



# Transparency Review

Journal of Transparency Studies

## ***RTI UNLOCKS PARTY, JUDICIARY DOORS***

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# Letters To The Editor

The latest issue of Transparency Review has done a great service by compiling and putting together in one place various articles on NREGS. However, newspaper reports tend to present a distorted picture because they are anecdotal (except for the CAG Report) and hence depend on the incidents selected and not on the average performance on the ground.

NREGS has two basic flaws, both of which are common in all our schemes and not to NREGS alone: In India, schemes are launched without training and without detailed experimentation. I recollect meeting a contractor in Berlin who had the business of cleaning windows and walls in the city. We would consider that an unskilled job. Yet, every new recruit went through a week-long course where he was taught to identify different kinds of grime and dirt, the best materials to clean each type and the best method of doing so. Not surprisingly that contractor made enough money to keep a private plane of his own to commute between Hamburg and Berlin - the two cities where he had his business.

Thus, our culture is interested only in Lakshmi; not in Saraswati. Our second problem is we have given up on inspection altogether - our Government needs inspectors who move around on the ground not directors who sit in luxurious airconditioned offices.

The RTI part of your issue is informative. Personally, I would not ask to see notings made by each official - officials

too need privacy. On the other hand, I would like every Government office to have a website which lists every day which file is lying on whose desk and for how long. That is enough Brahmastra to bring officials in line because most corruption and most misrule is based on delay.

**P.V.Indiresan**  
**Former Director IIT**  
**Chennai**

May I say how grateful we are to your goodself for sending us transparency review. it is not only thoughtful but also very topical. This document will undoubtedly open the eyes of Government on Right to Information Act which is being sabotaged by bureaucracy. We will use the material in our journal, Public Relations.

**Dr C V Narasimha Reddi Editor, Public Relations, Voice Mobile**

Transparency Review is very informative and analytical. I have downloaded it and distributed it to young scholars at our Institutes.

**Abu Nasar Saied Ahmed (Professor)**  
**Omeo Kumar Das Institute of Social Change and Development, Guwahati**

Very useful work.  
We will certainly use the new research

**Pankaj Pachauri**



# Right to Information

*The Right to Information is now penetrating areas hitherto enveloped in secrecy. For the first time since the democratic process began in India, citizens have been enabled to look at the income tax returns of political parties, which would give an inkling of the source of funds that pour into their coffers. The growing demand for transparency has spread to the judiciary as well. The Chief Justice's statement that, as a constitutional authority, he was outside the ambit of the Right to Information Act has met with angry protests from past Chief Justices of the Apex Court as also Parliament's Standing Committee on Law and Justice. These subjects are discussed in more detail in this issue.*

## PARTIES MUST SHOW FUND DETAILS

Political parties have avoided disclosing their income tax returns, attempting to ward off RTI queries by calling appellants "busybodies" or claiming parties were not "public authority". Not any more.

In a recent order, the Central Information Commission (CIC) held that all political parties should disclose their income tax returns. The decision, which came on a request filed by an NGO, Association for Democratic Reforms, is being viewed as a boost for transparency as it increases scrutiny into funding of political parties, a perpetual source of speculation.

Citing the report of the National Commission to Review the Working of the Constitution, Information Commissioner A N Tiwari said political parties must be subjected to statutory audit of the amounts they spend. "Accounts should be monitored," he said. Referring to various Supreme Court rulings, Tiwari said there was "public interest" in knowing funding of political parties.

"Given that political parties... exercise power, transparency in their organization, functions and their means of funding is a democratic imperative, and is in public interest," the order said. The essential point that CIC made was that political parties could not claim special privileges while being very much a part of public life.

The I-T authorities, in response to the RTI plea, had claimed that information, containing details of commercial activities of political parties, were exempt under the RTI Act.

On its part, CIC has held that Permanent Account Number (PAN) of political parties, whose I-T returns are to be divulged, should not be disclosed as there was a possibility of the information being misused.

Not surprisingly, given the near-total unity of the political class, the Law and Justice Ministry had refused to express its opinion on the subject, saying it could be in conflict with the interest of the public authority against whom Central Information

Commission may pass an order in this regard.

Interestingly, among political parties, only Communist parties had no objection to the disclosure of their returns. Congress called the appellant a "busybody having malafide intent" and said information was being sought for "ulterior motives".

Bahujan Samaj Party said there was no public interest in parting with such confidential information while Nationalist Congress Party (NCP) maintained it was not a public body.

NCP argued the information related to profit and  
(*Courtesy: The Times of India*)

loss was personal and disclosure would warrant invasion of privacy. BJP and DMK also gave similar reasons while refusing to provide the NGO with their returns.

In pursuance of a similar notice, the Election Commission had said the political parties were not required to furnish information about their I-T returns to it under the law. But it suggested amendment in the statutes to make it mandatory for political parties to publish their audited accounts for scrutiny of the general public.

## PARTIES' VARYING STANDS

### ■ Transparency Studies

During the hearing by the Central Information Commission (CIC) in the party funding appeal, all political parties except the CPI and CPM had objected to the move. The response of as many as 20 political parties had come on the notices issued by the apex information panel.

The Congress had termed the appellant, the Association of Democratic Reform (ADR), as a "busy body having malafide intent" and accused it of seeking information for "ulterior motives".

The BJP had claimed the I-T returns were confidential information, parting with which would amount to infringement of certain privacy rights of the political parties' members.

The CIC said since political parties influence the exercise of political power, transparency in their organisation and functions, and more particularly, their means of funding, is a democratic imperative and, therefore, is in public interest.

"There is unmistakable public interest in knowing these funding details which would enable the citizen to make an informed choice about the political parties to vote for," the CIC said in its 24-page order allowing ADR's appeal.

"The laws of the land do not make it mandatory for political parties to disclose sources of their funding and even less so the manner of expending those funds. In the absence of such laws, the only way a citizen can gain access to the details of funding of political parties is through I-T returns filed annually with I-T authorities," Information Commissioner A N Tiwari said.

Referring to various Supreme Court rulings bringing transparency in the functioning of political parties and their fundings, the CIC held that every citizen is entitled to seek information from I-T department either under I-T Act or the RTI Act.

After the verdict, however, the Congress and the BJP tried to put on a brave face and said they were still to study the order. Congress General Secretary Manish Tewari said the RTI Act had provisions for appeal in case a third party objected to giving information.

"In any case, we file our tax returns with the Election Commission and anyone who wants to scrutinise our returns that badly can ask the Commission for a copy," Tewari said.

# NO LAW, SO PARTIES DON'T REVEAL

Most political parties - specially the smaller, regional ones with national ambitions - want to keep their coffers away from public scrutiny. They have persistently refused to declare their source of funds.

The honorable exceptions are the biggies - the Congress, BJP, CPI and the CPM - and 11 lesser-known outfits. They have been giving the Election Commission details of donations and contributions received by them.

But here are the rank no-shows: Agriculture Minister Sharad Pawar's NCP, Railways Minister Lalu Yadav's RJD, Uttar Pradesh Chief Minister Mayawati's BSP, and Parkash Singh Badal's Shiromani Akali Dal.

