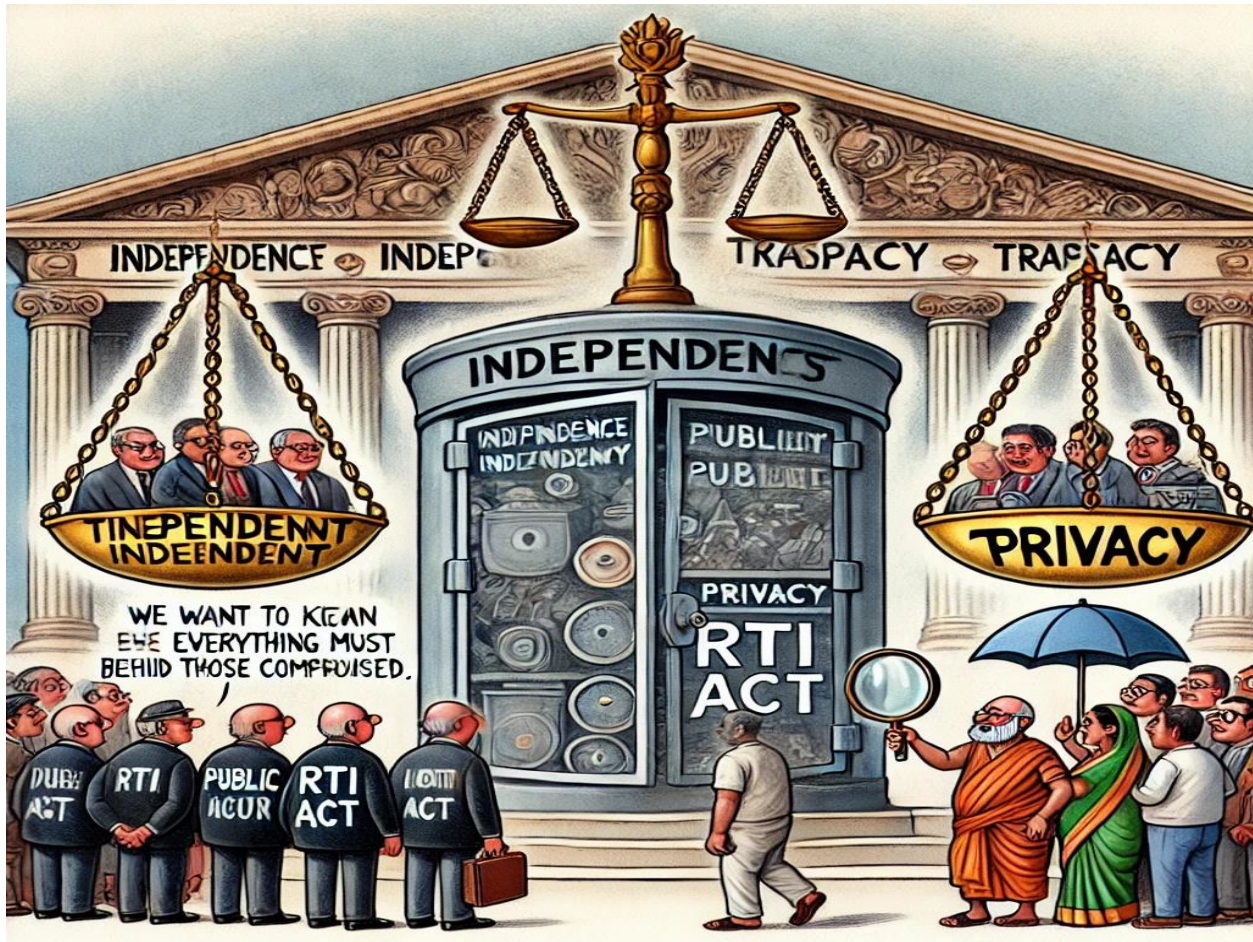




"BALANCING TRANSPARENCY AND INDEPENDENCE: JUDGES' ASSET DISCLOSURE" – PAPER II



The judiciary plays a pivotal role in upholding democracy, safeguarding constitutional values, and ensuring the rule of law. The independence of the judiciary is a cornerstone of this framework, allowing judges to function without fear, favor, or external influence.

However, while independence is vital for the judiciary, it cannot be an absolute or unchecked power. In a democracy, transparency and accountability are equally important, and public confidence in the judiciary is contingent upon the perception that judges act with integrity and impartiality.

