

JUDICIAL ACCOUNTABILITY VIS-A-VIS JUDICIAL INDEPENDENCE IN THE LIGHT OF THE RIGHT TO INFORMATION ACT, 2005

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INTRODUCTION

“The place of justice is a hallowed place, and therefore not only the Bench, but also the foot space and precincts and purpose thereof ought to be preserved without scandal and corruption”.

- “On Judicature” by Francis Bacon²

An independent and impartial judiciary is one of the keystones of a democracy. As it is the most important organs in a democracy, the framers of our Constitution have tried to ensure the judiciary’s independence by giving judges immunity from prosecution for any act they carry out in performance of their judicial functions. People repose a great deal of faith in the judiciary.

The Indian Judiciary has had a great past but in recent times the integrity of this system is being questioned in light of the rampant corruption and lack of transparency in it. Since the judiciary is considered to be the guardian of the constitution, in order to inspire confidence in the people, judges are expected to have impeccable records. The various judicial scams that have come to the forefront have undermined people’s faith in the judiciary.

Beginning with the Rs 7 crore Ghaziabad provident fund scam that benefitted successive judges of the district court, the cash-at-judges’-door case involving Justice Nirmal Yadav of Punjab and Haryana High Court, the passing of impeachment motion against Justice Soumitra Sen for misappropriation of funds, the contentious issue of disclosure of judges’ assets, and the dispute over the move to elevate Justice P.D. Dinakaran, former Chief Justice of Karnataka High Court to the SC have raised a plethora of questions with regard to the absolute independence and the justification behind placing judges

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²Eliakim Littell et al., ‘Dixon’s personal history of Lord Bacon’, (Vol 69, Harvard Classics)

at a position above law, making it virtually impossible to hold them accountable. Hence, there is a call for their accountability so as to ensure public faith in the system of justice.

A major question being raised today is: *Can the Judiciary be allowed to abuse its power and be permitted to do anything in the name of "independence"?* The recognized principle is that *"everyone utilizing public revenue is duty bound to the public and shall be accountable"*. Surely, the Judiciary can be no exception to this principle.

In the absence of any specific piece of legislation to prudently check the power of judicial activism, the Right to Information Act, 2005 is the best existing instrument to deal with the need for an accountable and transparent judiciary.

CURRENT LEGAL POSITION

Independence and autonomy constitute the basic features of the Indian Constitution and stand free from abrogation even through constitutional amendments.³ Our Constitution makers had great foresight in realizing the need for an unbiased institution of judiciary free to discharge its functions without fear of any repercussion for the same. The Constitutional provisions reflect this thought and encompass it in the form of Doctrine of Separation of Powers between the Judiciary and the other wings of the government.

The term independence is rather vague and lacks a definite meaning. It can, however, be said to encompass two facets: independence of judges at the individual level and independence of the Judiciary as a class. The latter forms a broader spectrum and essentially includes issues pertaining to fiscal autonomy, whereas, the former stems from the notion of freedom from external interference and undue influence.

The level of immunity granted to the judiciary is evident from the *Veeraswami*⁴ judgment, the first case dealing with corruption in the judiciary,

*'No criminal case shall be registered under Section 154, CrPC against a Judge of the High Court, Chief Justice of High Court or Judge of the Supreme Court unless the Chief Justice of India is consulted in the matter. Due regard must be given by the Government to the opinion expressed by the Chief Justice.'*⁵

³*Kesavananda Bharati v State of Kerala* [1973] 4 SCC 225.

⁴*K Veeraswami v Union of India & Others* [1991] 3 SCC 655.

⁵A.G. Noorani, 'Above the Law' *Frontline* (Chennai, 25 October 2008) <<http://www.hindu.com/fline/fl2522/stories/20081107252208100.htm>> accessed on 28th August 2011 ; Mandeep Tiwana, 'Human Rights & Policing, Landmark Supreme Court Directives & National Human Rights Commission guidelines' <http://www.humanrightsinitiative.org/publications/hrc/humanrights_policing.pdf> accessed on 2 September 2011.

The judgment reveals the level of protection given to a judge even in cases where he is charged with an offence. The conduct of the judge during the discharge of his duties is specifically prohibited from the realm of discussion of the legislature under Article 121. Additional autonomy is endowed on the Judiciary through safeguards bestowed in the form of securing of tenure, fixing of emoluments and the power to punish for contempt of court.

