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Blow to RTI Act from legislature, judiciary

State Reason For House Info: Panel

Not just CJI, all SC judges outside law

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Manoj Mitta | TNN

New Delhi: While MPs and the executive have pressed for greater transparency in the judiciary, particularly in terms of postings and appointments, a parliamentary committee's recommendations may just make it much more difficult for the common citizen to access information or documents from the "House of the people".

Faced with differing norms for requests for information by courts and investigating agencies as against queries filed under RTI, the privileges committee has said that all applications under the Act should state reasons for seeking the data in question. The parliamentary committee has further said the RTI Act be amended in case of queries that come under the ambit of Parliament and, if the Speaker feels that the information or documents can call in question proceedings of the House, he could refer it to the privileges panel. This would also mean that the time limit prescribed in the Act will not be applicable. Also, once the Speaker has given a ruling on an RTI request, it is not open to a review by the central information commissioner. The committee has reasoned that the justification for raising the barrier between the public and Parliament lies in the procedures adopted in dealing with requests from courts and agencies like police and CBI. Such queries, in keeping with reports of privilege committees from the second Lok Sabha onwards, have laid down that the discretion lies with the Speaker and needs the approval of the House.

The Lok Sabha panel, headed by Congress MP Kishore Chandra Deo, has made a detailed study of the norms adopted by foreign legislatures ranging from Samoa to Canada to point out that in most cases requests were processed by parliamentary panels. It has traced this power to the UK's 1689 Bill of Rights which states that freedom of speeches and debates or proceedings ought not to be impeached or questioned in any court or place out of Parliament. The panel says that recommendations of privileges committees were based on the "simple reason that the House must be aware before granting permission for production of the requisite documents whether or not the production of documents will involve calling into question the proceedings of the House or a committee of the House".

Using this as the bulwark of its arguments, the privileges committee has said it was "indeed a strange situation" that documents sought under RTI would not be required to state the purpose for which they had been sought, but an agency like the CBI would have to do so. It has held that "...Parliament needs to have the discretionary power to decide whether to part with the document/information sought for."

New Delhi: If Chief Justice of India K G Balakrishnan has announced that, being a constitutional office holder, he fell outside the ambit of the RTI law, the Supreme Court registry has claimed such immunity for other judges too by casting a veil of secrecy over all matters relating to their code of conduct, complaints against them and declaration of their assets.

Responding to an RTI application, the SC's central public information officer (CPIO) Ashok Kumar said, "The matters covered under resolutions like 'in-house procedure to probe against judges', 'declaration of assets by judges', 're-statement of values of judicial life', etc, are not handled by the registry and the information relating thereto is not held by or under the control of CPIO." Asked whether CJI was subject to RTI for his administrative (as opposed to judicial) functions, CPIO sidestepped the question saying it was beyond his jurisdiction "to interpret the law, opine, comment and advise on matters." Though the SC is cited as a public authority accountable under RTI, CPIO's reply to applicant S C Agrawal implies that no question can be asked about CJI or any of the other judges, thereby defeating the legislative intent of extending the transparency law to the judiciary as well.

Little wonder then that the parliamentary standing committee on law and justice, headed by E M S Nachiappan, denounced Justice Balakrishnan's attempt to get off the RTI hook and pointed out that none of the other constitutional office holders – not even the president or prime minister – has been exempted from its purview. Since CJI is the formal custodian

of all information relating to his colleagues on the bench, CPIO stonewalled RTI queries about them by making a rather dodgy distinction between SC's registry and CJI's office. This came to light, as reported first by TOI, on an RTI application seeking to know whether judges have been filing declarations of their assets with CJI in keeping with a 1997 resolution to do so. The resolution pertaining to declaration of assets was one of the three resolutions passed by the full complement of SC judges in 1997. While the second resolution adopted the code of conduct, the third put in place the in-house procedure of inquiry for dealing with complaints of judicial recalcitrance. Justice J S Verma, who was the CJI when those resolutions had been passed, is surprised at the suggestion made by the dispensation that the registry could not answer questions about judges as the information was with CJI's office. "The registry is very much part of CJI's office," Justice Verma said. "This is clear from Article 146 which places the SC registry under the responsibility of CJI. There is no scope to separate the two."



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