

AN OPEN LETTER TO ALL JUDGES OF THE SUPREME COURT AND HIGH COURTS

13/2/09

Dear Judges,

In 1997, while adopting the "Restatement of Judicial Values" (also called the code of Conduct), the judges of the Supreme Court decided that each judge would declare her/his assets in confidence to the Chief Justice of India. This was reiterated in 1999 in a conference of the Chief Justices of India. These resolutions were adopted in light of a growing public perception that there was lack of accountability of the Higher Judiciary. This was also in line with the requirement of declaration of assets by all civil servants to the government.

Subsequently, in 2002, and 2003, the Supreme Court in its judgements in the ADR and the PUCL cases has held that it is part of the fundamental right of citizens, under Article 19 (1) (a) to know the assets and liabilities of candidates contesting election to Parliament or the State Legislatures. In the words of the court: *"Mr Ashwini Kumar, learned senior counsel appearing on behalf of the intervenor submitted that the aforesaid observations are with regard to citizens right to know about the affairs of the Government, but this would not mean that citizens have a right to know the personal affairs of MPs or MLAs. In our view this submission is totally misconceived. There is no question of knowing personal affairs of MPs or MLAs. The limited information is whether the person who is contesting elections is involved in any criminal case and if involved what is the result? Further, there are widespread allegations of corruption against the person holding post and power. In such a situation, question is not of knowing personal affairs but to have openness in democracy for attempting to cure a cancerous growth of corruption by a few rays of light. Hence, citizens who elect MPs or MLAs are entitled to know that their representative has not misconducted himself in collecting wealth after being elected. This information could easily be gathered only if prior to election the assets of such person are disclosed."*

The rationale given by the Supreme Court for the need for disclosure of assets of candidates contesting elections would equally apply to all public servants occupying crucial positions of authority. In any case, with the Right

to Information Act, 2005, now in place, it is clear that the disclosure of assets by Public Servants to the Government or to any other authority would be accessible to the citizens under the RTI Act. Section 8(1) (j) exempts "information which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information." However this exemption clause would clearly not apply to the disclosure of assets of public servants, which has already been held by the Supreme Court in the ADR and PUCL cases to be in public interest.

You are doubtless aware of the controversy currently raging in the media regarding the disclosure of assets of Judges. The Chief Justice of India has recently gone on record to say that while all the Judges of the Supreme Court have made a disclosure of their assets to him in confidence, he cannot disclose them publicly. Thereafter the Chief Information Commission has directed that at least the information about whether judges are making their declaration of assets to the Chief Justice of India or not, must be disclosed. Unfortunately, instead of complying with the orders of the highest statutory body on Right to Information, the Supreme Court has chosen to challenge this in the High Court, leading to an unseemly spectacle. Virtually all independent and respectable commentators and legal luminaries like Mr. Fali Nariman, Mr. Ram Jethmalani, Mr. Shanti Bhushan, Mr. Soli Sorabjee and others have commented aversely on the attitude of the highest judiciary refusing to be transparent about their assets, while ordering others to do so.

Several very eminent former Judges and Chief Justices of the Supreme Court including Justice Krishna Iyer and Justice J.S. Verma, have publicly expressed the view that it would be desirable for Judges of the Supreme Court and the High Courts to publicly declare their assets. By doing so, they would be setting an example of transparency in the country which would then be emulated by other public servants in the country. Such voluntary disclosure of assets by Judges (without resort to the RTI Act) would be applauded as an act of statespersonship by the people of this country, at a time when people have become cynical about the integrity of public servants. It would greatly advance the cause of transparency and probity in public life which is the basis of the Supreme Courts judgements in the ADR and PUCL cases and this would also advance the Objectives of the RTI Act.

We therefore call upon you to set an example for public servants by voluntarily making public your asset declaration.

Sincerely,

Admiral R.H. Tahiliani, (Former Chief of Naval Staff & Director, Transparency International, India.)

Aruna Roy (Founder, MKSS and RTI & NREGA Activist)

Ramaswamy R. Iyer (Former Secretary, Water Resources, GOI)

Vikram Lal (Chairman, Common Cause)

Madhu Bhaduri (Former Ambassador, GOI)

Amit Bhaduri (Professor Emeritus, JNU)

Anil Sadgopal (Education Activist & Former Professor of Education, Delhi University)

Jean Dreze (Former Member, National Advisory Council)

Vandana Shiva (Education & Agriculture Activist)

Trilochan Sastry (Professor & Dean, Academic, IIM, Bangalore)

Yogendra Yadav (Professor CSDS)

Prashant Bhushan (Convener, Campaign for Judicial Accountability and Reform)

Arvind Kejriwal (Magsaysay Awardee & RTI Activist)

N. Bhasker Rao (Chairman, Centre for Media Studies)

Harsh Mandar, (Director, Centre for Equity Studies)

Ravi Chopra (People's Science Institute)

Kamini Jaiswal, (Advocate, Supreme Court)

Shabnam Hashmi (ANHAD)

Mira Shiva (Health Activist)

Kavita Srivastava (Secretary, PUCL Rajasthan)

Gautam Navlakha (Human Rights Activist)

Nikhil Dey (National Campaign for Peoples Right to Information)

Arun Kumar (Prof. JNU)

Dunu Roy (Director, Hazard Centre)