Judicial independence in the current scenario is an almost absolute privilege with only a slight difference in the form of impeachment proceedings. The process of removal of judges for misconduct is exceptionally complex. Impeachment proceedings have been initiated against 2 judges in India till date, Justice V. Ramaswamy in 1993 and Justice Soumitra Sen in 2011. The current legal position has extremely meagre checks on the powers of the Judiciary. The lack of legislation and judicial precedents with respect to an effective control over the judicial autonomy has tarnished the sanctity of the entire institution. In this backdrop, the RTI is explored as a means of achieving a corruption-free judiciary.

1. The Right to Information Act, 2005

Background

The recognition of right to information as a basic right has grown tremendously over the past two decades. We have come a long way since the time when only thirteen countries had laws granting their citizens right to information as held by public authorities⁶ and the right was not recognized as a human right by any inter-governmental body.⁷ By 2008, the constitutions of more than fifty countries granted constitutional status to the right either expressly or implicitly, as interpreted by their top courts;⁸ at least eighty countries had right to information laws or regulations in force at the national level.⁹

⁶Roger Vleugels, 'List of 86 Countries with FOI [Freedom of Information] Laws' <<http://right2info.org/laws/Vleugels-Overview-86-FOIA-Countries-9.08.pdf/view>> accessed on 30th August; The John Ackerman & Irma Sandoval-Ballesteros, 'The Global Explosion of Freedom of Information Laws' (2006) 58 ADMIN. L.REV. 85

⁷Toby Mendel, 'Freedom of Information: A Comparative Legal Survey' <http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_information_en.pdf> accessed on 3rd September 2011

⁸For a list of the 50 countries, see <<http://right2info.org/constitutional-protections-of-the-right-to->>

⁹*Supra* note 5; Government of the People's Republic of Bangladesh, Ministry of Law, Justice and Parliamentary Affairs, (2008)

The right to information is a safeguard that every democracy needs. It is based on the principle that democracy is meaningless without its citizens having access to information which in turn is essential to keep the country free from the vice of corruption.

The UN General Assembly adopted Resolution 59(I), stating, “Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated.”¹⁰ This right besides constituting an indispensable part of a democratic process also forms an integral part of freedom of speech and expression as enshrined under Article 19(1) (a) of the Constitution of India. “Freedom of speech and expression” includes the right to acquire as well as disseminate information.

The Right to Know has been upheld in *Bennett Coleman v Union of India*¹¹, *S.P Gupta v. Union of India*¹², *Association of Democratic Reforms v. Union of India*,¹³ and *PUCL v. Union of India*¹⁴. It is pertinent to note here that three resolutions unanimously adopted by the Supreme Court on May 7, 1997¹⁵: Restatement of Values of Judicial Life; Declaration of Assets by the Supreme Court and High Court judges; and ‘In-house Procedure, for inquiry into allegations against these judges, aim at providing a framework for accountability within the Judiciary.’¹⁶ In light of these resolutions it appears that though the Judiciary seems to agree with informal disclosure of information, it is hesitant when it comes to disclosure under RTI, lest it opens a floodgate of queries.

It is highly ironical that the RTI Act which not only draws inspiration from various proactive judicial pronouncements on the citizens right to know but has also been formulated by a committee chaired by a former Judge of the Supreme Court — Justice P.B. Savant¹⁷, is being shunned by the judiciary when it comes to self application.

¹⁰Toby Mendel, ‘Public Service Broadcasting : A Comparative Legal Survey,’ < http://www.unesco.org/webworld/publications/mendel/inter_standards.html> accessed on 24th August 2011

¹¹[1973]2 SCR 757

¹²[1982]2 SCR 365

¹³[2000]57 DRJ 82

¹⁴[2004]2 SCC 476

¹⁵Justice A.R Lakshmanan (retd.), ‘A time For Zonal Benches In Supreme Court’ < <http://indialawyers.wordpress.com/category/supreme-court/page/2/>> accessed on 30 August 2011

¹⁶J Satya Brata Sinha, ‘Judicial Independence, Fiscal Autonomy And Accountability’ < [http://jrn21.judiciary.gov.ph/forum_icsjr/ICSJR_India%20\(SB%20Sinha\).pdf](http://jrn21.judiciary.gov.ph/forum_icsjr/ICSJR_India%20(SB%20Sinha).pdf)> accessed on 4 September 2011

¹⁷Ajit Bhatattacharjea, ‘RTI unlocks Party, Judiciary Doors’ (2008) vol I No. 5 Transparency review <<http://www.cmsindia.org/rtimay2008.pdf>> accessed on 20 August 2011

