

## Declaration of Assets by Judges - What we can learn from Argentina (17 July, 2009)

Dear friends,

The Right to Information Act in India has been used by public spirited activists to find out whether judges of the High Courts and the Supreme Court have filed declarations of their assets as required under a resolution of the full court of the Supreme Court of India. The Registry of the Supreme Court refused to disclose whether or not judges have been filing their assets declarations in response to an RTI application. The Central Information Commission ordered that this information should be made known to the applicant. However the Supreme Court challenged this order before the Delhi High Court. The High Court has reserved its decision after hearing all concerned parties.

When a judge hears a matter that requires him/her to pass an order which he/she will be required to comply with in future, does it result in the violation of the first principle of natural justice- *nemo judex in causa sua* (no one shall be a judge in his own case) is a moot point. Nevertheless the Law Minister has indicated the United Progressive Alliance Government's intention to bring in legislation requiring all judges of the High Courts and the Supreme Courts to file their assets declarations compulsorily. However the media has reported that such declarations are likely to be kept confidential under the proposed law. Whether this is indeed how declarations will be made remains to be seen when the Bill is tabled in Parliament.

Meanwhile take a look at how the issue of declaration of judges' assets was resolved in Argentina.

### **Public Ethics Law in Argentina requires public officials to disclose assets and people can access it easily:**

All public officials in Argentina are required to file affidavits regarding their assets with the appropriate authorities under the *Public Ethics Law (No. 25. 188)* enacted by their Parliament in 1999 (Complete text of the law called *Ley de Ética en la Función Pública* is available at: [www.profesorgentile.com.ar/leyes/25188.html](http://www.profesorgentile.com.ar/leyes/25188.html) Google translates this page into English reasonably well ). Declarations on affidavit are required to be filed within 30 days of assuming office and thereafter every year until the official remains in service. **This procedure applies to all public functionaries, including members of the judiciary at all levels** (Art. 5). Public functionaries are required to declare a detailed list of all things they own domestically and abroad (Art. 6). They must also declare things owned by their spouse or partner and minor children in a similar manner. This list must include all movable and immovable property, value of shares owned, other investments made, bank deposits etc. Details of all types of bank accounts and safe deposit vaults and income tax returns filed with the authorities must be given in a sealed envelope. All affidavits are then filed with the National Commission for Public Ethics. A list of persons who have filed affidavits in this manner is required to be published in Argentina's official gazette. Non-submission of affidavits in a timely manner can lead to departmental action and penalties under the law.

Any person may file an application seeking a copy of any affidavit filed in this manner, stating his/her name, contact details, details of the organisation if copies are being sought on its behalf; the purpose for which the information is being sought and the final use to which the affidavit will be put (Art. 10). The requestor may not use the copies of affidavits for any criminal purpose, or for commercial purpose such as determining the credit rating of the official, or for seeking donations for political or charitable purposes. Misuse of the information is punishable by a fine of 500-10,000 pesos by the National Commission on Public Ethics (Art. 11) **However the requestor may publicise the information contained in the assets declaration through the media for**

**educating people.** Obviously the contents of the sealed envelope will not be made public except to the appropriate authorities in the context of false declaration or corruption cases.

**Judiciary accepts the principle of assets disclosure for judges in 2007:**

While coverage of all public officials in the government went undisputed, the judiciary resisted making such declarations for a long time. The Supreme Court had even issued a ruling in 2000 stating that the public ethics law did not cover the judiciary. However the Judicial Council (Consejo de la Magistratura in Spanish) through a series of actions culminating in 2007 passed a resolution stating that judges will be required to file assets declaration in the same manner as other public officials (Text available at: [www.consultas.pjn.gov.ar/.../resolucion\\_declaraciones\\_juradas.pdf](http://www.consultas.pjn.gov.ar/.../resolucion_declaraciones_juradas.pdf) Google translates this page into English reasonably well). Any person may access these affidavits subject to the provisions of the public ethics law quoted above.

**Argentina and India- a brief overview:**

Argentina and India have been allies in G-15 and the Non-Aligned Movement. A 19th century census reported the presence of 6 persons of Indian origin in Argentina far back in 1885. Kurt Tank an Argentinian aeronautics engineer played a key role at Hindustan Aeronautics Ltd. in developing India's first indigenously produced military aircraft:- Hindustan Marut. The total value of trade in 2008 was US\$ 1.3 billion, with the balance of payment being in favour of Argentina. Argentina exports edible oils, food, copper technology for CNG, etc. to India worth US\$1.2 billion. India sells chemicals, raw material for pharmaceuticals, textiles, handicrafts,etc. in Argentina for the remaining sum. A huge bulk of Argentinian exports is soyabean oil.

**If Argentinian soya bean oil is good enough for consumption in India, perhaps their practice of assets declaration in the judiciary may not hurt if adapted here. Such declarations are essential for establishing and maintaining high standards of probity for public officials such as judges.**

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Thanks  
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