



## The black box of Indian democracy: Classified Supreme Court verdicts

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### Abstract

This article critically analyses the ongoing opacity surrounding some significant Supreme Court decisions in India that are still unavailable to the public despite the constitution's call for open justice, most notably the 1975 Habeas Corpus case (ADM Jabalpur v. Shivkant Shukla) and recent national security decisions. The article explores the legal, institutional, and political justifications for the existence of a "dark archive" within Indian constitutional law through doctrinal analysis, reviewing statutory frameworks like the Official Secrets Act and the Right to Information Act, and a comparative study of the structured "closed judgments" system in the United Kingdom. While highlighting the detrimental effects of judicial secrecy on precedent, legal certainty, and public trust, the discussion also identifies important legal gaps, including the lack of independent oversight and statutory declassification mechanisms. Given that India's judiciary has started implementing previously unheard-of transparency initiatives, such as live streaming Supreme Court proceedings, disclosing judges' assets to the public, and increasing transparency in judicial appointments, this question is particularly pertinent today. Notwithstanding these developments, the persistent inaccessibility of some rulings highlights unresolved conflicts between state secrecy and transparency. The article stresses the critical need for principled transparency to protect the legitimacy and accountability of India's highest court in a time of growing state surveillance, digital governance, and increased public scrutiny of institutions.

**Keywords:** Judicial transparency, classified judgment, national security, right to information (RTI)

### Introduction

The notion of open justice, which is the bedrock of constitutional democracies, acts as a check on capricious rulings and a source of public trust in the legal system. Article 19(1)(a) <sup>[1]</sup> of the Indian Constitution, which safeguards the freedom of speech and expression and, by extension, the right to be informed about court proceedings, upholds this principle. The Supreme Court has long emphasized the need for transparency in its operations by arguing that justice must be done and seen to be done <sup>[2]</sup>. However, the existence of a "dark archive"—a compilation of Supreme Court decisions and related materials that are still inaccessible to the general public—seriously calls into question this constitutional promise.

In cases that have moulded Indian constitutional law, such as various national security decisions and the 1975 Habeas Corpus case (ADM Jabalpur v. Shivkant Shukla), this opacity can be particularly apparent. While the main texts of some of these rulings are available, important ancillary materials, including draft opinions, internal discussions, and sometimes even the full reasoning, are classified or heavily redacted. Concerns about national security, public order, or the fragile nature of state interests are often used as justifications for such secrecy. However, because there is no explicit legal framework or independent oversight for the classification and declassification of these judicial records, the validity of such practices and their compliance with the open court principle are seriously questioned.

A significant obstacle to judicial transparency in India is the existence of significant legislative gaps that have largely unchecked the classification and disclosure of Supreme Court rulings. India differs from other jurisdictions with codified frameworks governing sensitive judicial information in that it lacks a comprehensive statute that specifies exact criteria, procedures, and deadlines for classifying, redacting, or declassifying court records. Court

registries or the executive usually decide whether to withhold or redact judgments due to the lack of independent oversight and meaningful channels for challenge, which results in inconsistent and discretionary practices. Therefore, the absence of statutory protections jeopardizes the legitimacy and predictability of the judiciary's transparency initiatives.

The consequences of these legislative flaws are significant. If declassification procedures are not necessary, legal precedent may be slowed down and lower courts' ability to apply Supreme Court reasoning may be effectively hampered. This is particularly true for significant rulings involving fundamental rights or national security. Additionally, by giving the impression that the judiciary is capricious and susceptible to executive influence, especially in politically sensitive cases, this opacity erodes public confidence in the court. The Supreme Court's discrete transparency efforts, such as asset disclosures and live-streaming hearings, are insufficient to address the structural lack of legally required disclosure requirements. As a result, the legislative vacuum in India's constitutional democracy not only makes accountability challenging but also poses a threat to the institutional credibility of the judiciary.

In the contemporary era, the stakes for judicial transparency have only gone up. The proliferation of digital surveillance, the expanding use of national security by the executive branch, and the global trend of democratic regression have all led to heightened scrutiny of the judiciary. The Supreme Court of India's notable efforts to increase transparency, including live-streaming proceedings and disclosing judges' asset declarations, do not address the fundamental issue of inaccessible landmark judgments. As the judiciary handles complex matters at the intersection of individual rights and state power, maintaining a "dark archive" not only impedes public and scholarly scrutiny but also poses a threat to the legitimacy of constitutional adjudication.

