

# RTI v. JUDICIARY



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The Right to Information Act, 2005 has been probably the most discussed law of the recent times and also has given much more power to the people than any other law. Its basic aim is "to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority"

RTI stands for Right to Information. Right to Information is a part of fundamental rights under Article 19(1) of the Constitution. Article 19 (1) says that every citizen has freedom of speech and expression. As early as in 1976, the Supreme Court said in the case of Raj Narain vs State of UP, that people cannot speak or express themselves unless they know. Therefore, right to information is embedded in article 19. In the same case, Supreme Court further said that India is a democracy. People are the masters. Therefore, the masters have a right to know how the governments, meant to serve them, are functioning. Further, every citizen pays taxes. Even a beggar on the street pays tax (in the form of sales tax, excise duty, etc) when he buys a piece of soap from the market. The citizens therefore, have a right to know how their money was being spent. These three principals were laid down by the Supreme Court while saying that RTI is a part of our fundamental rights.

This Act is a consequence of the judicial decisions and the situation today is that it is the judiciary that is being questioned under the RTI Act. This gives a passage to a conflict, between the rights of citizens to obtain information under RTI Act and the right to immunity enjoyed by the judiciary not to disclose information pertaining to appointment of judges, their assets, etc. This debate is indeed a sign of a healthy nation and includes great and fundamental issues.

This case was initiated with the Central Public Information officer (Central Public Information Officer), moving the apex court in December 2009, challenging Central Information Commission's (CIC) order directing disclosure of information regarding appointment of judges to Supreme Court and disclosure of communication between erstwhile Chief Justice of India and Justice Raghupathy. The application for information was moved by RTI activist Subhash Chandra Agarwal.

The Bench comprising of Justice B. Sudershan Reddy and Justice S.S. Nijjar were the hon'ble bench to decide this conflict. Justice Reddy in his reference order said that the RTI Act merely recognizes the constitutional right of citizens to freedom of speech and expression and independence of judiciary forms part of the basic structure of the Constitution. The independence of the judiciary and the fundamental right to free speech and expression are of great value, and both are required to be balanced." Whereas, Chief Justice of India, K. G. Balakrishnan has

consistently been maintaining that his office does not come under the transparency law and hence cannot part with such information under it.

A Parliamentary Standing Committee on Personnel, Law and Justice held that judiciary comes under the purview of the Right to Information law with regard to all activities of administration except “judicial decision making”.

Apart from the views of the judicial mechanism, various citizens, including activists, are of the view that the corrupt among public servants always give a ruse, reason to escape from accountability. It is the citizens of India, who provides the judiciary with the power to judge and do justice to them, so it is quite obvious that they have the right to ask the judiciary for the appointment criteria as such appointed judges will be dealing with their cases later. If the judiciary is having hiccups when they are being asked for the appointment process adopted by them, it simply means that there are some mal-appointment criteria that will not be accepted by the common people at large. All this indicates that it is the duty of the judiciary to honor the citizens of India by honoring RTI.

Moreover, it is very obvious that the current practice for appointment of judges which also include- “bhai bhatijavaad” will lead only to a big haphazard which will indirectly lead to corruption as those who have been appointed on that criteria will obviously maintain this criteria till they hold an office in judiciary, thereby this process will lay a long term sustenance in the Indian judiciary. Our judiciary is trying to exempt itself from speaking truth, to honor RTI act, by citing legal privileges during appointment of persons to the Indian judiciary.

More than RTI ACT , to seek information is part of every Indian citizen’s fundamental rights & human rights , RTI ACT is just fulfilling that right partly & fixing a time frame. Nobody , no constitutional functionary is higher than Indian citizens , nobody’s privileges or any laws prevailing over the fundamental rights & duties of Indian citizens is constitutional , just or legal .The shame is that even after 64 years of independence , FUNDAMENTAL RIGHTS & DUTIES OF INDIAN CITIZENS is observed more in breach than implementation , by our public servants including the judiciary .

Moreover, glancing over the opinions of certain hon’ble justices, advocates and jurists, certain positive considerations on their side is being explored. like that of Justice D. V.Shylendra Kumar, High Court of Karnataka, Bangalore, (whose article on disclosure of assets by judges had triggered a heated national debate on the transparency of the judiciary, ) is of the view that the RTI Act is a wonderful piece of legislation that could provide relief and succor to the people

Advocate Prashant Bhushan, appearing for the the RTI applicant, who has sought information under the transparency law, submitted that several eminent jurist and former judges, including Justice V R Krishna Iyer, have criticized the way in which judicial appointments are made now-a-days and said that it is high time that the process of appointment of judges be brought under public scrutiny.

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. Hereby, it is urged from all the judges, to honor RTI ACT, to honor Indian citizen's fundamental & human rights and to facilitate them with proper and honest judgment.

