

A LIBERAL CONSTRUCTION OF THE OUTSTRETCH OF OUR INFORMATION RIGHTS

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Abstract

Judiciary under RTI or RTI under Judiciary? A Right to Information of people or a prerogative of the government? The answer to these fundamental questions was eloquently given by the Supreme Court of India when it averred that the public's informational rights cannot be destroyed at the behest of a misinterpretation of the law. Disconcerted over the abstraction that the Supreme Court and its officiating authority of CJI are distinct and separate, the Court ruled the necessary and declared them to be the same while reaffirming that they both should be included within the peripheries of Right to Information. This paper discusses the need-based requirements of including the office of CJI under RTI. First, it covers the issues of transparency requirements of democracy as there is a growing global trend inclining towards a transparent government. Secondly, the paper, in the light of the Supreme Court judgment substantiates the idea that such transparency cannot be unbridled and can be subjected to the requirement of a larger public interest.

Introduction

Supreme Court is the defender and protector of our various rights. The ever-increasing awareness among the masses concerning their rights and freedoms in recent years has paved the way for more and more liberal interpretations of those rights and freedoms that are guaranteed to the people of the country and because of this, a big step was taken by this Court which was by far necessitated with time. The Supreme Court in the case of *Central Public Information Officer v. Subhash Chandra Agarwal* did the laborious task of including the office of the Chief Justice of India within the fabric of the Right to Information (RTI) Act, 2005.¹

The anatomical framework of the RTI Act, 2005, goes beyond the traditional writings of article 19 which guarantees everyone a Constitutional right to information. The preamble of the RTI Act lays down the intent and purpose for which the right to get access to information was made specific legislation. RTI Act seeks to set out a practical regime of right to information in India.

¹ 2019 SCC OnLine SC 1459.

Citizens should be given access to the information stored with the public authorities as that will help promote transparency and accountability among the public authorities.

Right to Information broadly covers the following aspects: (a) The right to expeditiously access unerring information maintained by the public authorities regarding their working; (b) The access to information on the payment of fixed and nominal fees and; (c) The duty of the governmental authorities to create an atmosphere that would facilitate the free flow of information.

With the dictum that “transparency does not undermine judicial independence²”, the Court has pondered upon the fact that a liberated judiciary does not imply that it cannot be subject to the pointers of an informative society. The Court held that the fundamental right to information clubbed with the intended legislation to secure a statutory right to information for the citizens is an inalienable natural right. Article 19 under the Constitution talks about the freedom of speech and expression. As well-known, free speech is vital for any society that is considerate towards its citizens. The Courts as the organs of a free society must nonetheless minimise the arena of confidentiality and make it parallel with the public interest. Justice Bhagwati in the instant case dwelled upon the fact that a democratic society is concerned with the Constitutional values of transparency, and accountability as these are the postulates that make a democratic government more approachable to the people. A democracy should never be static. It should continuously evolve through a dynamic process so that the era of secrecy can be relinquished, confidentiality can be restricted and the claim for transparency can be supported through an open and thriving society.

Seeking a Transparent Judiciary

Judiciary is one of the three premier organs that promote good governance in the country. The enforcer and protector of the rights of the masses, this organ substantiates the concept of the welfare state in the true sense. It moots upon the issues pertinent to society and bestows justice to those who have been the victims of wrongdoings. Whenever any organ, institution, or private person fails to observe their part of their obligation as sects of the society, the judiciary intervenes to accord complete justice to all. This task of the judiciary requires an unbiased and non-partisan attitude among the judges. Any kind of divulsions from the notions of righteousness in their working results in harm to the seekers of justice. To avoid such kind of fallacies, it is paramount that the judges remain objective in their approach. In order to ensure such objectiveness, some degree of scrutiny is required. Such scrutiny can be ensured through a system of openness in the working of the judges. However, such scrutiny in no way allows an unfettered interference in the functioning of the judiciary. The institution of judiciary should not be destroyed at the behest of a ‘litigative public debate’. It simply implies a controlled degree of supervision by the members of the society to respect the contours of a democracy. RTI is not arbitrary. It is a well-established right with thought about restrictions where ever needed. No

² *Ibid.*

doubt the judiciary has to be safeguarded from the dangers of unwarranted intrusions in order to preserve its sanctity, but at the same time, the benefits of freedom of information cannot be cornered under the guise of independence. Even though the judiciary need to be protected, but it does not mean that it is purely above the requirements of a democracy. A balanced has to be stroked out as a means to preserve the integral fundamental right and the honour of the judiciary.