Scope of the RTI Act

Right to Information Act has given more power to the public than any other law in the country. The basic principle set forth in international instruments and case laws is that the public has a right of access to all information held by public authorities, subject only to a narrow set of legitimate exceptions.¹⁸

The Apex Court has time and again resisted the application of the Act to the Judiciary and this became evident when the former Chief Justice of India, openly objected to this phenomenon and publicly commented that his office does not fall within the definition of a “Public Authority” and hence the Act does not apply to his office. This argument is not only without any merit since, as per Section 2(h)¹⁹ of the RTI Act all constitutional authorities are public authorities, it also indicates SC’s current line of argument that exposing judges to all-out scrutiny would undermine judicial independence is flawed. The factions of people favouring accountability argue that ‘independence’ means independence from the Executive, and not freedom to indulge in corrupt practices and other forms of misconduct.²⁰

There, however, appears to be no justified reason for not including the Judiciary within the ambit of “public authority” under the RTI Act. Judicial bodies perform public functions and are financed with public money; the rationale that calls for transparency within the Legislature and Executive should therefore apply to the judiciary with equal force.²¹

The scope of the paper is limited to exploring two issues within the realm of judicial transparency in light of the RTI Act: appointment of judges and disclosure of assets by judges.

¹⁸*The Public’s Right to Know: Principles on Freedom of Information Legislation*, Principle 1 <<http://www.article19.org/pdfs/standards/righttoknow.pdf>> accessed on 27th August 2011

¹⁹“Public authority” means any authority or body or institution of self government or constituted-

- a) By or under the Constitution.
- b) By any other law made by Parliament.
- c) By any other law made by State Legislature.
- d) By notification issued or order made by the appropriate Government.

²⁰Paul D. Crrarrington and Roger C. Cramton, ‘Original Sin and Judicial Independence: Providing Accountability for Justices’. (2009) 50 Wm. & Mary L. Rev. 1105

²¹John Ackerman & Irma Sandoval-Ballesteros, ‘The Global Explosion of Freedom of Information Laws’, (2006) 58 ADMIN. L.REV. 89

2. Appointment of Judges

In recent times, the integrity of individual judges is being questioned. Charges of misappropriation of funds and improper conduct have spawned heated debates pertaining to the system of appointment of judges. Growing awareness in light of the various instances of arbitrary and questionable appointments of allegedly misfit judges is demanding the inclusion of such information within the purview of the RTI Act. Our Constitution has provided for a “consultative process” between the Executive and the Judiciary for the appointment of Judges. In the *First Judges’ Transfer Case*²², Justice Bhagwati delivering the majority judgment held that expression ‘consultation’ used in Art 124 (2) and 217 of the Constitution does imply ‘concurrence’, declaring that the Executive could appoint a judge. It was held that ‘consultation’ with the Chief Justice would mean that there should be a ‘collegium’ to advise the Chief Justice, though the composition of the collegium was not spoken of. The Supreme Court in the *Second Judges’ Transfer Case*²³ observed that “the opinion given by the Chief Justice in the consultation process has to be formed taking into account the views of the two senior most judges of the Supreme Court. The Chief Justice of India is also expected to ascertain the views of the senior most judge of the Supreme Court, whose opinion is likely to be significant in adjudging the suitability of the candidate by reason of the fact that he has come from the same High Court or otherwise.” Article 124 (2) of the Constitution is an indicator that ascertainment of the views of other judges of the Supreme Court is requisite. The objective underlying Article 124 (2) is achieved in this manner as the Chief Justice of India consults them for the formulation of his opinion. The *Third Judges’ Transfer Case*²⁴ increased this number from two to four senior-most judges. This system was advocated by the Judiciary on the ground that it upheld the integrity of the judiciary and kept it away from the control of the Executive.

However, recent events show how miserably the collegium has failed to fulfil its purpose.²⁵ There are a number of cases where it has proved to be ignorant and hardly creditable. The Chief Justice of Calcutta High Court recommendation for the appointment of a judge to the High Court in spite of the pending misappropriation proceedings against him²⁶, recommendation to elevate the Chief Justice of Karnataka High Court

²²[1978] 1 SCR 423

²³Supreme court *Advocates-on-Record Association and Anr. v Union of India* [1993] 2 SCR 659

²⁴Presidential Reference No. 1 of 1998, 1999 SC (1)

²⁵Law Commission of India, 214th Report On The Proposal For Reconsideration Of *Judges Cases I, II, III*, p. 60 <<http://lawcommissionofindia.nic.in/reports/report214.pdf>> accessed on 1 September 2011

²⁶V. Venkatesan & S.S. Chattopadhyay, ‘Judges In The Dock’, *Frontline* (Chennai 25 September 2008)

despite the allegations of acquiring “huge assets”²⁷, the ‘Provident Fund case’²⁸, the ‘Cash-for-judge-scam Case’²⁹ all reveal the incompetency and irregularity of the collegium system.

