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## CJI, please declare my assets

**J. S. Verma** Posted online: Wednesday, Aug 12, 2009 at 0319 hrs

A leader of the Bar, Fali S. Nariman, commenting on the Rajya Sabha's refusal to grant leave to introduce the Judge's (Declaration of Assets and Liabilities) Bill 2009, recently wrote in these columns: "It was a rebuke also to the judges of the higher judiciary; they were pulled down a peg or two... The prestige of our higher judiciary has been adversely affected." He has voiced the feelings of many of us — retired and sitting judges of the higher judiciary. My anguish is deeper because my long apprehended fear in this behalf has come true. Our attempt at self-regulation of judicial accountability, a facet of the independence of the judiciary, from within having failed, it is now to be done from outside, and that too at our behest. It has now been said that we judges will declare our assets only if required to do so by a law. I believe most of us prefer voluntary correct behaviour instead of outside imposition. That, in my humble view, is the dignified course for judges of the higher judiciary, which appears to have been the view also of the framers of the Constitution.

It was in this spirit the earlier Chief Justice's Conferences resolved to evolve a framework for self-regulation of the Supreme Court and high court judges, which culminated in the three resolutions adopted unanimously by the Supreme Court on May 7, 1997 when I was the Chief Justice of India. One of these required compulsory "declaration of assets" by every judge (including the Chief Justice) of the Supreme Court and the high courts. This was the commitment of all 22 judges of the Supreme Court (including me, as the CJI), of whom six later became CJI. The remaining CJIs including the present incumbent were then puisne judges in the high courts bound by those resolutions. Acceptance of these resolutions by every new appointee was ensured during my tenure.

Conscious of the strength only of social sanction instead of legal sanction to make it enforceable in case of need, I wrote to the then prime minister on December 1, 1997 of the need of parliamentary legislation based on the framework provided by the Supreme Court with its unanimous consent. Nothing more was required to be done by the political executive except to endorse the Supreme Court's suggestion in the form of legislation, which preserved the independence of the judiciary with judicial accountability as a necessary concomitant. I believe the later Chief Justice's Conference of 1999 endorsed the same, followed by the Bangalore Principles of 2002.

What more consensus or approval of the proposed legislation is needed? If at all, there may be some room for marginal improvement in the content of those resolutions covering the field of judicial accountability in the light of experience gained during the intervening last 12 years. That does not require much imagination, time or effort. I may here mention that even after my retirement I had reminded the prime minister of this urgently felt need in a letter of April 7, 2005, reiterating the material facts.

My dissent with the majority view in the Veeraswami case (1991) was based on the felt need for a legislation to cover the field of judicial accountability at the higher level preserving the independence of the judiciary, because the existing mechanism was found ineffective. The subsequent infructuous removal proceedings in Parliament against V. Ramaswami after the adverse finding of the judge's committee proved the point. I had concluded my dissent by expressing the apprehension of the danger of erosion in the judiciary's independence, if the remedy were to be devised from outside. That stage is now reached.

The framers of the Constitution enacted Article 235 to enforce accountability of the subordinate judiciary and vested the "control" over it to the high court to preserve the independence of the judiciary consistent with the directive principle of state policy in Article 51 of separation of the judiciary from the executive. No similar provision was made for the higher judiciary, and the high courts were not made subordinate to the Supreme Court, except in their judicial functions. Obviously, the higher judiciary was expected to self-regulate its behaviour without any outside intervention, except for removal by Parliament for proved misconduct or incapacity after an adverse finding by a committee of judges. I would like to believe that the framers of the Constitution were keen to preserve not only the independence of the judiciary, but also their self-respect by leaving that sphere of discipline to be governed by self-regulation according to the well-established traditions and norms of judicial behaviour.

The enactment of Article 235 is clear evidence of the recognition that judicial accountability is an essential facet of the independence of the judiciary. The only difference can be in the form of the mechanism to enforce accountability at the higher level, ensuring that it is effective and it does not erode the independence or conflict with the directive principle of separation of the judiciary from the executive. Undoubtedly, every holder of a public office in a republican democracy has to be accountable to the political sovereign — the People.

If a landmark judgment of the Supreme Court mandates every candidate at an election to Parliament or legislative assembly to publicly declare his/ her assets and liabilities, there is no reason why the higher judiciary should be exempt from that requirement. This is the demand of transparency for effective accountability of every holder of a public office.

The requirement of transparency automatically invokes the RTI Act. Judicial functions are in the open court and in public view. There is no reason why the administrative acts should not be equally transparent and subject to public scrutiny, as are the similar acts of other organs. In fact, judicial review of the administrative acts of the Chief Justice and of the Court is well established.

Judicial accountability requires transparency. Public knowledge of the antecedents, assets and liabilities of the judge, spouse and dependents is necessary for adjudging the judge's conduct and suitability for the performance of official duties.

Even though it is more than a decade since I demitted the office of Chief Justice of India, yet I would like to do the next best. I had made a disclosure of my assets soon after I assumed office of CJI in March 1997 and kept it with the Registrar General of the Supreme Court as a part of the official record. Similar declarations were then made by all the Supreme Court judges voluntarily pursuant to the unanimous resolution of May 7, 1997. I invite the Chief Justice of India to make a public disclosure on the Supreme Court's website of the declaration of my assets which must be with the Registrar General in the official record. I do hope most of the judges in the high courts and the Supreme Court would act likewise and bring quietus to this unsavoury controversy. Judiciary's real strength lies in public acclaim. I am sure this will raise us a "peg or two" in public estimation.

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