Understanding Public Authorities

The concerned case has surfaced the way for the judges to declare that the office of the Chief Justice of India (CJI) is a 'public authority' within the meaning of the RTI Act. By bringing the office of the Chief Justice within the domain of RTI, the judiciary has given new wings to this ever-applauded legislation. The makes the understanding of the meaning of the expression 'public authority' crucial. The expression 'public authority' has been subjected to numerous interpretations from time to time. So, what exactly is a Public Authority? The formal definition available under the RTI Act is as any authority or body or institution of self-government established or constituted by/under the Constitution, by any other law made by Parliament; by any other law made by State Legislature; by notification issued or order made by the appropriate Government and includes any-body owned, controlled or substantially financed; non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.³

This definition helps us to understand that which institution or body materialises as a public authority from which information can be accessed by every citizen of the country. But just like the instant case, confusion regarding whether a particular authority is a 'public authority' under RTI Act has been attracted quite a several times. This has forced the Central Information Commission's (CIC) as well as the judiciary to intervene and bring about interpretative inclusions under RTI, so as to get rid of any underlying confusion and to prevent any unnecessary restrictions on the scope of the Act. Alongside a formal definition, the adjudicating bodies have tried to identify the relevant public authorities through their working.

For example, the inclusion of 'political parties' within the RTI Act was done by the CIC. The commission considered the various parameters and followed the spirit of the RTI Act⁴ The political parties have a symbiotic relationship with the democratic state. They exist because the popular democracy requires them to regulate the governance process. They are the insignia of a democratic state. Their adherence to the Constitution, raising of funds from the people, forming the government after being elected reveal the nexus between the parties and the state.

³ Right to Information Act, 2005 (Act 22 of 2005), s. 2(h).

⁴ *Mr. Subhash Chandra Agrawal v. Parliament of India*, CIC/SM/C/2011/001386, wherein the CIC considering various factors ruled that political parties are essentially a public authority and fall under the scope of Right to Information Act, 2005.

Since RTIA provides that any person can seek any information stored with a public authority, the CJI would be the 'competent authority'⁵ in case of the Supreme Court and in case a person requests any sought of information from the Supreme Court, then the CJI would be the requisite authority to proceed to, so to consider the CJI and the Supreme Court as two separate entities would be a fallacy. The Court also shed light upon Article 124 of the Indian Constitution which provides that there shall be a Supreme Court of India consisting of a Chief Justice and other judges.⁶ This incontestably implies that the CJI is a part and parcel of the Supreme Court. The two are not distinct from each other. If one were to approach the CJI, one would have to go through the Supreme Court and the situation would be the same vice-versa. The Court has propounded that the two together form the office of the Supreme Court of India. Section 2(h) of the RTI Act cannot be interpreted in a way that places the CJI and the Supreme Court on two different pedestals. It would lead huge to irregularities and errors as a person seeking information would first have to see whether the information falls within the domain of CJI or the Supreme Court which would be an absurdity. Until and unless it can be shown that the Chief Justice is a distinct establishment and has its own designated Central Public Information Officer (CPIO), it cannot be submitted that Supreme Court would have its CPIO while the CJI would have its own. The aforementioned definition of public authority has conceded to the reasonable deduction that the office of CJI is also a public authority. Judiciary has merely confirmed what was already substantiated in the Act. This has helped the common men to avoid any confusion when they want to access any information that is available with the Supreme Court.

Defining the Depths of Transparency and Establishing Its Need

The participants of a democracy fancy their acquiesce to be taken by the authorities with regards to the when, why, and how of the decisions of the democratic system. This flows from the basic requirements of any equalitarian society that favours openness as an inclusive part of the regime. Free flow of relevant information would result in the enhancement of the candours of the

⁵ Right to Information Act, 2005 (Act 22 of 2005), s. (2) states:

“(e) "competent authority" means—

- (i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
- (ii) the Chief Justice of India in the case of the Supreme Court;
- (iii) the Chief Justice of the High Court in the case of a High Court;
- (iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
- (v) the administrator appointed under article 239 of the Constitution;

⁶ The Constitution of India, art. 124 states that: There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

administration. This lies parallel to the inclusion of the Chief Justice within the horizon of the RTI Act as it would be disproportionate to the mandates of an informative society to keep such a relevant authority out of its zone.

