

CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORM

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PUBLIC STATEMENT OF THE CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORM ON THE SUPREME COURT JUDGES' DECISION TO PUT THEIR ASSET DECLARATIONS ON THE WEBSITE

The decision of the Supreme Court judges to put their asset declarations on the Supreme Court website is a welcome first step towards transparency and accountability of judges in this country. It is also a tribute to the power of public opinion. We hope that this decision will encourage and spur the judges of the High Courts in the country to do likewise. We also hope that it will put moral pressure on other public servants in this country to similarly make their asset declarations publicly available, in accordance with the spirit of the Supreme Court judgement by which they ordered public declaration of assets of candidates contesting elections.

However, this decision of the Supreme Court judges does not obviate the need for a law to make such public declarations compulsory. Indeed, the law must provide for an annual public declaration of assets and liabilities as well as income tax returns of all public servants, including judges. It is only when people can compare the assets of public servants with their legal sources of income, that one can catch public servants who have acquired assets disproportionate to their legal income. The argument that income tax returns or asset disclosures of public servants is an unwarranted invasion of privacy of public servants is specious, since in a democracy, the people who are the real sovereign are entitled to know whether their public servants are paying their taxes and whether they have acquired assets which are disproportionate to their legal income.

The public disclosure of assets by judges, though a welcome first step, is certainly not the end all of the serious problem of judicial accountability or the lack of it. The main problem is the lack of an independent credible institution which could entertain complaints against judges, investigate them and take action against errant judges. This needs to be a full-time body which is independent of the government as well as of the judiciary. Institutionalising an in-house body of sitting judges as a Judicial Council to entertain complaints against judges as proposed in the Judges Inquiry amendment Bill will not serve the purpose. In-house bodies of lawyers ie the Bar Council, and of doctors ie the Medical Council have notoriously failed to seek accountability of lawyers and doctors who have been misconducting themselves. Such bodies are plagued by inevitable conflicts of interest. Moreover, a body of sitting judges would not be able to devote the time required to properly enquire into complaints against judges, which have been growing.

Apart from this, there is a serious problem with the method of appointing judges to the higher judiciary. There is not only no transparency in the process, there is also no system or method followed for preparing shortlists or for choosing among eligible candidates. The whole process is totally arbitrary and ad hoc which has led to political favouritism, when appointments were in the hands of the executive, and nepotism when appointments have been with the judiciary. Here too, we need a full-time independent institution which can methodically, systematically and transparently go about the job of selecting judges of the higher judiciary.

We also need to get rid of the Veeraswami judgement which restrains criminal investigation of judges without the prior written permission of the Chief Justice of India. This has tied the hands of investigating agencies from investigating judges of the higher judiciary. A Judicial Bureau of Investigation under an independent Judicial Complaints Commission, should be set up to investigate complaints against judges.

We also need to amend the Contempt of Courts Act to do away with the colonial and antiquated "scandalising or lowering the authority of the Court", from the definition of criminal contempt. This has deterred public exposure of corrupt judges, and it is certainly not necessary to protect the honour or dignity of honest judges or of the judiciary.

The road to securing the judicial accountability therefore, is still long and hard. But proper accountability for such a powerful and vital organ like the Indian judiciary is absolutely vital for the survival of rule of law and of democracy in this country. The lessons from the asset disclosure controversy are that an organised public campaign and galvanised public opinion can and sometimes does bring about fundamental institutional changes in a society.

Issued by:

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