

# THE LAW ABOVE ALL?

Suchi Pande, Nikhil Dey and Aruna Roy

The recent statements by the Chief Justice of India (CJI) that his is a Constitutional office and therefore exempt from the Right to Information (RTI) Act, has justifiably drawn much criticism. Long before the RTI Act came into effect in 2005, it was the Supreme Court of India that had laid the grounds for opening up the acts of government and its functionaries to the people. In 1975 in the State of UP vs Raj Narain case for instance, the Supreme Court held: *“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 functionaries...The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of public.”*

The statement of the Chief Justice is in any case not supported by the law and the intent of parliament, which is perhaps why the speaker of the Lok Sabha chose to make public his disagreement with the Chief Justice on this matter. The RTI Act was created to give Indian citizens access to information held by any public authority. Section 2(h) of the RTI Act 2005, defines a public authority as *“any authority or body or institution of self government established or constituted by or under the Constitution...”* Even if as reported, the Chief Justice prefers to see himself as a constitutional authority, and not a public servant, all constitutional authorities are also public authorities as defined in the Act. Unfortunately, the statement of the Chief Justice is not an isolated comment. Ever since the RTI Act came into force, there are several instances where the Indian judicial establishment, has tried to dilute the applicability of RTI to the courts and the judicial system.

The irony is that this act draws much inspiration and legitimacy from proactive judicial pronouncements on the citizens right to know. In fact the first draft of the Act was formulated by a committee, chaired by a former Judge of the Supreme Court- Justice P.B. Savant, as Chairman of the Press Council of India in 1996. The Act as it stands today owes its basic principal formulations to that committee. The Indian judiciary has an honourable history of being able to view its constitutional obligation as fundamental to its functioning. It is most unfortunate that the Supreme Court, which in its past

judgments has laid down the basis for a citizen's right to know (in *State of UP vs Raj Narain*, 1975) and upheld the right to information as a fundamental right (in *SP Gupta Vs the Union of India*, 1982); is now being seen as backtracking from its own leading role, and in many cases taking an adversarial position.

Within months of the passage of the RTI Act, the Supreme Court tried to insulate itself from the Right to Information Act. It reportedly first sought a blanket exemption from the Act. That did not succeed, but subsequently various High Courts and the Supreme Court, have drafted rules that not only violate the letter and spirit of the RTI Act, but threaten to defeat the fundamental purpose of the Act to ensure transparency and accountability in government functioning.

Many High Courts for instance have fixed exorbitant application fees under the RTI. The Delhi High Court has refused to divulge information on appointments of class 3 and class 4 officers in its offices, taking recourse to rules that prohibit disclosure of information on administrative and financial matters. Recently the Punjab and Haryana High Court rejected an RTI application seeking information on pendency of cases (including writs) in the High Court and the number of cases remanded by the Supreme Court for rehearing and/or expeditious disposal. The PIO of the Punjab and Haryana High Court in rejected the application on the grounds that *"the information specified under section 8 of the RTI and shall not be disclosed and made available...which is not in the public domain or does not relate to judicial functions and duties of the court and matters incidental or ancillary thereto."* The rules of the Punjab and Haryana High Court are in violation of the RTI Act as the quoted exemption is absent from the relevant exemption section (section 8) of the RTI Act.

The Judiciary has taken advantage of general atmosphere of opaqueness and non-accountability, in the other wings of government, in dragging its feet about its own transparency issues. There is a sense that no matter what the issue, the penultimate interpretation lies with the courts, and RTI is no exception. With notable exceptions, many progressive orders of the Information Commissions have been stayed by various high courts. The courts have also raised objections about the *locus standi* of the Information Commissions and their power as independent appellate authorities to direct the Courts in dispensing information as per the provisions of the Act. If the judiciary is so persistent in exempting itself, is it not logical to fear that it may undermine the implementation of the RTI Act in the other wings of government?

It is even more surprising that the statements of the CJI come in light of a request for information regarding the disclosure of information pertaining to judges' assets. Corruption is a matter of concern no matter where it may occur. It is not the first time the CJI has expressed his preference for secrecy over transparency in refusing to divulge information pertaining to judges' assets. In 2007 in an interview to a television news channel the CJI said that no self-respecting judge would accept the idea of a compulsory declaration of assets. Last week the CJI, in response to an RTI application, once again refused to reveal details of judges' assets stating that the information was not available with the Supreme Court registry. This denial is contrary to the resolution adopted in a full court meeting in 1997 attended by 22 judges, which provided for the declaration of assets by judges to the CJI of the Court and a similar declaration by the CJI for the purpose of record. It is also contrary to its own ruling in 2003 requiring all electoral candidates including Members of Parliament, to disclose their assets.

In a democracy all institutions, including the judiciary, must be transparent and accountable. Transparency in judicial functioning and accountability for judicial actions and inactions inspire public faith and confidence in the institution. The lack of stringent in house accountability and transparency mechanisms has allowed the judiciary to keep itself free from regular public scrutiny. The Right to Information Act is a step forward towards opening a closed and secretive judicial system. The preamble of the Act specifically states that India is a democratic republic and in a democracy an *"informed citizenry and transparency of information...are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable"*. The Chief Justice of India, as the high priest of the legal system, must uphold the RTI Act and realise that no institution can be considered credible and inspire public confidence unless it is open and transparent. The judiciary can only occupy the high moral ground it often claims, by setting an example, and leading from the frontlines of transparency; not by hiding behind the veil of secrecy.