Proceeding from the statement that “transparency and accountability should go hand in hand”⁷ the Supreme Court, in this case, has held that there is concurrence in the fact that being the stanchions of modern democracy, transparency and accountability should always adopt a cooperative approach and move hand in hand while enlightening the people. Transparency ensures fairness while accountability ascribes answers to wrongdoings. These are the major concomitants of the RTI Act and are necessary to ensure that erroneous activities are rightfully restricted. It is well believed that soaring transparency can never hinder the independence of the authorities-be it the legislature, the executive, or the judiciary itself. But what should be the limits of this transparency is a question that cannot be ignored.

Transparency v. Confidentiality

We understand that on one hand, a democracy needs openness to survive the specifications of transparency, but on the other hand, it also needs a certain degree of confidentiality. It is not possible for any official or minister while discharging the official duties to be completely transparent. The preparation of sensitive documents related to policy matters and other delicate issues demands a veil of secrecy. Such a veil can be lifted whenever public interest demands. But other than that, a controlled degree of confidentiality is necessitated by the nature of the work being done. If every report is made public, if the disclosures become the unfettered routine, then public interest will indubitably suffer. Some confidentiality can help augment an honest assessment of important matters and improve the efficiency of the officers as they can work without the fear of being attacked.⁸

Needless exposure of the inner business of the government can reduce the equanimity in the work of the officers. Exceptional cases call for some protection from the free and frank expression of opinions and public interest immunity can be claimed in those matters where national security or policy is involved.

An excessive interference in the affairs of any organization can create unnecessary problems and can downgrade the quality of the work being done. This necessitates a clear demarcation of boundaries and an evolved set of uniform principles that can guide the information seeker about the limits he cannot ingress.

Genesis of The Matter

⁷ *Supra* note 1.

⁸ *R.K. Jain v. Union of India*, 1993 AIR 1769.

The case at hand has been categorised as a ‘rare’ one, not rarest of rare, but a rare one involving the Supreme Court as one of the litigants.⁹The genesis of this case lies in the writ petition filed by activist Subash Chandra Agarwal, who in the year 2007 requested a copy of the resolution which required the declaration of assets by the judges of the Supreme Court.¹⁰ This was denied by the Supreme Court by stating that the said information was not available with it and then the CPIO also invoked the existence of a ‘fiduciary relation’ between the CJI and the judges of the Supreme Court.

This led the petitioner to move to the Central Information Commission (CIC). The CIC, invoking the parameters of the RTI Act, declared that the information about the asset declaration by the judges should be made available to the applicant. Aggrieved, the CPIO, Supreme Court moved to the Delhi High Court. The learned single bench of the Delhi High Court pondered upon the question that whether CJI is a public authority and whether the CPIO of the Supreme Court is different from the CJI. The conclusion that was arrived at was that CJI and Supreme Court are one entity only. They cannot be canvassed away from each other. To ask any information from the Supreme Court would require the applicant to approach the ‘competent authority’, i.e., the office of the CJI.

This clarifies the position of CJI and Supreme Court hold with regards to each other. It also resolves the contentious issue that the CJI and the Supreme Court have only one CPIO. If the CJI and the Supreme Court will be treated as distinct and separate from each other as regards RTI matters, it would give birth to extraneous situations wherein both the applicant as well as the competent authority would be swirled into a confusing whirlwind of chaos and puzzlement. It would lead to erroneous questions as to which authority is the ‘more competent one’ with regards to the information requested.

Another scepticism regarding the inclusion of this office with the ambit of public authority has been resolved in this case. Being constituted under the Constitution, the office of CJI is without a doubt a public authority and comes within the scope of the RTI Act. But the question left unanswered now is that whether the information relating to the assets declaration could be

⁹ *Available at* CJI under RTI Act: A rare case where Supreme Court ruled against itself - News Analysis News (indiatoday.in), last accessed on 5 January 2021.

