

## A COMPARATIVE ANALYSIS ON JUDICIAL APPOINTMENTS IN THE LIGHT OF RIGHT TO INFORMATION

JAGRUTHI RAO

SCHOOL OF LAW CHRIST (Deemed to be University)

Best Citation - JAGRUTHI RAO, A COMPARATIVE ANALYSIS ON JUDICIAL APPOINTMENTS IN THE LIGHT OF RIGHT TO INFORMATION, 2 ILECR 7, 2022

### LABSTRACT:

The Indian legal system is one of the world's oldest, and the judiciary is one of the most important departments in a democratic setting. It has been entrusted with the responsibility of fully understanding constitutional ideals and duties as a custodian of the rights of a country's citizens. The Independence of the Judiciary is considered to be sine quo non in a democratic setup like India. The Black's Law Dictionary defines the term "equality before law" wherein it lays emphasis on the Independent Judiciary. The Chief Justice of India's ("CJI") office was brought under the purview of the Right to Information Act, 2005 ("RTI Act") in 2019 judgment in the Central Public Officer Supreme Court of India v. Subhash Chandra Agarwal case. As a result, one major concern is that this move may jeopardize the judiciary's independence. This research article focuses on the position of the Judiciary and tries to strike a balance between the Right to Information and the gaps that exist in accountability and transparency. With close reference to the Right to Information Act, 2005 to fill in these gaps this article aims to bring about the much-needed transparency and accountability through recent judicial and constitutional developments. The major issue with judicial independence can be connected with the appointment of judges that will be dealt with through comprehensive judicial pronouncements

in due course of this paper. The major questions this paper seeks to answer is whether the appointment of Chief Justice of India and Chief Justice of each State falls under the ambit of Right to Information Act, 2005 with reference to the recent judgment delivered by the Delhi High Court in 2019. Another question the author of this article poses is whether the Right to Information Act, 2005 can remove the concerns of transparency and accountability in the judicial system. The methodology adopted for this paper is a comparative analysis on the judicial appointment procedures in India and developed country like United Kingdom. Thus, this paper focuses on the extent to which the Right to Information can be guaranteed in the judicial sphere.

### ILKEYWORDS:

Appointment, independence, judiciary, right to information, transparency

### IIINTRODUCTION

The Judiciary is one of the three vital organs of the state as defined by our Constitution, and it has a distinct duty to play in comparison to the other two. India's judicial system is one of the world's oldest legal systems. It is part of the legacy that India got from the British after more than 200 years of colonial control, as seen by the numerous similarities between the Indian and English legal systems. The judiciary is unquestionably one of the most important institutions in a democratic system since it is charged with the enormous responsibility of dispensing justice, which is one of a citizen's most basic demands. The judiciary is entrusted with completely achieving constitutional ideals in furtherance of the constitutional framers' vision as the custodian of a country's citizen's rights. The goals of social, economic, and political justice for all residents are enshrined in the Constitution's preamble<sup>29</sup>. When justice is not applied fairly, civil society rights are jeopardised, and the rule of law notion is tainted. The independence of the court could be seen as the

<sup>29</sup> Nivrati Gupta, Balancing Right to Information with Indian Judiciary, December 15<sup>th</sup> 2020 <https://blog.ipleaders.in/balancing-right-information-indian-judiciary/>

bedrock of democracy. It is superfluous to state that the courts and judicial rulings have evolved over time. The judiciary is unquestionably one of the most important institutions in a democratic system since it is charged with the enormous responsibility of dispensing justice, which is one of a citizen's most basic demands. The judiciary is entrusted with completely achieving constitutional ideals in furtherance of the constitutional framers' vision as the custodian of a country's citizen's rights. The goals of social, economic, and political justice for all residents are enshrined in the Constitution's preamble. When justice is not applied fairly, civil society rights are jeopardised<sup>30</sup>, and the rule of law notion is tainted. The independence of the court could be seen as the basis of democracy. The judiciary's role in ensuring a system of justice in governance and administration has been critical. Consequently, whether it is the substantive interpretation of Article 19<sup>31</sup> or Article 21<sup>32</sup> or the preaching of egalitarian principles, court decisions in India have pervaded every level of society. The judiciary, as everyone knows, is the foundation of a strong democracy. It aspires to not only analyse the law's black letter, but also to take an activist attitude by creatively interpreting it to meet society's requirements.

