Chapter five

Judicial Response to Right to Information

*Openness is rule and secrecy is exception*
Introduction

After Independence, though the Constitution of India did not explicitly recognise the right to freedom of information, this right has been inherently been recognised as a part of right to freedom of an individual through the prism of fundamental rights. Though it took more than half a century for the Executive to enact a specific legislation on right to information, however, the judiciary, especially the Apex Court, in no uncertain terms recognised right to information as one of the important fundamental rights of citizens.

We have observed in the previous chapter of this thesis that innumerable judgments of the judiciary and the movement led by the civil society finally lifted the veil of secrecy that shrouded public bodies, and the Right to Information Act, 2005 was born. Though the 2005 Act endorsed the unfettered spirit of right to information, like all other rights, this right too, must be used with caution. This right is not an absolute one and is subject to certain exceptions as stated in the Act. However, in upcoming years since its enactment, the RTI Act has thrown open a large number of issues relating to its legal significance, process information and implementation challenges.

It is appreciable that the judiciary has used its craftsmanship to harness the right to information to achieve an extremely laudable social objective, viz., that of preventing criminalization of the Indian politics. This seems to be really unfortunate to say that the judicial system in India has proved itself to be an instrument not really meant for protecting the rights of the oppressed and poor, rather it has become an instrument to harass the common man. The system functions with great speed and eagerness when it is invoked by powerful and rich man, while its functioning becomes abnormal and impaired in case of the weak and the poor. The courts are increasingly displaying their elitist bias and it appears that they have seceded from the principles of the Constitution which set up a republic of the people who were guaranteed "Justice- social, economic and political". It is again hard to digest that why the higher judiciary is so much insisted for making itself out of the realm of Right to Information Act because only those who are guilty of errors, incompetence,
misbehavior, dereliction of duty and malpractice may be concerned and wish that the fact relating to such matters are not made public.¹

Even before the enactment of the Right to Information Act, 2005, the Supreme Court in a catena of cases² had consistently ruled that right to freedom of speech and expression guaranteed to citizens under Article 19(l)(a) of the Constitution include within it right to receive and impart information. Particularly, in the case of Secretary, Ministry of Information & Broadcasting v Cricket Association of Bengal³ the Supreme Court held that for ensuring the right of freedom of speech and expression to the citizens of India, it is necessary that they have plurality of view and a large range of opinions on public issues. "A successful democracy posits an aware citizenry. Diversity of opinions, ideas, views and ideologies is an essential requirement which enables the citizens to arrive at informal judgments on all issue concerning them". We have already discussed many cases in previous chapter.

Judiciary and the Right to Information

Judiciary can be said to be the backbone of the right to information in India. Time and again it has vehemently supported the principles of transparency and irritability in all spheres of governance. However, in the recent times even the judiciary has been embroiled in a controversy pertaining to the issues of disclosure. This is indicative of conflicts and contradictions coming to the fore after access law has actively been enforced.

The judicial system in India has attained maturity over a period of more than one and a half century and has now earned international reputation as one of the most efficient adjudicatory systems of the world. The vital agencies concerned with constitutional and public law include the Parliament, the Executive bureaucrats, Public Officials, Lawyers and the Judiciary. They enjoy considerable functional freedom yet their working having been

¹ Right to information in India available at: http://ssrn.com/abstract=1758022
³ AIR 1995 SC 1236
based on the principle of checks and balances, restrains them from encroaching upon each other's domain and act with complete co-ordination.

The full bench of Delhi High Court in *Secretary General Supreme Court of India v Subash Chandra Agrawal*\(^4\) held that the source of right to information does not emanate from RTI Act, 2005, but it has emerged from the constitutional guarantee under Article 19 (1). Therefore, the right to information Act is not the repository of right to information, its repository is the constitutional right guaranteed under Article 19 (1) (a) of the Constitution.

The Central Information Commission has addressed two very serious institutional issues pertaining to higher executive and judiciary, namely, disclosure of correspondence about appointment of judges and the need for declaration and disclosure of assets by the higher judicial officers. Despite the fact that there were certain established principles as well as several judicial pronouncements on these issues, yet requisitions from the information seekers generated a debate process pertaining to these critical and complex issues.\(^5\)

One thing should be kept in mind that Judiciary is one of the three wings of the government along with the Legislature and Executive, and it is also accountable to the people like the other two. If any sort of immunity is resorted to the judiciary from Right to Information Act then it will be completely in contradiction of the basic principle of transparent and accountable governance, that the enforceable right of the citizen to government held information must be the rule, with only a few exceptions for genuine considerations of national security and individual privacy. Right to Information is no doubt a key to good governance.

**Assets declaration by the judges of Higher Court**

Higher Judiciary (including the judges of the Supreme Court and various High Courts in India) has recently received a lot of condemnation when Supreme Court of India preferred to appeal against the judgment of Single Judge of High Court of Delhi\(^6\) in Secretary General, *Supreme Court of India v. Subhash C. Agarwal*. The Delhi High Court

\(^4\) AIR 2010 Del 159.
\(^5\) Dr. Anshu Jain, *A treatise on the right To Information Act*, p135 (Universal law Publishing, 2014)
\(^6\) *The Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, W.P. (C) no. 288/2009; judgment pronounced on Sep. 02, 2009.
upheld an earlier order of Chief Information Commissioner (CIC), whereby CIC directed Central Public Information Officer (CPIO) of the Supreme Court to furnish information sought by the respondent in the present case, under the Right to Information Act, 2005. The assets of the judges of Supreme Court and High courts were sought to be disclosed under the Right to Information Act. In order to preserve their honour, prestige, dignity and the faith that the general public reposes in them, the judges of the Supreme Court and High Court declared their assets voluntarily, as there was severe criticism by media and public at large. After giving sermons on the significance of such a declaration to ensure accountability which is directly proportional to independence of the judiciary, they have granted exemption from disclosure to the contents of such declaration classifying it as personal information under the section 8(1) (j) of the Act, and further making such disclosure purely an act of volition of the individual judge. Apart from the issue of judicial accountability the decision also re-surfaced the debate of judicial hierarchy. However, the judgment can also be seen as a ray of light in darkness because judiciary, for the first time, has acknowledged its accountability towards the people of the country.

**Issues and results**

The Applicant’s request (made on November 11, 2007) under the Act had basically two parts:

1. To furnish a copy of the 1997 resolution, which requires every judge of the Supreme Court and high courts to make a declaration of his/her assets.

2. The information regarding compliance of the above resolution.

After receiving the application, CPIO informed the applicant that a copy of the resolution would be furnished on remitting the requisite charges. CPIO informed that the registrar of the Supreme Court never holds or controls the information related to declaration of assets of the judges of the Supreme Court. On appeal by the applicant, the appellate authority remanded the matter back to the CPIO observing that he should have disclosed the name of the authority holding the requisite information and should have referred the application to the latter authority in light of section 6(3) of the Act. After

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7 Sec. 8(1)(j) of Right to Information Act, 2005
remission CPIO rejected the application presented afresh holding that the applicant should file applications to the designated authorities of respective high courts to get information related to asset declaration by their judges. The applicant then approached the Chief Information Commissioner (CIC) in an appeal.

The CIC order rejected the contentions of CPIO, Supreme Court and held that the Supreme Court is a public authority under section 2(h) of the Act it is established by the Constitution of India. Section 2(e) (i) was referred by CIC to hold that the CJI is a competent authority, under the Act, empowered to frame rules under section 28 of the Act to carry out provisions of the Act. Rule making power under the Act is conferred upon the CJI and the Supreme Court who cannot disclaim being public authorities. The single judge bench of Delhi High court upheld the above mentioned order of CIC. It was held that the office of CJI is not a distinct public office from the Supreme Court and as CJI his office is covered under the provisions of the Act. It was also held that information sought by the applicant cannot be exempted under sections 8(1) (e) or (j) of the Act.

The division bench of the Delhi High Court framed three issues for their consideration, which are as follows-

1. Whether the respondent had any right to information under section 2 (j) of the Act in respect of the information regarding making of declarations by judges of the Supreme Court pursuant to the 1997 resolution?

2. If yes, whether CJI held the information in his fiduciary capacity within the meaning of the expression used in section 8(1) (e) of the Act?

