
Accountable or not?

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It is not the law minister alone who was rebuffed in the Rajya Sabha on August 3, when the House would not grant him leave to introduce the Judges (Declaration of Assets and Liabilities) Bill 2009. It was a rebuke also to the judges of the higher judiciary; they were pulled down a peg or two for having expressed their readiness to disclose their assets if there was a law to that effect enacted by Parliament, but only if that law ensured the confidentiality of such declaration. Members of Parliament reacted unfavourably — one of the national newspapers, in an editorial, told us why: “the judiciary had ruled some years ago that a person must officially declare his (or her) assets and liabilities before becoming an election candidate, and MPs of all parties, ruling Congress included, were only returning the compliment!”

What is of concern to me is not the exchange of compliments. What is of concern is that the prestige of our higher judiciary has been adversely affected. This has never happened before; whenever in the past the law minister, in consultation with the CJI, introduced measures for increasing salaries, pensions and perquisites for judges of the higher judiciary, the measure was not only permitted to be introduced in one or other House, but it got passed smoothly in both Houses. Then why this snub? Let me explain.

Sometime ago one Subhash Aggarwal sought information (seemingly innocuous) from the office of the Supreme Court as to “whether any judges of the Supreme Court and High Court have been declaring their assets under the code of conduct adopted by the chief justices”. The office of the Supreme Court said that this information did not exist in the Registry, and information was therefore declined. In an appeal filed by Aggarwal before the Chief Information Commission (under the Right to Information Act, 2005) the office of the Supreme Court took the stand that though this information was in the chief justice’s office, that office was not part of the Supreme Court Registry. The CIC rejected this plea and ordered the office of the Supreme Court to get the information (as to whether any judges were disclosing their assets) from the chief justice’s office, and to disclose it.

The Supreme Court (Registry) challenged this order by way of a writ petition in the high court of Delhi, saying that this information could not be given since it was provided by judges to their chief justice in a fiduciary capacity, that this was personal information not having any bearing on public activity or public interest. The writ petition was heard by a single judge of the Delhi high court. A couple of months ago the arguments were concluded and the high court judge has reserved judgment.

Meanwhile, the Union law minister, apparently anxious that something should be done by his ministry about judicial reforms in the first hundred days of office of the UPA government, moved the Rajya Sabha on August 3 for permission to introduce his bill. All sections of the House said, “No, not this bill”, because apart from providing that the

declaration of assets would be made privately by the judges only to their respective chief justices, it also went on to provide for a blanket immunity from accountability: Clause 6 of the bill said that the declaration made by a judge to his chief justice shall not be made public or disclosed and “shall not be called for or put into question by any citizen, court or authority, and that no judge would be subject to any inquiry or query in relation to the contents of the declaration by any person”. This non-transparent, impunity provision has had the effect of the higher judiciary losing much credibility, not only with members of Parliament but with large sections of the public as well. The inclusion of this clause has weakened the otherwise high moral authority of judges of our Supreme Court. The higher judiciary exists in our country and flourishes because of the confidence people have in it. If only the judges had relied on the Constitution of India to protect them, as when they decide individual cases, and disgruntled litigants sometimes make allegations against them, they would have had no need for additional protection from government or from Parliament.

If the credibility of the higher judiciary is to be restored, as I believe it must — since without the higher judiciary our Constitution simply cannot work — it is essential that every judge of the Supreme Court set an example and voluntarily make a public disclosure of his (or her) assets on the website of the Supreme Court, law or no law. This would then be dutifully followed by judges of the high courts on the salutary principle stated in the Bhagavad Gita: “Whatsoever great men doeth, that other men also do; the standard they setteth up, by that the people go.”

If there are frivolous pleas by disputed litigants, as the bill had anticipated, they would be only sporadic and occasional, and in any case this is an occupational hazard for all judges who have taken an oath under the Constitution to act fearlessly; fearlessness is an attribute which our judges have invariably and repeatedly exhibited in a host of matters that have come before them. In the United States, which like India has a written Constitution, all justices of the US Supreme Court are required to disclose annually their assets and liabilities under the Ethics in Government Act 1978 passed by the US Congress. The chief justice and other associate justices of the US Supreme Court are named in the enactment, and they disclose their assets and liabilities without protective safeguards, and regardless of disgruntled litigants — who are a-plenty there, as they are here.

I would respectfully beseech the judges of our highest judiciary not to rely on the technicalities of the RTI Act or to depend on the executive to extricate them from their present delicate no-win situation. Public confidence in the administration of justice by the higher judiciary is of paramount concern. The judges must act on their own taking solace in the ringing words of Supreme Court Justice Vivian Bose who wrote in a judgment way back in 1954: “We (the judges) have upon us the whole armour of the Constitution and walk hence forth in its enlightened ways, wearing the breastplate of its protecting provisions and flashing the flaming sword of its inspiration.” More protection is simply superfluous.

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