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Make declaring judges' assets mandatory for all further appointments

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It would be most unfortunate if newly appointed judges were found owning large assets with no credible explanation.

These past weeks have been difficult times for the Supreme Court, particularly the Chief Justice of India (CJI), over making public the details of judges' assets. Reacting to the CJI's statements rejecting such disclosure, Justice D.V. Shylendra Kumar of the Karnataka High Court wrote a forthright article in a newspaper stating the CJI did not speak for the many judges of integrity in India. Justice Kannan from the Punjab and Haryana High Court publicly declared his assets. The media, former judges and public opinion weighed in heavily on the side of these two.

Members of Parliament, cutting across party lines, earlier rejected a Bill, which sought to prevent public scrutiny of such declarations of assets. The Supreme Court's isolation was complete. Perhaps for the first time since the days of the Emergency, when the court was reviled for letting down citizens on the issue of unlawful detention, the judges were at the receiving end of public criticism, and seen to be occupying the low moral ground. After all, it is a little difficult to answer the question posed by the common man, "if there is nothing to hide, what is there to fear?" Indeed, the public must have reacted in dismay at the stand taken here: just a few years ago, the Supreme Court made it mandatory for politicians to declare their assets. For many members of the Bench, current and retired, and the Bar, it was galling to see their institution come under suspicion and attack. Fortunately, the Supreme Court reversed course, agreed to disclosure and averted further damage to its reputation and credibility.

Just as well, because another embarrassment was waiting for it a week later. Under the Right to Information Act (RTI), the Central Information Commission directed the Supreme Court to furnish details whether judges had filed their declarations of assets; the Supreme Court challenged this in the Delhi High Court. On September 2, 2009, the High Court rebuffed the apex court, holding that the declarations were not immune from the RTI, and added for good measure that declaring personal assets resonated with the best practices and standards of ethical behaviour of judges.

It is crystal clear that the dominant mood in the country is that judges of the superior courts (Supreme Court and High Courts) must declare their assets and allow citizens to access such information. Indeed, such transparency must be welcomed as an aid to fighting corruption in the judiciary. As early as 1997 the judiciary, then headed by CJI J.S. Verma, resolved to make such disclosures. Compliance was partial; some judges declared their assets, some failed to periodically update the declarations, and some did not declare at all. The correctness of what was declared was not verified; no procedure or mechanism exists for that. No instance of any action against a judge for non- or wrong disclosure.

The primary area of concern is the acquisition of assets by a person after he became judge. The relevant questions are: "Has the judge failed to disclose an asset of value? Is there a declared asset whose acquisition cannot be explained, having regard to the judge's legitimate sources of income?" These questions cannot be asked when disclosures are kept under wraps in a cupboard in the Supreme Court; but the answers will be sought when the declarations are out in the open. A suitable body and procedures will have to be devised to deal with the questions and get the answers. Safeguards must be erected to minimise harassment to judges, and this will be in addition to the extraordinary power that judges have to punish for contempt of themselves, and the common remedy of criminal and civil action for defamation.

Disclosure is all the more important now because we hardly have any weapon to fight judicial corruption. There is no specific forum to complain to, and no investigative machinery. The police cannot register an FIR against a judge on charges of corruption without the CJI's permission. Corruption within the judiciary is no small matter; it grows horizontally and vertically. In 2001, a former CJI said 20 per cent of the judges across the board were corrupt; that figure would have to be indexed for inflation. Recent horror stories involve touting for appointments to High Courts, cash delivery to a judge's house, and gifts to judges from employees' provident funds. The judges implicated continue to sit on the seat of justice. The only existing remedy is impeachment by Parliament. This is illusory; no judge has ever been impeached. The CJI did recommend in vain impeachment of a Calcutta High Court judge for misdemeanours; a resolution has not even been tabled in the House. But if questions are raised about assets, then the public process of transparency may overcome institutional secrecy, and accountability may begin to replace inertia. After all, it is said, sunlight is the best disinfectant.

The Indian superior judiciary is the most powerful in the world, largely because of two features which are unique to it. The first is its extensive public interest jurisdiction, enabling it to exercise powers in executive and legislative areas. The second is the near total control it exercises over judicial appointments. Neither of these two features was envisaged in the Constitution; the court acquired them by rather creative interpretative exercises. It could do so because public opinion was solidly behind it; people saw it as the one organ of state that was clean and could be trusted. That public trust is the bedrock that sustains the court. It does not have the power of the elected vote, or purse or sword; its legitimacy, and extent of power, is defined precisely by how much public regard it is the repository of. The court lost that trust in August on the issue of public disclosure, could not long sustain isolation and fortunately reclaimed lost ground. The lesson in this for us who are supporters of the judiciary is that if the house is not kept in order and the occupants are not well chosen, the institution will forfeit public confidence, and with it the source of power.

A day after announcing its willingness to openly disclose the assets of its judges, the Supreme Court announced the names of five prospective appointees to the court and others to be Chief Justices of the High Courts. No mention was made of the requirement of declaration of their assets. It will be in the fitness of things for the court to immediately apply the high principle of transparency and require these judges to first declare their assets publicly, and await any information from the Bar or the public, before confirming the appointments. That would demonstrate judicial sincerity and commitment, and allay any residual public misgivings. It would be most unfortunate for the judiciary if any of these judges assumed high office, and was then found owning large assets with no credible explanation. The government too has a constitutional duty to ensure that proper procedures are followed and proper persons selected; and our President, a constitutional power, to advise and guide.

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