3. Whether the information about the declaration of assets by the judges of the Supreme Court is exempt from disclosure under the provision of section 8(1) (j) of the Act?

Deciding the first issue, court dealt with two aspects:

1. Establishing what is information held by a public authority,

2. Establishing that the nature of resolutions passed in 1997 and 1999 are binding on the members of higher judiciary.

Court emphasized the importance of information and knowledge, and to establish that Right to Information is a universally established principle cited relevant provisions of
several international agreements. Further, the court reiterated that Right to Know is a necessary concomitant of the fundamental freedom of Speech and Expression enshrined in article 19(1)(a) of the Constitution of India, and held that “responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption”. While deciding on the nature of the said resolutions, court found that the decision involved, to a great extent, the examination of role of judiciary in a democracy. The court cited, Justice Michael Kirby (former judge, Australian High Court) who said, “A judge without independence is a charade wrapped in a farce inside oppression”. Further the court tried to establish that greatest strength of judiciary is the faith people repose in it. Finally it was held that the 1997 and the 1999 resolutions are meant to be adhered by; therefore they have a binding effect. Therefore the petitioner has the Right to Information in respect of information regarding making of declarations by the judges of the Supreme Court.  

Furthermore, the double standards lay down in respect of accountability of separate classes of judiciary, namely, lower judiciary and the higher judiciary are not justifiable. For example, service rules for the lower judiciary mandates disclosure of assets to ensure accountability, but there is no such compulsion for the judges sitting on higher pedestal, where there should have been stricter accountability requirements. Deciding on the second issue, court rejected the contention of the appellant alleging that since the resolution itself provides for confidentiality as a condition to any such declaration, therefore the CJI holds such information under a fiduciary capacity, which exempts it from disclosure under section 8(1)(e) of the Act. Section 22 of the RTI Act has an overriding effect on all other legislations (including the Official Secrets Act); therefore merely because a document contains a condition of confidentiality, it cannot be exempted from disclosure under section 8(1)(e) of the Act. Furthermore it is very well argued that CJI cannot be fiduciary vis-à-vis judges of the Supreme Court as judges of the Supreme Court hold independent office, and there is no hierarchy. The document is open for observation of successive CJIs and hence cannot be exempted from disclosure under section 8(1) (e) of the Act. The court studied the inherent relation between the two rights, while it decided the third issue. The Right to Information is derives its authority from the freedom of speech and expression and the Right to Privacy is derived from right to life and liberty. The court held that this was the

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8 Right to information in India, p.23 available at: http://ssrn.com/abstract=1758022
confronting relation between the two rights that made legislature to enact section 8(1)(j) of the Act exempting the disclosure of personal information, so as to protect the right to privacy of the public officials. The court finally decided that the information sought by the applicant does not justify or warrant protection under section 8(1)(j) of the Act, inasmuch it required the furnishing of the information related to compliance of 1997 resolution, but the details of any such declaration will be protected under section 8(1)(j) of the Act as personal information.

“Judicial independence doesn’t mean that judges are above the law - Lord MacKay.” This decision showed that higher judiciary could only preach accountability to other organs of state, viz. legislature and executive (sometimes it includes lower judiciary also), but when it comes to following their own preaching they are fearful. The Apex Court has itself mentioned in several cases that society’s demand for honesty of a judge is exacting and absolute, therefore a judge must keep himself absolutely above suspicion. The confidence of the common in the honesty and impartiality was destroyed after seeing the panic and apprehension among the judges, when they were asked to disclose their assets. Instead of keeping themselves absolutely above suspicion, the act of opposing disclosure of assets brought them into the centre of suspicion.

Appointment and Transfer of Judges

It all began with a negative ruling by the CIC in 2006 in Mukesh Kumar v. S. Chatterjee, Additional Registrar, Supreme Court of India & P.K. Sethi, Joint Secretary and AA Department of Justice, Ministry of Law and Justice wherein it directed that the process of selection of judges of the Supreme Court and High Courts need not be disclosed under the RTI Act. In this case, the CIC, A. N. Tiwari, had observed that there was merit in the contention that certain processes are best conducted away - the public gaze, for that is what contributes to sober analysis and mature reflection, unaffected by competing pressures and public scrutiny.

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9 Right to information in India, p.20 available at: http://ssrn.com/abstract=1758022
10 Cyrus Das and K.Chandra, Judges and Judicial Accountability (Universal Publication)
However, in another case, the CIC analysed the issue of disclosure of the process of appointment from a different perspective. In *Subhash Chander Agrawal v Secretariat of President*,\(^{12}\) it was argued on behalf of the appellant that the relationship between a judge and the Chief Justice cannot be construed to be fiduciary as claimed by the CPIO, Department of Justice. The Counsel for the appellant relied on the ruling in *S.P. Gupta v. Union of India*\(^ {13}\) in which the Supreme Court had held as under:

If we approach the problem before us in the light of these observations, it will be clear that the class of documents consisting of the correspondence exchanged between the Law Minister or other high level functionary of the Central Government, the Chief Justice of the High Court, the state government and the Chief Justice of India in regard to appointment or non-appoint of a High Court Judge or Supreme Court Judge or the transfer of High Court Judge and the Supreme Court Judge and the notes made by these constitutional functionaries in that behalf cannot be regarded as a protected class entitled to immunity against disclosure. It is undoubtedly true that appointment or non-appointment of a High Court Judge or a Supreme Court Judge and transfer of a High Court Judge are extremely important matters affecting then quality and efficiency of the judicial institution and it therefore, absolutely essential that the various constitutional functionaries concerned with these matters should be able to freely and frankly express their views in regard to these matters. But we do not think that the candor and frankness of these constitutional functionaries in expressing their views would be affected if they felt that the correspondence exchanged between them would be liable to be disclosed in subsequent judicial proceedings.

There is no reason to suspect that high level constitutional functionaries like the Chief Justice of a High Court and the Chief Justice of India would flinch and falter in expressing their frank and sincere views when performing their constitutional duty. We have already dealt with the argument based on the need for candor and frankness and we must reject in its application to the case of holders of high constitutional offices like the Chief Justice of a High Court and the Chief Justice of India.

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\(^{12}\) Appeal No. CIC/WB/A/2006/00460, dated 29 July 2006.

\(^{13}\) AIR 1982 SC 149
Observing that it is difficult to agree that if the differing views of the two chief justice become known to the outside world, the public discussion and debate that might ensue might have the effect of lowering the dignity and prestige of one or the other of the two Chief Justices, the Court further said:

When the differing views of the two Chief Justices are made public as a result of disclosure, there would certainly be public discussion and debate in regard to those views with some criticising one view and some criticising the other, but that cannot be helped in a democracy where the right of free speech and expression is a guaranteed right and if the views have been, expressed by the two Chief Justices with proper care and deliberation and a full sense of responsibility in discharge of a constitutional duty, there is no reason why the two Chief Justices should worry about public criticism. We fail to see how such public criticism could have the effect of undermining the prestige and dignity of one or the other Chief Justice. So long as the two Chief Justices have acted honestly and bona fide with full consciousness of the heavy responsibility that rests upon them in matters of this kind, we do not think that any amount of public criticism can affect their prestige and dignity. But if either of the two Chief Justices has acted carelessly or improperly or irresponsibly or out of oblique motive, his view would certainly be subjected to public criticism and censure and that might show him in poor light and bring him down in the esteem of the people, but that will be the price which he will have to pay for his remissness in discharge of his constitutional duty. No Chief Justice or Judge should be allowed to hide his improper or irresponsible action under the cloak of secrecy. If any Chief Justice or Judge has behaved improperly or irresponsibly or in a manner not befitting the high office he holds, there is no reason why his action should not be exposed to public gaze. We believe in an open government and openness in government does not mean openness merely in the functioning of the executive arm of the State. The same openness must characterise the functioning of the judicial apparatus including judicial appointment and transfer.

Here, Bhagwati, J. observations on the mystery around the process of judicial appointments are very significant and relevant in this context. He observed:

*Today the process of judicial appointment and transfers is shrouded in mystery. The public does not know how judges are selected and appointed or transferred and whether*
any and if so what, principles and norms govern this process. The exercise of the power of appointment and transfer remain a sacred ritual whose mystery is confined only to a handful of high priests, namely the Chief Justice of the High Court, the Chief Minister of the State, the Law Minister of the Central Government and the Chief Justice of India....

