

# THE WEEK

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## Who's big?

**For the first time, SC knocks at HC's door**

**By Soni Mishra**

Little did Subash Chandra Agrawal know that his RTI petition would create a first in history. His request two years ago, seeking information on whether judges were filing details of their assets under their 1997 in-house resolution to do so, has brought about such a turn that for the first time, the Supreme Court of India has knocked at the doors of a High Court seeking a relook into one of its orders.

The RTI controversy has seen Supreme Court judges deciding to make public details of their assets, and Agrawal, a Guinness record holder for writing the maximum letters to editor, finally getting a reply to his query. However, in the latest episode of the controversy, the SC has filed an appeal in the Delhi HC to set aside its order, by a single judge of the lower court, that stated that the office of the CJI comes under the purview of the RTI.

On September 2, HC Judge Ravindra Bhat had directed the Central Public Information Officer of the SC to release by September 30, the information sought by Agrawal. This was after SC challenged in the HC, the direction of the Central Information Commission to the CPIO of the SC to provide the information. "The conclusions reached by the judge are unjustified in law and constitutional theory," said the appeal filed by the SC registry and approved by Attorney General G.E. Vahanvati. The division bench of the HC has now referred the matter to a three-judge bench that will hear the plea on November 12 and 13.

Meanwhile, Chief Justice K.G. Balakrishnan had said: "The office of the CJI is privy to so much information like privileged communication between various Constitutional authorities, complaints against judges, etc. How can all this information be disclosed under the RTI?"

The situation could even present a Constitutional crisis if the three-judge bench upholds the order of the single judge. "The SC can't be a judge in its own case. That is not permitted by the basic principle of natural justice," said Lalit Bhasin, senior SC advocate and secretary of the Bar Association of India.

Legal experts have differing views on the SC appeal, with some feeling that it would sully the image of the judiciary and others, that SC's supremacy cannot be questioned. "The SC talks of transparency and is now being seen as opposing that very concept," said Vikas Singh, senior SC advocate and former additional solicitor general. SC lawyer and convener of the Campaign for Judicial Accountability and Reform, Prashant Bhusan, criticised the SC move, saying it is "utter bankruptcy of good sense".

Union Law Minister M. Veerappa Moily, on the other hand, is sympathetic to the SC stance. "We cannot make them [judiciary] vulnerable to harassment and blackmailing," he said. Bhasin, too, defended the SC move, saying the apex court is supreme, as per the Constitution. "The CIC and the HC orders make the CJI subordinate to the CIC. Under the Constitutional setting, the SC is its own master, with the only Constitutional limitation being the situation of an impeachment," he said.

According to Bhasin, the only resolution of the issue is a law making it mandatory for the judges to declare their assets. "The CJI has also said that the judges will abide by a law. Now, the declaration of assets by the judges is a voluntary effort," he said.

Meanwhile, the Judges (Declaration of Assets and Liabilities) Bill, 2009, which proposed to make declaration of assets by judges mandatory but could not be tabled in the Budget session of Parliament, will now not be a stand-alone Bill and be merged with the proposed Judges Inquiry Bill to create a forum to inquire into complaints against judges. Moily said the Bill would be presented in the winter session of Parliament. The judiciary thus is facing its toughest 'accountability' test.

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