¹⁰ The 1997 resolution on declaration of judge’s assets as adopted on 7 May 1997 states that: every Judge should make a declaration of all his/her assets in the form of real estate or investments (held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her) within a reasonable time of assuming office and in the case of sitting Judges within a reasonable time of adoption of this Resolution and thereafter whenever any acquisition of a substantial nature is made, it shall be disclosed within a reasonable time.

The declaration so made should be to the Chief Justice of the Court. The Chief Justice should make a similar declaration for the purpose of the record. The declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential.”

accessed by the applicant or not? For this, we need to understand the definition of the term 'information.'

Understanding Information

After understanding the rationale behind the inclusion of CJI as a public authority, the next question that comes for determination is that whether the information about the declaration of assets is 'information' within the meaning of the RTI Act? Also, does the CJI holds them in a fiduciary capacity with the judges or not?

Let us first understand the definitions of both these terms. 'Information' has been clearly defined under the RTI Act."¹¹

This definition is quite wide and gives the applicants access to information available in different forms. Not only documents but records, memos, e-mails, reports, orders, contracts, etc have been made accessible. Any opinion or advice can also be accessed through the Act.

Information occupies a core position in our lives. We are constantly exchanging information about things and this contributes to the growth of our knowledge. Any obstacles in the way of the exchange of information can hamper the development process. Information contributes to the growth of the human mind. This in turn also helps in facilitating the development of a nation. Principal cases like *People's Union for Civil Liberties v. Union of India* and *Association for Democratic Reforms v. Union of India* have highlighted the importance of information. In the latter case, while recognising the electorates right to information, the Court observed that:

"Information is the key to power, fortune, science and technology and even steadfast democracy. Its potential when channelised is capable of banishing ignorance, poverty, hunger and want. It plays significant role in every walk and sphere of life, including the field of politics and democracy. It can transform democratic institutions and the governance of the country."¹²

Thus, from this statement we can see that the Apex Court has recognized the value of information in a democracy and designated it as a tool for furthering development. Therefore, the flow of information must not be restricted, especially those related to significant aspects of our lives. That is why the RTI Act has been created so that an informed population can be shaped.

What kind of information can be disclosed?

Coming to the issue related to the case at hand, that whether the information about the declaration of assets by the judges is 'information' within the meaning of the RTI Act, it was

¹¹ Right to Information Act, 2005 (Act 22 of 2005), s. 2(f) defines information as: any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

¹² *People's Union for Civil Liberties v. Union of India* and *Association for Democratic Reforms*, (2003) 2 S.C.R. 1136.

declared that such information would be ‘information’ within the purview of the RTI Act. The Court refused to treat these issues as insurmountable, stating that the CJI has complete authority to frame rules to determine how and when such kind of information can be accessed. Framing of rules is the prerogative of the CJI. “The CJI, if he deems it appropriate, may in consultation with the Supreme Court Judges, evolve uniform standards, devising the nature of information, relevant formats, and if required, the periodicity of the declarations to be made,” the bench commented.¹³

Thus, the Court allowed the disclosure of information to the applicant and directed the CJI to develop standards regarding such disclosure.

However, it is important to remember that only that information as much as it is related to the fact that whether such declarations have been made by the judges or not were to be disclosed to the applicant. Since the content of such declarations invoke the privacy clause, their disclosure would require the fulfilment of certain criteria which has been discussed further.

The bench also explained the position in the United States of America, where the Redaction norms¹⁴ and the Government Act of 1978 limit the access to personal information about the family members of the judges, the disclosure of which could endanger their lives and also permits accessing such personal information which might be required.¹⁵

Information v. Right to Information

But now the questions that arises if that whether the citizens have the right to ‘access’ the information relating to content of the assets declared by the judges.

For this, first we need to understand the difference between ‘information’ and ‘right to information.’ The concept of information is now fairly clear. And information whose access is facilitated by RTI law and that passes the test of any limitations placed upon its disclosure encompasses the whole idea of right to information. The Supreme Court has declared that information relating to declaration of assets by the judges is ‘information’ within the meaning of the RTI Act.¹⁶ But can that information be directly made available to the requesting persons or does it need to qualify the requirements of section 8 of the RTI Act, which imposes restrictions on the disclosure of the information?