Justice Bhagwati further observed as under:

The mystique of this process is kept secret and confidential between just a few individuals, not more than two or four as the case may be, and the possibility cannot therefore be ruled out that howsoever highly placed may be these individuals, the process may on occasions result in making of wrong appointments and transfers and may also at times, though fortunately very rare, lend itself to nepotism, political as well as personal and even trade off.

We do not see any reason why this process of appointment and transfer of Judges should be regarded as so sacrosanct that no one should be able to pry into it and it should not be protected against disclosure at all events and in all circumstances. Where it becomes relevant in a judicial proceeding, why should the Court and the opposite party and through them the people not know what are the reasons for which a particular appointment is made or a particular Additional Judge is discontinued or a particular transfer is effected? we fail to see what harm can be caused by the disclosure of true facts when they become relevant in a judicial proceeding. In fact, the possibility of subsequent disclosure would act as an effective check against carelessness, impetuosity, arbitrariness or mala fides on the part of the Central Government, the Chief Justice of the High Court and the Chief Justice of India and ensure bona fide and correct approach, objective and dispassionate consideration, mature thought and deliberation and proper application of mind on their part in discharging their constitutional duty in regard to appointments and transfers of Judges.

Responding to this argument the Counsel for the Respondents stated that the S.P. Gupta case was superseded by: (i) Review of the judgment by Advocates on record (1993), (ii) Presidential Reference to the Supreme Court under Article 143 (1998) regarding appointment of judges by transfer; and (iii) Procedure for Appointment of Judges established in 1999.
The CIC did not agree with this contention and said that the disclosure part of the decision was not overruled at all. The held that the case was overruled insofar as it was in conflict with the view relating to the primacy of the opinion at the Chief Justice of India in matters of appointment, transfer and the justifiability of these matters as well as in relation to judge strength, but it did not find that the decision in the Gupta case on the question of disclosure was overruled. However, since the disclosure of the information sought pertains to third parties, the CIC directed the PIO to process the disclosure after duly issuing notice to third parties concerned. It was further directed that in case of a valid objection to disclosure in any case, the information sought might be supplied to the exclusion of the objectionable portion, as prescribed under section 10 of the RTI Act. Similarly, in D. K. Mishra v. Ministry of Law and Department of Justice,\textsuperscript{14} the CPIC was directed to disclose information pertaining to appointment process.

In Subhash Chandra Agrawal v. Department of Justice,\textsuperscript{15} the CIC has held yet again that the class of documents consisting of correspondence exchanged between the Law Ministry or other high level of functionaries of the Central Government, the Chief Justice of the state and the CJI in regard to the appointment or non-appointment of a High Court Judge, a Supreme Court Judge or the transfer of a High Court Judge and the notes made by these constitutional functionaries in that behalf cannot be regarded as a protected class entitled to immunity against disclosure.

Foolproof and effective protection can be gauged from the fact that not a single judge of Superior Court has been impeached so far from working of the Constitution and in fact a motion of this nature was moved in the Parliament only once in the isolated case of Justice V. Ramaswamy, which also failed for want of requisite majority support. It is beside the point whether this failure was because of some political considerations? The founding fathers of our Constitution have provided such a foolproof protection and security to a judge and to the tenure of office occupied by judges only to ensure that the judges of this country not only act in absolute independence, in the sense that they are not in any way troubled or pressurized by the possibility of their losing the office or post, but also to ensure that they always act without any fear or favour.

\textsuperscript{14} MANU/CI/0008/2009.
\textsuperscript{15} 2010 (1) ID 275 (CIC, New Delhi).
Important Orders Pertaining to the Judiciary

Openness is integral part of Judiciary

To disclose the information protected under section 8(1)(j), the public interest is sufficient. The openness is the necessary concomitant of democracy. Opposition to openness will result in serious undermining of the faith reposed by general public in the honesty, integrity and impartiality of the judiciary. The common man usually does not trust the legislature and remain suspicious of the acts of the executive, but it always trusts the judiciary. The sole reason of this blind faith is the self-regulation and abstinence from extraneous influences exercised by the judiciary, and that image is slowly but surely dampening. It is better if the judiciary act of its own. Only then it can save its independence, prestige and honour. If the legislature comes to intervene in this regard to enact a law for disclosure of assets by the judges then it will not be good for the honour of judiciary itself.

Refusal of RTI by Supreme Court

While the government under fire by higher court for not effectively implementing the RTI Act, few have noticed that India’s highest court violates the Act routinely, and with an impunity that makes the government’s evasion of the RTI Act seem benign.

Consider the following example:

- On 20\textsuperscript{th} February 2008, Satnam Singh, a prisoner in Ludhiana’s Central Jail sent a Right to Information (RTI) request to the Supreme Court (SC) asking for a copy of its guidelines on police reforms. The Public Information Officer (PIO) of the SC denied the request and referred Singh to the SC website. Singh filed a first appeal pointing out that as a prisoner, he had no access to a computer, and that, by not sending him the information, the SC was denying him his right. Hearing the appeal, the Registrar, SC too denied the request, now asking him to apply under the Supreme Court Rules 1966, instead of the RTI Act.

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16 Right to information in India, p.21 available at: http://ssrn.com/abstract=1758022
- On 10th November 2007, Subhash Chandra Agrawal filed an RTI request with the SC asking for information concerning declaration of assets by Supreme Court Judges, among other things. The PIO denied the request, claiming he did not hold the information. Agrawal filed a first appeal asking that his application may be transferred to the Public Authority holding the information. The Registrar asked the PIO to re-consider the request, but he denied the information again. Agrawal moved the Central Information Commission (CIC) which in January 2009, asked the PIO and furnish the information. The SC challenged this order twice before the Delhi High Court (HC) even as it made some information about judges’ assets public on its website, but the HC upheld the CIC’s ruling.

- In 2007, N. Anbarasan filed an RTI request before the Karnataka High Court (HC) for information pertaining to the scrutiny and classification of writ petitions, among other things. The PIO denied the information and asked Anbarasan to apply under the Karnataka HC Act and Rules. Anbarasan approached the Karnataka Information Commission (KIC), which ruled in his favor. The PIO challenged the KIC’s order before the HC, which quashed it. Subsequently, AKM Nayak, the State Chief Information Commissioner, and a former Additional Chief Secretary, appealed against the HC ruling before the SC. The SC not only dismissed the appeal but fined Nayak 1 lakh rupees for wasting public money satisfying their ego.

- Although the SC frequently agonises over government’s lack of transparency, its own Registry has steadfastly resisted yielding information under the Act. In the past decade of the Act’s existence, the SC has fought many RTI applicants tooth and nail, forcing them to the stage of second appeal. Where the CIC has ruled in favor of the applicants, the SC has typically challenged its decisions before the Delhi HC. The SC has fought these battles not for some significant intrusion of transparency, but for routine matters such as providing pendency figures: for example, the applicant who sought this information in 2009 had to wait until 2014 just to get the Delhi High Court to rule that the SC may provide the information.
**RTI Act v/s Supreme Court Rules**

The SC, referring applicants to its own rules is a significant tool deployed by the SC to keep the RTI Act at bay. Order XII, Rule 2 of the SC rules 1966 says:

“The Court, on the application of a person who is not a party to the case, appeal or matter, may on good cause shown, allow such person search, inspect or get copies of all pleadings and other documents or records in the case, on payment of the prescribed fees and charges.”

In several ways, this rule gives the SC greater powers to withhold information from citizens, over the RTI Act. Unlike the RTI act:

- The rule insists on the applicant providing a reason, and makes the availability of information contingent upon “good cause shown.”
- It prescribes no time limit within which information is to be provided.
- It lists no penalties for delaying or failing to provide the information.
- It has no mechanisms for appeal.

These inconsistencies have to be resolved in favour of the RTI Act as per the non-obstante clause provided in Section 22 of the RTI Act. Yet the SC has been maintaining that it can deny RTI requests, and limit citizens to the SC Rules.

