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SABHARWAL ON TRIAL

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The Constitution has vested the Supreme Court with the power to impose correctives on the executive and, in lesser measure, on the legislature. The more the power, the greater the responsibility that goes with it.

Hence, judges, more so the Chief Justice of India (CJI), are expected to set high standards of integrity. They should not be immune from public criticism and legal action in a situation of culpable delinquency on or off the bench. I look at the alleged misconduct of former CJI Y K Sabharwal with no predisposition one way or other. I hold every judge, particularly a CJI, in high esteem and view allegations of misconduct with initial scepticism.

But when the charges are grave and a former chief justice like J S Verma and senior advocates like Shanti Bhushan and Prashant Bhushan come out in support of them, they cannot be wished away as idle rumour.

American jurist Judge Jerome Frank wrote: "The best way to bring about the elimination of these shortcomings of our judicial system...is to have all our citizens informed as to how that system now functions. It is a mistake, therefore, to try to establish and maintain, through ignorance, public esteem for our courts".

The truth of the allegations against Justice Sabharwal should be established by a high-level, responsible inquiry. Judges, including chief justices, have been victims of media accusations, which have at times been found to be baseless, malignant and motivated, and at other times unhappily true, with no action taken subsequently. Sons and close relations have benefited from proximity to sitting judges - I called it sonstroke long ago.

Years ago, chief justices made an informal code of conduct for judges. Even so, judges with a bad record have got away, even securing promotions. Justice Sabharwal is charged with using judicial power to further the business interests of his sons. If true, this misconduct deserves condemnation, as it violates the credibility and majesty of the CJI's office.

The Campaign for Judicial Accountability and Reforms (CJAR) has made serious charges against Justice Sabharwal. First, he took control of the case relating to commercial properties in residential areas of Delhi just around the time his sons entered into a partnership with shopping mall and commercial complex developers and got into that business themselves.

Second, he passed orders soon thereafter to seal such commercial establishments, which in turn drove them to the shopping malls and commercial complexes built around Delhi, thereby increasing their market price.

Third, the Mulayam government in Uttar Pradesh allotted commercial plots to his sons' companies at prices below the market rate at a time when Justice Sabharwal was dealing with its cases, including the one pertaining to Amar Singh's tapes. Though Justice P B Sawant (former judge of the Supreme Court), Justice H Suresh (former judge of the Bombay high court) and I are on the board of patrons of the CJAR, we were not party to its inquiry or, for that matter, even informed about it. The facts are, however, verifiable. Justice Sabharwal's sons are said to be businessmen who allegedly rose to rapid riches because of their father's judicial eminence.

These are matters that demand an impartial enquiry. Such a body has to be appointed by the CJI and none less. If Justice Sabharwal wants to deny the charges, he should be given the opportunity to do so. I gather that Justice Sabharwal has denied the charges in The Times of India. I suspend my judgment until an inquiry is conducted by a body preferably comprising eminent individuals in the judiciary and civil society. I appeal to Justice Sabharwal to cooperate in such an inquiry. It is in his interest as well as the judiciary's that his name is cleared. He has a duty to speak where silence may be seen as guilt. Caesar's wife must be above suspicion; judges of India are in the same position.