

Right to Information Versus Indian Judiciary: An analysis

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Abstract

The Court must be the most accountable institution in any democracy because of its vital role as a watchdog. In fact, judges must be held to standards that are higher than any other government officials. This can be, only if RTI Act is made applicable to the Supreme Court. That will ensure that the court, like any other institution, is accountable to the people.

Any legislation of Indian legislature has binding force on each organs including judiciary until the same is declared ultra-vires. As a guardian of Constitution, Judiciary has empowered only to check the constitutionality of particular legislation on well founded grounds and to interpret the provisions. So long as any Act stands valid, it must be observed by the judiciary. Same is true in respect of R.T.I. Act 2005.

The Court is not covert coward but an eloquently open and fearlessly frank institution. Secrecy is incompatible with the judiciary; otherwise our democracy will become a travesty and they have not humanity will face authoritarian governance by a proprietariat oligarchy.

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1. INTRODUCTION

The basic principle in a democratic republic is that the people are supreme. Once this concept of popular sovereignty is kept in mind, it becomes obvious that the organs of the State have been created to serve the people of this country. It follows that, all the trinity of authorities whether judges, legislators, or executives are the service providers. Surely, the master has the right to check, control and criticize service providers if they do not act, behave or perform properly. In turn, service providers are accountable towards the people of this country. Further, in a government of responsibility like ours, where all public authorities must be responsible for their conduct, there can be 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.¹

The right to know or right to information is implicit in the right to freedom of speech and expression under Art. 19 (1)(a). The disclosure of any information regarding the functionaries of the government must be the rule and the secrecy is an exception.² Actually the freedom of speech and expression will be meaningless without opportunity to collect the information. The speech or expression without relevant information will create confusion in the society. On the other hand, to establish any fact at any forum relevant evidences are required. Therefore, people should have means to know the truth and collect the information, so that they may not make speech or express their opinion in air. The people have right to know the reality and basis of governmental actions. By knowing the real facts they may be able to form their opinion in regard to governmental activities before casting their votes in an election. The knowledge of past conduct of contesting candidates of election will facilitate the voters to make up the mind about the suitability of the candidate and will enable the voters to choose right candidate as their representative.

Under Article 21, life means life with human dignity. So there is strong link between Article 21 and right to know particularly where the secrets of government decisions may affect the health, life and occupation of people.³

In *Dinesh Trivedi v/s Union of India* case,⁴ Court held that the citizens of India have rights to know about the affairs of government. This right is implicit in Art. 19 (1) (a). It is observed by Court that it is essential to ensure the continued participation of the people in the democratic process that they are kept informed of the vital decisions taken by the Government aimed at their welfare and basis thereof. Democracy expects openness and openness is a concomitant of free society.

The right to get information in democracy is recognized all throughout and it is a natural right flowing from the concept of democracy.

The Right to Information Act 2005 is a revolutionary step towards the maintaining the transparency in state functionaries actions. Perhaps this Act is the greatest achievement of Indian legislature after independence. By the judicial construction the Indian judiciary has played a very constructive role to strengthen "the right to know" as an affective constitutional right. The "right to know" has a more wide scope than present R.T.I. Act. 2005. Virtually the scope of right to know has been regulated by this Act.

The right conferred by this act is very confirmative to natural rights. Under democratic systems, governments are formed by popular mandate and tax payers provide life blood for the functioning of governments. Therefore, people must have right to know about the functioning of

government organs or machineries. The transparency in government is sign of good governance. Of all the service providers, the most trusted and powerful should be more responsive, transparent & accountable. So out of all the three organs of the State, judiciary should be more responsive, transparent & accountable. An informed public criticism of judicial misconduct & incompetence or institutional turpitude or dysfunctionality creates corrective public opinion through vigilant scrutiny and media publicity. Speech is duty & silence cowardice, since information, accountability & transparency of the judiciary are inalienable attributes of any democratic institution. For this purpose, the Right to information Act, 2005 was passed.

Transparency in State Functioning is a sign of good governance. Under democratic system of government legislature, executive and judiciary stand on same footing as in regard to transparency. Former Chief Justice J.S. Verma⁵ has rightly contended that Supreme Court can't be kept out of discussion of transparency. If judiciary wants to maintain transparency in other organs then the same is applicable on Judiciary also. The concept of "Right to know" and "Right to information" is a creation of Indian Judiciary. Then how the judiciary can itself deny to (redress) recognize this right. The legislature has only regulated the right to information by this legislation (R.T.I. Act 2005).

