



‘Reluctance to disclose assets creates impression that judge has something to hide... majority of judges are definitely not reluctant’

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It is a matter of utmost paradox that the chief justice of the most powerful Supreme Court in the world should be expressing apprehension for the safety and security of the judges of the superior courts in this country by saying that revealing the particulars of assets of the judges and throwing open the information to the public domain may result in harassment to judges and in turn prevent the judges from performing their duties without fear or favour. He has also expressed his fear that this may impair the independence of judges and affect their functioning.

It is equally ironic that the apprehension should have been expressed by the chief justice of the Supreme Court of India, that too in an interview given to a news daily and as the chief justice of the apex court of the country and in the context of the applicability or otherwise of the provisions of the Right to Information Act (RTI Act), a piece of legislation which was commended for legislation by the very Supreme Court in terms of its judgment in Peoples Union for Civil Liberties vs Union of India (AIR 2002 SC 2112J). This judgment upholds the high moral principle that the rule of law should operate uniformly; that the Constitution is above every one; that rights of citizens guaranteed under Article 19(i)(a) of the Constitution of India, i.e., right of expression, should outweigh the personal difficulties and hardships that can be pleaded by persons occupying high positions and serving as public servants. It must be remembered that the Supreme Court had emphatically ruled that no immunity can be claimed by any person, including one holding a constitutional position on the ground of any possible exposure to harassment and consequential difficulties if the particulars of the assets held by persons in such high public positions are revealed and made public. As is well known, the Right to Information Act was enacted with the object to provide for setting out the practical regime of right to information for citizens by ensuring access to information on any given issue.

The extent of applicability of the provisions of the RTI Act and persons or officers brought within the scope of the provisions of this Act naturally can be a matter for judicial determination. It is possible to have a divergence of opinions concerning the interpretation of the meaning and extent of applicability of the relevant provisions of the RTI Act.

The object of this article is to dispel the most damaging and uncalled for impression created in the minds of the public at large and litigants in particular, that the judges of the superior courts in this country, who enjoy high constitutional protection and immunity, are wary of disclosing their assets or are not prepared to throw open the information relating to the acquisition and holding of their assets to the public domain; that they would rather prefer to keep the information well-guarded and also cover up a possible misdeed or a possible improper acquisition of assets and would like to avoid either scrutiny or an explanation, if one was needed in respect of their asset holdings.

But such an impression has been created by a writ petition filed before the Delhi High Court on behalf of the Supreme Court of India, orders on which are pending. The petition questions the legality of an order passed by the central information commissioner, the purport of which is that the registrar general of the Supreme Court is required to furnish certain information sought for by someone who is entitled to do so. The information sought for is about the assets held by judges of the Supreme Court and high courts.

Meanwhile, the Chief Justice of India has articulated an opinion that seems to have created some misgivings in the minds of the people. This was in an interview that he gave to some news dailies.

A further development is the failed attempt to introduce a Bill in Parliament for enacting a law making it obligatory for judges of the superior courts to disclose their assets through declarations filed before the chief justice of the high courts concerned. The judges of the Supreme Court, including the chief justice, would have been required to file such declarations before the President of India. What, however, created a storm was the provision in the Bill that information contained in the said declarations would remain confidential and not accessible to the public.

Not quite unexpectedly, the Bill has drawn flak and has become a subject for controversies. The Bill will naturally take its course in accordance with Parliamentary procedure and constitutional provisions. The immediate objective of this article is to dispel the impression created in the minds of the people about the conduct and behaviour of the judges of the superior courts of this country and to convey the message that whatever has been said and done in this regard latterly is not necessarily the way that all judges of the superior courts view this issue.

On the legal plane, the Chief Justice of India does not have the authority to speak for all other judges of the superior courts, whether of the Supreme Court or of high courts, unless any of them have either confided in the chief justice or have authorised him to speak on behalf of others also.

