

Too High A Horse

Judges must disclose their assets to maintain public confidence in the courts

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SOME FOUR years ago, Transparency International and the Centre for Media Studies, a Delhi-based research firm undertook a study of corruption in India. The report said that Indians pay more than Rs 20,000 crore as bribes every year and implicated scores of public servants at all levels. The report contained scathing observations about corruption in the judiciary and a number of valuable suggestions. It stated that our legal system is expensive and suffers from endemic delays, making it difficult for ordinary citizens to get justice. This provides a strong temptation to use money to oil the creaking wheels of justice. Lawyers, court officials and even judges were found to be the recipients.

The people have not forgotten the notorious case of Justice V. Ramaswami. A Parliament-appointed Enquiry Committee of three judges found him guilty on various counts of corruption. However, the ruling party prevented his removal and ensured the defeat of the impeachment motion by the simple device of not voting. A simple issue of probity in the apex court was dressed up as a rivalry between North and South by unscrupulous politicians. Parliamentary corruption cooperated with its judicial companion.



Illustration: Sudeep Chaudhuri

A judge of the Rajasthan High Court and his Registrar sought sexual favours from a female doctor. A committee appointed by the Supreme Court found them guilty but the judge only resigned. No further action was taken. Some judges in Mysore were involved in a sex scandal. Nothing serious happened. A judge of the Delhi High Court was formally charged for corrupt dealings with property developers and the trial has not commenced for more than a decade. The case raises an interesting question: "In receiving sexual favours, does a Judge receive 'illegal gratification'?" The Supreme Court has not found it serious enough to expedite the trial. No wonder, then, that the distinguished Chief Justice Bharucha publicly declared that about 20 percent of judges were corrupt. What have the remaining eighty percent done to rein in the corrupt one fifth?

The report has drawn attention to the fact that through judicial decisions the Supreme Court has immunised itself against criminal investigations by the police – investigations to which every other public servant is subject. The report has rightly emphasized that a National Judicial Commission should be created with the power to hire and fire judges. Just as judges ruled — in a somewhat unusual exercise of their power — that candidates for political office must declare their assets, the suggestion has also been made that judges too should declare their assets and those of their family members.

The United Nations Centre for International Crime Prevention has been actively involved in

deliberations with various international non-governmental organizations such as the Judicial Group on Strengthening Judicial Integrity. In April 2000, the Group decided to formulate a Code of Proper Judicial Conduct and this Code was adopted at the Hague in November, 2002.

The Code recognises that though the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary, every society recognises that judicial integrity is a basic requirement for the Rule of Law. The behaviour and conduct of a judge must reaffirm people's faith in the integrity of the judiciary. All recognize the validity and binding nature of national laws which require the public disclosure of every judge's financial assets.

The issue of corruption including judicial corruption is going to be the most prominent one in the next parliamentary election. People realise that judges are not happy at the invasion of privacy that the disclosure of their private finances entails. Unfortunately, judges do not appreciate that the people rightly and firmly believe that such disclosure is one of the most effective means of discouraging corruption, conflicts of interest and misuse of public funds. Individual citizens, social groups and the media are almost unanimous that laws must compel disclosure and that such disclosure should be accurate, timely and comprehensive. They also want such laws to be vigorously enforced.

A number of countries in Latin America, such as Brazil, Mexico and Argentina have passed specific asset disclosure laws for public officials. Some expressly state that judges, too, are subject to those laws. Worldwide, let alone countries like the United States, even countries like El Salvador and Uganda have this legal requirement for disclosure.

IN MY opinion, this obligation in India stems from the 14th Article of the Constitution, which grants us the Fundamental Right to Equality before the law and the Equal Protection of the law. There is no need for an additional law creating or affirming such a duty. There is no dispute that judges are 'public servants' under the Indian Penal Code and the Prevention of Corruption Act. In 1988, even Members of Parliament and state legislatures were deemed to be 'public servants' by the Prevention of Corruption Act. Judges are and have always been public servants and therefore must stand on the same footing as other public servants. There is no rational distinction justifying special treatment for them.

If a candidate for election to any legislature — a mere aspirant to become a 'public servant' — must publicly declare all his assets and the assets of his family members, is it not much more essential that judges do the same when seeking judicial office and while they hold that office? The people's confidence in judges' integrity is the foundation of the judicial edifice. The law of contempt of court is not a safeguard for judges as persons but for the functions which they exercise.

Look at the awesome powers which our Constitution confers upon our Judges — particularly those in the highest court. Apart from their complete control over the life, liberty and property of all citizens high and low, they have the power to declare illegal and void the public acts of all bureaucrats, every minister and every government on the grounds that they violate the constitution, the law or principles of natural justice. What is more, they can declare a law passed unanimously by the President and both Houses of Parliament as null and void if they find it to be in conflict with the Basic Principles of our Constitution. Since Parliament reflects the will of the Indian people, some have criticised this judicial power as an affront to the people's sovereignty. While legislators have to face elections at fixed intervals and have to win the approval of the people, judges can carry on until they become old without any such check, scrutiny or control. Yet, those judges can turn to the Government and Parliament and nullify their solemnly promulgated laws, telling them, "We understand the Constitution you enacted 60 years ago better than you do." The founding fathers reposed this power in judges, knowing the calibre of the judges of those days. It is tragic to see how far standards have fallen. It is imperative that

Judges should do nothing to further erode the people's confidence in them. The refusal to declare assets is calculated to destroy that confidence. Even the time of public disclosure has not yet arrived. A high officer enforcing the people's right to 'know' has only enquired if judges are actually disclosing their assets to their Chief Justice!

In March, 2003, the Election Commission explained why the disclosure of assets is necessary for candidates. It said that disclosure is a condition for a candidate's transparency. Voters have the basic right to learn the full particulars of each candidate for their vote. The right to get such information in a democracy flows from the very democratic nature of the polity. The Commission said that the Fundamental Right of Freedom of Expression included the freedom to seek and receive information. It quoted the Supreme Court's order of 2nd May, 2002 which mandated that the Election Commission compel this disclosure from every candidate.

Justice Ramaswami was found to be corrupt but the ruling party blocked his impeachment in Parliament

It is a credit to the entire judiciary that many judges have declared they are prepared to disclose their assets even without any law requiring them to do so. The Chief Justice of India has rightly responded that judges are welcome to disclose their assets. I am afraid the Supreme Court will appear totally hypocritical if, through some fancy distinction it does not accept the duty that judges have to disclose their assets.

In the interest of the dignity of the Supreme Court, I hope the Hon'ble Chief Justice will soon change his mind and say that all judges must disclose their assets. It is not enough that the disclosure is made by judges the Chief Justice in private; this is a disclosure to which every citizen of India is entitled. If he does take this step, it will make the petition filed in the Delhi High Court by the Hon'ble Supreme Court challenging the Chief Information Commissioner's order fruitless and redundant. There are many people in this country who rightly think that the Supreme Court harmed its own dignity by becoming a litigant in the High Court. The noted jurist Fali Nariman turned down the request of the court to assist it in deciding the case, saying that judges of the apex court must demonstrate that the law is the same for everybody. This carries its own compelling lesson.

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