The call for transparency in public institutions, including the judiciary, has gained significant momentum in recent years. One of the primary concerns raised in this context is the disclosure of assets by judges.



As per the latest reports, 27 of the current 33 judges of the Supreme Court have voluntarily declared their assets to the Chief Justice of India (CJI), but these declarations are not publicly available. The absence of these asset declarations from public view has reignited debates about transparency, accountability, and the delicate balance between judicial independence and public scrutiny.

Independence of the Judiciary

The independence of the judiciary is a fundamental principle enshrined in the Constitution of India. It ensures that judges can interpret laws and deliver judgments without external pressure or influence from the executive, legislature, or any other authority. This independence is crucial for maintaining the rule of law, protecting fundamental rights, and resolving disputes impartially.

In a democratic setup, the judiciary acts as a guardian of the Constitution, preventing abuses of power by other branches of government. To perform this function effectively, judges need to be insulated from any form of influence, whether political, financial, or social. The autonomy of the judiciary is safeguarded through several constitutional provisions, such as security of tenure, fixed salaries, and independent judicial appointments.

Disclosure of Assets and Judicial Accountability

The debate around the disclosure of assets by judges brings into focus the tension between judicial independence and public accountability. Asset disclosure is viewed as a key measure to ensure transparency and prevent corruption or conflicts of interest. In India, all Members of Parliament (MPs), Members of the Legislative Assembly (MLAs), and civil servants are required to disclose their assets. However, for judges of the Supreme Court and High Courts, there is no legislation mandating such disclosures.

In 2009, the Supreme Court of India resolved that judges should voluntarily declare their assets to the Chief Justice of India upon assuming office and whenever a substantial acquisition is made. This was a significant step toward enhancing transparency in the judiciary, but the disclosure of assets remained voluntary and not legally binding.

The reluctance to make these declarations public stems from concerns that such disclosures could expose judges to unnecessary public scrutiny and undermine judicial independence. Judges argue that revealing their personal financial details could lead to harassment or undue pressure, especially



in a highly politicized environment. Furthermore, the judiciary maintains that asset disclosure should not be a tool for surveillance that hinders the effective functioning of the courts.

Right to Information Act and the Judiciary

The Right to Information Act (RTI), 2005, is a landmark piece of legislation that promotes transparency and accountability in public institutions. Under the RTI Act, citizens can seek information from public authorities, including government offices and officials. However, the application of RTI to the judiciary has been a contentious issue.

The question of whether the judiciary falls under the purview of the RTI Act was addressed in the landmark judgment of *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal* (2019). In this case, a Constitution Bench of the Supreme Court, headed by then-Chief Justice Ranjan Gogoi, ruled that the office of the Chief Justice of India (CJI) is indeed a public authority under the RTI Act. The court held that the judiciary is not exempt from public scrutiny, but it also emphasized that the right to information must be balanced with the right to privacy and the need to ensure judicial independence.

The court's decision reaffirmed that while the judiciary is a public institution, it must function transparently and be accountable to the public. However, the ruling also underscored that the RTI should not be used as a tool for surveillance or to undermine the effectiveness of the judiciary.

Previous Cases and Developments

The issue of asset disclosure by judges has surfaced repeatedly in the public domain. In 2009, following significant public pressure, the Supreme Court resolved to declare judges' assets on the court's website by October 31, 2009. Although the assets were posted online for several years, this practice was discontinued after March 31, 2018. Currently, only a handful of judges have declared their assets voluntarily, but these declarations are not publicly available.

On August 28, 2022, The Indian Express filed a Right to Information application seeking details of judges who had not declared their assets between 2022 and 2024. However, the Supreme Court's Central Public Information Officer (CPIO) denied the request, citing exemptions under the RTI Act. This decision was upheld by the First Appellate Authority, reinforcing the view that asset disclosure by judges remains a voluntary act and not subject to mandatory public disclosure.



Recent Disclosure of Assets by Judges

In a recent update, 27 out of 33 sitting Supreme Court judges have declared their assets to the Chief Justice of India, but these declarations are not accessible to the public. This move comes amidst growing calls for mandatory asset disclosure laws for judges, akin to the requirements imposed on MPs, MLAs, and civil servants.

The Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice, in its report over a year ago, recommended legislation for mandatory disclosure of assets by judges. However, no concrete steps have been taken in this direction so far.

Significance of Asset Disclosure and Constitutional Morality

The disclosure of assets by judges is not merely a procedural formality; it holds significant constitutional and moral value in a democratic society. The judiciary, like other public institutions, derives its legitimacy from public trust and confidence. Transparency in the financial dealings of judges can help maintain this trust and ensure that the judiciary remains free from corruption or conflicts of interest.