"It's true that most political parties don't submit their annual report on donations," S.Y. Quraishi, one of the three Election Commissioners of India, told the Hindustan Times. "But we can't take action against political parties not furnishing details of their funding as there is no penal provision in the law."

While the Central Information Commission has ruled that party accounts filed with the Income Tax department can be accessed by the public under Right to Information provisions, they are already required to declare their source of funding - contributions and donations - by a provision of the Representation of People's Act 1951, the law governing elections.

This law was amended in 2003 to allow political parties - under Section 29(B) of the Act - to accept donations from private individuals and companies (barring those owned by the Government).

Section 29(C) of the same Act made it compulsory for parties to give the Election Commission every year a list of contributions and donations - upwards of Rs 20,000 - received from individuals and companies.

But there is nothing in the law to force the parties to fall in line - no punishment, no penalty or fines. And it's the lack of a coercive mechanism, according to Quraishi, that enables parties to brazen it out.

*(Courtesy: Hindustan Times)*

Of the 50 recognised and 900 unrecognised but registered political parties in the country, only 15 political parties filed their annual report to the ECI in 2005-06 and - one less - 14 in 2006-07.

But, let it be said, not all smaller parties have been similarly recalcitrant. Former Union minister Sharad Yadav's Janata Dal (United), Chandrababu Naidu's TDP, the Thackerays' Shiv Sena and Jayalalithaa's AIADMK have been filing disclosure statements with the Election Commission. The rest have just not bothered. The Commission can't punish them, so why bother?

Also, officials say there was no provision requiring or enabling the Commission to look into the veracity of the disclosures made by the parties.

The Congress's disclosure for 2005-06 was Rs 5.96 crore and Rs 3.61 crore by the BJP. Is that all they received in a year?

Meanwhile, with the increase in the number of parties seeking registration with the Election Commission of India reaching alarming proportions, the Commission is pitching very strongly for an urgent need to check the proliferation of political parties.

"Election is a serious business and associations with no interest in participating in the election process should not be permitted to pollute the system by enrolling themselves as political parties," said a recent ECI communication to the Union Law Ministry.

Strongly reiterating the need for amending the law in order to empower the Commission to regulate registration and deregistration of political parties, the Commission said a large number of political parties - most of them non-serious and perhaps defunct - would only add to avoidable system overload in the conduct of election and is not going to contribute to the democratic process in any manner.

KF Wilfred, Secretary of the Election Commission of India, told the Hindustan Times that despite the EC putting certain mechanism in place, the number of parties seeking registration was fast increasing.

# UNKNOWN PARTIES WITH CRORES

Chances are you've never heard of the Parmarth Party or the Rashtriya Vikas Party or the Satya Vijay Party. These are among the many registered political parties receiving huge donations.

The EC looked at their declarations of donations and contributions and said it has reason to suspect "gross misuse" of their status as registered political parties.

The EC reported the Parmarth Party and Rashtriya Vikas Party to the Central Board of Direct Taxes for investigation. These parties are based in Haryana and the income tax department raided both.

"The Parmarth Party records showed donations were being utilised for investment in shares, loans and advances, jewellery, etc," Vikram Sahay, an official in the Finance Ministry informed EC secretary KF Wilfred.

The two parties - one registered in 2004 and the other in 2002 - received crores in donations.

Election commissioner SY Quraishi said: "This is a serious matter. But we have no powers to either regulate such funding or de-recognize parties misusing their status."

"There is a distinct possibility that this may even lead to a racket where political parties are registered merely for tax evasion, taking advantage of

*(Courtesy: Hindustan Times)*

the loopholes in the law," said an EC communication to the Union Law Ministry.

The Parmarth Party (name now changed to Matra Bhakta Party) received Rs 96.43 lakh in donations in 2004-05 and Rs 1.10 crore in 2005-06. The same year the Congress received Rs 5.96 crore and the BJP got Rs 3.61 crore.

In 2005, the Rashtriya Vikas Party - headquartered in Faridabad - received about Rs 2 crore in three donations from one firm. MP Sharma, who runs Sharma Detectives, heads the party. When contacted, Sharma told HT: "Our political rivals must be behind the IT raid as they are feeling threatened because of our presence. We have provided all records to the Income Tax department. The party is for political purposes and our five candidates fought Lok Sabha elections in 2004."

The donations received by Satya Vijay Party headquartered in Indore has also raised the EC's suspicion as after its registration in July 2005, it received huge funds - many from professors and lecturers of Jhabua (Madhya Pradesh).

"There is something more than what meets the eye in these donations," said Chief Election Commissioner N Gopaldaswami in a recent communication to Prime Minister Manmohan Singh on this issue.

## GOVERNMENT APATHY TO REFORMS

"It is no exaggeration to say that in the matter of thwarting purposive electoral reforms, the Government has much to answer for. It has deftly frustrated the recommendations of successive committees on electoral reforms including by the Law Commission and the Election

Commission over the years. Here the reference to Government is to the political and bureaucratic elite which is determined to retain power over the electoral process." (Mr L.C. Jain, former Member of the Planning Commission, in a newspaper article)

*(Courtesy: The Indian Express)*

# A COMPLEX ISSUE, SAYS EXPERT PANEL

A panel of experts, which examined the question of political funding as part of the Constitution Review, came to the conclusion that it was undeniably a complex matter. There is no absolute truth or ideal solution in electoral matters, specially funding, it said. Any solution can be evaluated in completely different ways in different contexts. In Scandinavian countries, for instance, the disclosure of electoral expenses and sources of funding is perceived as a violation of the fundamental principle of the right to voter secrecy; in other countries, such as Germany and Canada, these practices are viewed as exactly the opposite as a guarantee of transparency in political activity and the citizens' right to be fully informed.

While political parties do need funds, financial transactions are invariably kept secret by all of them. Such is the level of secrecy that only those at the highest level know the truth about the total funds and expenditure. Parties do not publish statements of accounts, income and expenditure. Many political parties and candidates have been found to be using dubious methods to raise funds like kickbacks, funds from foreign countries and even donations by mafia gangs and other un-desirable elements. How to let parties get honest funding from legitimate sources for their basic and continuing political activities is one of the most crucial contemporary concerns of the reform agenda in respect of the functioning of political parties in India. So said the experts' panel.

The Review panel emphasised that every reform on this issue must be aimed at achieving greater and improved levels of transparency with respect to party revenues and expenditures. In fact, the issue of transparency and public disclosure is crucial to the fight against political corruption. In principle, this need would seem

more fitting with regard to hefty contributions than for small ones, since greater the contribution, the greater the risk of dependence and the greater the danger of corruption. Thus, there is a need for greater transparency and public disclosure in respect of party funding. This demand for transparency must be conceived, rather, as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics that might lead to corruption.