The negative impact of these scams is immense when we analyse the confidence which the Judiciary now holds in the minds of the people. As was opined by the Hon’ble Supreme Court in the Veeraswami Judgment,

“A single dishonest judge not only dishonors himself and disgraces his office but also jeopardizes the integrity of the entire judicial system... a judge must keep himself absolutely above suspicion; to preserve the impartiality and independence of the judiciary and to have the public confidence thereof”.³⁰ Hence, there is an outcry regarding accountability and transparency in the appointment of judges.

The Malimath Committee Report has also suggested that the aberrations in the conduct of judges can be checked and corrected if the problem is noticed at the earliest and efforts are made to correct them at the very stage of appointment.³¹ While debating the controversial question of whether disclosure under the RTI would encroach upon the fine line which separates judicial independence from judicial accountability, former Hon’ble Chief Justice. J.S. Verma, expressing his support for the same aptly said:

“There would be no problem if two principles are followed while appointing judges - firstly people with an honest track record and good character should only be considered for appointment, and secondly, they should have a balanced judicial mind and temperament... For fairness of the process, it is fine to maintain confidentiality when the appointments process is on. However, when the process has been finalized and appointments done, the reasons for appointments and rejections should be made public. This would enhance the image of judiciary further in the eyes of common people, who see judiciary as their savior”.³²

²⁷V.R Krishna Iyer. ‘Issues raised by Y’affaaire Dinakaran’ <<http://www.judicialreforms.org/files/issue%20raised%20by%20I%E1ffaire%20Dinakaran.pdf>> accessed on 1 September 2011

²⁸Vinay Kumar, ‘CBI Files Charge Sheet in PF Scam Case’ <<http://www.thehindu.com/news/national/article498909.ece>> accessed on 20 August 2011

²⁹‘Cash-for-judge scam: CBI files chargesheet against Nirmal Yadav’ (MSN news, 4 March, 2011) <<http://news.in.msn.com/national/article.aspx?cp-documentid=4994154>> accessed on 20 August 2011

³⁰Supra note 4

³¹Mallimath Committee Report on Criminal Justice System

<http://www.mumbai.police.org/%5Carchives_report%5Cmalimath%20committee%20report.pdf> accessed on 21st August 2011

³²Bring the Judiciary under RTI: Former Chief Justice’ (Indo Asian News Service, 21 January, 2007) <<http://www.india-forums.com/news/national/17312-bring-judiciary-under-rti-former-chief-justice.htm>> accessed on 21st August 2011

This attitude would probably help in putting right the wrongs that the *Second Judges' Case*³³ has resulted in and at the same time would help in raising public confidence.

3. Declaration of Assets

In recent times, the issue relating to declaration of assets has gained momentum in all wings of the government. The Judiciary too has been encompassed in this phenomenon, which is being considered as a means of achieving accountability and transparency.

In fact, the question of judicial accountability in light of the RTI Act first arose when Subhash Chandra Aggarwal, an RTI activist, sought information from the office of the Supreme Court as to "*whether judges of the Supreme Court and High Court have been declaring their assets under the code of conduct adopted by the Chief Justices*". The information was declined on the ground that the Registry did not hold such information. In an appeal to the Central Information Commission, it was held that any information with the CJI would be deemed to be available with the Registry as well. In a constitutional anomaly, the Supreme Court filed a writ before the Delhi High Court, claiming that "*there is no provision either in the Constitution of India or under any other law which requires the Hon'ble judges of the Supreme Court to declare their assets to the Hon'ble Chief Justice of India*".³⁴

This stand of the Apex court appears to be in contrast with its initial support of declaration of assets in view of the need for accountability, since the Supreme Court in *Association for Democratic Reforms* case³⁵, had ordered politicians to declare their assets, suggesting that this was a constitutional imperative. In a number of developed countries, the judiciary has recognized the disclosure of finances by judges as an instrument to protect against corruption in the form of conflict of interest and illicit enrichment.