## Open Justice in Indian Constitutional Law

### a. Constitutional and Doctrinal Foundations

Article 19(1)(a) <sup>[3]</sup> of the Constitution, which protects the right to information and freedom of speech, enshrines the idea of open justice. The Supreme Court is empowered by Article 145 to establish guidelines for how it will carry out its duties, including publishing rulings., backed by procedural laws like Order 18 Rule 4, Section 153B of the Civil Procedure Code, and Section 327 of the Criminal Procedure Code, which collectively state that the public should normally have access to court proceedings <sup>[4]</sup>. Transparency is the foundation of legitimacy for all decision-making processes, including judicial appointments and adjudication, as the Supreme Court has reaffirmed on numerous occasions. In *Naresh Shridhar Mirajkar v. State of Maharashtra* <sup>[5]</sup>, the court established the open courts doctrine, holding that public access to court proceedings is crucial to maintaining justice, accountability, and public trust in the legal system. There are some exceptions to this rule, though, such as in-camera proceedings, privacy issues, and national security considerations. *Mohammed Shahabuddin v. State of Bihar* (1980) <sup>[6]</sup> reinforced the constitutional right to a public trial under Section 327 of the Criminal Procedure Code by stating that open trials are the universal rule and must be strictly followed. In *Swapnil Tripathi v. Supreme Court of India* (2018) <sup>[7]</sup>, the Supreme Court furthered this theory by endorsing live streaming of court proceedings as a crucial step in boosting openness and public confidence in the legal system, especially in cases of national significance. A recent ruling by the Supreme Court in *Biswajit Das v. CBI* (2025) <sup>[8]</sup> upheld the Court's broad authority under Article 142 to guarantee full justice, enabling it to address significant legal issues beyond those that were first raised. This decision demonstrates the Court's dedication to equity and openness, stressing that its rulings and procedures ought to be easily obtainable and serve the larger goals of justice. It represents continuous attempts to strike a balance between openness and judicial discretion within India's constitutional framework.

The fundamental rights protected by Article 21, which safeguards life and individual liberty, are also closely linked to the constitutional right to information about court proceedings. Cases including *Maneka Gandhi v. Union of India* (1978) <sup>[9]</sup> strengthened the need for transparency in judicial decision-making by extending the reach of Article 21 to include procedural fairness and the right to be heard. Despite being controversial for suspending habeas corpus rights during the Emergency, the Court's seminal decision in *ADM Jabalpur v. Shivkant Shukla* (1976) <sup>[10]</sup> also demonstrated the importance of dissenting opinions, particularly that of Justice H.R. Khanna, in maintaining judicial integrity and transparency even in the face of pressure. Recent rulings have further emphasized the public's right to know, such as *Association for Democratic Reforms v. Union of India* (2023) <sup>[11]</sup>, which invalidated opaque political funding schemes and reaffirmed the necessity of transparency for democratic governance. A recent ruling by the Supreme Court in *Biswajit Das v. CBI*, upheld the Court's broad authority under Article 142 to guarantee full justice, enabling it to address significant legal issues beyond those that were first raised. This decision demonstrates the Court's dedication to equity and openness, stressing that its rulings and procedures ought to be easily obtainable and serve the larger goals of justice. It represents

continuous attempts to strike a balance between openness and judicial discretion within India's constitutional framework.

The fundamental tenets of India's open justice system are not only procedural; they are intricately linked to the Constitution's substantive guarantees, especially Article 21, which safeguards the rights to life and personal freedom. By interpreting Article 21 in a progressive manner, the Supreme Court has broadened its scope to include the rights to justice, a fair trial, and information about court proceedings. Historic rulings and a symbolic change in judicial iconography—such as the recent unveiling of Lady Justice's uncovered eyes—that demonstrate the judiciary's dedication to accountability and transparency both reflect this doctrinal evolution. In India, where open justice is viewed as crucial to guaranteeing that judicial power is used in a way that is visible, understandable, and accountable to the people, Jeremy Bentham's famous remark that "without publicity, all checks are insufficient" has found resonance. However, the open justice principle is not unqualified. Indian courts have acknowledged the existence of justifiable exceptions, including in-camera proceedings, witness identity protection, and limitations on media coverage in situations where public exposure could jeopardize national security or the administration of justice. Nevertheless, courts are supposed to use the least restrictive methods required to safeguard conflicting interests, and the burden of proof rests with the party requesting such restrictions to show a significant risk of prejudice. Therefore, the open justice doctrine functions as a default constitutional norm, with the exception of carefully crafted exceptions supported by strong arguments and always subject to judicial review. Upholding the rule of law in India's constitutional order and preserving public trust in the judiciary depend on this balance.