In the case of *Thalappalam Service Cooperative Bank Limited v. State of Kerala and Others*, it was observed that section 8 of the RTI Act starts with a non-obstante clause, which means that this section would have an overriding effect whenever it comes into conflict with any other

¹³ *Supra* note 1.

¹⁴ When a document is Redacted, it means that certain texts contained in the document are concealed in view of privacy.

¹⁵ *Supra* note 1.

¹⁶ Right to Information Act, 2005 (Act 22 of 2005), s. 2(j).

provisions of the Act. Section 8 provides a list of exempted information that cannot be disclosed unless larger public interest demands.¹⁷

It was further observed that no public authority is under any kind of obligation to provide information relating to the private matters of an individual to the requester. Only that information which the public authority can lawfully access without violating the framework of section 8 can be made available to the requesters through RTI. Also, such information will have to be made subject to the public interest test to determine that whether the disclosure is justified or not.

Public Interest Test

Public interest is an amorphous term incapable of precise definition. The public interest test is quite often applied to RTI cases to achieve the balance between facilitating the right to access and the opposing need to deny access.

Public interest respects privacy. It is not antithesis to it. The revered RTI Act incorporates this balance under section 8(1)(j) wherein the requirement of a 'larger public interest' has been mentioned.¹⁸ Whenever any personal information is requested through the RTI Act, that has no connection to the public interest and would cause unwarranted interference in the life and privacy of an individual, then the requirement of this test can be invoked. However, this makes it imperative that the dimensions of public interest are correctly understood.

Section 8(1)(j) offers protection from the disclosure of personal information.¹⁹ It expressly refers to the unwarranted invasion into the privacy of an individual and offers protection from the same. If the disclosure of personal information does not serve any public interest, then it cannot be made accessible.

Conducting a public interest would serve the true object of the RTI Act, as the Act was not created to destroy the privacy of any individual. It has to be made sure that there is no breach of confidentiality and no harm is being caused to the party whose information is being disclosed. Since the information relating to 'assets' of the judges of the Courts is personal information, the requirements of public interest are generated.

The following examples can help us understand how disclosure can act as a means of serving the public interest: (a) conducting debates on matters of public importance; (b) ensuring the accountability of the officials; (c) promoting openness in the expenditure of public funds; (d)

¹⁷ Civil Appeal No. 9017 of 2013.

¹⁸ Right to Information Act, 2005 (Act 22 of 2005), s. 8(1)(j) states that information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

¹⁹ *Ibid.*

exposing the wrongdoing by the public authorities; (e) enhancing the scrutiny of decision making etc.²⁰

Similarly, certain factors weigh against the disclosure: (a) a likelihood of damage to security or international relations; (b) threats to the integrity or viability of decision-making processes; (c) the public interest in protecting the privacy of individuals and the public interest in the preservation of confidences.²¹

These factors reveal that a delicate balance has to be achieved between the factors identified as favouring the disclosure and the factors that lie against the disclosure of information. This test would apply in the case of the declaration of the contents of the assets of the judges also.

Also, such tests do not impose the requirements of ‘motive’ or ‘purpose’ for making a request for information as revealed by the Supreme Court. As section 6(2) of the RTI Act specifies, a person making a request shall need not give any reasons under the Act.²² The Court declared that the test of public interest does not justify in the requirements of imposing ‘motives and purposes and declared them to be extraneous and irrelevant.’²³

Preserving The Independence of Judiciary

Transparency, in today’s times, is considered to be the norm. The same is true for judicial independence as well. But again, neither of these are absolute. Transparency of judiciary has to be secured and the judiciary cannot be accoutred in a non-liftable veil of confidentiality. The concept of judicial independence does not forbid the disclosure of information but simply requires that all the factors contending prohibition must be carefully examined before completely disclosing the information. Norms can be devised as per the need of each case so that stability can be achieved between these two elements.