If laws are intended to be effective with regard to transparency, they should be very general in nature and be enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Otherwise, alternate or indirect ways to evade control will be devised. In fact, while it is essential to strengthen regulation, the mechanisms and capabilities of supervision and controlling entities,

## **Letting political parties get honest funding from legitimate sources for their basic and continuing political activities is a major concern.**

this only addresses part of the problem. Quite often, funding and commitments do not reach the parties, but rather go directly to the candidate and his/her inner circle of sup-

porters. This is truer today in the context of the image and credibility crisis that partisan organisations have been undergoing, and the emergence of regional leaders due to the decentralisation process. This usually tends to make transactions between donors and beneficiaries become even more secretive. Hence, the main leaders or party members are often not aware of private contributions (many of them dubious in origin and in quite large sums), but only the candidate and his/her inner circle, which frequently consists of private contributors and/or individuals not involved in the party.

Consequently, any proposals for reforms concerning political funding should revolve, among other things, around the following five main objectives: (i) reducing the influence of money

by diminishing its impact (by shortening campaigns, establishing ceilings on expenditure and limiting individual contributions); (ii) improving the use of money by investing it on more productive activities for the sake of democracy, and not just squandering it on propaganda and negative campaigns; (iii) stopping, or at least curtailing, as much as possible, current levels of influence peddling and political corruption; (iv) strengthening public disclosure and transparency mechanisms with respect to both the origin and the use of funds; and (v) promoting fairer requirements for elections, particularly concerning access to the media.

Some of the suggestions by the Constitution Review Panel are: regulating political contributions through a comprehensive single legislation with provision for compulsory auditing

of accounts of all political parties; controlling electoral expenditure but increasing the existing ceiling to a reasonable level which should include all the expenses incurred by the candidate and his party and his well-wishers; monitoring election expenditure by the Election Commission through specific formats in such a manner that fudging of accounts be made difficult and enacting legislation to make it possible to ascertain details of about the patrimony of candidates by means of public affidavits reporting on it which should be audited by the Special Authority created under the separate legislation on political parties. Also, elected officials should submit audited reports annually during their term of office and final audited statement at the end of their term of office.

## FINANCE MINISTER BACKS MOVE

Finance Minister P Chidambaram has said there was no problem on his part in disclosing the income tax (I-T) returns of political parties, as has been ruled by the Central Information Commission (CIC).

The Central Information Commission (CIC), acting on an appeal by an NGO named Association of Democratic Reforms (ADR), ruled that the I-T returns of political parties came under the purview of the Right to Information (RTI) Act.

"I have no problem in disclosing the I-T returns of political parties, but I have objection to individual I-T returns being disclosed, unless some criminal case is involved," Mr Chidambaram said here.

This is the first reaction from the government on the CIC order that has been welcomed widely by the public.

Asked about the CIC order, he said, "I have not seen the order. I don't know if the I-T Department has received it. I have to receive the order and then see if the I-T Department is bound by it."

*(Courtesy: The Deccan Herald)*

The order by Information Commissioner A N Tiwari said as political parties exercised political power, transparency in their organisation and functions, and their means of funding was a democratic imperative, and therefore was in the public interest.

"There is unmistakable public interest in knowing these funding details which would enable the citizen to make an informed choice about the political parties to vote for," said the order.

It added that the laws of the land do not make it mandatory for political parties to disclose sources of their funding and even less so the manner of expending those funds.

But it said the Permanent Account Number of political parties should not be disclosed as there was a possibility of the information being put to fraudulent use.

Incidentally, except for the Left parties, no other political party, not even one, is in favour of disclosing their IT returns.

# JUDGES WON'T DISCLOSE ASSETS

The judges of the Supreme Court and High Courts are not willing to divulge details of their wealth and disciplinary action taken against them on corruption and misconduct charges.

Documents available with HT have revealed that the Supreme Court wanted changes in the Right to Information Act (RTI) to allow appeals seeking judiciary-related information to be decided by court officials only, and not by the Central Information Commission.

Making public his views on the issue, the Chief Justice of India, Justice K.G. Balakrishnan had made it clear that the RTI Act was not applicable to his office. "Constitutional functionaries are not covered under the RTI," he said.

However, top jurists, including former Chief Justices of India, J.S. Verma and V.N. Khare have expressed dismay and shock over the reluctance of the Supreme Court and High Courts to provide information sought by the people under RTI.

"If there is reluctance to provide information, I am willing to be the first to volunteer and see to it that all correspondence regarding appointments and executive actions during my tenure as Chief Justice should be made public," Justice Verma said.

Justice Khare said the judiciary could not escape accountability measures, which it wanted others to follow.

"Everybody holding a constitutional office in this country is accountable, and so are the Judges. It is important for them to come clean and be seen as above suspicion," he said.

In a letter to the CIC, the Supreme Court had in 2006 said, "No appeal or any other proceedings shall lie against the order of the Chief Justice of India or his nominee. Any appeal arising

out of the order passed by an officer of the Supreme Court inferior in rank to Registrar General of the court, shall be before the Registrar General."

The CIC, however, did not accept the controversial recommendation and maintained that the right to decide the final appeal lies with the Commission.

The Supreme Court refused to provide information on the number of Judges against whom action was taken on complaints of corruption and misconduct.

"There was no such information available with the court as neither the Supreme Court nor the Chief Justice of India is the appointing or disciplinary authority in respect of superior courts, including High Court Judges," the Supreme Court said in its reply to a RTI query that sought to know the number of Judges against whom corruption allegations were probed.

The reply contradicts Supreme Court's own resolution adopted in 1999, in a meeting attended by 19 judges, that put in place an in-house procedure for taking "suitable remedial action against Judges not following accountability standards".

Similarly, in response to a question, which wanted to know if Judges were submitting details of their assets to respective Chief Justices, the Supreme Court replied, "The information relating to declaration of assets by hon'ble Judges of the Supreme Court and High Courts is not held by or under the control of registry of the court and therefore, cannot be furnished under the RTI Act."

The court's reply again runs contrary to its own resolution of 1997 on declaration of assets, which was decided in a full meeting attended by 22 Judges.

*(Courtesy: The Hindustan Times)*

# RTI COVERS JUDGES, SAYS PANEL

People have every right to seek details of a judge's wealth, allegations of misconduct against him and appointments in the judiciary, according to a parliamentary panel. "Except judicial decision-making, all other activities of administration and persons included in the judiciary are subject to the RTI Act," said the report of the Parliamentary Standing Committee on Personnel, Law and Justice.

"We have examined in detail every clause of the RTI Bill 2004, and it is clear that all three wings of State - executive, legislature and judiciary - are fully covered under this Act." EM Sudarsana Natchiappan, who heads the panel, said: "When Constitutional authorities like the Prime Minister and Lok Sabha Speaker were covered by the RTI Act, there was no question of any exemption for any other individual's office." Judicial decision-making doesn't come under the Act because decisions are pronounced in open courts and consulta-

*(Courtesy: The Hindustan Times)*

tion between Judges is a privilege, he said.

Natchiappan said it was important to end the confusion prevailing on the matter, and after discussing the interpretation of various sections of the Act, "the Committee was very clear that all Constitutional authorities came under the definition of public authority". The pith and substance of this Act is to empower people by allowing them to seek information on those occupying high offices and making decisions which affect their lives. Any reluctance only amounts to dilution of people's right to know," Natchiappan said.