The dispute over RTI and SC Rules came before the CIC as early as 2006, a year after the passage of the Act in the case of **Manish Khanna v The Supreme Court of India**. The appeal was heard by former bureaucrat and then Chief Information Commissioner, Wajahat Habibullah. Ignoring the four fundamental inconsistencies listed above, Habibullah startlingly ruled that there was “no inherent inconsistency” between the Act and Order XII Rule 2. In his view, Rule 2 merely provided an “alternative procedure” to access the information without denying it in any way ignoring the “on good cause shown” condition.

**Faith and Confidence must be maintained by Judges**

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18 *Ibid*
19 By a rough calculation, the SC’s refusal to provide information about judicial records under the RTI Act has come before the CIC nearly 50 times in the last ten years – this is just counting the cases which have been decided by the CIC; many more await a hearing.
In an interview a significant statement given by former Chief Information Commissioner Wajahat Habibullah that the judiciary too falls under the purview of the Right to Information Act. He asserted that the Right to Information Act applies to all the organs of the Government and all Constitutional bodies, which includes the legislature, executive and the judiciary. He added that he does not want to indulge in any kind of fight with the judiciary but differences are bound to occur between the two bodies.\textsuperscript{20}

Former CJI J Balakrishnan says that "Like every other legislation, this (RTI Act) is also grossly misused by some people. Just like right to information, right to privacy is also an important right and independence of judiciary is an important thing. These are all on the basis of Constitution. Just like RTI Act, any other constitutionally valued principles should also be protected."\textsuperscript{21} Actually this statement makes an excuse to adopt an opaque system for higher Judiciary which is not correct on the ground of equality. There is no law perfect and chances are available to be misused but on this basis main goal of legislation cannot be denied. There are sufficient provisions in the Act to curtail the misuse of the right.\textsuperscript{22}

The institution of the court is sustained by the faith and confidence reposed in it by the people, especially by the litigant public. The judicial wing of the State thus cannot fail the people in this regard. It is with this faith and confidence that litigants approach the court for any relief. It is obvious, therefore, that when once that trust and confidence is eroded, there are no seekers of justice or persons coming for relief before the courts of law and there cannot be any further justification for the existence of courts.

In such situation if any impression is created that the judges of the superior court are reluctant to disclose the particular of their assets, it undoubtly creates an impression in the minds of the general public that the judge has something to cover up or hide. An impression of this nature is damaging to the image of the judiciary and the institution of courts.

\textsuperscript{21} http://www.zeenews.com/news664624.html.
\textsuperscript{22} Chief Justice of India has written a letter to the Prime Minister of India Dr. Manmohan Singh for suitable amendment in the provisions of Sec. 8 so as to maintain the independence of judiciary. In the letter he has suggested "Section 8 (providing for exempting certain information) needs to be suitably amended by inserting another specific clause to the effect that any information, the disclosure of which would prejudicially affect the independence of the judiciary, should be exempted from disclosure under the provisions of the Act."
Judging own causes

Among three pillars of democracy general public have a faith in Judiciary because judiciary have always tried to correct the step which resulted in the violation of the right of citizens. Even before implementation of RTI Act higher court has been establish right to information as an integral part of fundamental right. But in case of Judicial Accountability Courts did not adopt a transparent approach, in case of asset declaration, and declaring unconstitutional the judicial Accountability Act on the name of freedom depreciate the respect of Judiciary. Within the current transparency regime is that orders pertaining to constitutional courts are often heard by the same constitutional court on the judicial side.

For example, the public information office of a High Court rejects an RTI Application filed, and thereafter the applicant succeeds in an appeal before the Information Commission which directs the High Court to provide the information sought for. However, the administrative officer of the high court promptly files a writ petition before the same court which sits on appeal of the Information Commission’s order on the judicial side.

It begs the question as to how an entity can be a judge in its own cause, more so when transparency and fairness are at stake. This trend is entirely permissible under the Constitution of India, and the Supreme Court routinely hears and rules on appeals from the Central Information Commission regarding matters pertaining to its functioning on the administrative side.23

However, the maxim ‘justice must not only be done, but must seem to be done’ is ignored by this internal appeal mechanism. This absurd consequence of this self-appealing mechanism is evidenced by the Madras High Court’s judgment dated 17 September 2014 in WP No. 26781 of 2013 wherein the High Court was seized with a writ petition filed by the Registrar of the Madras High Court seeking to quash an order passed by the Central Information Commission.

However, thereafter the High Court proceeded to hold that an applicant must disclose ‘bare minimum’ reasons for his application under the RTI Act, 2005 (i.e., the applicant must disclose whether the information sought for is for his ‘private interest’ or

‘public interest’ and elaborate thereon). This observation is in blatant violation of S.6 of the RTI Act, 2005 which specifically mandates that a citizen need not provide any reasons for his application.\footnote{Ibid}

A researcher who wanted a copy of the affidavits filed in a public interest litigation (PIL) heard by the SC between 1999 and 2004. The official answered we do not provide copies of the judicial record to non-parties and hung up. In all my experience of seeking information under the RTI Act, never before had an officer declined to provide information so transparently. The official asked him to look up SC Rules 1966.\footnote{Aniket, The Supreme Court Still Adamantly Refuses to Yield to RTI available at http://thewire.in/9856}

Filing RTI requests with multiple public authorities, no government body comes close to the SC in terms of contempt towards RTI applications. This attitude seems to be pervasive in the higher judiciary. The summary denials, fighting ordinary applicants before the CIC, and even hauling them before the Delhi HC suggests that as far as India’s higher judiciary is concerned, transparency is good for others, not for itself.

\textit{Mere personal information of Judiciary is only burden on RTI}

In August 2011, the CIC directed the Supreme Court to make public its rules if any, about the appointment of its retired judges as arbitrators and also the total amount of medical reimbursements made to individual judges during the last three years. The CIC also directed the Apex Court to disclose the list of all resolution-passed in the meetings of all the judges since 1997. This order of the CIC came on three appeals filed by RTI activist, Subhash Chandra Agrawal, who was denied information by the Supreme Court either on the grounds that it was personal in nature or it was not available in the form sought by him.\footnote{CIC Asks SC to Make Rules Public, The Hindustan Times, 6 August, 2011, p. 03.} However, here it may be noted that seeking information on issues such as medical reimbursement made to individual judges is perhaps taking matters a little out of the context of good governance and transparency- the very objects of the transparency law. Demand for such types of information may be characterised as frivolous. Here, the observations of the Supreme Court in \textit{Central Board of Secondary Education v. Aditya Bandhopadhyay}\footnote{MANU/SC/0932/2011} (discussed in detail later in the chapter) seem very relevant. In this case
the Apex Court has observed that in regard to information which is not related to achieving transparency, accountability and prevention of corruption, the emphasis is different and the other public interests (like privacy, confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments) should be given equal importance. Indiscriminate demands of directions for disclosure of all and sundry information (unrelated to accountability and eradication of corruption) under the RTI Act would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information.

In yet another order of the CIC, the Supreme Court has been directed to make public details of cases where orders have been reserved so that the citizens know the 'status of pendency'. Overruling the stand of the Apex Court that it does not maintain such data, the Chief Information Commissioner directed the Court to start the practice now’ and make arrangements in future for compiling arc disclosing such records.28

Precedents are Binding for Information Commission

It is abundantly clear that the Information Commission is bound by the law of precedence ie, judgment of the High Court and Supreme Court. In order to maintain judicial discipline and consistency in the functioning of the commission it was directed that the commission shall give appropriate attention to the doctrine of precedent and shall not overlook the previous judgment. It is not only the higher court’s judgment that are binding but even those of the larger bench of commission should be given due acceptance. The rule of precedence is equally applicable to intra appeals or references in the hierarchy of the Commission.29

Certified copy under RTI is not public document

29 Namit Sharma v Union of India, 2012 (6) SCJ 881
In the case of *Datti Kameswari v. Singam Rao Sarath Chandra And others*\(^{30}\) on 11 December, 2015, the nature of the documents obtained under the Right to Information Act, 2005 and their admissibility was in issue. Supreme Court pronounced that the xerox copies of the documents which are certified as true copies under the Right to Information Act, 2005 cannot be equated with certified copies mentioned in the Evidence Act. By reading of section 74 of the Evidence Act it can be called public document. Explanation-2 of Section 62 makes the position clear. However, if a document is obtained under the Right to Information Act from a competent Authority, it can be asked to be taken as a certified copy if the original satisfies the definition of public document and no formal proof of the same is required. But, in the case of other private documents, the copies of which are obtained under the Right to Information Act, the provisions of Evidence Act with regard to secondary evidence have to be satisfied.\(^{31}\)

**Constitutional Avenues Remain Open under Article 32/226-227**

Under the Act, where a citizen has exhausted the remedy of appeal or second appeal, the finality given to the orders of the commissioners and appellate authorities and overriding effect of the Act on other provision given in other laws is only for the purposes of the Act and the citizen has a right to approach the High Court under Art. 226 or where it refers to a fundamental right, he may even approach the Supreme Court under Art. 32.