### b. Recognized Exceptions

Although India's constitution upholds the idea of open justice, the law acknowledges that sometimes conflicting interests like privacy, dignity, and national security must take precedence over transparency. One well-known exception to the open court principle is in-camera proceedings, in which the press and public are not allowed. In addition to allowing courts to order private hearings in other sensitive matters, such as cases involving minors or matrimonial disputes, Section 327 of the Criminal Procedure Code, 1973 <sup>[12]</sup>, mandates in-camera trials in cases involving sexual offenses like rape. The fundamental justification is to safeguard the privacy of witnesses, victims, or parties and to avoid any unnecessary trauma or intimidation that could result from public exposure. To protect the dignity and interests of the parties involved, family courts may also hold proceedings in camera under Section 11 of the Family Courts Act, 1984 <sup>[13]</sup>, particularly in cases involving divorce, custody, or highly personal accusations.

Nonetheless, Indian courts have always maintained that the authority to hold in-camera proceedings must be used carefully and only in very specific situations. The Orissa High Court stressed in *Janaki Ballav v. Bennet Coleman and Co. Ltd.* <sup>[14]</sup> that the decision to bar the public from a trial should not be made arbitrarily but rather only after careful analysis of the facts and compelling arguments. Additionally, the Supreme Court has reaffirmed that the

larger idea of open justice should not be compromised by such exceptions. Courts must strike a balance between openness and legitimate concerns for protection, as evidenced by the high-profile case involving religious leader Asaram Bapu, where the court ordered in-camera examination of witnesses to protect their safety and privacy [15].

Courts are expected to give reasoned orders outlining the need for secrecy and to reveal as much information as possible without jeopardizing legitimate interests, even in cases where in-camera proceedings are justified. This strategy guarantees judicial accountability and prevents the exception from overriding the rule. In order to tackle new challenges, like the use of video conferencing during the COVID-19 pandemic, the courts have also issued guidelines that limit public access only when absolutely necessary, while maintaining the right of parties to participate and the obligation to document the reasons for any deviation from open proceedings. In order to ensure that exceptions to open justice are specifically tailored, justified, and subject to judicial scrutiny, the Indian legal system works to strike a balance between the demands of confidentiality and transparency.

Indian law recognizes that transparency must sometimes yield to competing interests. In-camera hearings may be justified in cases involving sensitive personal information, minors, or national security. Yet, even in such cases, the Court is expected to provide reasoned orders explaining the necessity for secrecy and to disclose as much information as possible without compromising legitimate interests.

### The "Dark Archive": Examples and Legal Context

#### a. The 1975 Habeas Corpus Case (ADM Jabalpur v. Shivkant Shukla)

A watershed event in constitutional history, the ADM Jabalpur case was decided during India's 1975–1977 Emergency. Chief Justice A.N. Ray led the majority ruling, which held that the state could suspend the right to habeas corpus in an emergency, thereby allowing the detention of people without judicial review. Important ancillary materials, including draft opinions, internal discussions, and judicial correspondence, are still classified even though the main judgment is now publicly available. The complete context of the Court's decision-making during a time when constitutional rights were routinely suspended is obscured by this secrecy. The lack of these documents creates a knowledge vacuum about how the Court strikes a balance between executive power and civil liberties and hinders academic study of judicial reasoning in emergency situations. The 44th Amendment (1978), which overturned the judgment's main conclusion but left its institutional ramifications unresolved, further complicates the case's legacy.

#### b. National Security and Sensitive Rulings

The Supreme Court has decided more cases involving border disputes, terrorism, and surveillance in recent years; these cases frequently result in partially redacted or completely unpublished rulings. For example:

- In the Pegasus Spyware Case (2025) [16], the Court agreed that results pertaining to "national security and sovereignty" would not be made public, but those impacted by phone hacking might get some information. Although this strategy aims to strike a

balance between security and privacy, it lacks precise redaction guidelines, so citizens are unaware of the extent of government monitoring.