Role of the judiciary

Judiciary is one among the three organs of the state as envisaged in the scheme of our Constitution and has a unique role to play in comparison to the executive and the legislature, which are the other two organs of the state. Under the scheme of our Constitution, the judiciary is assigned the role of acting as an arbiter of disputes not only in respect of the disputes arising between citizens and citizens and persons and persons, but also in respect of disputes arising between the state and the citizens. For this purpose, the judges of the superior courts have been conferred with the power and jurisdiction to review both the executive actions and the legislative actions of the state on the touchstone of the constitutional provisions and relevant statutory provisions.

The architects of our Constitution were conscious of the very significant and special role assigned to the judiciary in the scheme of the Constitution. It was envisaged as the organ for protecting the rights of the citizens, guaranteed under the Constitution. There was the recognition that judges, particularly the judges of the superior courts, who have the power of judicial review of administrative and legislative actions, should function without fear or favour and that the judiciary should remain totally independent and fully insulated from any external interference.

This has been ensured through appropriate constitutional protections, among which is a definite and assured tenure of office to every judge of the superior courts of this country. When once a judge assumes office, till he lays down the office on attaining the age of retirement as indicated in the Constitution itself, he/she is insulated from any outside interference in his/her duties. The tenure of office of a judge of the superior court can be put to a premature end only when he/she is impeached by a resolution of Parliament, supported by not less than two-thirds of the combined membership of the Parliament. Further, an impeachment requires that the motion for impeachment be based on proved misconduct on the part of the judge concerned.

How foolproof and effective the protection is can be gauged from the fact that not a single judge of the superior court has been impeached so far in the past 59 years of the working of the Constitution and in fact a motion of this nature was moved in Parliament only once in the isolated case of Justice V. Ramaswamy, which also failed for want of requisite majority support. It is beside the point whether this failure was because of some political considerations?

The founding fathers of our Constitution have provided such a foolproof protection and security to a judge and to the tenure of office occupied by judges only to ensure that the judges of this country not only act in absolute independence, in the sense that they are not in any way troubled or pressurised by the possibility of their losing the office or post, but also to ensure that they always act without any fear or favour. In fact, every judge of the superior courts, before assuming office, subscribes to an oath either in the name of god or on solemn affirmation, as envisaged under the Constitution, which is as under:

I, AB, having been appointed chief justice (or a judge) of the Supreme Court/high court at...., do swear in the name of god/solemnly affirm that, I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.

There cannot be any better protection to a judge than the one given by the Constitution. There is no question of any person either improving upon the protection or in any way detracting from such protection, whether by any executive action or even by legislative measures, unless the relevant provisions of the Constitution itself are amended. Such an impregnable protection and assured term of office is a mark of the faith and confidence reposed in the judges by the Constitution. It is thus incumbent on them to function with ability, competence, impartiality and fearlessness.

The institution of the court is sustained by the faith and confidence reposed in it by the people, especially by the litigant public. The judicial wing of the state thus cannot fail the people in this regard. It is with this faith and confidence that litigants approach the court for any relief. It is obvious, therefore, that when once that trust and confidence is eroded, there are no seekers of justice or persons coming for relief before the courts of law and there cannot be any further justification for the existence of courts.

In the scheme of our Constitution, courts are here to stay and judiciary has a unique and specified role to play. There is no question of the state being envisaged without the judicial wing. It is a well thought out scheme and design that there should be checks and balances on the functioning of all wings of the state. Ensuring that the executive and the legislative wings of the state not only adhere to the assigned roles but also do not transgress or exceed the constitutional limitations, is the responsibility of the judicial wing of the state.

Effective and purposeful functioning of the judiciary for achieving this object should be ensured at all times. It is for the judiciary to inspire at all times the confidence of the litigant public through its own conduct. There cannot be any discordant note on this. There can never be an impression conveyed or created in the minds of the people that judges of this country are in any way either wanting in this task or are afraid in any manner in performing their duties and functions.