#### **IV. RIGHT TO INFORMATION AND JUDICIARY**

The judiciary is one of the most essential organs in a democratic system since it is entrusted with the enormous responsibility of administering justice, which is one of the citizens' most basic demands. As the custodian of a country's citizens' rights, the judiciary is charged with carrying out the Constitutional ideals to the utmost extent possible. The objectives of ensuring social, economic, and political fairness for all residents are enshrined in the Constitution's Preamble. Justice was not delivered in a fair manner. It jeopardises civil society's interests while also undermining

the rule of law principle. An independent court is seen as the bedrock of democracy. The judiciary and judicial rulings have had a significant impact.

In line with both the ideas of constitutional and Parliamentary sovereignty, India's constitution uses a variety of mechanisms to ensure the independence of the judiciary. Judges of the Supreme Court and the High Courts have extensive provisions in place to ensure their independence. Firstly, the judges of the Supreme Court and the High Courts have to take an oath before entering office that they will faithfully perform their duties without fear, favour, affection, ill-will, and defend the constitution of India and the laws. Recognition of the doctrine of constitutional sovereignty is implicit in this oath. Second, the procedure of appointing judges in India ensures the judiciary's independence. The President appoints the judges of the Supreme Court and the High Courts. The President of India is required by the Indian constitution to make appointments in conjunction with the highest judicial authorities. Of course, he listens to the Cabinet's suggestions. The constitution also specifies the criteria required for such positions. The constitution attempts to ensure that appointments are made without regard for political concerns. Thirdly, the Constitution ensures that judges have a secure term<sup>33</sup>. The *Supreme Court and High Court judges serve "during good behaviour," not at the pleasure of the President, as other high-ranking government officials do*. Fourth, their wages and allowances are deducted from the Indian Consolidated Fund<sup>34</sup>. Furthermore, under Article 360<sup>35</sup> of the constitution, the salary and allowances of Supreme Court and High Court judges cannot be cut during their tenure, unless there is a financial emergency. Fifth, the executive and legislative branches cannot debate the activities of judges unless they are removed<sup>36</sup>. Sixth, Supreme Court judges must retire at the age of 65, while High Court

<sup>30</sup> Hardik Batra, RTI And Judiciary

<https://www.legalserviceindia.com/legal/article-3673-rti-and-judiciary.html>

<sup>31</sup> Article 19 Constitution of India Act, 1950

<sup>32</sup> Article 21 Constitution of India Act, 1950

<sup>33</sup> Ibid

<sup>34</sup> Atin Kumar Das, Independence of Judiciary in India: Critical Analysis, <https://jcil.lsyndicate.com/wp-content/uploads/2016/10/final.docx>

<sup>35</sup> Article 360 Constitution of India Act, 1950

<sup>36</sup> Tania Khurana, Transparency of Judiciary under Right to Information

<https://cic.gov.in/sites/default/files/Transparency%20in%20%20Judiciary%20under%20RTI%20by%20Tania.pdf>

judges must retire at the age of 62. Judges with such long tenure are able to work impartially and independently. Seventh, a retired Supreme Court judge is not permitted to practise law in any Indian court. A retired High Court judge, on the other hand, can practise law in any state. A strong information regime based on the RTI<sup>37</sup> Act could help to assuage concerns about the judiciary's overall transparency and accountability<sup>38</sup>. The goal of the RTI Act is to promote transparency and accountability in the working of every public authority, according to the preamble. The Supreme Court has ruled that the right to information is inextricably linked to the basic right to freedom of speech and expression. It has also taken the initiative in extending this privilege to a variety of democratic institutions. In the case of *Union of India v. As & Soacnioatthieorn for Democratic Reforms*<sup>39</sup>, for example, the court concluded that claims of pervasive corruption were a sufficient cause for electoral candidate disclosure requirements. In light of this, it is only fair that the judiciary be subjected to equal requirements when its integrity is called into doubt. The Supreme Court of India v. Subhash Chandra Agarwal ("RTI case") saw the court take the much-needed step of placing the office of the Chief Justice of India under the RTI Act. The court did so by relying heavily on the decision in the *First Judges* case. Although this decision was later overturned, the court's views on communication disclosure and its impact on the transparency of the process were supported in the RTI case. It was pointed out that it was in the spirit of free speech and expression for judges' opinions to be contested and even criticised, especially if they were genuine. Furthermore, if a judge's actions were improper, the judge should be publicly chastised, as transparency is a quality that should not be limited to the executive branch. It was also pointed out that the reverence for the secrecy of the appointment and transfer process was misguided. The court decided that there could be no class

immunity for the information sought, based on Justice Bhagwati's perspective. The Supreme Court and the High Courts, having been created under Articles 124(1)<sup>40</sup> and 214<sup>41</sup> of the Constitution, are public authorities as defined by Section 2(h) of the RTI Act, according to the court. The CJI's office is not separate from the Supreme Court, and Chief Justices' offices are separate from their individual High Courts; as a result, they are all public authorities. Furthermore, the information is held by the CJI's office in its official role, not in a fiduciary position, and thus falls under Section 2's purview (j). Finally, in order to qualify for the exception under paragraph j of Section 8(1) of the Act, the Information Officer would have to weigh the competing privacy interests. The CJI has been ordered to publish information about the appointments of judges to the SC and HCs, as well as a declaration of assets made to the CJI, as long as the information has some public interest and is not wholly personal.