- **Sealed Cover Jurisprudence:** The government's use of "national security" as a general excuse for secrecy has been denounced by the Court (*MediaOne v. Union of India*, 2023) [17]. It declared that "all investigation reports cannot be termed secret" and ordered courts to redact only the most sensitive parts while explaining the reasoning to those who would be impacted. In spite of this, the government continues to invoke security exemptions in overly broad ways, as demonstrated by its efforts to suppress evidence in cases such as the MediaOne telecast ban.

#### c. Legal Consequences of Secrecy

Three serious harms result from the non-disclosure of judgments and related materials:

- **Undermining Precedent:** The doctrine of stare decisis is broken because lower courts and litigants do not have access to the Supreme Court's full reasoning. Redactions in national security decisions, for instance, lead to unclear precedents and require lower courts to interpret inconsistent guidance.
- **Suppressing Public and Academic Criticism:** Scholars are unable to examine trends in court decisions, such as prejudices in emergency or surveillance rulings. If made public, the ADM Jabalpur archives may show how judicial independence is undermined in times of crisis.
- **Undermining Public Trust:** A sense of judicial subordination to the executive is powered by secrecy. The Court's refusal to reveal findings related to "sovereignty" in the Pegasus case led to charges of caving in to executive overreach, undermining the judiciary's legitimacy as a check on state overreach.

### Legal and Institutional Reasons for Non-Disclosure

#### a. Statutory Frameworks

##### 1. Official Secrets Act, 1923

The Official Secrets Act of 1923 [18], whose broad language frequently extends to judicial records, gives the government broad power to conceal information under the pretext of national security. Any information that could "assist an enemy" or compromise "sovereignty and integrity," a definition that is sufficiently ambiguous to encompass delicate Supreme Court rulings, is punishable under Section 5. At the same time, Section 8(1)(a) of the Right to Information (RTI) Act, 2005 [19], which aims to increase transparency, exempts information that could "prejudicially affect" national security or sovereignty. This provision is commonly abused to redact or withhold court documents, especially in cases involving national security, despite the Supreme Court's ruling that such exemptions must be narrowly interpreted and subject to a public interest test (*CPIO v. Subhash Agarwal*, 2019) [20].

##### 2. Right to Information Act, 2005

Despite the Court's own precedent rejecting such broad claims, the Supreme Court Registry frequently uses the "fiduciary relationship" and confidentiality to reject RTI requests for judgments or ancillary materials. Although the Court clearly stated in *Reserve Bank of India v. Jayantilal Mistry* (2015) [21] that regulatory bodies cannot use

"fiduciary" status to avoid transparency, this logic is applied inconsistently to court records. This problem is made worse by India's arbitrary declassification practices for sensitive judgments due to a lack of codified protocols. For example, redactions in surveillance cases (like Pegasus) lack standardized justification or timelines, and the ADM Jabalpur (1975) ruling is public but its internal discussions are still classified.

#### **b. Judicial and Administrative Practices**

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#### **c. Executive Influence and Political Sensitivities**

Judicial disclosure practices are frequently shaped by executive claims of political sensitivity or national security, frequently without independent oversight. There is a risk of excessive secrecy when the government uses Section 8(1)(a) of the RTI Act <sup>[22]</sup> to prevent access to judgments, as is the case in border disputes or terrorism cases. This is especially true when courts give executive claims a pass without closely examining them. The International Commission of Jurists noted that the lack of statutory protections against executive meddling exacerbates this dynamic by documenting "increasing executive influence" in judicial functioning, which undermines institutional autonomy. As a result, constitutional accountability is undermined in a system where politically sensitive cases—such as those contesting state surveillance or decisions made during an emergency—are disproportionately obscured.

#### **RTI Requests: Legal Barriers and Judicial Attitudes**

Despite being designed to promote transparency, the RTI framework encounters substantial institutional and legal obstacles when it comes to Supreme Court rulings and internal documents. With broad discretion in interpreting exemptions under Section 8 of the Act, the Supreme Court Registry routinely rejects RTI requests on grounds like national security, confidentiality, or fiduciary relationship. The absence of external review or established procedures exacerbates this discretion because many rejection orders either use the vague "other" category or fail to identify the precise exemption that was invoked, making it challenging to evaluate the validity of denials and leading to uneven transparency practices.

