

The judges' assets imbroglio

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When its judges decided in principle to put their assets on the website, public perception prevailed and the Supreme Court enhanced its own reputation.

The controversy relating to the disclosure of judges' assets has achieved, for the moment, a happy resolution. A vigorous debate among the public, former judges, leaders of the Bar, Bar Associations, High Court judges and last but not the least the Chief Justice of India — is a sign of a vibrant democracy. The method and content of the disclosure are still opaque and may require further debate.

The contest was a thrilling and educative exercise, for every citizen. The media, particularly the electronic media, were a force-multiplier and reached many households across India. The debate will always remain a landmark and turning point in Indian legal history and will be the stuff shared by law teachers with generations of law students and citizens.

Let us briefly recount the highlights of the controversy. The first shot was fired when an application was made by one S.C. Agrawal under the Right to Information Act (RTI) seeking information "whether judges declared their assets as per the May 7, 1997 Resolution" — a resolution unanimously passed by Supreme Court judges. The demand was not for a disclosure of assets.

The redoubtable public interest crusader, Prashant Bhushan, representing Agrawal, succeeded before the CIC. This was a landmark order upholding the right of the citizen to information, in furtherance of the principles of judicial accountability.

The Chief Justice of India reacted: "We do not agree with what [the] CIC has said — we might appeal against it in Court" (*Hindustan Times*, 11.01.09).

Former Chief Justice of India J.S. Verma, who was instrumental in getting the 1997 Resolution passed unanimously, publicly opined that the assets of the Supreme Court judges were very much in the public domain (*The Indian Express*, 19.01.09).

Justice Ravindra Bhat of the Delhi High Court stayed the CIC's decision on 19.01.2009 in a writ petition filed by the CPIO of the Supreme Court and appointed F.S. Nariman as "Amicus Curiae" who declined since he had very clear views — publicly expressed — that judges must disclose their assets.

Lok Sabha Speaker Somnath Chatterjee said: "Judges of the higher judiciary should also be subjected to accountability on issues like declaration of assets ..." and added "he had allowed access to information about MPs' assets to anyone who sought it." (*The Indian Express*, 22.01.09)

Former Attorney General Soli Sorabjee cryptically said: "Whether legally bound or not, in the fitness of things, judges should declare their assets." (*The Times of India*, 23.01.09)

The argument of the Supreme Court Registry that the resolution was purely voluntary and confidential and did not require any disclosure under any legal provision did not cut much ice, either with the Bar or the public. The Delhi High Court Bar Association resolved to support the CIC order. (*The Hindu*, 25.01.09).

After a brief summer interlude, on August 3, 2009, the introduction of the Judges (Declaration of Assets and Liabilities) Bill, 2009 in the Rajya Sabha brought the controversy to the centre-stage. The Bill contained Clause 6 prohibiting the disclosure to the public or in any other manner except in court proceedings where an offence is alleged or in proceedings involving misbehaviour. The battle-lines were drawn. The Bill supported the Supreme Court judges.

A stormy debate followed and Arun Jaitley, himself a leading lawyer, contended that the clause violated Article 19(1)(a). Ram Jethmalani said: "what this Bill does is, it creates a suspicion in the public mind that the judiciary is seeking favours from the executive — Now, this privileged position, which the judges are seeking from the executive makes them totally subservient to the executive." Some members of the ruling party joined the criticism. The passing of the Bill was deferred. Parliamentary support was not forthcoming.

The parliamentary debate triggered strong articles from former Chief Justice J.S. Verma and F.S. Nariman. Justice Krishna Iyer also threw his considerable weight in favour of disclosure. Justice Shylendra Kumar (Karnataka High Court) wrote an article supporting disclosure and, *inter alia*, stated "The Chief Justice of India does not have the authority to speak for all other judges" (*The Indian Express*, 22.08.09). Justice Kannan of the Madras High Court voluntarily disclosed his assets. Senior Advocate K.K. Venugopal is reported to have said: "I agree with the judge of the Karnataka High Court that all judges of the Supreme Court and High Courts should make a complete disclosure of their assets." (*The Indian Express*, 23.08.09)

The Chief Justice responded to Justice Kumar's article by saying "he wants publicity and such a thing is not good for a judge. Judges should not be publicity-crazy." (*The Indian Express*, 24.08.09) The stand of Justice Shylendra Kumar received wide support.

On August 27, 2009, *The Hindu* reported that the judges of the Supreme Court had decided in principle to put their assets on the website, but regarding the modalities — in what manner or form — no decision was taken. Transparency triumphed. Public opinion prevailed. The entire nation was happy that the Supreme Court had enhanced its own reputation by agreeing with the public perception. The decision received laudatory notices in many editorials.

The remark by the Chief Justice about the Karnataka judge, that he was "publicity crazy," was an off-the-cuff remark — an impulsive reaction in an unguarded moment. The Chief Justice, in an exclusive interview, is reported to have gracefully said about the Karnataka judge: "He is young and has a good chance to make it to the Supreme Court on the basis of merit once he attains the required seniority — why alone an elevation to the SC, he has a good chance of becoming the CJ!" (*The Times of India*, 29.08.09).

Exchanges between judges in public are not unknown in other jurisdictions. Earl Warren and Felix Frankfurter's exchange in the U.S. Supreme Court has been recounted by Bernard Schwartz. Justice Frankfurter while dissenting observed in open court that the majority opinion was an "indefensible example of judicial nitpicking" and "excessively finicky appellate review." Chief Justice Warren angrily retorted "that was not the dissenting opinion that was filed ... As I understand the purpose of reporting an opinion in a courtroom is to inform the public and is not for the purpose of degrading this court."

Lord Atkin is admired for his powerful dissent in *Liversidge vs. Anderson* where he stated about his colleagues: "I view with apprehension the attitude of judges who, on a mere question of construction when face to face with claims involving the liberty of the subject, show themselves more executive-minded than the executive." The majority, including Lord Maugham and Lord Wright, were not amused. They refused to talk to him. Lord Maugham wrote a letter to the *London Times* criticising Lord Atkin and defending his own judgment. Maugham was widely criticised for this unprecedented "lapse."

In the *State of Rajasthan vs Union of India*, acting President B.D. Jatti saw Chief Justice M.H. Beg before he wrote his judgment. Justice Goswami records in his judgment: "I part with the records with a cold shudder. The Chief Justice was good enough to tell us that the acting President saw him during the time we were considering judgment after having already announced the order and there was mention of this pending matter during the conversation." Chief Justice Beg issued a press statement giving his views.

The current controversy has broken fresh ground. For the first time, the Supreme Court became a litigant before a High Court; for the first time, a High Court judge spoke up against the view of the Supreme Court judges — not in their judicial capacity because that is not permissible — but on a public issue with ethical dimensions; for the first time, former judges, in an effort to preserve the institutional integrity and respect of the Supreme Court, vigorously entered the fray; and for the first time, the media boldly took a critical stand against the apex judiciary.

In cricketing terms, the Supreme Court team has been bowled out against the citizens' team which prevailed. The opening fast bowling combination of Verma and Nariman created the momentum — the Rajya Sabha debate carried it forward and the final six came from a High Court judge. Meanwhile, the media rating almost touched 20-20 levels.

But there are no winners and no losers in this friendly contest — because both sides believed that they were protecting the independence of the judiciary. The only winner is Indian democracy. Have we graduated from the most populous democracy to a more robust democracy?

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<http://www.hindu.com/2009/09/01/stories/2009090156010800.htm>