

Lecture- 26



RTI and Judiciary

Right to Information (RTI) is a Fundamental Right guaranteed to the citizens of India. It was introduced by the Right to Information Act, 2005 which seeks to mandate disclosure of information by the government bodies. Under this act, any person can make such requests to public bodies, and the concerned authorities will have to respond with the information unless legally compelling reasons stop them from doing so.

RTI has always been seen as a crucial tool for countering corruption, mismanagement as well as abuses in working of the government bodies. And, it primarily stems from the Right to Freedom of Speech and Expression as provided under Article 19(1)(a) of the Constitution. The fundamental objective of this act is to empower the citizens, thereby promoting transparency and accountability in the functioning of public authorities under the central government as well as the state governments.

Judiciary, as we all are aware, is one of the three organs of the state, the other two being the Legislature and the Executive. Legislature and Executive have always been under the ambit of the RTI act but, its relation with Judiciary has not been the same mainly due to the reason that the independence of Judiciary has been enshrined in the basic structure doctrine. Therefore, it had always been feared that subjecting this independent organ of the government to RTI could take away its freedom.

But, eventually, in 2019, the Supreme Court held that the Office of the Chief Justice of India comes under the ambit of the RTI. The analysis that we take up in this article is with respect to the process of inclusion of Judiciary under the Right to Information as we go through the relevant judgement explaining how the things have changed over the last decade and led us to the present scenario.

Relevant Provision of the RTI Act, 2005

As already mentioned, the Right to Information Act came in the year 2005. Under this Act, every public body is to be included in the RTI. And for a particular body to get an exemption from RTI obligations, it needs to be listed under Section 24 of the statute. Judiciary, though, does not find

its mention under this section; therefore, it becomes clear that the provisions of the RTI should bound judiciary.

But, that has not happened in the last decade for, the Judiciary has remained reluctant in getting bound by the relevant rules in turn, getting itself a kind of immunity from the Act. On the other hand, attempts to make Judiciary more accountable and responsive to the information sought by the citizens started in 2007 itself.

The Sequence of Events

Backdrop:

On November 11, 2007, RTI Activist Mr. Subhash Chandra Agarwal, filed a plea in the Supreme Court of India requesting information on the assets of judges. But the same was refused to be revealed by the court. In response, the first appeal stood filed at the Supreme Court's registry and this request too got denied. Mr. Agarwal, then, approached the Central Information Commission which thereafter, in 2009, asked the SC to disclose information of judges' assets, for the office of the Chief Justice of India, came under RTI. The Supreme Court, on receiving this order, went to the Delhi High Court challenging its validity which led to a temporary stay of the CIC order.

Arguments given by SC:

The Supreme Court was of the view that asset declaration by the Judges would come under 'Personal Information' so that was not liable to be declared under the RTI Act as there are necessary provisions in the act which exempts one from disclosing personal information. They further reckoned that Judges could not be treated the same way as the politicians when it came to asset declaration. Also, it was argued that bringing Judiciary under RTI and allowing too much of transparency could eventually take away the independent nature of the Judicial Organ.

Verdict of the HC:

On September 2, 2009, single-judge bench of the High Court came up with the decision that CJI's Office is accountable under the RTI Act and thus, the assets need to be declared under the law. This verdict got challenged by the Supreme Court before the division bench of the Delhi HC in response to which a 3-judge bench was constituted. Thereafter, this special bench observed

that the declaration of assets by the judges to the CJI was binding on them. Finally, on January 12, 2010, the ruling was delivered stating that the Office of CJI was under the ambit of the RTI Act.

Onset of the 2019 SC Judgement:

In 2010 itself, after the Delhi HC judgement, Secretary-General of the Supreme Court along with Central Public Information Officer (CPIO) went on to file appeals against the Central Information Commission and High Court orders. The matter, later on, was referred to the Constitutional Bench by the Supreme Court. And, on November 13, 2019, the Supreme Court's final verdict came upholding the Delhi HC judgement thereby stating that the Office of the Chief Justice of India comes under the definition of Public Authority' and hence, it is bound by the Right to Information Act.

Importance of the Supreme Court Judgement

This landmark judgement given in Central Public Information Officer; **Supreme Court of India v. Subhash Chandra Agarwal** is crucial to understand for it ended the constant debate that revolved around the inclusion of Judiciary under the ambit of RTI. The court pronounced that the need to have transparency did not undermine judicial independence and stated that independence and accountability go hand in hand in the case of Judiciary.

Additionally, it held that the decision to go for public disclosure must be taken on a case by case basis taking into consideration the competing public interest claims and weighing them along with the privacy concerns. On the question of whether the Supreme Court and the Office of the CJI were two separate public authorities under RTI, the court observed that the Supreme Court of India i.e. a public authority, in view of Article 124 of the Constitution, necessarily includes the office of the CJI as well other judges. It was further held that the offices together constitute the Supreme Court and are therefore, part and parcel of the Supreme Court (as a body, authority and institution).

With regards to the fiduciary relationship, the Supreme Court rejected the existence of such a connection between the judges and the CJI. The appellants, in view of section 8(e) of the RTI

Act (that provides an exemption from disclosure of information held under fiduciary relationship by a person) had contended that the information on judges' assets held by the CJI was in a fiduciary relationship. The Court, while declining such claims, observed that such a relationship could arise in certain situations only.

Conclusion

In the course of this article, we tried to have an insight into how the Judicial organ of the state' eventually came under the ambit of the Right to Information Act, 2005. We went through the concerned judgement and made attempts to cover all its essential aspects. RTI, as it is evident, performs important functions in a democracy by enhancing citizen's ability to participate in the process.

When we could question the legislature and the executive for their actions and have a sort of transparency in their functions by exercising our RTI, then why should Judiciary be allowed the privilege. The landmark judgement rightly dissolves such immunity granted to the Judicial organ by answering all the relevant questions in detail. Now, when all the three organs are finally under the RTI, we, the citizens can enjoy all the benefits provided to us under the 2005 Act and in turn, experience the democracy in its real sense.