The phenomenon of a ‘litigative public debate’ should not be construed as a pathway for facilitating needless intrusions into the affairs of the judiciary. It should not be allowed to permit an unbridled transgression into the affairs of the judiciary. Matters like asset declaration, appointment of judges etc, all require a degree of confidentiality and that should not be disregarded citing transparency. The Supreme Court has also identified certain factors that favour confidentiality in such matters. These are confidentiality, data protection, reputation, and the negative effects uncontrolled public scrutiny.²⁴

Reference can be made to another important area where the Court has emphasised upon the importance of transparency, i.e., the collegium system, which governs the appointments and

²⁰ *Supra* note 1.

²¹ *Ibid.*

²² Right to Information Act, 2005 (Act 22 of 2005), s. 6(2) states that: An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

²³ *Supra* note 1.

²⁴ *Ibid.*

transfers of the judges. The Court opined that if the selection process of judges is made public, it will only bring about more transparency in their working. This transparency is in no way intended to harass the potential candidates or to mock them.

However, through cases like *Helen Suzman Foundation v. Judicial Service Commission* and *Supreme Court Advocates-on-Record Association v. Union of India* the need of maintaining a balance between the competing interests of transparency and independence has also been reflected. In the former case of the South African Constitutional Court, barring personal data, other information related to the procedures and the criteria adopted by the judicial commission's selection panel for the appointment of candidates was made public. Certain information relating to the pros and cons of the candidate's profile was, however, not made public. Even the opinions expressed in favour of the prospective candidates were not disclosed citing the possibilities of unnecessary comparison between the future legal practitioners. This showed an example of how a positive balance between these two aspects of democracy can be achieved by taking into account well thought about considerations.²⁵

In the Indian case of *Supreme Court Advocates-on-Record Association v. Union of India*, which dealt with the National Judicial Appointments Commission (NJAC), the court held the submissions made by the learned Attorney General regarding providing complete transparency in the functioning of the NJAC as a rather 'sweeping generalisation' completely ignorant of the privacy of an individual. Right to know, the Court held, though is a fundamental right but is bound to the pointers of the fundamental right to privacy.²⁶ Independence, privacy, and transparency must learn to mutually co-exist.

But again, this independence, that we so rave about, does not shield the judges from the fundamentals of rule of law. Rule of law is a concomitant of Constitutional democracy and to ensure that the equality clause is respected, it must be remembered that the judges are not above law.

All this leads to the conclusion that both independence and privacy are matters of great concern for the smooth functioning of the judicial organ. Be it related to judicial appointments or asset declaration, there is a need to develop well thought about considerations that will place both of these on an equal footing.

Fiduciary Relationship

Section 8(1)(e) of the RTI Act prohibits the disclosure of any information which is available to a person in his fiduciary capacity.²⁷ In order to get access to such information, the requester needs

²⁵ Available at [Helen Suzman Foundation v Judicial Service Commission \(concourt.org.za\)](http://concourt.org.za), (last visited on 12 January 2021).

²⁶ Writ Petition (civil) 1303 of 1987.

²⁷ Right to Information Act, 2005 (Act 22 of 2005), s. 8 (1)(e) states that: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information

to justify the existence of a larger public interest. But why is such that the information that is available to a person in a fiduciary position needs to satisfy the test of public interest? Let's take a look at the definition of a fiduciary relationship.

A fiduciary relationship is one where one person acts for the benefit of another. Trustee-beneficiary relationship, principal-agent relationship are examples of fiduciary relationships. A fiduciary relationship requires trust and integrity between the parties so that the benefits of the relation can be reaped.

In the noteworthy case of *Central Board of Secondary Education v. Aditya Bandopadhyay*, the Supreme Court dwelled upon the meaning of the "fiduciary relationship." The Court explained that a fiduciary relation involves one person performing his duties towards another person, for the benefit of the other person, and in good faith and candour. Such relations involve the imposition of special confidence in the one who has to perform the duties.²⁸

The entire relationship must be carefully examined to find out if it is a fiduciary one or not. A person must be acting for the benefit of another; the benefiting party must exercise a degree of ascendancy over the other and the beneficiary must depend upon the fiduciary for his practical interests. If such features exist, then a relation between two parties can be termed as a fiduciary one.