The Law Minister, Mr H.R.Bhardwaj, while speaking to HT, was non-committal on the implementation of the RTI Act in judiciary. "Judiciary is not an extension of the Government, therefore no directions can be issued to it for the implementation of the RTI Act," he said. "I hope issues pertaining to providing information to the people would be streamlined."

## ISSUE DEBATABLE, INSISTS CJI

Amidst a controversy over even bringing judiciary under the purview of RTI Act, Chief Justice K G Balakrishnan has said the question was "debatable." In a way the Chief Justice appeared to disagree with the view of a Parliamentary Standing Committee that barring the judicial decision-making, the judges are accountable under the RTI Act. "It's all debatable," the CJI told a news channel in response to question in the context of the Committee's views.

The Chief Justice however, acknowledged that Judges are "public servants". He had earlier said that judges being constitutional authorities were

*(Courtesy: The Indian Express)*

not covered under the RTI Act.

In recent times there has been a concerted demand including from jurists that Judges should be covered by the RTI Act.

The demand followed rejection of an RTI applicant's query by the Supreme Court registry on the issue of disclosure of assets by members of the higher judiciary.

The CJI had also stated that at the time of being appointed or elevated the Judges of the High Courts and Supreme Court disclose their assets to him in a sealed cover and also keep him posted of any addition to their assets.

# SURVEY ON JUDICIAL CORRUPTION

As demands for transparency in the judiciary get shriller, the Bar Council of India (BCI) has taken an unusual step. The top regulator of the legal profession in India is conducting a nationwide "confidential survey" among lawyers on what ails the judiciary and the state of the profession.

The survey, the first of its kind, covers the controversial issues of judicial corruption and appointment of Judges to the Supreme Court and High Courts. The BCI also wants to know about nepotism in judiciary or what in bar parlance has come to be known as the concept of "uncle Judges".

The BCI has sent an elaborate questionnaire to the chairmen of all State Bar Councils and presidents of High Court bar associations along with a letter asking them to circulate it among their members for responses within a month from the date of its receipt.

The two-part, nine-page questionnaire contains 36 questions. The first part deals with the state of the legal profession and aims to ascertain the strength and weaknesses of the profession. The second part deals with some very controversial issues in the judiciary.

The BCI wants to know if there was rampant corruption in judiciary and how to deal with it. On the present secretive mode of appointment of judges to the SC and HCs, which has come under attack from a parliamentary panel, the BCI asked: "Is it fair and impartial? If not, what is your suggestion to make it transparent and fair?"

Another controversial matter raised by the BCI is (Courtesy: *The Hindustan Times*)

the issue of "uncle Judges". "What is your view on the Judges sitting in the same court where their near relatives, like children, nephews, in-laws etc. are practising?"

The BCI asked the lawyers to articulate their view on the quality and performance of the judiciary in their state, particularly, the High Court.

In the letter dated February 22, BCI Chairman S Gopakumaran Nair said the exercise was aimed at collecting relevant data on a national basis to make an authoritative "empirical study" on the current status of the Indian legal profession.

The BCI said the findings would be used for all official purposes in future to improve the standard of the profession.

Assuring confidentiality to the lawyers, Nair said: "This is a very responsible job and part of your duty to assist the apex body to make a realistic study and arrive at right conclusions." The BCI also asked the lawyers for their views on the entry of foreign lawyers and foreign law firms. It asked if there was a need for a central law like Advocates' Protection Act on the lines of the Judges' Protection Act, in view of "the increasing number of interference and onslaught on advocates' professional freedom".

Asked about the need for conducting such a survey, BCI member Jagdev told HT: "Basically we want to know from advocates whether the present system is transparent or not and how to improve it." The Delhi High Court Bar Association has accepted the BCI's request and started the process of sending the questionnaire to its members.

## CJI'S VIEWS BIZARRE, SAYS EX - JUDGE

The following is a quotation from an article in *the Hindu* by Mr Justice V.R. Krishna Iyer, former Judge of the Supreme Court: "Public justice is public service, and obviously judges are public servants. The Right to Information Act, therefore, does cover 'constitutional authorities', contrary to what the Chief Justice said. His absolutist obiter, coming as it does from a legal luminary for whom I have high regard, is bizarre and it is a faux pas.

Unfortunately, he has, in my legal perception, slipped into an accidental innocence of jurisprudence.

This may, however, be justly overlooked, having regard to the heavy burden he bears. He has to manage the court, handle a load of judicial work, frequently make ceremonial journeys, give erudite speeches and interviews, and bear the tremendous strain involved in selecting higher judicial personnel".

# LAW GRADUATES SHUNNING COURTS

The Supreme Court has expressed concern over the tendency among law graduates preferring corporate jobs to judicial services, as thousands of judges' posts remain vacant in subordinate courts.

During the hearing of a PIL seeking implementation of the court's 2002 order to fill all the vacancies in subordinate courts and increase the Judge-population ratio from the present 10.5 Judges per 10 lakh population to 50 judges per 10 lakh population, a bench of Chief Justice K.G. Balakrishnan and Justice R.V. Raveendran said the situation was so bad that over 3,000 Judges' posts in the lower judiciary were lying vacant for years.

"People (law graduates) are not coming forward to become Judges and even those who are appearing in the examinations are unable to meet the required standard," the bench said.

The PIL filed by an NGO, Janhit Manch and three others, wanted the court to direct the Centre to take steps for the appointment of more Judges in subordinate courts in a time-bound manner for clearing the backlog of about three crore cases.

*(Courtesy: The Hindustan Times)*

Initially the court showed reluctance to entertain the PIL but agreed to issue notice to the Centre after petitioners' counsel Prashant Bhushan drew its attention to various Law Commission's reports on arrears and delay and the court's orders on filling up the vacancies in subordinate courts, which were yet to be implemented.

He said despite the court's direction, the Government had failed to provide proper infrastructure in place for efficient functioning of the judicial system.

Blaming it on the lack of political will and poor resource allocation to the judiciary, the petitioners urged the court to as many ad hoc judges as necessary to clear the backlog of cases and setting up of an effective mechanism for prioritisation and tracking of cases requiring urgent attention.

"There are inordinate delays in the dispensation of justice in this country today and these delays deny litigants of their fundamental right to justice," the petitioners said and suggested that alternative dispute resolution mechanism like plea bargaining and pre-litigation counselling should be used.

## SPEAKER DISAGREES WITH CJI

Lok Sabha Speaker Mr Somnath Chatterjee has disagreed with Chief Justice of India Mr KG Balakrishnan's views that the Right to Information Act was not applicable to his office. "I am not questioning the Chief Justice. He is a high constitutional functionary. But since you ask me, I feel we should not keep anything back from people," he told reporters when asked about the CJI's views.

Mr Chatterjee said that in a democracy, people occupied the central position and insisted that once such information was denied, "there is scope for speculation which may affect the credibility of the institution". Disputing Mr Justice Balakrishnan's views that Constitutional functionaries were not covered under the RTI, he said: "Everything is under the Constitution or should be under the Constitution. The question is whether people are entitled to know." "The Constitutional position of

*(Courtesy: The Indian Express)*

people's right to know has been recognised under the RTI Act," he said, noting that it had been legislated for the purpose of enforcement.

