and-allegations-against-chief-justices.

[287] Dhananjay Mahapatra, *Eight chiefjustices were corrupt: ex law minister,* THE ECONOMIC TIMES (Sep. 17, 2010), https://economictimes .indiatimes .corn/news/politics-and-nation/eight-chief-justices-were-corrupt-ex-law-minister/articleshow/65 68990 .cms?from= mdr.

[288] For an introduction, see Alvin Goldman and Cailin O'Connor, Social Epistemology, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY, https://plato.stanford.edu/entries/epistemology-social/#PeerDisa (Aug. 28, 2019).

[289] William H. Rehnquist, *Sense and Nonsense About Judicial Ethics,* 28 REc. Ass'NB. CITY N.Y. 694, 699-700 (1973).

[290] This is the subject of a separate forthcoming analysis on judicial accountability and institutional design.

continue to incentivize corruption within the judiciary in India, render it invisible, and enable corrupt judges to go unpunished.