Just after the enactment of this Act the Supreme Court of India sought exemption from it. Argument given for doing this may be evaluated as follows:-

The independence of the judiciary from the executive and the legislature as well as independence of each and every judge within the judiciary is considered as a necessary condition for a free society and a constitutional democracy. It ensures the rule of law and realization of human rights and also the prosperity and stability of a society. Therefore, the constitution provides for the independence not only of the Supreme Court but also of the High Courts and the subordinate courts. The Supreme Court has also held more than once that the independence of the judiciary is a basic structure of the Constitution and any attempt to curtail it directly or indirectly even by an amendment of the Constitution is invalid.⁶ At the same time, it is true that independence of the judiciary should also be maintained and ensured from inside the judiciary. The purpose of the RTI Act is to make public authorities transparent & accountable. Being transparent and accountable does not mean interference with independence. We must remember Judge Jerome Frank of the U.S. Court of Appeals:-

"I am unable to conceive... that in a democracy, it can ever be unwise to acquaint the public with the truth about the workings of any branch of government. It is wholly undemocratic to treat the public as children who are unable to accept the inescapable shortcomings of man made institutions... The best way to bring about the elimination of those shortcomings of our judicial system, which are capable of being eliminated, is to have all our citizens informed as to how that system now functions. It is a mistake, therefore, to try to establish & maintain, through ignorance, public esteem for our courts."⁷

The unambiguous ruling of High Court that C.J.I. is public authority under the R.T.I. Act 2005 will enable people to seek even sensitive information from the C.J.I. Office. Although the Chief Justice of India K.G. Balakrishnan has made objection to furnish the huge sensitive information. The sensitivity of information will be determined in the light of R.T.I. Act's provision and not

according to individual authority's view. If right to Information Act permits to furnish any specific information then there is no question of denial in the name of sensitivity.

Another argument forwarded by the Judiciary is that it is a constitutional body. In fact, all the three organs of the State are constitutional bodies as all have been created under the provisions of the Constitution. If on the basis of having constitutional body, the RTI Act will be made inapplicable on the Judiciary then on other two organs i.e., Executive and Legislative also, the Act will not apply & the entire purpose of passing this Act will frustrate.

Further, the object and purpose of the RTI Act is to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of **public authorities** in order to promote transparency and accountability in the working of every **public authority**.

Again, Section 2(h) of the RTI Act defines the term **public authority**. According to it, **public authority** means any authority or body or institution of self government established or constituted -

- (a) By or under the Constitution.
- (b) By any other law made by Parliament.

This section makes it very clear that Judiciary is well within the ambit of the RTI Act - Section 2(e) of the Act defines the term "competent authority", who are empowered under section 28 of the Act to make rules to carry out the provisions of the Act. It provides literally:-

Sec. 2(e)(i)

- (ii) The Chief Justice of India in the case of Supreme Court,
- (iii) The Chief Justice of the High Court in the case of a High Court.

So unless Sections 2(h), 2(e)(ii) & (iii) are amended by parliament or be declared unconstitutional by the competent Court, it will have full authority to cover judiciary.

Here another relevant issue is, whether the details of judges appointment will be made public? The appointment of judges in superior judiciary also requires the transparency like other public authorities appointment. People still have great faith and honour in judiciary in comparison of other two organs of the State. Any pretence to furnish details of appointment of judges would create confusion in general public.

In fact, the purpose of the Independence of judiciary as well as transparency & accountability by access to information through the RTI Act is one and the same. It is best to sub-serve the citizens of the country with accountability, transparency and without unwanted obstruction (for that independence of judiciary is needed). Now, when purpose of both is same and one, it is unimaginable that the RTI Act might interfere with the independence of the judiciary. Independence does not mean absence of accountability, responsibility and transparency.

The Infinite fact remains that many judges have lost their conscience because of a curious sense of independence without accountability. These two values go together.....⁸ We want a judiciary whose body and soul are beyond purchase whose independence is beyond pressure, partiality & corruption, and whose performance is free, fearless and fair and offers democratic access to the forensic process.... Indian's have not humanity is unhappy that the justice system is declining in

terms of its integrity, social philosophy and genius, even as the Judges have wrested the power, without constitutional justification, to appoint their brethren in the dubious guise of independence of the judiciary.⁹

The Court must be the most accountable institution in any democracy because of its vital role as a watchdog. In fact, judges must be held to standards that are higher than any other government officials. This can be, only if RTI Act is made applicable to the Supreme Court. That will ensure that the court, like any other institution, is accountable to the people.

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