The Speaker said he had allowed giving away of information under the RTI and had even suggested that the proceedings of Parliamentary Standing Committees should be thrown open to the media. Since there has been no consensus on opening up of Standing Committee proceedings to the media and with the MPs having reservations on it, it could not be done, Mr Chatterjee said. "Since you are asking me as a Constitutional functionary, I feel nothing should be held back from the people. Except, of course, when it is something related to security," the Speaker added. Mr Chatterjee had earlier allowed disclosure of information under the RTI Act regarding the assets and liabilities of MPs which are furnished to him in a sealed envelope by the lawmakers.

# TRANSPARENCY NEEDED IN COURTS

■ Suchi Pande, Nikhil Dey and Aruna Roy

The recent statements by the Chief Justice of India (CJI) that his is a Constitutional office and therefore exempt from the Right to Information (RTI) Act, has justifiably drawn much criticism. Long before the RTI Act came into effect in 2005, it was the Supreme Court of India that had laid the grounds for opening up the acts of government and its functionaries to the people. In 1975 in the State of U.P. vs Raj Narain case for instance, the Supreme Court held : "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries...The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of public."

The statement of the Chief Justice is in any case not supported by the law and the intent of parliament, which is perhaps why the Speaker of the Lok Sabha chose to make public his disagreement with the Chief Justice on this matter. The RTI Act was created to give Indian citizens access to information held by any public authority. Section 2(h) of the RTI Act 2005, defines a public authority as "any authority or body or institution of self government established or constituted by or under the Constitution..." Even if as reported, the Chief Justice prefers to see himself as a constitutional authority, and not a public servant, all constitutional authorities are also public authorities as defined in the Act. Unfortunately, the statement of the Chief Justice is not an isolated comment. Ever since the RTI Act came into force, there are sev-

eral instances where the Indian judicial establishment has tried to dilute the applicability of RTI to the courts and the judicial system.

The irony is that this act draws much inspiration and legitimacy from proactive judicial pronouncements on the citizens' right to know. In fact the first draft of the Act was formulated by a committee, chaired by a former Judge of the Supreme Court - Justice P.B. Savant, as Chairman of the Press Council of India in 1996. The Act as it stands today owes its basic principal formulations to that committee. The Indian judiciary has an honourable history of being able to view its constitutional obligation

**The irony is that RTI Act draws much inspiration from judicial pronouncements on citizens' right to know.**

as fundamental to its functioning. It is most unfortunate that the Supreme Court, which in its past judgments has laid down the basis

for a citizen's right to know (in State of U.P. vs Raj Narain, 1975) and upheld the right to information as a fundamental right (in S.P. Gupta vs the Union on India, 1982); is now being seen as backtracking from its own leading role, and in many cases taking an adversarial position.

Within months of the passage of the RTI Act, the Supreme Court tried to insulate itself from the Right to Information Act. It reportedly first sought a blanket exemption from the Act. That did not succeed, but subsequently various High Courts and the Supreme Court, have drafted rules that not only violate the letter and spirit of the RTI Act, but threaten to defeat the fundamental purpose of the Act to ensure transparency and accountability in government functioning.

Many High Courts for instance have fixed exorbitant application fees under the RTI. The Delhi High Court has refused to divulge information on appointments of class 3 and class 4 officers in its offices, taking recourse to rules that prohibit disclosure of information on administrative and financial matters. Recently the Punjab and

Haryana High Court rejected an RTI application seeking information on pendency of cases (including writs) in the High Court and the number of cases remanded by the Supreme Court for rehearing and/or expeditious disposal. The PIO of the Punjab and Haryana High Court in rejected the application on the grounds that "the information specified under section 8 of the RTI and shall not be disclosed and made available... which is not in the public domain or does not relate to judicial functions and duties of the court and matters incidental or ancillary thereto." The rules of the Punjab and Haryana High Court are in violation of the RTI Act as the quoted exemption is absent from the relevant exemption section (section 8) of the RTI Act.

The Judiciary has taken advantage of general atmosphere of opaqueness and non-accountability, in the other wings of government, in dragging its feet about its own transparency issues. There is a sense that no matter what the issue, the penultimate interpretation lies with the courts, and RTI is no exception. With notable exceptions, many progressive orders of the Information Commissions have been stayed by various high courts. The courts have also raised objections about the locus standi of the Information Commissions and their power as independent appellate authorities to direct the Courts in dispensing information as per the provisions of the Act. If the judiciary is so persistent in exempting itself, is it not logical to fear that it may undermine the implementation of the RTI Act in the other wings of government?

It is even more surprising that the statements of the CJI come in the light of a request for information regarding the disclosure of information pertaining to judges' assets. Corruption is a matter of concern no matter where it may occur. It is not the first time the CJI has expressed his preference for secrecy over transparency in refusing to divulge

*(The authors are RTI activists)*

information pertaining to judges' assets. In 2007 in an interview to a television news channel the CJI said that no self-respecting judge would accept the idea of a compulsory declaration of assets. Last week the CJI, in response to an RTI application, once again refused to reveal details of judges' assets stating that the information was not available with the Supreme Court registry. This denial is contrary to the resolution adopted in a full court meeting in 1997 attended by 22 judges, which provided for the declaration of assets by judges to the CJI of the Court and a similar declaration by the CJI for the purpose of record. It is also contrary to its own ruling in 2003 requiring all electoral candidates including Members of Parliament, to disclose their assets.

In a democracy all institutions, including the judiciary, must be transparent and accountable. Transparency in judicial functioning and accountability for judicial actions and inactions inspire public faith and confidence in the institution. The lack of stringent in house accountability and transparency mechanisms has allowed the judiciary to keep itself free from regular public scrutiny. The Right to Information Act is a step forward towards opening a closed and secretive judicial system. The preamble of the Act specifically states that India is a democratic republic and in a democracy an "informed citizenry and transparency of information... are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable". The Chief Justice of India, as the high priest of the legal system, must uphold the RTI Act and realise that no institution can be considered credible and inspire public confidence unless it is open and transparent. The judiciary can only occupy the high moral ground it often claims, by setting an example, and leading from the frontlines of transparency; not by hiding behind the veil of secrecy.

## **In a democracy all institutions must be transparent and accountable**

# LOK SABHA IMPOSES CONDITIONS

While MPs and the executive have pressed for greater transparency in 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 that 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 UK's 1689 Bill of Rights which states that freedom of speeches and debates or pro-

*(Courtesy: The Times of India)*

ceedings 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 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."

Even as it asserts that Lok Sabha has been proactive with regard to RTI and has a rule for declaration of assets and liabilities, the panel has envisaged situations as when an RTI request could be made under the Act for comments by a person against whom a privilege notice is pending. The panel has recommended that if a request needs appearance of a member or officer of the House in court, with or without documents for deposition, "in relation to proceedings of the House or any committee" the matter may be referred to the privileges committee.

With regard to earlier reports, the panel has said that in 10th Lok Sabha, the privileges panel had held original documents in a particular case may not be handed over to police unless required in a court of law. This was in the case of a complaint lodged by an MP who had alleged that his signatures had been forged during the infamous Janata Dal split prior to a critical no-trust motion faced by the P V Narasimha Rao government.

