

In a higher court

J. S. Verma Posted online: Friday , Sep 11, 2009 at 0420 hrs

Let me begin by commending Justice S. Ravindra Bhat of the Delhi high court for his excellent judgment of September 2, 2009 in the judges' assets case, the quality of which would do credit to anyone at the highest level in the judicial hierarchy. It is remarkable also for the reason that it was prepared (evident from the postscript) when the Supreme Court judges (led by the CJI) were still dithering on the issue, before finally reiterating the full court's earlier resolution of May 7, 1997 to this effect. Once again the high courts have shown the right path when the Supreme Court dithered, as it did during the infamous Emergency in the Habeas Corpus case. In that case, the later amendment of Article 359 of the Constitution to protect the non-derogable rights in Articles 20 and 21 even during an emergency corrected the aberration of the Supreme Court judgment, approving that of the nine high courts. In the present case, the strong public opinion, including eloquent support from within the judicial fraternity, shows Justice Bhat to be right. I wish the judicial verdict is accepted by the Supreme Court (led by the CJI) in good grace without any reservations.

The basic premise of the judgment in paras 46 and 47 is worth mention. It says: "It would be highly anomalous to say that in exercise of the legitimate jurisdiction to impact people's lives, property, liberties and individual freedoms, as well as (to) interpret duties and limitations placed upon State and non-State agencies, barring the institutional accountability standards in the Constitution, judges have no obligation to disclose their personal assets, to someone or authority... All power — judicial power being no exception — is held accountable in a modern Constitution. Holders of power too are expected to live by the standards they set, interpret, or enforce, at least to the extent their office demands. Conventions and practices long followed, are known to be legitimate sources, and as binding upon those concerned, as the express provisions themselves."

These principles are unexceptional. It would be a pity if the judgment is not accepted in good grace and it is challenged in appeal by the Supreme Court, ultimately before itself! Any such course will further damage the judiciary's image. This is not a matter in which the "doctrine of necessity" can apply.

Media reports quote Attorney General Goolam Vahanvati saying that the judgment would be challenged in appeal. As counsel appearing for the Supreme Court, his statement is assumed to be on instructions from the CJI. If true, it is unfortunate. I wish the Attorney General had drawn inspiration from his illustrious predecessors (names exclude the living) like M.C. Setalvad, C.K. Daftary, S.V. Gupte and Lal Narayan Sinha (who refused to argue for the Union government in the Habeas Corpus case during the Emergency) to candidly advise the CJI against any further reservations or challenge to the above judgment. That remains to be seen.

In my view, the only surviving issue now relates to the modalities and the procedure for declaration of assets by these judges, the custody of the declarations, and furnishing the information sought under the RTI Act. The judgment of Justice Bhat deals with this aspect also. The form of declaration and its custody are simple matters to be worked out by the concerned authorities. Section 8 of the act provides the manner of dealing with the request for information. If need be, that can be elaborated for clarity without destroying the object of the enactment — maximum disclosure, minimum confidentiality. These details need not detain us.

The one area of concern voiced by many judges who are in favour of disclosure needs mention. They want a safeguard against harassment by unscrupulous persons and disgruntled litigants who are known to make false and scurrilous allegations even against some honest judges for ulterior motives. Even though the apprehension is genuine, it has to be accepted as an occupational hazard, which is common to all public functionaries. Moreover, the additional contempt power is available to the judges as a deterrent. In any case, this aspect can be taken care of, and can not be a justification for not declaring the assets subject to public scrutiny for legitimate reasons. In the current environment of waning credibility of the higher judiciary, with specific allegations of corruption based on prima facie authentic materials even against a few of the highest, it is in the judiciary's own interest to be fully transparent and above suspicion.

In addition, I have a suggestion for consideration. To decide any dispute about the age, Article 217(3) provides the machinery in respect of a high court judge, and Article 124(2A) is the corresponding provision for a Supreme Court judge. A similar provision can be enacted to decide finally any controversy relating to the assets of a high court or Supreme Court judge by the President of India after consultation with a body constituted for the purpose. The composition of that body can be decided after a wide debate to obtain the distillate of public opinion, keeping in view the significance of the independence of the judiciary. My view is that the body should comprise only of judges, because adjudication of disputes is primarily a judicial function. If considered necessary, the vice president could chair that body, since that office is not identified with either the executive or the judiciary. The myth that judges cannot be trusted to decide against their own fraternity has been exploded in the removal proceedings against Justice V. Ramaswami, wherein the judge's committee found him guilty but Parliament let him off, and now by Justice Ravindra Bhat in the present issue, uninfluenced by Chief Justice K.G. Balakrishnan's contrary view voiced consistently through the media.

It is also necessary for the proposed legislation to provide that the final determination made in this manner in every case considered fit for inquiry by the President of India, as also in the cases rejected as not fit for inquiry, should be published to end the controversy. This procedure will protect the honest judges from vilification, while identifying the wrong ones, if any, for the logical follow-up action. This, in my view, is the way to ensure judicial accountability, with protection of the honest, which constitute the large majority.

The writer is a former Chief Justice of India

<http://www.indianexpress.com/story-print/515773/>