The parameters of RTI's application to the judiciary have been shaped by significant court rulings. The Supreme Court ruled in *Central Public Information Officer, Supreme Court v. Subhash Chandra Agarwal* (2019) <sup>[23]</sup> that the Chief Justice's office is a "public authority" and is therefore subject to RTI, including for asset disclosures. However, the court pointed out that transparency must be balanced with

privacy and confidentiality, particularly in delicate cases. The Court emphasized that exemptions must be narrowly construed and justified in *Manohar Lal Sharma v. Union of India* (2023) <sup>[24]</sup>, where it clarified that national security cannot be used as a general justification for non-disclosure and called for reasoned orders and the use of the least restrictive means to protect sensitive information.

For journalists, legal scholars, and the general public, the cumulative impact of these decisions and practices poses a serious obstacle. Lack of access to complete rulings and the reasoning behind them hinders critical examination, scholarly study, and public discussion, undermining judicial accountability and the Supreme Court's authority to operate.

#### **Comparative Analysis: The UK's "Closed Judgments" System**

The Justice and Security Act, 2013 <sup>[25]</sup>, which creates a formal and statutory framework for handling national security concerns in civil proceedings, governs the United Kingdom's approach to handling sensitive judicial information. The Act established Closed Material Procedures (CMP), which guarantee that the judge considers all relevant information while permitting some evidence to be kept secret from the public and, in some situations, even from the parties. The system uses Special Advocates— independent attorneys who can contest the government's secrecy claims and represent the interests of excluded parties—to ensure equity. Crucially, the Act encourages accountability and transparency by requiring the regular review of closed judgments and, when practical, the publication of public summaries.

In contrast, India's approach lacks a specific legal framework for judicial secrecy and is primarily ad hoc and executive discretion-driven, depending on statutory exemptions in the Official Secrets Act and the Right to Information Act. There is no official declassification procedure or requirement to provide public summaries; instead, the Supreme Court Registry or the executive has primary authority over non-disclosure decisions. The UK system, on the other hand, is distinguished by judicial supervision, frequent review, and the participation of special advocates, guaranteeing that secrecy is strictly regulated and open to outside examination.

Sensitive information can be protected while preserving public confidence, as the UK model shows. The UK makes sure that secrecy is the exception rather than the rule by putting in place procedures like independent oversight, periodic review, and the publication of reasoned summaries. Adopting comparable statutory protections and organized processes would benefit India by balancing the need for open justice in the constitution with legitimate security concerns, enhancing the judiciary's accountability and public trust.

#### **Legal Gaps and Challenges to Reform Proposals and Solutions**

Significant shortcomings and difficulties in the administration of classified court records are evident in India's legal system, especially with regard to accountability and transparency. First, there is no legal framework or Supreme Court-mandated procedure for reviewing or declassifying sensitive rulings on a regular basis. There is no obvious legal route for eventual disclosure once a judgment or its supporting documentation is withheld,

leading to perpetual secrecy that goes against the open justice principle. This lack of organized declassification maintains judicial opacity and contrasts sharply with best practices in other jurisdictions.

Second, the executive and judicial branches have wide latitude to invoke security or confidentiality exemptions, frequently without considering less restrictive options or offering thorough, well-reasoned explanations. This excessive use of exemptions, which are usually supported by Section 8 of the RTI Act or the Official Secrets Act, results in inconsistent and capricious practices. A culture of secrecy is further cemented by the fact that decisions to redact or withhold judgments are rarely the subject of meaningful challenge or review due to the absence of clear criteria or procedural safeguards.

Lastly, there is no independent oversight mechanism in place in the Indian system to examine claims of secrecy or guarantee that redactions are appropriate and warranted. Decisions to redact or withhold court records, particularly in high-profile or politically sensitive cases, lack accountability in the absence of an independent body or procedure. This lack of oversight hinders legal research, educated public discourse, and the development of constitutional jurisprudence in addition to undermining public confidence. Restoring equilibrium between the constitutional requirement for transparency and reasonable confidentiality requires filling in these institutional and legal gaps.