# BRIEFS

## RED TAPE IN UTTAR PRADESH

It is a sorry state of affairs in Uttar Pradesh on the Right to Information (RTI) front, with close to half of the over 9,000 appeals and complaints made in a year yet to be disposed.

Between April 2006 and March 2007, the total number of appeals and complaints made under the transparency law stood at 9,946. And of these, a total number of 4,088 appeals and complaints were pending disposal.

The information was given in a reply to an application filed by RTI activist retired Commodore Lokesh K Batra to the Uttar Pradesh State Information Commission (UPSIC).

Batra had originally filed an RTI application with the UPSIC under Section 25 of the Act, which makes it mandatory for all State Information Commissions and the Central Information Commission to furnish reports on the implementation of law.

But he did not get the desired information even after filing the same RTI for two consecutive years.

In 2007, the UPSIC replied that the required information could not be provided, as the report of the Commission for the last year had not been prepared.

"Due to acute paucity of staff, no such statement could be prepared by the Commission as desired by you so far nor it is still in such a position as to prepare and provide the same in near future," was the reply the RTI activist got.

Not ready to give up, Batra filed another RTI plea to know the monthly disposal of appeals and complaints with the UPSIC.

"The results were surprising. Cases accumu-

lated despite the state having the highest number of information commissioners, which is the opposite of what should have happened," he said.

"If this is the state in one year, then imagine the number of cases pending now (since the implementation of the RTI act)," Batra asked.

A comparison of the website of the UPSIC ([www.upsic.up.nic.in](http://www.upsic.up.nic.in)) and the CIC ([cic.gov.in](http://cic.gov.in)) clearly indicates poor implementation of Section 4 of the Act, which makes it mandatory for the Commission to keep its website updated on the progress made on the complaints.

"The UPSIC has failed to maintain the required data in the website in compliance of the Act," he said.

When contacted, Chief Commissioner, UPSIC, Justice M A Khan accepted paucity of staff as a reason for not maintaining documentation of the information and not updating the website.

He said: "We do not have either proper infrastructure or manpower. We have ten information commissioners and we work on a rotational basis. We gets lots of cases, but then we do not have basic staff like data operator or web designer."

"Seeing the poor state of the SIC, the IAS officers are reluctant to continue working with us," Khan said.

Batra said: "If this lackadaisical attitude comes from the State Information Commission, who are the highest authorities for taking to task the public authority, there will be no check on the public authorities and the administration of the State too," Batra said.

*(Courtesy: The Indian Express)*

## TAINTED COPS IN PUNJAB

After *the Times of India* through an RTI document found out that a staggering 1,398 Punjab Police personnel continue to be involved in criminal cases, on Wednesday director general of Punjab police NPS Aulakh asked ADGP (crime) GD Pandey to personally monitor the progress in these cases.

However, the intention of the police again appears doubtful as Pandey himself is facing a CBI inquiry in the case involving purchase of wireless scam for the police. Aulakh has also asked zonal IGs to list all these 'tainted' personnel and the cases related to them. They have been asked to give the DG detailed reports within three months.

Data in the RTI document revealed that from the DG level officer to constables, cops were involved in cases like murder, rape, attempt to murder, robbery, theft and forgery, but despite this they got promotions and other benefits. "I do not

have any magic wand. One has to see the details of the cases individually, and this would take time," Aulakh remarked.

The DGP's order seems to be for policemen other than the IPS officers, as officials told TOI that CBI is already most of the cases involving IPS officers.

The effort of the DG is being seen as eyewash as chief minister Parkash Singh Badal, who also heads the home ministry, has chosen to stay away from making any commitment to strengthen the police system.

Talking to TOI, former DG PC Dogra advocated the need for developing a system for policing the police system.

"The situation is getting out of control," said the former DG demanding a detailed study of the personnel involved in crime. Another former DG, Julio F Ribeiro, had earlier said that the recruitment process should be stricter and purposeful.

## DOW CHEMICALS MUST COMPENSATE

Information obtained under the RTI Act shows that at least a section of the Government believes that Dow Chemicals which bought the Union Carbide is not "immune" to the responsibility of paying compensation to the victims of the 1984 Bhopal gas leak tragedy.

The activists fighting for the gas tragedy victims said on Monday that a law ministry document obtained through the RTI Act last week from the PMO held that "irrespective of the manner in which Union Carbide has been acquired by Dow Chemicals, if there is any legal liability it would be borne by Dow Chemicals".

"We are happy to say that the law ministry is saying something we have been saying all along," said Satinath Sarangi of the International Campaign for Justice in Bhopal.

The activists want Dow Chemical, owner of the former Union Carbide, to pay for the clean-up and health damages before starting any new business in the country. But the Dow says all liabilities were settled in 1989 when Union Carbide paid

\$470 million to the Indian Government. But local court cases in India have since challenged Dow's stand and called for more compensation for victims as well as for environmental damage.

Last April, Dow Chemicals signed a joint venture agreement with Gujarat Alkalies and Chemicals Ltd to set up a 200,000 tonnes per annum chloromethanes factory in Dahej, Gujarat. This is Dow's first major investment announcement since its acquisition of Carbide as it has been shying away from large investments in India, both because of its perceived risks and the hostile reaction to its entry from various quarters.

The gas leak, described as the world's worst industrial accident, occurred when a storage tank at a Union Carbide India pesticide plant spewed deadly cyanide gas into the air in Bhopal, killing more than 3,500 slum dwellers immediately.

Meanwhile, around 50 Bhopal gas tragedy victims who came to Delhi on foot staged a protest; they were later joined by more Bhopal victims.

*(Courtesy: The Indian Express)*

# CORRUPTION IN FIRMS MUST BE DISCLOSED

The Central Information Commission (CIC) has held that the Government or a public authority, under the Right to Information Act, has to provide information it has on any company, public or private, despite the company's refusal to part with such information.

Information commissioner M M Ansari said that a public authority cannot take refuge to "third party exemption" under the RTI Act to deny information merely because the company concerned has not concurred with such disclosure.

"A major concern of the RTI Act is to contain corruption. The disclosure of information relating to corrupt practices of public/private companies is, therefore, largely in public interest" the CIC observed.

The CIC's order came on an appeal filed by Anil Kumar Sharma of Jabalpur who sought certain information from Registrar of Companies (Ministry of Company Affairs) regarding a company of which he is a shareholder. In his application, he alleged the company had been conducting its business activities in an "illegal manner" and has thus earned profit through corrupt practices. The requisite information was denied on the grounds that the company concerned did not permit the disclosure of information asked for by the appellant and hence cannot be divulged without express concurrence of the company.

Rejecting this argument, the CIC said that as the matter pertained to alleged corruption, disclosure of information was largely in the public interest and any exemption under Section 8(1)(d) of the Act - which protects from disclosure, information relating to commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party - is untenable.

