

<http://www.expressbuzz.com/edition/story.aspx?Title='We+have+nothing+to+fear,+hide'&artid=Fd8XmNOBAsw=&SectionID=XVSZ2Fy6Gzo=&MainSectionID=XVSZ2Fy6Gzo=&SectionName=m3GntEw72ik=>

'We have nothing to fear, hide'



D V Shylendra Kumar

First Published : 21 Aug 2009 12:04:00 AM IST

Last Updated : 21 Aug 2009 08:22:07 AM IST

The judges drawn from the Bar and appointed to the high courts would all have disclosed their income for the previous five years. This is an essential requirement. The particulars of assets of all appointees from the Bar would thus be available for anyone to see. Moreover, the norms and guidelines conventionally followed while elevating persons from the Bar to the Bench demand that the appointee be an assessee, under the Income Tax Act with a certain assured level of income. All the information about the assets of both the promotees and the fresh appointees is thus already in public domain till they assume office as judges of superior courts. Why should, therefore, there be any reluctance or hesitation or even an objection on the part of any judge to disclose particulars of the assets acquired by him/her after assuming the office of judge, as thereafter the only income of the judge is salary, unless the judge has any other source of income even after the assumption of office as judge.

In a situation of this nature, if any impression is created that the judges of the superior courts are reluctant to disclose the particulars of their assets, it undoubtedly creates an impression in the minds of the general public and the litigant public that the judge so reluctant to disclose the particulars has something to cover up or hide. An impression of this nature is most damaging to the image of the judiciary and the institution of courts and even to the individual judges.

It is high time that any such impression is immediately removed. It is a truism to say that a majority of the judges of the superior courts are definitely not reluctant or unwilling to disclose the particulars of their assets. In fact, most of them, it may be safely assumed, are even willing to declare it voluntarily without there being any element of compulsion and some have even already disclosed the particulars of their assets.

In view of this, it is fair to say that the views expressed by the Chief Justice of India are not necessarily representative of the views of all the judges of the superior courts of this country. In fact, the Supreme Court of our country has no supervisory power or control over the high courts in the scheme of our Constitution. High courts are independent and function in accordance with

the constitutional provisions and in terms of the applicable statutory provisions. The Supreme Court only exercises appellate jurisdiction over the high courts in specified areas as provided for under the Constitution and the laws. The law declared by the Supreme Court is binding on all the courts — it is a constitutional mandate in terms of Article 141 of the Constitution. The Supreme Court has also the most exclusive power in passing such decrees and making such orders as are necessary for doing complete justice between litigants in any cause or matter before it and it is to be enforced throughout the territory of India in the manner prescribed by law. Other than such constitutional provision and subject to these very constitutional provisions, the high courts function independently.

Every judge of the superior courts of this country functions independently and has every right and duty to express his/her opinion without fear or favour. Even while functioning on the judicial side, a judge may dissent from a majority opinion and express his/her dissenting opinion. It is only a fortiori so in non-judicial matters.

Not reluctant to declare assets

Hitherto, it is only the opinion of the Chief Justice of India that is expressed in public and the Chief Justice of India is the person, who has been reacting to the doubts and queries of the people as articulated in different sections of the media. No one else from the judiciary has expressed any opinion to the contrary and silence in such a situation obviously amounts to consent or agreement. And yet, the fact of the matter is that judges of the superior courts of this country are not reluctant and hesitant to declare their assets. On the other hand, a majority of them must be ready and willing to do so. There should be no question of any judge either hiding or taking shelter under any non-disclosure provision or under a provision to ensure confidentiality or secrecy of the information. The protection provided to the judges of the superior courts under the Constitution itself is good enough and sufficient to ensure the independence of the judiciary and fearless functioning of the judges. There is no question of any other person or any other organ creating a sense of apprehension, fear or possible harassment in the minds of the judges by use or misuse of any information that one may come across or might fall into the hands of the litigant public of this country.

There is no dichotomy between the public and private life for a judge. The conduct of a judge should be impeccable, should be one of inspiring confidence of the litigant public and people of this country, be it in the course of his/her judicial functioning or outside the court. Every judge of the superior court is also a public servant and accountable to the citizens of this country like any other public servant.

There is an inalienable relationship between efficacy and openness. Efficacy of our courts is due to the open conduct of court proceedings. Judges function in open courts and the proceedings of a court can be watched by any member of the public and is open to scrutiny. Transparency is the hallmark of our judicial system. That is partly the reason why the efficacy of courts is generally accepted. In such a system, there can never be any reluctance or hesitation on the part of the judges to disclose their asset particulars. There should not be. Transparency in judicial functioning necessarily implies transparency in the matter of acquisition of assets by the judges as much as in the functioning of a judge inside the court. Such a transparency is expected from all other public servants holding high public office in the other two organs of the state, namely, the executive and the legislature. When such is the case, members of the judiciary cannot plead immunity or claim exception from being accountable to the people. On the other hand, it is imperative that the judiciary should conduct itself in such a manner that judicial functioning becomes more transparent and more accountable, without which people may not indefinitely continue to retain the faith, trust and confidence that they repose in the courts and judges of our country.

Unsavory episodes on the rise

There have been a few unpalatable incidents in the context of some sitting and past judges, the allegation being that they had indulged in some questionable transactions. It is in the wake of this that a suitable legislation was contemplated to plug the loopholes, if any. Certain of these alleged demeanours received copious attention in the media. Reportedly, such rather unsavory episodes seem to be on the increase. As a consequence, a suitable response from the appropriate organ of the state was only to be expected. It has come in the form of some

measures contained in the Bill, which failed to get tabled in Parliament because of some lacunae pointed out by the members.

That being so, there is absolutely no question of one organ or wing of the state trying to interfere with the functioning of the other organ or wing of the state except to the extent of its own assigned role under the Constitution. There is no gainsaying the fact that it is the duty of the legislature to legislate and usher in laws to meet the requirements of a changing society from time to time. The hopes and aspirations of the people are never static, by reason of which the legislature needs to be dynamic if it is not to become anachronistic. That does not mean that the legislature enjoys the prerogative to ignore the stipulations of the Constitution. Likewise, it is the constitutional duty of the judiciary to judicially review the legislative action and statutory provisions strictly by the touchstone provided in the Constitution. The validity or otherwise of the legislative provision is thus established through a constitutional process and not simply arbitrarily as anyone can see. It needs to be again emphasised that each organ of the state is duty bound to perform its assigned role according to prescribed norms, which means that there is no trade off or exchange of their respective roles.

Rules of conduct

It is also very necessary for the high constitutional functionaries to bear in mind that they should not conduct or act in a manner which can in any way disable them from performing their duties and functions assigned to them. At any rate, so far as the judges are concerned, a judge cannot and should not by his/her conduct and expressions outside the court disable himself/herself from his/her duty to be performed as a judge inside the court.

An article of this nature, which is otherwise not common or usual for a judge to pen, has become necessary only to convey to the people of this country that the impression created as of now is not necessarily the correct impression; that the judges of the superior courts of this country do not necessarily subscribe to the views and apprehensions expressed hitherto; that they have views and opinions otherwise than what has been conveyed to the public at large so far. The judges have nothing to fear; they have nothing to hide and they have no hesitation to disclose particulars of their assets and even for throwing open the information to the public domain. In fact, it is for the judges of this country to act and provide information even voluntarily. Indeed, I humbly appeal to all my brother and sister judges of the superior courts to do so. No inhibition need deter us from this path.

(Concluded)

(The author is judge, High Court of Karnataka in Bangalore)