In addition to addressing the legal shortcomings, a comprehensive reform agenda for judicial transparency in India must also address the institutional culture and technological framework that support secrecy. Legislative reform must come first. An independent oversight panel made up of retired judges, legal experts, and representatives of civil society should be established, and India should pass a "Classified Judgments Act" that clearly defines what qualifies as a classified judgment and establishes deadlines for periodic review and declassification. This committee would make sure that confidentiality is appropriate, justified, and never unjustified. The RTI Act should be amended to make it clear that, absent a specific, well-reasoned exemption, judicial records—including judgments—are presumed to be public. Additionally, any denials must be supported by a transparency impact statement.

Initiatives from the judiciary are equally important. The Supreme Court should change its regulations to require that all rulings be made public, with redactions only permitted in extreme circumstances and always supported by a written order. Sensitive and historical archives ought to be proactively examined and made public after a predetermined amount of time, subject to judicial review. In order to operationalize this commitment and enable public and scholarly scrutiny, a digital transparency portal—an easily accessible online repository for judgments, redacted versions, and declassification schedules—would be established. To promote a transparent culture at all judicial levels, registry and judicial officers should get specialized training on the concepts of open justice and the cautious application of exemptions.

Lastly, India can adopt best practices from comparative jurisdictions like the United Kingdom. Legitimate confidentiality and the constitutional requirement of open justice would be better balanced by requiring periodic

reviews of classified materials, requiring the publication of anonymized public summaries in cases where full disclosure is not feasible, and introducing special advocates to contest secrecy claims. Along with independent oversight and digital innovation, these reforms would make secrecy the exception rather than the rule, rebuild public confidence, and bring Indian judicial practice into line with international accountability and transparency standards.

### Contemporary Relevance

The swift digital transformation and the growing scope of state secrecy in India highlight the importance of judicial transparency and open justice in the modern era. Cases involving digital surveillance, facial recognition, and data privacy are becoming more common in the digital age, and they all touch on delicate state interests as well as the fundamental right to privacy guaranteed by Article 21 of the Constitution. The temptation for both the executive and the judiciary to invoke secrecy has increased due to the spread of government surveillance technologies, the slow progress of comprehensive data protection legislation, and the tightening of social media regulations. Since courts are being asked to decide complicated cases involving technology, security, and civil liberties, it is more important than ever to establish strong transparency procedures and unambiguous legal standards.

Global patterns of democratic regression and waning public confidence in institutions exacerbate this problem. Democracies around the world are struggling with the normalization of opaque governance practices and executive overreach. It has been challenging to offset these pressures in India due to the absence of strong institutional and statutory frameworks for judicial accountability. The risk of unchecked secrecy is increased by the insularity of current accountability procedures, such as the Supreme Court's "in-house" inquiry process, and the lack of external oversight, especially in high-profile or politically sensitive cases. In this situation, maintaining the rule of law and halting the deterioration of constitutional norms require judicial transparency, which is not just a procedural ideal. India can learn a lot from comparative experiences. Structured frameworks, such as closed material procedures, special advocates, and periodic declassification reviews, have been developed by jurisdictions like the UK and Canada to strike a balance between the public's right to know and national security requirements. These models show how independent oversight, frequent review, and the release of well-reasoned summaries can preserve public confidence while protecting sensitive information. To guarantee that secrecy stays the exception rather than the rule and that the judiciary continues to act as a safeguard against authoritarian tendencies, India must embrace such best practices, make investments in digital infrastructure, and promote an open culture.

### Conclusion

A constitutional oddity that threatens the values of accountability, open justice, and the rule of law is the existence of a "dark archive" of secret Supreme Court rulings. The fundamental problem of inaccessible judgments in cases of significant constitutional and public importance is not addressed by recent transparency initiatives, even though they are positive steps. Examples of these initiatives include the publication of judges' asset declarations<sup>12</sup> and

certain internal procedures.

India needs to take a principled, methodical approach to judicial transparency if it hopes to live up to the promise of the Constitution. Informed by comparative experience and a dedication to the public interest, this calls for legislative action, judicial leadership, and administrative innovation. Only then will the Supreme Court be able to carry out its duty as the protector of constitutional democracy and rebuild public confidence in its procedures.

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