

# RIGHT TO INFORMATION AND THE JUDICIARY

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There was a time when the Courts in India, particularly the Supreme Court waxed eloquent about the “Right to Information”, being a part of the Constitutionally enshrined right to speech and expression. Thus, while rejecting the government’s claim of privilege on the Blue book containing the security instructions for the Prime Minister in Indira Gandhi’s case, the Court said, “In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way by their public functionaries.”

Thereafter, while rejecting the government’s claim of privilege on the correspondence between the Chief Justice and the Law Minister on the appointment and transfer of judges, the Court said, “Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy.”

It was on the basis that the Right to Information is a fundamental right of people, that the Court ordered that even candidates contesting elections would be obligated to publicly disclose information about their criminal antecedents and their income and assets etc. Yet, though the courts general pronouncements on the right to information have been very liberal, it’s practices have often not been in conformity with the declared right. Thus, for example, the courts often follow the practice of asking the government and public authorities to file reports in sealed covers in court. These reports are then perused only by judges and often not given to the opposite parties or their lawyers. Often the orders and judgements of courts are based on their perception formed on the basis of these “confidential reports”, which is not only a violation of the right to information of the opposite party, but also in violation of the principles of Natural Justice, considered to be sacrosanct.

The double standards of the Courts on Right to Information have become even more obvious after the Right to Information Act has come into force. Though the Act clearly applies to Courts which are obviously included in the definition of Public Authorities, most High Courts did not even appoint Public Information Officers (PIOs) even months after the Act came into force. Some have still not appointed them, thus effectively denying the right to information to the people about the courts. Moreover, many of even those which appointed PIOs have framed their own rules which effectively deny

information about administrative or financial matters. Thus, the Delhi High Court Rules provide that:

“5. Exemption from disclosure of information - The information specified under Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed:-

(a) Such information which is not in the public domain or does not relate to judicial functions and duties of the Court and matters incidental and ancillary thereto.”

Thus, information sought regarding the appointment of Class 3 and 4 employees by the High Court, who are reported to have been appointed on extraneous considerations, without any public advertisement or selection, was denied by the High Court, citing this rule. This rule means that no information will be given about the expenditures incurred by the High Court (from public funds) or about any appointments or transfers. This is in total violation of the RTI Act which allows exemption from disclosure only on certain grounds specified in Section 8 of the Act and on no other ground. No public authority can refuse to disclose information which does not fall under the exemptions permissible under Section 8 of the Act. Rule 5 of the Delhi High Court rules clearly violates the Act and is thus liable to be struck down.

Not only this, the High Court rules have increased the application fees from the normal 10 Rupees to upto 500 Rupees. And the penalty for non disclosure has been reduced from the Maximum of 25,000 Rs. as provided in the Act to Rs. 500, which is hardly likely to deter any information officer from wantonly denying information. Thus every attempt has been made to dilute the Act and make it as difficult as possible for citizens to access information about the courts. They have been emboldened to do all this in the secure knowledge that to challenge such illegal rules, the citizen would have to approach the same courts.

The Supreme Court has recommended to the government that so far as the Supreme Court is concerned, the decision of the Registrar General of the Court should be final and not subject to any independent appeal to the Central Information Commission. They have further recommended that the Chief Justice should have the unfettered right to interdict the disclosure of any information, which in his opinion, might compromise the independence of the Judiciary. The Chief Justice has already gone on record to say that even the disclosure of income and assets by judges or the formation of any independent disciplinary authority over judges, would compromise the independence of the judiciary. Going by this, it is obvious that no information about complaints against judges or about their incomes and assets would be available under the Right to Information. Thus while the Supreme Court decrees that even candidates aspiring to become public servants (MLAs or MPs), would be required to disclose their assets, when it comes to sitting judges, such disclosure would violate the independence of the judiciary! There cannot be a more glaring case of double standards.

The track record of the courts on cases arising out of the RTI Act is also not very inspiring. Even the occasional progressive orders of the Central Information Commission

ordering various public authorities to disclose information have been stayed by the Delhi High Court and the matter remains pending for months and years thereafter. Thus, even the order of the CIC to merely peruse the correspondence between the then President and the Prime Minister on the Gujarat genocide of 2002 has been stayed by the High Court, though the Act specifically provides that no information will be withheld from the CIC. Similarly, the order of the CIC asking the UPSC to disclose the marks obtained by candidates in the preliminary examination has also been stayed by the High Court, as have various other orders of the CIC.

All this shows that while the courts have been liberal in making pronouncements about the citizen's right to information in a democracy, and have also in cases implemented it with regards to others, they have been very reluctant to practice what they preach. The dictum appears to be that transparency and accountability is good for others, but the courts and judges are sui generis, and in their case transparency would compromise their independence. The wand of "Independence of the Judiciary" has always been waved by the judiciary to shield themselves from accountability, going to the extent of saying that not even an FIR can be registered against judges for any offence without the prior written permission of the Chief Justice of India. On top of all this, they enjoy the power of Contempt, where they can send any person who accuses any judge to jail.

It is not surprising then that the voices to make the judiciary accountable are growing louder and are now beginning to take the shape of a public campaign. The common people are beginning to realize that they are the main stakeholders in the judicial system and they must bring grassroots pressure on the authorities for them to reform the system.

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