The debate at hand is that whether the CJI holds the asset-related information in a fiduciary capacity with the judges or not? The Delhi Court declared the absence of any kind of fiduciary relationship between the CJI and the other judges.²⁹ The CJI while exercising its duties under the 1997 resolution on asset declaration by the judges does not act for the benefit of other judges. The CJI does not work to promote the interests of other judges. The information relating to the assets was received by the CJI in his official capacity. Also, as per the Constitutional scheme, there is no established hierarchy between the CJI and other judges of the Supreme Court. They all have been bestowed with the same set of powers and immunities. Neither of them is vulnerable or dependent upon the other. This denies the existence of any fiduciary relationship between them.

Therefore, the argument that debates the existence of a fiduciary relationship between the CJI and the other judges of the Supreme Court is unsubstantiated and inapplicable.

Balancing of Interests

The next point of consideration is the invocation of section 8(1)(j) of the RTI Act. RTI Act mandates the disclosure of information to prevent any asymmetry between the information held by the authorities and the citizens.

available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information

²⁸ (2011) 8 SCC 497.

²⁹ *Supra* note 1.

Public authorities hoard a lot of information about the individuals. A lot of it is related to matters of personal importance. From bank details to medical information, a myriad of information is stored with the public authorities. However, such information cannot be disclosed by a simple request made through RTI Act. A lot of relevant considerations have to be taken into account while tackling requests related to personal information and not a lot of it can be disclosed easily without violating the parameters of privacy, which has been expressly declared to be a fundamental right.³⁰

For this purpose, the requirements of proportionality are to be fulfilled. The requirements of proportionality have been largely tested in the case of *K.S. Puttaswamy v. Union of India*, the right to privacy case.³¹ This case has trumpeted the right to privacy as a fundamental right and now along with this right and the requirements of section 8 of the RTI Act, a balancing of interests between disclosure and non-disclosure has to be achieved.

For example, in the case of *Subhash Chandra Agarwal v. Registrar, Supreme Court of India*, where information relating to the medical facilities used by the judges was requested, the Supreme Court held that it amounts to an invasion into the personal lives of an individual, and this does not hold good in the pretext of the RTI Act and well as the fundamental right to privacy.³²

The basis of RTI is not only on the promise to deliver quality democratic decisions but also on providing opportunities of self-fulfillment to the people. The autonomy and dignity of the individuals cannot be periled at the behest of transparency and accountability.

Not only the general public but even the esteemed judiciary cannot be forsaken at the hands of an uncontrolled tool of accountability. Judicial liability towards the citizens is an immanent part of the office of the judge. Information related to the judge's office and the administration of justice must be publicised in view of transparency, but such transparency should not cross its lines and render their private matters public.

This entails a very important duty upon the PIOs to carefully conduct a weighing of interests between the disclosure and non-disclosure. However, one needs to remember that it is neither information nor privacy that is absolute. Both are subject to a set of restrictions that can be controlled and regulated, as and when needed.

Another example of the need for proportionality, as referred by the Supreme Court, is when a person demands information related to the number of leaves taken by an employee of a public institution and the reasons behind such leaves. Now, this can be simply misunderstood as a case of transparency, to ensure that the accountability of the employee is maintained.³³

But what the PIO's need to understand in this situation is that there might exist certain medical reasons behind the taking of leaves and medical privacy is the right of every person. In such

³⁰ *Ibid.*

³¹ (2017) 10 SCC 1.

³² LPA 34/2015 & C.M.No.1287/2015.

³³ *Supra* note 1.

cases, the PIO's must and balance the conflicting interests by invoking the proportionality clause. The PIO's can disclose the number of leave taken and the reasons for the leaves while leaving the medical reasons undisclosed.³⁴ The PIO's should meticulously apply the proportionality test in equilibrizing the two interests.

So, from the above-mentioned deliberations, one can deduce that information relating to the content of the assets declared by the judges would qualify as 'personal information' and would warrant the fulfillment of the public interest test in the light of the requirements of proportionality and the relevant fundamental right to privacy and section 8 of the RTI Act.

A Misinterpreted Tangent?

