

## HOW TO CLEAN UP THE MESS

**Fifth Column** -M.S. Ananth

The ruling of the Delhi High Court in the CPIO *versus* S.C. Aggarwal case and the open letter by a group of jurists to the Chief Justice of India have brought to focus critical issues of transparency in the judiciary. In this connection, a few points need to be kept in mind.

'Corrupt' is not an adjective like fat, inefficient or incompetent, but a legal word which qualifies proscribed acts. Hanlon's Razor succinctly captures the point, "Never attribute to malice that which can be adequately explained by stupidity". Therefore, before condemning a judge as 'corrupt', let's appreciate the significance of the term. 'Corrupt' has not been defined in the Prevention of Corruption Act, but acceptance of "gratification" (not necessarily "pecuniary") other than "legal remuneration" is an offence under the act.

Irrespective of the merit of the high court judgment, the moot point is, to what extent does declaration of assets address corruption and transparency? Judges may disclose their income-tax returns and/ or a statement of assets, perhaps along with that of their spouses, though the high court judgment opines otherwise on this point. It is rather naïve to believe that gratification other than legal will be only in the form of money and also that such gratification would be reflected in the income-tax returns or statements of assets. As per the judgment of the Delhi High Court, the asset declaration made by judges to the CJI is "information" under the Right to Information Act. How is a citizen to use this information, forward queries or complaints to the Central Bureau of Investigation, the Central Vigilance Commission or to the income-tax department? Daring and spirited citizens can, of course, file public interest litigations, risking strictures and cost.

### Systemic change

What we have is access to information with which we cannot do much. Disclosure of assets may not tangibly address corruption and transparency in the judiciary. Whether the decision to disclose assets by the CJI engenders faith in the public is debatable. In September, a group of counsels raised concerns regarding a certain Supreme Court justice nominee and, ironically, the allegations relate to "huge assets" acquired by the nominee. Lawyers from the state high court echoed these apprehensions. These concerns bring to focus the need for a mechanism to address allegations of corruption in the judiciary. The letter proceeds to request the CJI to take steps to "initiate a thorough enquiry into all the allegations" and take "appropriate action thereafter". This leads to two questions: if the concerned judge was corrupt, why was he promoted to the high court bench in the first place? Secondly, would the allegations of corruption have had the same effect if he was not considered for the Supreme Court judgeship? Unfit to be a Supreme Court judge, but fit enough to be a high court judge? The existing mechanism of addressing acts of impropriety by judges (impeachment as per the Constitution) has been wholly unsatisfactory. The parliament's response to this serious issue is hardly inspiring.

So, how are allegations of corruption against a judge to be handled, if disclosure of assets isn't going to take us any further? A start can be made by ensuring that judges of integrity and competence are appointed through a more transparent system. A hearing, along the lines of the Senate Judiciary Committee on Supreme Court nominees, would help address the issue of transparency. But a more permanent mechanism for pursuing allegations of corruption within a legal framework needs to be evolved. We cannot hope to have judges with integrity if an opaque appointment system continues alongside a non-existent prosecution mechanism. The law minister should use his experience in the Administrative Reforms Committee to address these issues.