The Kerala High Court held that no Mandamus writ can be filed, if information not supplied. In the instant case, the petitioner sought certain information from, respondent under the Right to Information Act, which was not supplied. Therefore, the petitioner has approached High Court seeking the direction for writ of mandamus to direct the authority to information immediately. The Kerala High Court had refused to admit writ and held that, the Right to Information Act itself provides effective and adequate alternate remedies. The Act specifically stipulates that if within the time stipulated in the Act, information requested for has not been supplied; it would be deemed that the petitioner's request has been rejected. In such circumstance, the petitioner can file an appeal under Section 19 of the Act. The petitioner has still another remedy by way of approaching the State Information Commission directly in exercise of the powers of the Commission under

\(^{30}\) Civil Revision petition no 3031 of 2015.

\(^{31}\) See also K. Bhaskar Rao v. K.A. Rama Rao (2010 (5) ALD 339)
Section 18(1)(c).\textsuperscript{32} Earlier, the P&H High Court held that if the petitioner has an alternative remedy under Section 19(6) of the Right to Information Act, 2005 which could be exhausted by him. No opportunity is provided to entertain the -instant petition in the face of the afore-mentioned alternative remedy.\textsuperscript{33}

The Madras High Court has observed that, if, one has to go by the object on which the said Act has been enacted, the objection raised by the petitioner pales into insignificance and does not warrant the Court to interfere with the impugned order passed by the First Appellate Authority. Hence, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed. The Court also observed that if, however, the petitioner chooses to file a Second Appeal to the State Information Commission as provided under Section 19(3), the dismissal of the Writ Petition will not be a bar and as and when such appeal is filed, the. Commission may deal with it on merits and in accordance with law.\textsuperscript{34}

\textbf{High Courts are under the jurisdiction of Central Commission}

The constitution and organization of the High Court is within the legislative ambit of the Parliament under Entry 78 to the Schedule VII of the Constitution. Article 231 of the Constitution provides that the Parliament may by law establish a common High Court for two or more States or two or more States and Union Territories. Thus, all the High Courts as Public Authorities under the Right to Information Act, 2005 will come within the jurisdiction of the Central Information Commission and not State Information Commission.\textsuperscript{35}

\textbf{Appellate authority under RTI Act is not a court}

While discussing provisions relating to appeal, the Hon'ble Supreme Court has observed that there are other legislations in which the term 'appeal' is used when Courts are not in the context of reference. For instance, under the Right to Information Act, 2005 an

\textsuperscript{33} Naresh Kumar v. Union of India, (2006) INPHHC 2332.
\textsuperscript{34} V.V. Mineral v. The Director of Geology & Mining, Chennai. 2007 (4) ML 394.
\textsuperscript{35} D.N. Loharuka v. Mumbai High Court, CIC decided on 13/03/2009.
appeal lies from the order of the Central/State public information officer to a senior official of higher rank. These officials, no doubt, cannot be called Courts.\textsuperscript{36}

\textit{Commission is a wider body and clothed with all the powers of a Civil Court}

The Madras High Court has observed that the Commission is a wider body and clothed with all the powers of a Civil Court under Section 18(3) of the RTI Act and, therefore, it is misnomer to call it as a non-eficacious remedy. If a person, who seeks for documents, is a business competitor and if any trade secret is sought for, then such document may be denied. But, regarding a public document, if sought for by an individual whatever the motivation of such individual in seeking document has no relevancy as the Central RTI Act had not made any distinction between a citizen and a so-called motivated citizen. Hence, the submission in this regard has to fail.\textsuperscript{37}

\textbf{Judicial pronouncement in interpreting the procedure}

\textit{Copy of the document submitted in court, cannot be asked under RTI}

The Kerala High Court held that wherever it is the right of every party to a revision petition to get a copy of whatever document placed on the record by the other side. For that, the party need not go through the procedure under the Right to Information Act since it is his right to get a copy of the same even otherwise.

\textit{Application for information cannot made under CPC}

Justice Hemant Gupta P&H High Court has observed that "It is correct that the application has been moved by the plaintiff before the Civil Court, but it cannot said that since the application has not been filed before the Information Officer, the plaintiff would not be entitled to the information. It is the matter of fee, which may be claimed before any such information is supplied. But the information cannot be withheld only for the reason that the application has been filed before the Civil Court and not before the Information Officer."\textsuperscript{38}

\begin{footnotesize}
\begin{enumerate}
\item Snehadeep Structures Private Limited v. Maharashtra Small Scale Industries Development Corporation Limited, AIR 2010 SC 1497: (2010) 3 SCC 34
\item V.V. Mineral v. The Director of Geology & Mining, Chennai, 2007 (4) MLJ 394
\end{enumerate}
\end{footnotesize}
Court can ask petitioner to ask information under the Act

Where it was pointed out that despite approaching the respondent department the requisite information/documents have not been furnished to him on the basis that the department would file the documents only if the Court asks for the same. The Court has relegate the petitioner to the remedy of obtaining the documents through the competent authority appointed under the Right to Information Act, 2005, with liberty to file a fresh petition after attaching all the relevant documents.\(^{39}\)

Information under RTI cannot be asked why (Reasons):

The Supreme Court held that the definition of ‘information’ shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed, especially in matters pertaining to judicial decisions. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion.\(^{40}\) This is also doesn’t seem to be correct because the judiciary is not expressly excluded in u/s 2 (h) and 8 of RTI Act. This judgment is somewhat against natural law and also a violation of jurisprudential approach of law, transparency in a judgment is essential and kill the arbitrariness in the procedure.

The Court further has observed that as petitioner has submitted his application under Section 6 of the RTI Act before the Administrative Officer-cum-Assistant State Public Information Officer seeking information in respect of the questions raised in his application. However, the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under

Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the "public authority" under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent (Judicial Officer) was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.41

The Supreme Court in its decision in the case of Maraikkayar v Haji Kathija Beevi Trust, Nagapattinam19 observed that it is true that no Court is liable to furnish information regarding the reason for its judgment under the Right to Information Act, 2005 but it is certainly expected to reveal and record the reasons for its decision in the judgment-order. Giving reasons for the decision/order serves two main purposes, namely, it would give satisfaction to both the parties and at the same time enable the Appellate Court to appreciate the matter and reach a conclusion whether or not the decision warrants any interference.

Justifying the non-disclosure of information which does not form part of public record, the Supreme Court in Indira Jaising v Registrar General of the Supreme Court of India,42 held that decision or information with regard to a Judge cannot be sought under the RTI Act. The Court noted that free-flow of information is undoubtedly an essential element for the proper functioning of democracy, but there is several area where information cannot be furnished. The court held that in-house report about allegation against sitting judge of Karnataka High court did not form part of public record and therefore, its non disclosure was justified

Weather CIC must be have a judicial Qualification

The Supreme Court in Union of India v Namit Sharma43 was called up to decide whether or not the appointees to the Information Commission must possess judicial qualifications. The Supreme Court in its earlier judgment in Namit Sharma v Union of  

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41 Krishna Pal Malik, Right to Information, p.46 ( Allahabad Law agency, 2013)
43. 2012 (8) SCALE 593.
India, had decided in September, 2012 that Information Commissioners are judicial tribunals performing 'functions of wide magnitude' including function of judicial and quasi-judicial nature. Moreover, the Information Commission "is a tribunal having all the essential trappings of a Court". As such, the Court read into" the RTI Act a "judicial mind" requirement. Therefore, to be appointed as Information Commissioner, an individual must possess the judicial acumen and experience requisite to "fairly and effectively deal with the intricate problems of law that would come up for determination before the Information Commission." Another ground for holdings this view was the upholding of two fundamental values, namely separation of powers and independence of Judiciary.

