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Sunil Sethi: Who judges the judges?

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The power of three against one: that's how the battle of their lordships, India's chief justices past and present, has panned out over the ongoing row over the judiciary making their assets public. Delhi High Court judge S Ravindra Bhat's ruling this week that the office of the Chief Justice of India and other judges, being public authorities, come under the Right to Information Act and are therefore open to public scrutiny nails that long-asked question: "Who judges the judges?" That's why it has been applauded by three former chief justices and put paid to the present Chief Justice KG Balakrishnan's endless dissembling over the matter.

It has saved embarrassment to a number of Bhat's fellow judges in high courts elsewhere who say they have nothing to hide and brought relief to members of the legal fraternity who believe that the judiciary can't remain locked in its ivory tower, impervious to the changed tenor of the times. Lawyers such as Prashant Bhushan have consistently canvassed for greater accountability of the judiciary.

Justice K Kannan of the Punjab & Haryana High Court, who recently listed his personal assets on a blog, nevertheless pointed the possible pitfalls to Bhushan: "Imagine a judge enquiring into allegations of disproportionate wealth case of a bureaucrat. In the course of the proceedings, what if the litigant asks the judge, 'how did you obtain your wealth, before asking me to explain my riches?' It may not be a daily occurrence, but consider the mischief that the right to demand the assets statement of a judge could entail." To which Bhushan replied that the "marginal gain in independence" of a judge not having to face uncomfortable questions about his wealth would be "more than offset by the enormous increase in corruption and misconduct of judges due to the lack of accountability."

That such an exchange between a judge and an advocate is the stuff of public debate is in itself a step forward in unlocking the judicial ivory tower. If members of other estates such as legislature (MPs and MLAs) and the executive (bureaucrats and other government officials) are expected to declare their assets at regular intervals, why should the judiciary be exempt? It was clear that CJI Balakrishnan had painted himself into a corner by saying that such a move would open a Pandora's box of frivolous and vexatious litigation and that it was enough for judges to declare their assets to the office of the CJI. But that's not the same thing, as Justice Bhat's ruling implies, as public knowledge. He argues that the secrecy surrounding the life and work of judges does more harm than good if "a judge is unable to explain his position to the people."

Opinion within the legal fraternity and government remains divided on how much of judicial life should be opened up. Not just in evolving norms of investigating charges of corruption and wrongdoing but also the very procedure of how judges are appointed or, indeed, the notes they make when writing up judgements. The division between conservative and progressive elements in the judiciary also underscores a generational shift. Younger judges want closer interaction with the public; by declaring their personal assets they hope to throw open a few windows in the stifling hothouses of inner councils that distance the courts from the view from outside.

It's not surprising that the Delhi High Court—which comprises some of the youngest, most liberal judges in the country—has taken the lead in delivering judgements hailed as “moral victories” that are in tune with a younger, open-minded population: first by striking down an obsolete section of the penal code that deemed homosexuality a crime; and now by arguing that the office of CJI cannot remain an ivory tower. In the famous lines of the poet John Donne:

No man is an island, Entire of itself. Each is a piece of the continent, A part of the main..... Therefore, send not to know For whom the bell tolls, It tolls for thee.