#### V. JUDICIAL ACCOUNTABILITY

In the light of the recent Supreme Court judgement, CPIO, *Supreme Court of India v. Subash Chandra Agarwal* it<sup>42</sup> will be careful to observe and analyse the issues which were deliberated in detail pertaining to aspects of accountability and right to information being interlinked.

Three categories of information are relevant to judicial transparency. These are namely -

1. The first concerns the adjudicative work of the courts – including transcripts, documents filed with the court, trial exhibits, recordings, settlements, opinions and dockets. This information may be further categorized into whether the proceedings are

<sup>37</sup> Right to Information Act, 2005 (Act no. 22 of 2005)

<sup>38</sup> Vijay Jiswal Independence of Judiciary in Indian Constitution (august 29 2013) <https://jcil.lsyndicate.com/wp-content/uploads/2018/01/Independence-of-Judiciary.pdf>

<sup>39</sup> *Union of India v. As & Soacnioatthieorn for Democratic Reforms*, W/P 294 OF 2021

<sup>40</sup> Article 124(1) Constitution of India Act, 1950

<sup>41</sup> Article 214 Constitution of India. Act. 1950

<sup>42</sup> *Supreme Court of India v. Subhash Chandra Agarwal & anr.* W/P.(C) 288/ 2009

criminal or civil in nature, whether information of a private or intimate nature is involved etc.

2. The second concerns with information of administrative nature – court budget, human and personnel resources, contracts between courts and third parties and organizational matters.
3. The third and most crucial type of information includes information about salaries, assets and liabilities, appointments, transfers and disciplinary actions pertaining to judges.

It is necessary to understand why access to judicial information is crucial for transparency and good governance. The judiciary in today's world has had several controversies which amongst several others include impeachment charges on 'financial misappropriation' and abuse of judicial office, where such an action will further cultivate judicial confidence amongst the public, allowing public access to judicial proceedings and records, which would require judges to act fairly, consistently and impartially and enable the public to 'judge the judges'.

### **VII. JUDICIAL PRECEDENTS**

The main source of judicial independence debate has been the appointment of judges, which has been thoroughly addressed in the Three Judges Cases. The court dealt with the interpretation of the phrase "consultation" in Articles 217 and 124 of the Constitution in *S.P. Gupta v. Union of India*<sup>43</sup> ("First Judges Case"). The court ruled no to the question of whether consultation constituted concurrence, permitting the Central Government to act independently as long as judicial authorities had been effectively consulted. As a result, the executive has the power to appoint judges. The Supreme Court *Advocates-on-Record Association v. Union of India*<sup>44</sup> case, popularly known as the Second Judges Case, overturned this ruling. The supremacy of the judiciary in

judicial appointments was upheld by the court in this instance. To ensure that the CJI does not have sole authority over judicial nominations, the court established a collegium of three judges to make recommendations. The Special Reference of 1998<sup>45</sup>, often known as the Third Judges Case, was the culmination of this process. As a result, the collegium was expanded to include the CJI and four of the court's most senior judges. The executive could, with good reason, reject the collegium's recommendations. If the same recommendations were made again, however, the appointment had to be made. This process was temporarily changed, but in the NJAC case, the court overturned the change, ruling it unconstitutional. The NJAC case resulted in a disagreement between the collegium and the executive, causing the latter's recommendations to be delayed. Finally, a revised Memorandum of Procedure was agreed upon, which included timetables for the completion of each stage of the process in the case of High Courts.

### **VIII. CONSTITUTIONAL SAFEGUARDS:**

Several provisions in the constitution establish a set of constitutional safeguards for upholding its independence and providing it an independent will to function and not at the behest of the legislature and executive. These were laid down in the case of *L. Chandra Kumar vs The Union of India & Ors*<sup>46</sup>

- According to Article 124(4)<sup>47</sup> of the Constitution, a Supreme Court judge may be removed by the President on the basis of demonstrated misbehaviour or incapacity.
- The substantive provisions of Articles 124(4) and 124(5) of the Constitution apply to judges of the High Courts under Article 218(4) of the Constitution.