Open to disclosing assets

In this background, on the issue of the judges of the superior courts disclosing their assets or making it known to the public at large or as the phrase goes throwing it into public domain, it is clear that there need be no hesitation or reluctance on the part of the judges either to disclose their assets or to make available the information to the public at large.

In fact, it is a misnomer to think that the judges of the superior courts are not ready to disclose their assets. The judges of the high courts are appointed after being drawn from

the Bar or on promotion from the subordinate judiciary in the ratio of 2:1 which means that for every promotee judge, there will be two judges appointed directly from the Bar. Judges promoted from the subordinate judiciary happen to be occupants of the post of district judge and every district judge is required to declare his/her assets every year, as part of the conditions of service. The judges drawn from the Bar and appointed to the high courts would all have disclosed their income for the previous five years. This is an essential requirement.

The particulars of assets of all appointees from the Bar would thus be available for anyone to see. Moreover, the norms and guidelines conventionally followed while elevating persons from the Bar to the Bench demand that the appointee be an assessee, under the Income Tax Act with a certain assured level of income. All the information about the assets of both the promotees and the fresh appointees is thus already in public domain till they assume office as judges of superior courts. Why should, therefore, there be any reluctance or hesitation or even an objection on the part of any judge to disclose particulars of the assets acquired by him/her after assuming the office of judge, as thereafter the only income of the judge is salary, unless the judge has any other source of income even after the assumption of office as judge.

In a situation of this nature, if any impression is created that the judges of the superior courts are reluctant to disclose the particulars of their assets, it undoubtedly creates an impression in the minds of the general public and the litigant public that the judge so reluctant to disclose the particulars has something to cover up or hide. An impression of this nature is most damaging to the image of the judiciary and the institution of courts and even to the individual judges.

It is high time that any such impression is immediately removed. It is a truism to say that a majority of the judges of the superior courts are definitely not reluctant or unwilling to disclose the particulars of their assets. In fact, most of them, it may be safely assumed, are even willing to declare it voluntarily without there being any element of compulsion and some have even already disclosed the particulars of their assets.

In the light of this, it is fair to say that the views expressed by the Chief Justice of India are not necessarily representative of the views of all the judges of the superior courts of this country. In fact, the Supreme Court of our country has no supervisory power or control over the high courts in the scheme of our Constitution. High courts are independent and function in accordance with the constitutional provisions and in terms of the applicable statutory provisions. The Supreme Court only exercises appellate jurisdiction over the high courts in specified areas as provided for under the Constitution and the laws. The law declared by the Supreme Court is binding on all the courts — it is a constitutional mandate in terms of Article 141 of the Constitution. The Supreme Court has also the most exclusive power in passing such decrees and making such orders as are necessary for doing complete justice between litigants in any cause or matter before it and it is to be enforced throughout the territory of India in the manner prescribed by law. Other than such a constitutional provision and subject to these very constitutional provisions, the high courts function independently.

Every judge of the superior courts of this country functions independently and has every right and duty to express his/her opinion without fear or favour. Even while functioning on the judicial side, a judge may dissent from a majority opinion and express his/her dissenting opinion. It is only a fortiori so in non-judicial matters.

Hitherto, it is only the opinion of the Chief Justice of India that is expressed in public and the Chief Justice of India is the person, who has been reacting to the doubts and queries of the people as articulated in different sections of the media. No one else from the judiciary has expressed any opinion to the contrary and silence in such a situation obviously amounts to consent or agreement! And yet, the fact of the matter is that judges of the superior courts of this country are not reluctant and hesitant to declare their assets. On the other hand, a majority of them must be ready and willing to do so. There should be no question of any judge either hiding or taking shelter under any non-disclosure provision or under a provision to ensure confidentiality or secrecy of the information. The protection provided to the judges of the superior courts under the Constitution itself is good enough and sufficient to ensure the independence of the judiciary and fearless functioning of the judges. There is absolutely no question of any other person or any other organ creating a sense of apprehension, fear or possible harassment in the minds of the judges by use or misuse of any information that one may come across or might fall into the hands of the litigant public of this country.