Directing the Registrar of Companies to acquire the information asked for and furnish it to the appellant within 15 days, the CIC said: "The allegations made by the appellant about the illegal activities of the Company in question should have been investigated by the competent body, mainly the Registrar of Companies. However since this was not done, the appellant is advised to approach the competent authority to investigate the allegations made by him so as to find the facts in the matter."

(Courtesy: *The Indian Express*)

## CIC PULLS UP CVC

The transparency watchdog has pulled up the Central Vigilance Commission (CVC) for not implementing the RTI Act in its true spirit.

"We do find the practice of the CVC, of not informing the complainant of the disposal of his complaint, is not in keeping with the spirit of the RTI Act which demands transparency and accountability in the working of every public authority," Chief Information Commissioner Wajahat Habibullah said.

The CIC's observations came while dismissing an appeal of Dharam Prakash Verma, who had sought action against a CVC official for not informing him about the closure of his complaint pending before it.

The CVC had contended before the information panel that there is no practice of informing the com-

plainant about the final disposal order.

"The procedure in the CVC is that on receipt of a complaint, an acknowledgement is issued but there is no practice of informing the complainant of the final order of disposal," it submitted.

Finding the explanation sans merit, the CIC said, "We recommend to the CVC to bring its practice into the fullest conformity with the spirit of the RTI Act." Verma had sought details on his complaint filed against Chairman Ordnance Factories Board with the CVC.

To which, the CVC replied that his complaint was forwarded to the Ministry concerned for investigation and report. On receipt of the investigation report, the CVC had decided to close the case, it said.

(Courtesy: *The Times of India*)

## GOVERNMENT APATHETIC, SAYS CIC

The Central Information Commission has expressed dissatisfaction over the Centre's efforts to create public awareness with regard to the Right to Information Act.

Observing that it is the Centre's duty to take steps for educating people on the transparency law, Chief Information Commissioner Wajahat Habibullah said the Government was "not doing its part satisfactorily" towards that cause.

Even as he quoted an official report to claim that the RTI law was being increasingly used by ordinary citizens, including people below poverty line, the CIC was categorical in expressing his dissatisfaction when he said, "very little has been done by government to create awareness of the RTI Act."

Speaking at a workshop organised by industry  
*(Courtesy: The Times of India)*

body ASSOCHAM recently, Habibullah was, however, appreciative of the efforts of NGOs and the media, which he said had been instrumental in building greater awareness and understanding among citizens about their rights under the pro-people legislation.

His remarks assume significance as it criticises the Centre for its lack of initiative in extending the benefits of the RTI law to the masses. The law has been projected as a result of UPA's efforts to usher transparency in governance.

Habibullah, who heads the statutorily formed Commission, went ahead to suggest that the Centre could play an indirect role in generating awareness about the RTI law by providing financial support to organisations to act on its behalf.

## AMENDMENT DRAWS PROTEST

A right to information group has protested against the amendment made by the State Government to the Karnataka Right to Information Rules, 2005.

The Government has issued a notification on the Act which imposes certain restrictions on citizens seeking information.

The notification dated March 17, 2008, states that all requests for information should relate to a single subject and not ordinarily exceed 150 words. It also states that if an applicant wishes to seek information on more than one subject matter, then they have to file separate applications.

The amendment goes on to say that in case the request relates to more than one subject, the Public Information Officer may respond to the request relating to the first subject only and may advise the applicant to make separate application for each of the other matters.

B H Veerasha of Mahithi Hakku Adhyayana

*(Courtesy: New Indian Express)*

Kendra says that amendments like these work against the people as it deprives them systematically from seeking information.

He also says that no objections were invited from the citizens before making amendments to the Act. The amendment will specifically result in filing more applications for getting specific information from the authorities and this will ultimately delay the entire procedure, as the number applications will increase exponentially and consequently increase the waiting period, he adds.

Alleging that it has become a common practice for PIOs not to furnish the information unless a complaint is filed before the Karnataka Information Commission and notices are received, Veerasha says that it takes 6 to 7 months to get any information from a public authority.

The group is now planning to arrange a protest meeting and hunger strike to express their opposition to the amendment.

# **KEEPING TRACK**

## **REINVENT JUDICIARY, SAY ACTIVISTS**

Transparency in judiciary will be only meaningful if the poor have full and easy access to it. As the Second National Convention at its recent meeting pointed out, the judiciary of the country is not functioning as an instrument to provide justice to the vast majority of the people in the country. On the other hand, most of the judiciary appears to be working in the interest of wealthy corporate interests which are today controlling the entire ruling establishment of the country. Thus, more often than not, its orders today have the effect of depriving the poor of their rights, than restoring their rights, which are being rampantly violated by the powerful and the State.

To begin with, the judicial system of the country is not even accessible to the vast majority of the people, who are poor. This is because of distance, expense and the procedural complexity of the system. It cannot be accessed without lawyers, without whom they

cannot even enter the system. Obviously, the poor cannot afford lawyers. In fact, a poor person accused

of an offence has no hope of defending himself in the present judicial system and is condemned to its mercy. That is why so many poor persons spend more time in jail as under-trials than the maximum sentence that can be imposed upon them for their alleged crimes.

Even worse than the lack of access, is the increasingly elitist and anti-poor attitude of the majority of the Judges, particularly of the Supreme Court. The ideology of the courts today, as reflected in their judgments, is more right wing and reactionary than even the government which is functioning as an agent of powerful corporate interests. The judiciary has remained largely

impervious to the daily and widespread indignities heaped upon the poor. Thus when the poor are deprived of their land and natural resources on which they survive, without any rehabilitation, the Courts have, barring few exceptions, refused to interfere, even when they are petitioned on behalf of these people, and even when such dispossession is for the benefit of private corporate interests. Even worse, however, is the fact that the courts have often in the recent past themselves ordered the eviction of poor slum dwellers from their dwellings without rehabilitation. This has been done without hearing them, in violation of the principles of Natural Justice and in violation of their right to shelter. This has been done sometimes on the ground that the slum dwellers do not legally own the land on which their jhuggis are put up, and sometimes on the ground that they are on the banks of the Yamuna or on the ridge which

are environmentally sensitive areas. But when shopping malls come up on the ridge, or the powerful Akshardham

temple comes up on the same banks of the river, all kinds of other flimsy excuses are trotted out to allow them.

The courts have also ordered the removal of hawkers from the streets of several towns, again without a hearing, without rehabilitation and in violation of their right to livelihood. They have ordered the removal of rickshaw pullers from the streets of Delhi in a similar fashion. These are actions which even the governments dared not take because of their democratic accountability, but could be taken by a judiciary which is totally unaccountable.

We have seen in recent times the gradual dis-

**There is an increasingly elitist and anti-poor attitude of the majority of Judges, particularly of the Supreme Court**

mantling of labour protection laws at the hands of the judiciary as it has refused to implement the Contract Labour Act and "creatively reinterpreted" various labour laws in favour of big business. In one judgement, the Supreme Court has gone so far as to say that labour laws should be interpreted in line with the economic policies of the government! Thus, they have achieved for the government what it could not get done legislatively because of the lack of consensus in Parliament.