In India, the anomaly is in the fact that even though the Judiciary seems to support the disclosure of assets by disclosing information informally to the Chief Justice, there is some reluctance when it comes to the disclosure of the same to the public as was seen in 2009, when the *Judges (Declaration of Assets and Liabilities) Bill* laid down for consideration was rebuffed, for it reflected the readiness of the Judiciary to disclose their assets provided that the Parliament ensured confidentiality of such declarations.

While addressing issues pertaining to disclosure, we must examine the kind of information being requested so as to maintain a balance between the needs of

³³Supra note 22

³⁴Tarunabh Khaitan, 'Dismantling The Walls Of Secrecy', *Frontline* (Chennai 2009)

³⁵Supra note 12 at 294

accountability as well as the privacy of judges. It must also be ascertained as to what kind of assets need to be disclosed. Other questions to be looked into are with respect to the disclosure of assets of family members.

The openness and transparency will only repose the faith of the citizens in the judiciary.

4. Judicial Independence & Accountability-The balance between the two

In a democratic process, independence and power without accountability result in the failure of the very of system democratic. Accountability and independence are essential elements to the existence of the judicial institution. The two are inter-wined and going beyond the superficial analysis would show the interdependence of the two. They are equally important for maintaining the rule of law and there is a need to balance them so as to ensure the proper functioning of a democracy. This balance was not only recognized in the ancient texts³⁶ and various national & international texts³⁷, but the founding fathers of the Indian Constitution also intended to uphold the principle of accountability along with judicial independence by imposing on the judge a duty to preserve the sovereignty and national integrity. The idea of judicial independence sharing an inextricable relationship with judicial ethics, of which accountability is one of the dimensions, has always been an interesting read for the legal scholars to deliberate upon.³⁸

³⁶S.D. Sharma, *Administration of Justice in Ancient India*, (1st ed., Herman Publishing House 1998).

Some of the original texts on the accountability of the judges were as follows:

- 1) Judges who pass unjust orders, or take bribes, or act arbitrarily, the confidence reposed in them shall be banished
- 2) A Judge who threatens, brow-beats, orders out, or unjustly silences any person who is a party to dispute before him shall be punished with first amendment.
- 3) He liable to be punished with highest amendment if he (a) failed to inquire into all relevant circumstances;
- (b) makes unnecessary delay in discharge of his duty or postpones cases with spite; (c) causes parties to leave the court by making them disgusted with the delay; (d) evades or causes to be evaded any statement which lead to the settlement of the case.

³⁷United Nations High Commission for Human Rights, *Basic Principles on the Independence of the Judiciary*, (1985), *The Beijing Principles on the Independence of the Judiciary*, (1997) <<http://www.asianlii.org/asia/other/CCJAPRes/1995/1.htm>> accessed on 21st August 2011; *The Bangalore Principles of Judicial Conduct*, (2002) <http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf> accessed on 21 August 2011

³⁸Stephen Burbank, 'What Do We Mean by "Judicial Independence"?' (2003) 64 *Ohio State Law Journal* 323

The guarantee of judicial independence is for the benefit of the judged, not the judges.³⁹ Where judges start abusing their independence by using it as a shield against investigations, corruption, their conduct and secrecy, the whole system of justice is paralysed and it is then that there is need for external intervention. Judicial independence does not mean that judges are above the law. It does not imply protection and immunization of a judge from censure or removal on the grounds of corruption. The *Second Judges Case*⁴⁰, the *Veeraswami*⁴¹ judgment and the "In-House Committee" to deal with cases of judicial misconduct, all give the impression of the Judiciary covering itself in the veil of independence and evolving principles of "the judges themselves will judge the judge".

The Principles of Independent Judiciary provide that "A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure."⁴² It further provides that, "All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."⁴³ Since there are written and unwritten principles and rules guiding the exercise of the judicial function, i.e., power to adjudicate, the obvious consequence is a public law accountability of those who are to exercise that function-and/or of those possibly bearing vicarious liability in case they violate such principles and rules.⁴⁴ It can be best stated that *judicial accountability is a facet of the independence of the judiciary*. This also implies that the mechanism to enforce judicial accountability must simultaneously preserve the independence of the judiciary.

