

Justice K. Kannan's stand against public declaration of judges' assets

Pompeia was perhaps a terribly wronged woman. In 62 BC she posted the festival of the Bona Dea ("good goddess"), to which no man was permitted to attend. However a young patrician named Publius Clodius Pulcher managed to gain admittance disguised as a woman, apparently for the purpose of seducing Pompeia. He was caught and prosecuted for sacrilege.

Caesar gave no evidence against Clodius at his trial, and he was acquitted. Nevertheless, Caesar divorced Pompeia, saying that "my wife ought not to be even under suspicion." It almost seems judges' turn now. Judges are under increasing pressure to declare their assets publicly on a lofty allusion to Caesar's wife having to be beyond suspicion. The CIC verdict directing the Supreme Court judges to declare their assets has found widespread approbation and the attempt of the Supreme Court to reverse the verdict by filing a writ petition before the Delhi High Court has drawn flak from many a quarter.

Former Supreme Court judges, two of them who were themselves previously Chief Justices of India (CJIs) joined issues and said that transparency and probity dictated that the assets be declared voluntarily by judges. The present CJI said that there was no law requiring judges to make a declaration of assets to the public. To this was the response by some jurists: of what use is Right to Information Act, if we must keep adding several subjects which could not be accessed by public? According to them, the already excepted areas in RTI Act under section 8, such as matters involving national sovereignty, parliamentary privileges, etc., ought not to be enlarged.

Nearer home Sri Lanka passed Declaration of Assets and Liability Law (Act 1 of 1975) requiring judges, among others to declare their assets at the time of their appointments. Many of the African countries have passed such legislation in the recent years to quell widespread allegations of corruption in high constitutional offices.

In India, although there is no such law, Supreme Court judges have been declaring their assets since 1997 to the CJI at the time of their appointment as an apex court judge and thereafter every year as per a resolution passed by the apex court on May 7, 1997. "The High Court judges may consider adopting a similar resolution in case it does not have a system of judges declaring their assets soon after the assumption of office and regularly updating the declaration made by them," said the CJI in his letter to High Court Chief Justices. The CJI wrote, "It is essential for an independent, strong and respected judiciary and indispensable for impartial administration of justice." He also called upon the High Court judges to adopt what is known as "restatement of values of judicial life" adopted by the apex court in another resolution earlier.

So what is the objection, if the statements made by judges to their respective Chief Justices are made public? Normally, it may not even sound civil to ask your own brother, sister or even a close friend about his or her financial details without offending his or her sensibilities and evoking a sense of embarrassment. Let us assume that that the attitude is never like a peeping Tom's voyeuristic proclivities- in this case, however, not in a prurient form, to purvey what is in a judge's wallet but rationalize it on the ground that the person who is entrusted with the task of judging other's conduct is beyond reproach.

Ask this question, what do you do after getting the details? Should a judge be answering everyone how he has got the wealth that he has declared? 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. Again, judges are not in the same league as politicians.

It is precisely for this reason that the judge, who granted an order of stay of the CIC order, said that judges could not be treated like politicians and ordinary government servants. Politicians are elected by people; they have a right to know the financial antecedents. A corrupt politician may not be re-elected again, if the voter believes that the politician has been corrupt. Can anyone

doubt the wisdom of the judgments of the Supreme Court in Union v Association for Democratic Reforms (2002) and PUCL v Union of India (2003), when they said that declaration of assets at the time of standing for election has become the necessity of the day because of statutory provisions of controlling widespread corrupt practices have become insufficient? Judges are not elected as are done in U.S.A. They cannot be removed by people.

What do you do with corrupt judges, do you ask? Without addressing the issues of the appointment and the removal procedures as they exist now, you cannot do anything. Shall we put the nominations for appointments of Supreme Court judges and of the High Court through discussions in the parliamentary select committees and of the respective State assemblies before they are taken on board, so that a full- fledged roving enquiry is made about the antecedents of a judge before he is appointed? A judge that is corrupt cannot be tried by his own brother judge or an ordinary magistrate, as any other public servant is tried, can he be? Judiciary ought to be institutions where normal litigations are fought, where a judge plays the role of an impartial arbiter. Can you parade a judge for dismissal from service before another judge?

Let us evolve mechanisms within the judiciary itself to regulate its conduct. If the existing mechanism is perceived as not being successful in preventing corruption in the judiciary, let us evolve better procedures for their recruitment and removal. That will give us answer to who shall access the records of assets of judges.