Constitutional morality dictates that judges, as custodians of the Constitution, must adhere to the highest ethical standards. Asset disclosure is a crucial step toward ensuring that judges remain accountable to the public they serve while safeguarding the integrity of the judicial system. Moreover, in an era where the demand for transparency is increasing across all public institutions, it is important that the judiciary also reflects this openness to maintain its credibility.

Conclusion

The debate over asset disclosure by judges raises important questions about the balance between judicial independence and public accountability. While the independence of the judiciary is paramount to ensure impartiality and protect judges from external influence, transparency in financial dealings is equally crucial to maintain public trust.

The voluntary disclosure of assets by judges, though a step in the right direction, falls short of the transparency expected in a modern democracy. The judiciary, being a public institution, must embrace the principles of openness and accountability, and asset disclosure is an important aspect of this process. However, any move toward mandatory disclosure must be carefully calibrated to protect



the independence of the judiciary, ensuring that judges can perform their duties without fear of undue interference.

In conclusion, the issue of asset disclosure by judges is a complex one that requires careful consideration of constitutional principles, judicial independence, and public accountability. It is only through a balanced approach that the judiciary can maintain its integrity while fostering greater transparency and trust in the eyes of the public.

Main Practice questions

1. Discuss the significance of the disclosure of assets by judges in maintaining judicial accountability and public trust, while balancing the need for judicial independence.
2. Examine the role of the Right to Information (RTI) Act in promoting transparency within the judiciary, particularly in light of the 2019 Supreme Court ruling on the Chief Justice of India being a public authority under the RTI Act.

Answer guidelines

Question 1:

Discuss the significance of the disclosure of assets by judges in maintaining judicial accountability and public trust, while balancing the need for judicial independence.

- **Introduction:**
 - Briefly explain the concept of judicial independence and why it is essential for upholding democracy and the rule of law.
 - Define the concept of judicial accountability and transparency, focusing on the disclosure of assets by judges.
- **Importance of Asset Disclosure:**
 - Discuss how asset disclosure enhances transparency in the judiciary and prevents conflicts of interest or corruption.
 - Explain how public trust in the judiciary is maintained through the visibility of judges' financial dealings.



- Highlight that asset disclosure for MPs, MLAs, and civil servants is already mandatory and draws parallels to the judiciary.
- **Challenges in Balancing Independence and Transparency:**
 - Discuss concerns about public disclosure undermining judicial independence by subjecting judges to undue scrutiny or harassment.
 - Mention the voluntary nature of current asset declarations and the judiciary's reservations about mandatory public disclosure.
- **Constitutional Morality:**
 - Address how asset disclosure aligns with the broader principles of constitutional morality and the ethical responsibilities of judges.
- **Conclusion:**
 - Summarize the need for a balanced approach that maintains both judicial independence and accountability to the public.

Question 2:

Examine the role of the Right to Information (RTI) Act in promoting transparency within the judiciary, particularly in light of the 2019 Supreme Court ruling on the Chief Justice of India being a public authority under the RTI Act.

- **Introduction:**
 - Provide a brief overview of the Right to Information (RTI) Act and its significance in promoting transparency and accountability in public institutions.
 - Explain the controversy around applying RTI to the judiciary.
- **2019 Supreme Court Ruling:**
 - Describe the key aspects of the 2019 Supreme Court ruling that declared the office of the Chief Justice of India (CJI) as a public authority under the RTI Act.
 - Discuss the rationale behind the court's decision to balance transparency with the need to protect the judiciary's privacy and independence.
- **Impact on Judicial Transparency:**
 - Analyze how this ruling promotes transparency by subjecting the judiciary to public scrutiny, especially concerning asset disclosure and other areas.



PL RAJ IAS & IPS ACADEMY

MAKING YOU SERVE THE NATION

- Mention the limits imposed by the court to ensure that RTI is not misused as a tool for surveillance or harassment of judges.
- **Challenges and Benefits:**
 - Discuss the ongoing challenges in implementing RTI within the judiciary, including concerns over judicial independence and the need for maintaining confidentiality in sensitive cases.
 - Address the benefits of increased public trust in the judiciary as a result of transparency under the RTI Act.
- **Conclusion:**
 - Summarize the role of RTI in balancing transparency with judicial independence and its significance in strengthening public confidence in the judiciary.