There is no dichotomy between the public and private life for a judge. The conduct of a judge should be impeccable, should be one of inspiring confidence of the litigant public and people of this country, be it in the course of his/her judicial functioning or outside the court. Every judge of the superior court is also a public servant and accountable to the citizens of this country like any other public servant.

There is an inalienable relationship between efficacy and openness. Efficacy of our courts is due to the open conduct of court proceedings. Judges function in open courts and the proceedings of a court can be watched by any member of the public and is open to scrutiny. Transparency is the hallmark of our judicial system. That is partly the reason why the efficacy of courts is generally accepted. In such a system, there can never be any reluctance or hesitation on the part of the judges to disclose their asset particulars. There should not be. Transparency in judicial functioning necessarily implies transparency in the matter of acquisition of assets by the judges as much as in the functioning of a judge inside the court. Such transparency is expected from all other public servants holding high public office in the other two organs of the state, namely, the executive and the legislature. When such is the case, members of the judiciary cannot plead immunity or claim exception from being accountable to the people. On the other hand, it is imperative that the judiciary should conduct itself in such a manner that judicial functioning becomes more transparent and more accountable, without which people may not indefinitely continue to retain the faith, trust and confidence that they repose in the courts and judges of our country.

Judges' code of conduct

There have been a few unpalatable incidents in the context of some sitting and past judges, the allegation being that they had indulged in some questionable transactions. It is in the wake of this that a suitable legislation was contemplated to plug the loopholes, if any. Certain of these alleged demeanours received copious attention in the media. Reportedly, such rather unsavoury episodes seem to be on the increase. As a consequence, a suitable response from the appropriate organ of the state was only to be expected. It has come in the form of some measures contained in the Bill, which failed to get tabled in Parliament because of some lacunae pointed out by the members.

That being so, there is absolutely no question of one organ or wing of the state trying to interfere with the functioning of the other organ or wing of the state except to the extent of its own assigned role under the Constitution. There is no gainsaying the fact that it is the duty of the legislature to legislate and usher in laws to meet the requirements of a changing society from time to time. The hopes and aspirations of the people are never static, by reason of which the legislature needs to be dynamic if it is not to become anachronistic. That does not mean that the legislature enjoys the prerogative to ignore the stipulations of the Constitution. Likewise, it is the constitutional duty of the judiciary to judicially review the legislative action and statutory provisions strictly by the touchstone provided in the Constitution. The validity or otherwise of the legislative provision is thus established through a constitutional process and not simply arbitrarily as anyone can see. It needs to be again emphasised that each organ of the state is duty bound to perform its assigned role according to prescribed norms, which means that there is no trade-off or exchange of their respective roles.

It is also very necessary for the high constitutional functionaries to bear in mind that they should not conduct or act in a manner which can in any way disable them from performing their duties and functions assigned to them. At any rate, so far as the judges are concerned, a judge cannot and should not by his/her conduct and expressions outside the court disable himself/herself from his/her duty to be performed as a judge inside the court.

An article of this nature, which is otherwise not common or usual for a judge to pen, has become necessary only to convey to the people of this country that the impression created as of now is not necessarily the correct impression; that the judges of the superior courts of this country do not necessarily subscribe to the views and apprehensions expressed hitherto; that they have views and opinions otherwise than what has been conveyed to the public at large so far. The judges have nothing to fear; they have nothing to hide and they have no hesitation to disclose particulars of their assets and even for throwing open the information to the public domain. In fact, it is for the judges of this country to act and provide information even voluntarily. Indeed, I humbly appeal to all my brother and sister judges of the superior courts to do so. No inhibition need deter us from this path.

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