

OF TRANSPARENCY IN THE JUDICIARY

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The issue of transparency has been a sticking point for the highest judiciary, especially with respect to the appointment of judges and administration of justice. The extraordinary January 2018 press conference by four seniormost judges of the Supreme Court (SC) was a result of this. Now a five-judge bench of the Supreme Court — chief justice of India, Ranjan Gogoi, and three future chief justices, Justice N V Ramana, Justice D Y Chandrachud and Justice Sanjiv Khanna along with Justice Deepak Gupta — are tackling the issue of whether all information on the appointment and assets of judges can be put out in the public domain.

It is telling that arguments on a petition by the SC defending its decision to not part with information on judicial appointments and assets of judges were made in the SC and before SC judges recently. So should the highest judiciary be blocking information in the name of judicial independence? After all, the SC imposes rigorous standards of transparency on elected representatives while it seems decidedly reluctant to apply the same standards to itself. Last year, in a verdict dealing with the criminalisation of politics, it had made it compulsory for candidates and political parties to issue declarations in the media on their criminal antecedents, if any. The judicial opacity cleared up slightly in recent times with the decisions of the supreme collegium on appointments being put out on the SC website. But only seven of the 27 SC judges have put out their assets on the website, the proportion being less in high courts.

Justice Gogoi suggested that too much transparency could destroy the judiciary, while not defending opaqueness. Can there be different standards for transparency across different arms of the state? The usual argument is that transparency will undermine judicial independence but then again the public has the right to know as much as possible, without trespassing on privacy, about those who are in a position to determine their fates. The notion that negative information about certain judges may be an impediment to their progress is misguided. Those under a cloud should not be cleared to move into higher positions. The judiciary must be beyond reproach. This is something the judiciary itself must reflect and act on rather than be pushed on the matter by lawmakers and civil society.

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