In the instant case, the petitioner Namit Sharma (respondent) had prayed for declaring the provisions of Sections 12(5), 12(6), 15(5) and 15(6) of the RTI Act ultra vires the Constitution. Refusing to declare any of these provisions ultra vires, the Supreme Court held that Sections 12(5) and 15(5) were intended to ensure that only persons with knowledge and experience were considered for appointment as Information Commissioner or Chief Information Commissioner. It was held that the Information Commissioner need not be persons with judicial experience as they perform only administrative functions. The principle of separation of powers and independence of judiciary therefore, cannot be invoked in appointment of CIC's/SIC's.

The Supreme Court overruling its decision in Namit Sharma v Union of India, had the opportunity of recapitulating the entire gamut of the Right to Information law and held that Section 2(j) defines "Right to Information" conferred on all citizens under Section (3) of the Act and includes the right to information accessible under the Act, which is held by or under the control of any public authority. While deciding whether a citizen should or should not get particular information which is held by or under the control of any public authority, the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession

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44. There were practical difficulties, one of them being difficulty to find a large number of competent Judges to be appointed as Information commissioners in Information Commissions across the country. Another problem noticed was that carrying out the judgment under the RTI Act would require immediate changes in the RTI Act and the Apex Court had failed to give any time to frame for the implementation. A large majority of the Members of the Parliament were also opposed to the idea of having exclusively Judicial Informatics commissioners by amending the RTI Act.

45. (2013) 1 SCC 745
of a public authority. The function obviously is not a judicial function, but an administrative function conferred by the RTI Act on the Information Commissions. It is incorrect to say that while deciding information affecting rights or privacy of third party, the Commissioner decides rights of third party and as such performs judicial function to protect the rights of third parties. However, while performing these administrative functions the CIC/SIC are required to act in a fair and Just manner following the procedure laid down in Sections 18, 19 and 20 of the Act. But it does not mean that the Information Commissioners are like Judges who must have judicial experience, training and acumen. It was also alleged that Information Commissioners not perform functions which prior to the RTI Act of 2005 were vested in Court therefore, they do not need judicial background, training or experience.

**Power of review is in Judiciary**

As far as the power of review is concerned, the absence of a provision for review shall not be a bar or in other words does not prohibit a statutory authority from undertaking review in specific circumstances. This was held by the CIC, in *Rajnish Singh Chaudhary v. Union Public Services Commission,* The CIC held that it was competent to review an order which was erroneous on the face of it or where there had been a violation of principles of natural justice. The touchstone for assuming the power of review is not always the presence of that specific power in the statute but a considered view of the statutory authority that without review there was an apprehension of miscarriage of justice. The power to correct through review is germane to promoting justice.

The role of judiciary as a guardian and custodian of the Indian Constitution had been echoed in *L. Chandra Kumar v Union of India,* wherein it was held that judiciary not only guards against violation of fundamental rights but also protects the citizens and aliens against discrimination, abuse of State authority, arbitrariness in the governance etc. by imposing restraints in the form of judicial review. These restraints help the executive and the legislature to be accountable to each other and also to the people of India.

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46 2009 (1) ID 429 (CIC New Delhi).
Order under RTI Act must be reasoned

A conjoint reading of Section 2(h), (j) and Section 3 read with Article 14 of the Constitution suggest that an order made under the RTI Act must be reasoned. Thus, it the case of *Kasim Maraikkayar v Haji Kathija Beevi Trust* the High Court of Madras in a revision petition found that the subordinate Court had simply observed that as the petitioners have *prima facie* proved their possession over the wakf property, the injunction petition is allowed and the injunction is made absolute. The High Court noted that the subordinate Court did not record any reason which made him to reach a conclusion with regard to *prima facie* case in favour of the petitioner so as to grant injunction until the disposal of the case. The High Court of Madras therefore, set aside the injunction order.

The Supreme Court has time and again emphasised that every order made by an administrative or a quasi-judicial authority must contain reason for coming to a conclusion. Where no reason is given, the order on being challenged is liable to be quashed and set aside. The Court in its decision in *Cyril Lasrado v Juliana Maria Lasrado* observed that reasons given in an order introduce clarity and an order without adequate reason is not sustainable. "Failure to give reasons amounts to denial of justice; they bring objectivity in the decision making. Right to reasoned decision is an indispensable part of a sound judicial system, it indicates application of mind and serves as a live link between the mind of the decision-maker to the controversy in question and the conclusion arrived at. Reasoned decision/order is the basic requirement of natural justice."

Other Important Decisions and Orders

The Allahabad High Court has held that the words "substantially finance” in section 2(h)(ii), clearly mean that the institution concerned has not to be one hundred per cent financed by the state. Here the object of the Act was to cover those institutions which even indirectly receive funds from the government.

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47 AIR 2008 Mad 91.
49 Observations made by Lord Denning M.R. in *Breen v Amalgamated Engg Union*, All ER 115
In Kousthubha Upadhyaya v. Department of Personnel & Training,\(^{51}\) it was held that the Annual Property Returns filed by Government employees are in the public domain and, therefore, there is no reason why they should not be freely disclosed. This should be considered as a step to contain corruption in government office since such disclosures may reveal instances where property has been acquired which is disproportionate to the known sources of income.

In Devanga Sankia Rachappa v. State Bank of India,\(^{52}\) it was held that a foreign branch of State Bank of India was also covered under the RTI Act. In Sudhir Vohra v. Delhi Metro Rail Corporation,\(^{53}\) the CIC held that the Delhi Metro Rail Corporation, being 'state' in terms of Article 12 of the Constitution of India, could not claim exemption on the ground that the engineering and structural design was its intellectual property and was covered under the Copyright Act, 1957.

In Pyare Lall v. PIO, Punjab & Haryana High Court,\(^{54}\) it has been held that merely because a certain matter was sub-judice did not render information regarding thereto exempt from disclosure unless its disclosure was expressly forbidden by the court or the disclosure constitutes contempt of court.

**The Act provides an effective alternative remedy**

The petitioner filed an application under the Right to Information Act seeking information from the respondent, which has been denied. The petitioner challenges before the High Court. The High Court held that the Court was not inclined to entertain the challenge, since the petitioner has an effective alternative remedy by way of appeal as provided under Section 19 of the Right to Information Act. Without prejudice to the right to the petitioner to file an appeal as above, the writ petition was dismissed.\(^{55}\)

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\(^{51}\) 2009 (1) ID 284 (CIC, New Delhi).
\(^{52}\) 2009 (1) ID 231 (CIC, New Delhi).
\(^{53}\) 2010 (1) ID 560 (CIC, New Delhi).
\(^{54}\) 2008 (2) ID (SIC Punjab).
In *S. Rangarajan v P. Jagjivan Ram*,\(^{56}\) also the Supreme Court held that criticism of the Government policies is not prohibited but there should be a proper balance between freedom of expression and public interest.

The High Court of Karnataka in *K. Ravi Kumar v University of Bangalore*, observed that the Karnataka Right to Information Act, 2000 makes it clear that the order of the day is to permit openness, transparency and accountability in the administration. The Act also applies to Bangalore University being subject to control of the State Government and therefore, it is bound to furnish the requisite information to the appellant in accordance with the State Right to Information Act.\(^{57}\)

Despite of remedy available in Act the Court sometime interfere in process like in case of *Union of India v Vishvas bhamburkar*\(^{58}\) Court observed that the Commission has the power under RTI Act to direct an inquiry into any matter and it should be carried out by an officer not below the rank of a Joint Secretary to the Government within eight weeks from today and a copy each of the said report shall be provided to the Commission as well to the respondent before this Court. So in this way it interfering the working of Commission.

The High Court of Patna in *Shekhar Chandra Verma v State Information Commissioner, Bihar*,\(^{59}\) observed that Right to Information Act, 2005 contemplate furnishing of information which is available on records and wherever such information is held by the Government or a public body it must be disseminated and supplied to the applicant. However, if the information is not readily available, the public authority is not required to carry out an enquiry and collect or create information for the applicant. In such a case, information may be refused.