Judicial independence was founded on public policy and it is must be remembered that public policy changes with the change in needs of the society. Today if the judges do not stand up to the expectations of the people with respect to their conduct and performance, as they did earlier, insulation granted to them by way of independence will reduce via public policy. It needs to be remembered that in a democracy, it is the public's perception and their confidence which will ultimately safeguard judicial independence. If the judiciary fails to assume responsibility for ensuring high standards of ethical conduct expected of its members, public opinion and political expediency

³⁹Frederick Lee Morton, *Law, Politics, and the Judicial Process in Canada*, (University of Calgary Press, 2002)

⁴⁰*Supra* note 22

⁴¹*Supra* note 4

⁴²Basic Principle of Independence of Judiciary, Principle 17 <<http://www2.ohchr.org/english/law/indjudiciary.htm>> accessed on 19th August 2011

⁴³*Ibid*, principle 19

⁴⁴Mauro Cappelletti 'Who Watches the Watchmen? A Comparative Study on Judicial Responsibility', *The American Journal of Comparative Law*, Vol 31, [1983]

may lead the other two branches of government to intervene. The inevitable consequence of such an action will be a compromise on the Principle of Independence of Judiciary itself.⁴⁵

Judges are accountable to the extent of deciding cases fairly and are subject to the disciplinary mechanisms provided under law. However, at the same time, judicial independence cannot be compromised, thereby making it essential to draw a balance between the two. The RTI Act is one such legislation, which aims at making the judiciary more accountable, without intruding upon the limits of the independence of the Judiciary. The Act provides that certain sensitive information may be withheld from the public, if the public authority in possession of the information thinks that the same is likely to jeopardize either national interest or violate the trade secrets. These exceptions are found in primarily Sec. 8 and Sec. 9 of the Act. Sections 8 and 9 of the Act enumerate the categories of information which are exempt from disclosure. Most of the exemptions are based on the public interest test.

Misbehavior by any judge, whether it takes place on the Bench or off the Bench, undermines public confidence in the administration of justice and also damages the public respect for the law of the land; if nothing is seen to be done about it, the damage goes unrepaired.⁴⁶ It is for this reason that judicial accountability is being argued for with such fervour. In the words of the former Chief Justice of India, Justice Verma:

"Since we are the ones laying down the rules of behaviour for everyone else, we have to show that the standard of our behavior is at least as high as the highest by which we judge the others. We have to earn that moral authority and justify the faith the people have placed in us. One way of doing this is by codifying judicial ethics and adhering to them."⁴⁷

CONCLUSION

Judicial independence is heavily dependent on the acceptance by the public of the judiciary as a fair and honest body free from corruption. Suspicion in the minds of the people regarding the conduct of the judiciary will only lead to loss in faith and confidence in the system of justice. Appointment of judges with good integrity is an essential prerequisite for a strong judiciary. Keeping this in mind, if disclosures are made with respect to the information pertaining to such appointments, it would not only lead to a transparent system but would also allow for public scrutiny.

⁴⁵*Secretary General, Supreme Court of India v. Subhash C. Agarwal*, 166 (2010) DLT 305

⁴⁶Spencer, Jackson, 'Machinery Of Justice', (8th ed. Cambridge University, 1995)

⁴⁷'Dato' Param Kumaraswami, 'Judicial Independence: In Search of Public Trust' (2003) 4. *Insaf the Journal Of The Malaysian Bar* 55

Reluctance in public scrutiny coupled with the scams in the entire government sector is perhaps the biggest reason why the Indian Judiciary is losing confidence of the public and in the absence of a Judicial Accountability Act dealing with transparency and accountability of the Judiciary at the moment, it is necessary that the Judiciary has some or the other mechanism to ensure accountability. Transparency in issues relating to appointment and disclosure of assets is of prime importance since it would help in nipping the problem of corruption in its bud and the RTI Act provides an effective mechanism for ensuring judicial accountability. We must not forget that justice should not only be done but it should also be seen as being done. Public perception is one of the most prominent factors behind the working of any organ in a democracy.

On the other hand while bringing the Judiciary under the scope of RTI or a Judicial Accountability Act in order to promote accountability and transparency we must make sure that it does not affect the judiciary's working or hamper its unbiased nature and that the balance between accountability and independence is maintained.

The welfare of a country depends on how it is administered and who administers it. The expectation from our judges is very high and they have a mammoth responsibility of preserving the rule of law. Accountability has been advocated for by some of the most esteemed members of the Indian Judiciary. It is now needed that the Judiciary as a whole comes together to stand up for transparency within its system. If the conflict with respect to accountability continues, judicial independence will be compromised further. As citizens, we sincerely hope that the judiciary lives up to the responsibility bequeathed to it and paves the way for a better, corruption free India.