The Delhi Court has recently retreated what has been so elaborately explained by the Supreme Court in the concerned case. The Court ruled that any kind of personal information that has no relevancy in the context of larger public interest or public activity cannot be disclosed under the RTI Act. In the case of *Har Kishan v. President Secretariat*, the petitioner demanded certain information related to the appointments made for the positions of multi-tasking staff at the Rashtrapati Bhawan. One of the information that was requested invaded into the personal space of the candidates as it demanded details about their residential addresses and father's name. The Court declared that such demand of information would constitute a 'roving and fishing inquiry.' Such information could not be disclosed as it constitutes an invasion into the personal life of the applicants.³⁵

However, everything was not good in the judgment. What was so infuriating was that even though the judgment shielded the right to privacy of the persons, but it also went against the enumerated provisions of the RTI Act that do not require any reasons for seeking the information under the Act. This is the entire ratio upon which the whole scheme of the RTI Act is based. The Court in this case had opined that "whenever any information is sought for under this Act, a disclosure of interest behind seeking that information is necessary in order to indicate the bona fide intentions of the applicant." However, in the name of bona fide interests, the Court has imposed a requirement of reasons for seeking information. Section 6(2) of the Act clearly denies the requirement of any reasons for obtaining information under the Act. This decision has again given a big blow to the RTI Act after the amendment of 2019. What originally came as a great legislation has become a dud at the hands of the corrupt government and a confused judiciary. It goes against the fundamental principles of the RTI Act and has set exceedingly low expectations for the people considering what were the original visions of the Act. Within a few days of delivering the judgment, the Delhi High Court clarified its position concerning the requirement of interest and stated that such disclosure of interest is necessary only when personal information is demanded under the Act. However, a plain look at section 6 shows that it does not invoke any

³⁴ *Ibid.*

³⁵ *Har Kishan v. President Secretariat*, W.P.(C) 7976/2020.

requirement of interest disclosure even when the request is concerning personal information. This decision of the single bench of the High Court has been recently reaffirmed, in July 2021, by a division bench of the same High Court took when it took cognizance of the matter on a writ petition filed against the said decision.

The trend that can be analysed from such misinterpretations is that with every passing year, serious tampering with the structure of RTI is being done. In the name of establishing bona fide interests, the potential to damage the reputation of this so-called empowering legislation has been done. Particular corrective measures are needed to correct the foul interpretations.

Conclusion

CJI is not an autonomous legal entity. It is a part of the same authority as the Supreme Court and has an important legal task to reflect the social values, political norms as well as the wishes of the society in its decisional outcomes. Any deviousness from such activities can be accounted for through the use of RTI. The Supreme Court has done the herculean task of declaring that the CJI being the competent authority to approach in case one needs some information from the Supreme Court is a part of the same office of the Supreme Court and comes within the trimmings of the RTI Act. Both form the essence of each other. However, probing over the tenets of an informative society, the court stated that the RTI Act should not be used as a tool of uncontrolled surveillance. Transparency should not be used as a guise to undermine the independence of the judiciary. If the judiciary gets stormed by the impulses of transparency, the relevant tests of public interests and proportionality can be invoked. But one cannot be allowed to violate the parameters of judicial independence on the pretext transparency and the right to privacy vis-à-vis the right to information must be vented with in the light of public interest. The exigency to negotiate a balance between them can be done by manoeuvring the rudiments of proportionality. Through this pronouncement, the Supreme Court has expanded the horizons of the RTI Act and opened up new vistas for the public. However, the now acknowledged question, that whether the judges made a declaration of their assets was for long left unanswered and it took years for the Supreme Court to finally bow to this notion of transparency. This shows that transparency is not as much a norm as it should be. The declaration made by the Supreme Court that asset declaration information is 'information' within the meaning of the RTI Act was an act long due. However, the delay in doing so was an obnoxious one accentuated by the continuous attempts to avoid the convictions of the RTI Act by thwarting the inclinations towards transparency. This coupled with the erroneous requirements of reasons for requesting information should not be allowed to destroy the virtues of democracy. Rather, they should be used as examples to deter the future reoccurrence of such aberrations. Undeniably, the act of the Supreme Court to include the office of the CJI within RTI has explicity expanded the horizons of RTI but it is now for other bodies like the lower judiciary and the CICs to maintain the legacy of this decision of the Supreme Court and continue to accrue the benefits of RTI to the citizens of the country.