This Convention finds the same bias against the poor when we examine the courts orders in matters involving civil rights. Bail applications of the poor and the weak are often not heard for years, while those of the wealthy and powerful, argued by corporate lawyers get heard immediately. Even Civil rights activists like Binayak Sen get hostile treatment from the courts and are denied bail, while smugglers and white collar racketeers are granted bail with alacrity.

The time has therefore come for the people of the country to reinvent the judicial system. A people friendly judicial system must be one which is simple enough to be accessed without the mediation of professional lawyers. It must function in a participatory and transparent manner. The laws and procedures must be simplified, so as to enable a better understanding and improved access to the judicial system by the common person. The proceedings of all courts must be videographed and the records made available to all citizens under the Right to Information Act. The recently proposed Gram Nyayalayas seem to be a step in the right direction. An adequate number of them must be set up so that they are available at every block level. This, along with a simple procedure will help in making justice quicker. We can outline the broad contours of a people's judiciary here, but its detailed blueprint needs to be prepared.

Most importantly, the judges who man such people's courts must be selected in a transparent

manner with much greater involvement and participation of the people. The system of selection must also take into account the social and political philosophy of the proposed appointee to ensure that it is in tune with the social and political philosophy of the Constitution, and in particular that the appointees have some demonstrable understanding and sensitivity towards the poor. For this, we need a Judicial Appointment Commission manned by persons other than judges, which will conduct public confirmation hearings, allowing full participation of the people thereby conforming with the basic principles of democracy.

There must also be a transparent and participatory system of evaluating and reviewing the performance of judges and dealing with judicial misconduct and delinquency. Judges must be accountable not merely for corruption, but every kind of misconduct, including betrayal of the principles of the Constitution - for action as well

as inaction. A full time, independent, Judicial Performance Commission, with an investigative machinery under its control must constantly review the performance of judges.

It is often said, even in "official" seminars that the judicial system is in

a state of collapse, because justice delivery is very slow. However, merely speeding it up, will not make it an effective system of justice for the poor. For that we need to reconstruct the entire system. Such radical restructuring of the judiciary however, will need a powerful people's movement in the country. Though that may still be distant, yet, public discussion and debate must begin on this issue. For, it is clear, that no amount of tinkering with the present system is likely to yield significant results. Drastic surgery is required.

The call given in the first Convention in 2007 is reiterated that the Judiciary in the country needs to be "reclaimed and reinvented" by the people.

## **There should be a people-friendly judicial system, simple enough to be accessed without the mediation of professional lawyers**

# PANCHES TRYING TO BETTER RURAL LIFE

Most of the participants who attended the recent conference on Panchayati Raj in New Delhi were confident that, as elected representatives, they were working towards building a better rural India. Despite the hurdles many of them faced in getting elected, they were convinced that democracy was at work at the grassroots.

The three-day meeting was attended by 4,000 elected functionaries of Panchayat Raj from across the country, though at any given time only about 300 participated. CMS took the opportunity to interview 250 of them, including 50 women, who functioned as Gram Sarpanch, Mandal or Block members of Zila Parishads.

As many as 75 per cent of them felt that corruption in the Government had increased in the last couple of years. There were divergent views on corruption at the level of Panchayati Raj, with 56 per cent asserting that corruption was now more but 44 per cent insisting that it had come down. Among the women participants, at least a third of them felt that they were elected for form's sake, because the law so required. On the other hand, two-thirds of them believed otherwise and thought they were indeed playing an active role.

Three-fourths of those interviewed were of the view that Panchayati Raj institutions were too politicized and worked more for the interests of one political party or another. This explained the lengthy debate among them on whether elections to the three-tier local bodies should be fought on party lines or without using party symbols.

More than 70 per cent blamed the State Government

for not giving the kind of support that the local bodies needed to function more effectively. A third of them said that the State Government was not treating grant-in-aid to them as an obligation under the law; but 57 per cent felt that the Government was sharing the revenue generated locally as per the Panchayati Raj Act.

It was heartening to note from most of them that local bodies were now computerized and that more than 90 per cent of them had been trained to make better use of their powers and responsibilities under the Panchayati Raj Act. However, it was disappointing to hear one out of five elected representatives plead ignorance about the Right to Information Act. Though 80

per cent of them claimed that the RTI Act was being implemented in Panchayati Raj institutions, only about 47 per cent admitted that someone or the other had made use of the Act in their respective village. There was further confirmation that the Act was being used mostly by the educated middle class.

On the working of the National Rural Employment Guarantee Scheme there was a general confirmation that it had increased employment opportunities for the poor but more than 40 per cent spoke of corruption in its implementation.

An assortment of obstacles in the smooth working of the local bodies were listed by them. Among these were delay in getting funds, factional discord in the village, interference of political leaders, lack of planning, not getting funds on time, Government employees' reluctance to work, lack of education and discrimination against women.

**What was in effect the real face of rural India was all but ignored by the media. Doordarshan News was the only exception which gave daily coverage. NDTV devoted one minute in its news bulletin on the concluding day with one byte of Sonia Gandhi on women empowerment. What was worse, Aaj Tak Hindi news channel, in its two-minute slot, questioned the "Rs 50 crore expenditure on the Panchayati Sammelan".**

*(Courtesy: CMS Survey)*

# TRANSPARENCY STUDIES

The Right to Information Act 2005 represents a historic breakthrough in recognising the citizen's democratic rights to monitor measures affecting the public good. Following adoption of the Act by the Parliament of India, the Centre for Media Studies (CMS) set up a Transparency Studies wing to document, examine and publicise the interrelation between governance and society in all its aspects. It facilitates dissemination of relevant material, confers with experts and field workers and networks with the media to promote implementation and awareness.

## ***The functions of Transparency Studies include:***

- Publishing and distribution by electronic mail of *Transparency Review*, a journal designed to publicise news, articles and documentation concerning developments in Right to Information and the overall interface between governance and society. Priority is given to right to education, especially of children; right to work; right to justice and associated human and social rights, especially at the grassroots.
- ◆ Operating Transparency Features to disseminate articles and information on the above.
- Linking with civil society groups to further common objectives like exposing corruption, monitoring elections, improving civic services.
- Arranging discussions on emerging issues and problems between specialists and mediapersons.



## **TII- CMS India Corruption Study - 2007**

Next issue highlights a unique study on corruption affecting BPL households in availing 11 important public services. The study, between November 2007 and February 2008 covered all parts of the country. The report is expected to be released in June 2008.

The survey brings out the extent to which the 11 public services are corruption - entrenched and how even BPL households are not spared though they are the targeted beneficiaries, as in the case of NREGS, PDS, House / plots for the poor, etc.

The study quantifies both the perception and experience of corruption in the selected services and also estimates the amount of bribe paid by BPL households in one year. CMS studies over the years have been pointing out the wide gap between levels of perception and actual experience of corruption. The menace cannot be tackled without the two being viewed together.

The latest study for 2007 focusing on BPL households indicates the high level of exploitation of the poor at the point of delivery of public services. Almost one-third of them end up paying bribes, mostly to the functionaries, in order to avail the services aimed at benefiting them.

The previous TII-CMS India Corruption Study for 2005, based on CMS PEE model for quantifying corruption involving citizens, had evoked wide range of public concern in the country.

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