The High Court of Bombay in *the Board of Management of the Bombay Property of the Indian Institute of Science through its Secretary v The Central Information Commission, The Information Commissioner and The Union of India (UOI)*,\(^{60}\) held that while entertaining an application for access to information under Section 6 of the RTI Act,\(^{56}\) (1989) 2 SCC 574
\(^{57}\) Shivanna Naik v Banelore University. ILR 2005 Kant 5747.
\(^{58}\) 2013(297)ELT 500(Del)
\(^{60}\) Writ Petition No. 1887 of 2010, decided on 11 October, 2010.
2005, the *locus standi* or intention of the applicant cannot be questioned by the Public Information Officer and he is required to furnish all the information sought except that which is exempted under any of the clauses of Section 8(1) of the Act. Similarly, an applicant seeking information is not required to state reasons why he/she needs such information except such details as may be necessary for contacting him/her for communicating the requisite information.

**The Commission did not have the power to appoint the Committee:**

There is no provision for an inquiry to be conducted by any other Committee for and on behalf of the Information Commission. A question arose before the Court whether the Central Information Commission has the power, under the RTI Act and the Rules made thereunder to appoint a Committee of persons other than the members of the Commission, to inquire into the implementation of the obligations cast upon a public authority, such as the DDA by virtue of Section 4 of the RTI Act?

The Court held that there is nothing in the Act which empowers the Central Information Commission to appoint a committee to conduct an inquiry on its behalf, the only rules that have been framed under Section 27 of the RTI Act, namely - (i) The Right to Information (Regulation of Fee and Cost) Rules, 2005 and (ii) The Central Information Commission (Appeal Procedure) Rules, 2005. None of these Rules deals with the powers of inquiry of the Central Information Commission. Therefore, there is nothing prescribed either in the Act or the Rules made thereunder, whereby the Central Information Commission could be said to have been empowered to delegate its power of inquiry under Section 18 to some other person or a Committee of persons. The Central Information Commission did not have the power to appoint the Committee to examine the relevant provisions of Section 4. The Court set aside the order of Chief Information Commissioner and held that the Central Information Commission and the Chief Information Commissioner have travelled beyond their boundaries of power and have thereby transgressed the provisions of the very Act which created them.61

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But in another case the Court observed that relief claimed by the petitioner for
directing the Chief Information Commissioner to constitute a bench, larger or smaller, is
essentially the power of the Chief Information Commissioner of Information and not the
power of the High Court.\textsuperscript{62}

\textbf{The Chief Information Commissioner has no powers to frame rules}

The Delhi High Court held that the Chief Information Commissioner does not fall
within the definition of appropriate Government or the competent authority. In other words,
the Chief Information Commissioner has no powers to make rules under Section 27 or
Section 28. Both the appropriate Government and the competent authority have been
empowered by the said Rules to make rules to carry out the provisions of the RTI Act.
However, such rules would only be operative if they are notified in the Official Gazette.\textsuperscript{63}

\textbf{CIC is not a court}

It was held by the Court that the Central Information Commission is not a court and
certainly not a body which exercises plenary jurisdiction. The Central Information
Commission is a creature of the statute and its powers and functions are circumscribed by
the statute. It does not exercise any power outside the statute. There is no power given by
the statute to the Central Information Commission to call any person or compel any person
to be present in a hearing before it in the proceedings under the Act, except for the
purposes of giving evidence oral or written or for producing any documents or things.

\textbf{CIC cannot be made a party to sue}

Hon'ble Delhi High Court held that like any other quasi-judicial authority, the CIC
is not expected to defend its own orders. Likewise, the CIC cannot be called upon to
explain why it did not follow any of its earlier orders. It is clear that the CIC should not be
made a party in any proceedings under the RTI Act.\textsuperscript{64}

\textsuperscript{62} CIC/Legal/DEL/2015/050
\textsuperscript{63} Delhi Development Authority v. Central Information Commission, [2010] Del HC 2720 : WP (C)
12714/2009 (Delhi HC on 21.05.2010).
\textsuperscript{64} Union Public Service Commission v. Shiv Shambu, 2008 IX AD (Del) 289.
**High Courts are under the jurisdiction of Central Commission**

The constitution and organization of the High Courts is within the legislative ambit of the Parliament under Entry 78 to the Schedule VII of the Constitution. Article 231 of the Constitution provides that the Parliament may by law establish a common High Court for two or more States or two or more States and Union Territories. Thus, all the High Courts as Public Authorities under the Right to Information Act, 2005 will come within the jurisdiction of the Central Information Commission and not State Information Commission.\(^{65}\)

An overall view and a dispassionate analysis of the judicial pronouncements made by the higher judiciary over the years would conclude that disclosure of information has been accepted as a rule while 'non-disclosure an exception to this rule, the object being to ensure maximum openness and transparency in the system of administrative governance. It has been universally accepted that complete openness in all matters of governance is neither feasible not advisable, therefore, a balanced approach to openness as envisaged by the RTI Act appears to be a viable approach towards good governance. The exception specified in Section 8(1) of the RTI Act, 2005 are designed to reconcile the possible conflict between transparency and secrecy regimes the larger interest of the public, the guiding principle being "maximum disclosure, minimum secrecy".\(^{66}\)

**A de facto amendment**

The apex court judgment in Girish Deshpande case in 2012 is not in consonance with the exemption under Section 8 (1) (j) nor with the restrictions on the citizen’s fundamental right under Article 19 (2).

The Supreme Court has given a judgment denying an RTI request for copies of all memos, show cause notices, orders of censure/punishment, assets, income tax returns, details of gifts received etc. of a public servant. Without giving any legal arguments, the court ruled that this is personal information as defined in clause (j) of Section 8(1) of the RTI Act and hence exempted. The only reason ascribed in this is that the court agrees with the Central Information Commission’s decision. Such a decision does not form a precedent

\(^{65}\) *D.N. Loharuka v. Mumbai High Court, CIC decided on 13/03/2009.*

\(^{66}\) *N V Paranjape, Right to information law in India, p.129 (Lexis Nexis, 2014)*
which must be followed. It also contradicts the Supreme Court’s earlier judgment in *R Rajagopal and Anr. v state of Tamil Nadu* and hence cannot be considered as laying down the law. Commissioners and officers gleefully took this as a precedent and started disallowing all information which could be called ‘personal’.  

**Court’s ruling on Suspension of Chief/State Information Commissioner**

In *K. Natrajan v State of Kerala*, the High Court of Kerala was called upon to decide whether Section 17(2) of the RTI Act, 2005 (22 of 2005) contemplates need to have inquiry started by the Supreme Court as pre-requisite to place the Chief Information Commissioner or the State Information Commissioner under suspension. Answering in the negative, the Court observed that the matter of suspension is to be considered by the Governor who is the appointing authority. Once, the Governor decides to have the inquiry conducted by the Supreme Court, it is open for him to invoke power of suspension of the Central/State Information Commission.

In the instant case, the State Information Commissioner had instructed the investigating officer to absolve the Leader of Opposition from accusation in matter relating to assignment of Government land to one of his relative. The conduct of the Commissioner amounted to misconduct and the Additional Director General Police (Vigilance & Anti-corruption) had submitted the verification report to Governor who took immediate action and suspended the Commissioner for misconduct. The petitioner’s contention was that he was not given a hearing before passing of his suspension order. The Court held that it is a settled law that "it is necessary to follow the principle of *audi alteram partem* rigorously in the domain service law." The provision of suspension is permissible even before an order suspension is made in order to maintain public trust and confidence in the impartial; honest working of the public authority. The writ petition was therefore, dismissed.  

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67 Shailesh Gandhi http://thewire.in/12560/the-supreme-court-is-also-guilty-of-diluting-the-right-to-information/

Judgments given by the Supreme Court on the RTI law in only one was information ordered to be provided. This judgment of *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Anr.*, also had the following statement:

Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties.