<sup>43</sup> *S.P. Gupta v. Union of India* (1981) Supp. SCC 87

<sup>44</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, W/P 1303 OF 1987

<sup>45</sup> *Supreme Court Advocates-on-Record Association v. Union of India* 1 of 1988

<sup>46</sup> *L. Chandra Kumar v. he Union of India & Ors* 1995 AIR 1151, 1995 SCC (1) 400

<sup>47</sup> Article 124(1) Constitution of India Act, 1950

- The Judges (Enquiry) Act of 1986 was enacted in response to Article 124(5) of the Constitution, which gave Parliament the ability to control the delivery of an address and the investigation of judges. A notice of motion to present an address to the President of India for the removal of a judge is given in the Lok Sabha if at least one hundred members sign it, or in the Rajya Sabha if at least fifty members sign it.
- According to the Act, the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha appoints a Committee to investigate the alleged misconduct or incapacity. If the Committee's report indicates that a judge has acted improperly or is incompetent, each house of Parliament votes on the motion in accordance with Article 124(4) of the Constitution.
- A motion to impeach the judge must be passed by both the Lok Sabha and the Rajya Sabha with a majority of not less than two-thirds of the members of each house present and voting.
- The Parliament's severe procedure for impeaching a judge strikes a compromise between protecting judges' independence from political will and ensuring that judges are treated fairly<sup>48</sup>.

### IX. JUDICIARY IN UNITED KINGDOM AND INTERNATIONAL CONVENTIONS

Since April 2006, an independent Judicial Nominations Commission has been in charge of judicial appointments. Previously, nominations were based on the Lord Chancellor's suggestion, who was a Government Minister. The Lord Chancellor's Department conducted its own research to choose the most qualified individuals. It was thought that the appointment procedure was

vulnerable to criticism, and that a member of the government should not be in charge of appointing judges alone. Judges were also thought to be appointed in the image of current judges rather than on the basis of merit from a large pool of qualified candidates. Despite the objections levelled at it, the previous appointment mechanism actually functioned rather well. There was no political factor in the selection of candidates, and the Lord Chancellor normally acted on the advice of the senior judiciary, who were in a position to identify capable practitioners<sup>49</sup>. However, as opponents pointed out, the selection was made from a rather small pool, which did nothing to increase the diversity of the judiciary. While judges should be appointed on merit, it was determined that if we are to have a court that public trust, it must fairly represent all sections of society that are in a position to produce candidates of the required aptitude. All appointments are made through a competitive process. The Commission makes recommendations to the Lord Chancellor, who has a limited veto power.

The United Nations Convention against Corruption<sup>50</sup> contains a number of provisions that require public officials to make declarations about their outside activities, employment, investments, assets, and substantial gifts and benefits from which a conflict may arise—provisions that, due to the Convention's broad definition of “public official,” also apply to judicial officers. The UNODC issued the Art 11<sup>51</sup> Implementation Guide and Evaluation Framework in 2015, which gives guidelines on how to best put such financial disclosure systems into reality.

Several treaties, agreements, and non-binding guidelines and principles address the subject of judicial

<sup>48</sup> Ibid

<sup>49</sup> The Justice System and Constitution  
<https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/justice-sys-and-constitution/>

<sup>50</sup> The United Nations Convention against Corruption  
<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

<sup>51</sup> Article 11 of UNODC

independence, but none of them directly address the issue of asset disclosure in the judiciary.

### **X.CONCLUSION**

As a modern democracy evolves, the scope of the Right to Information must be expanded to meet contemporary democratic needs. The judiciary is the major institution that has the burden of enforcing the state's borders on the other organs of government. The Indian Constitution grants independence in order to carry out this difficult task. It must, however, recognise that it has a responsibility to use its independence for the greater good of the people. The accountability process facilitates transparency. It is critical for judges to understand that, while the people of India may grant them immunities under the Indian Constitution, they have a higher obligation to the people to whom they are accountable. It is necessary to make a sustained effort to promote judicial accountability. When this effort falters, it creates a vacuum in which the political class and special interests will take advantage of the situation to further erode the judiciary's legitimacy. Any public institution's accountability is essential for the survival of a functioning democracy, because full and limitless power to any institution serving the public can be detrimental to society as a whole, a delicate balance between judicial responsibility and judicial independence becomes important.

### **XI.REFERENCES**

1. Transparency of Judiciary under Right to Information by Tania Khurana
2. Judiciary And Right To Information Act: To Disclose Or Not Disclose? By Samriddhi Kumar
3. Rti and Judicial Activism: Accountability and Independence Go Hand In Hand by Rishab Pillai

4. RTI: Disclosure of information relating to judges' appointment will impair the functioning of the Collegium, says Attorney General by Paras Nath Singh

5. Indian Constitution by M.P.Jain