This statement was without any basis and had no context with the case. RTI users were aghast at their fundamental right being described as a potential *‘tool to obstruct national development, integration, peace, tranquility and harmony’*. Citizens generally believe that many officers resort to oppression and intimidation but are surprised to note that the court felt some citizens have acquired the power to turn the tables on them. This was a statement castigating citizens exercising their fundamental right to expression. Other rights including the freedom of speech may be misused by a few persons. But it would be difficult to find such a castigation of the citizen’s use of a fundamental right in any other court judgment.

**Disclosure of File Noting**

Another debatable issue relates to the disclosure of file notings under the RTI Act. Though the Department of Personnel and Training on its website has mentioned that file notings cannot be disclosed, however, the CIC is of the opinion that file notings are very

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69 2011 STPL (Web) 685.
70 http://thewire.in/12560/the-supreme-court-is-also-guilty-of-diluting-the-right-to-information/
much within the ambit of the Act. The CIC has on a number of occasions expressed this view. In *Satyapal v. TCIL*\(^{71}\), the CIC held that most of the discussions on the subject-matter are recorded in the note sheets and decisions are mostly based on the recordings in the note sheets. Even the decisions are recorded on the note sheets. These recordings are generally known as "file notings". Therefore, no file would be complete without note sheets having these file notings. These "file notings" are an integral part of the file and are, therefore, not exempt from disclosure.

As a matter of fact the Ministry of Personnel, Public Grievances and Pensions been advised time and again to amend from its website's administrative instructions which say that file noting need not be disclosed.\(^{72}\) In *R.K. Garg v. Ministry of Home Affairs*,\(^{73}\) the CIC held that when the file noting by one officer meant for the next officer with whom he may be in a hierarchical relationship, is in nature of a fiduciary entrustment, it should not ordinarily be disclosed and not without the concurrence of the officer preparing the note. When read together, section 11(1) and section 8(1)(e), unerringly point to a conclusion that noting of a "confidential" file should be disclosed only after giving opportunity to the third party (the officer/officers writing those notes) to be heard.

However, file noting in the case of files classified as confidential attract the exemption of section 8(1)(j) and if in a given case it is decided to disclose noting of a confidential file, it has to be done only after completing the procedure under section 11(1).\(^{74}\) Thus, from whichever angle the provisions of the RTI Act are into, "file noting" cannot be held to be excluded unless they come in conflict with public interest or are excluded under any of the provisions of the Act.\(^{75}\) The (RTI) Act aims at bringing total transparency. The Preamble to the Act clearly states that it intends to harmonize the need to keep certain matters secret at the same time reiterating the paramountacy of the right to know.

\(^{71}\) Appeal No. ICPB/A-l/CIC/2006.
\(^{73}\) F.No. CIC/AT/A/2006/00363.
Scope of Right to information may expanded by PIL

The traditional rule of locus standi that a writ petition under Article 32 or Article 226 can only be filed by a person whose fundamental right is infringed has now been considerably liberalised by the advent of public interest litigation system during the last quarter of the 20th century. The higher courts now permit Public Interest Litigation (PIL) at the instance of public spirited citizens or organisations for the enforcement of constitutional and other legal rights of any person or group of persons who themselves are unable to approach the Court due to poverty, ignorance or because they belong to marginalised sections of the society. Access to justice through "class action', 'public interest litigation', or representative proceedings' has now become an integral part of constitutional jurisprudence of India.

Justice P.N. Bhagwati in Bandhua Mukti Morcha v Union of India76 explained the nature and purpose of PIL and wanted the Government and officials to realise that they should welcome public interest litigation because "it would provide them an access to examine whether the poor and down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community."

Since the rule of locus standi is not applicable in RTI cases, a person who has no locus standi in the case may also seek information under Section 3 or Section or section 6. Thus, where the petitioner sought information pertaining to documents of various bidders of tender notice, the State Government refused to provide him the same on the ground that he, not being a bidder himself, had no locus standi to seek information. On appeal, the High Court of Jharkhand, held that the refusal by State Government was improper and violative of the provisions of the RTI Act.77

As a corollary of the non-applicability of locus standi rule in RTI cases, it is easy to conclude that even a stranger may make a request for information under Section 3 or Section 6 of the Act and his request cannot be thrown off for want of locus standi. It was held by the High Court of Chhattisgarh (Bilaspur) in the case of Yogenndra Chandraker v

76 AIR 184 SC 803
77 State of Jharkhand v Navin Kumar Sinha, AIR 2012 SC 864
State Information Commission (SIC) that a request for information from a stranger cannot be refused merely on the ground that he had no locus standi or that he has not stated the reason why he was seeking the information.

In Centre for PIL v Union of India, the Supreme Court took initiative in supporting and accelerating the movement for a national law to be enacted on right to information, which eventually paved way of the enactment of RTI Act, 2005 (22 of 5). It is indeed a glaring example of vigilant citizenry and civil society working towards transparency, openness and accountability in the functioning of the government agencies and public authorities.

The Delhi High Court while dismissing the petition in Gunwant Jit Kaur v M/s LSM Export78 relied upon the contention raised by the learned counsel of CIC that this court while hearing a writ petition challenging a particular order cannot pass a general direction laying down the time limit for pronouncement of the judgements/orders by the Information Commissioners while observing and petitioner has liberty to raise the issue by Public interest litigation.

Public interest litigation has led to activate public participation in judicial process and considerably expended the scope of right to information. The public spirited activists group or organisations can now move the higher Court through PIL petition drawing Court's attention to problems relating to a variety of matters which have a direct bearing on people's life. Some of them are:—

1. pollution of river waters79 causing damage to public health;
2. miserable plight of under trials80 languishing in jails for years without trial;
3. vehicular air and noise pollution;81
4. industrial pollution;82

78 Writ petition No : 3610/2013, Delhi High Court.
79 M.C. Mehta v Union of India, AIR 1988 SC 1037 (Ganga River Water Pollution case).
80 Hussainara Khatoon v Home Secretary, State of Bihar, AIR 1979 SC 1369; Rudal Shah v State of Bihar. AIR 1983 SC 1086.
82 M.C. Mehta v Union of India, AIR 2001 SC 1948.
5. illegal mining activities;\textsuperscript{83}

6. police atrocities and custodial torture;\textsuperscript{84}

7. want of speedy trial;\textsuperscript{85}

8. handcuffing of arrested persons;\textsuperscript{86}

9. the problem of bonded labour;\textsuperscript{87}

10. Unhygienic conditions in blood banks;\textsuperscript{88}

11. Voter’s right to know about the candidates contesting election.\textsuperscript{89}

The growth of PIL has considerably helped in eroding the secrecy regime and provided access to information and democratisation of judicial process. With the evolution of new information technology and e-governance, the scope for access to information has considerably widened PIL requiring information on matters not involving public interest shall not be entertained by way of writ petition. Undoubtedly, the advent of PIL has provided new dimensions for the Courts to interpret right of freedoms guaranteed under the Constitution of India to fulfill the inspirations of the people and ensuring quality, fraternity, and opportunities as envisaged by the Preamble. The Apex Court in a number of PIL cases has reiterated that freedom of expression under Article 19(l)(a) includes within it, right to information. Though there is some criticism about PIL being misused by unscrupulous over activists to gain undue gain and popularity or to serve their ulterior selfish motives and Courts are also at times transgressing their permissible jurisdiction while exercising power of judicial review but it has been generally accepted that public interest litigations have substantially contributed to the protection of public interest and rights of people in the larger interests of the society.


\textsuperscript{84} \textit{SAHELI v Commissioner of Police, Delhi}, AIR 1990 SC 513; \textit{Shakila Abdul Gafar Khan v Vasant Raghunath}, AIR 2003 SC 4567.

\textsuperscript{85} \textit{M.H. Haskot v State of Maharashtra}, AIR 1978 SC 1548.

\textsuperscript{86} \textit{Prem Shankar v Delhi Administration}, AIR 1980 SC 1535.

\textsuperscript{87} \textit{Bandhwa Mukti Morcha v Union of India}, AIR 1984 SC 803 (there have been a series of nine PIL cases on this).

\textsuperscript{88} Common cause, \textit{A Registered Society v Union of India}, (1996) 1 SCC 753

\textsuperscript{89} \textit{Union of India v Association for Democratic Reforms}, AIR 2002 SC 2112: \textit{see also} People's Union for Civil Liberties v \textit{Union of India}, AIR 2004 SC 456.