* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on : 04.05.2009
Judgment Pronounced on: 02.09.2009

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W.P. (C) 288/2009

THE CPIO, SUPREME COURT OF INDIA,
TILAK MARG, NEW DELHI ..... Petitioner

Through: Mr. Goolam. E. Vahanvati,
Attorney General of India with
Mr. Gaurav Duggal, Advocate.

versus

SUBHASH CHANDRA AGARWAL & ANR. ..... Respondents

Through: Mr. Prashant Bhushan,
Mr. Mayank Misra and Mr. Harendra Singh,
Advocates for Resp. No.1.
Mr. K.K. Nigam, Advocate, for CIC
Mr. K.C. Mittal, Mr. D.K. Sharma,
Mr. Arvind Jain and Mr. Sujeet Kumar, Advocates
for Delhi High Court Bar Association.
Mr. P.N. Lekhi, Sr. Advocate with
Mr. Vijay Chaudhary and Mr. Ravinder Kumar,
Advocates, for Rashtriya Mukti
Morcha/ Invervener.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment? YES.

2. To be referred to Reporter or not? YES.

3. Whether the judgment should be reported in the Digest? YES.

HON'BLE MR. JUSTICE S.RAVINDRA BHAT

1. This proceeding, under Article 226 of the Constitution of India, requires the examination of questions and issues involving declaration as to personal assets of judges of the Supreme Court, made to the Chief Justice of India, pursuant to a Full Court

resolution of the Supreme Court of India, made in 1997. The petitioners challenge an order of the Central Information Commission, dated 6th January, 2009, upholding the request of the respondent who had applied for disclosure of certain information concerning such declaration of personal assets, by the judges (of the Supreme Court).

2. The facts of the case are that the Respondent (hereafter "applicant") had, on 10.11.2007 required the Central Public Information Officer, Supreme Court of India ("the CPIO"), nominated under the Right to Information Act (hereafter "the Act") to furnish a copy of the resolution dated 7.5.1997 of the Full Court of the Supreme Court, ("the 1997 resolution") which requires every judge to make a declaration of all assets. He further sought for information relating to declaration of assets etc, furnished by the respective Chief Justices of States. By order dated 30th November, 2007, the CPIO informed the applicant that a copy of the resolution dated 7.5.1997 would be furnished on remitting the requisite charges. He was also told that information relating to declaration of assets by the judges was not held by or under the control of the Registry of the Supreme Court and, therefore, it could not be furnished.

3. The applicant appealed to the nominated Appellate authority, who, after hearing him, recorded satisfaction (of the applicant) about receipt of a copy of the resolution; he nevertheless, challenged the second part of the impugned order which held that the CPIO did not hold any information regarding the declaration of assets. It was also contended that if the CPIO was not holding the information, he should have disclosed the authority holding such information and should have referred the application to such an authority, invoking Section 6 (3) of the Right to Information Act. It was also contended out that assuming that the CPIO did not hold the information, since the applicant had sought information regarding the declaration of assets made by the various Chief Justice of the States, the CPIO, Supreme Court should have transferred the

matter to the respective CPIOs. The appellate authority remanded the matter for reconsideration, to the CPIO, observing as follows:

> *"A perusal of the application dated 10.11.2007 discloses that the appellant had sought for information relating, to the declaration of assets by the Hon'ble Judges of the Supreme Court as well as the Chief Justice of the States. The order of the CPIO is silent regarding Section 6 (3) of the Right to Information Act. to the above extent, I feel that the appellant is justified in contending that if the CPIO was not holding the information, he should have considered the question of Section 6 (3). Regarding the respective States, if the CPIO was not holding information, he should have considered whether he should have invoked the provision under Section 6 (3) of the Right to Information Act.*
>
> *In the above circumstances, the impugned order to the above extent is liable to be remanded back. The matter is remanded to the CPIO to consider the question whether Section 6(3) of the Act, is liable to be invoked by the CPIO.*
>
> *The matter is remanded to the CPIO for afresh consideration on the above limited point after giving a reasonable opportunity of being heard to the appellant.*
>
> *The Appellant, if aggrieved by this order, is entitled to file a second appeal before the Central Information Commission, New Delhi under Section 19(3) of the Right to Information Act within 90 days from the date of communication of this order."*

After remission, the CPIO rejected the application, stating as follows:

> *"In the case at hand, you yourself knew that the information sought by you is related to various High Court in the country and instead of applying to those Public Authorities you have taken a short circuit procedure by approaching the CPIO, Supreme Court of India remitting the fee of Rs.10/- payable to one authority and getting it referred to all the public authorities at the expense of one Central Public Information Officer. In view of this, the relief sought by you cannot be appreciated and is against the spirit of Section 6 (3) of the Right to Information Act, 2005.*
>
> *You may, if so advised approach the concerned public authorities for desired information".*

4. The Applicant approached the Central Information Commission (CIC). It was contended that the CPIO had not followed the directions of the appellate authority, which originally remanded the case, and decided whether the application had to be sent

to another authority, as it was expected to. It was also contended that the CPIO's order maintained a studied silence about disclosure of information about asset declaration by judges of the Supreme Court to the Chief Justice of India ("CJI") in accordance with the 1997 Resolution. The CPIO contended, before the CIC, that the RTI application had two parts, the first part related to copy of Resolution, which was provided to the applicant, and the second part related to declaration of assets by the Supreme Court judges. The CPIO submitted that the Registrar of the Supreme Court did not hold the information. It was submitted that the 1997 Resolution was an in-house exercise; and the declaration regarding assets of the judges is only voluntary. The resolution itself describes submission of such declarations as "Confidential". It was also contended that disclosure of the declarations would be breach of a fiduciary relationship. The CPIO further submitted that the declarations were submitted to the Chief Justice of India not in his official capacity but in his personal capacity and that any disclosure would be violate of the 1997 resolution, deemed such declarations 'confidential'. It was also contended that the disclosure would be contrary to the provisions of section 8(1) of the Act.

5. The CIC, in its impugned order, reasoned that since the Supreme Court was established by the Constitution of India and is a public authority within the meaning of Section 2(h) of the Act. Section 2(e) (i) was referred, to say that the Chief Justice of India was a competent authority, under the Act, empowered to frame Rules under Section 28 of the Act to carry out provisions of the Act. It was held that rule making power is conferred by provisions of the Act, upon the Chief Justice and the Supreme Court, who cannot disclaim being public authorities. The applicant's appeal was allowed, on the following reasoning:

> *"16. The rule making power has been explicitly given for the purpose of carrying out the provisions of the RTI Act. The Act, therefore, empowers the Supreme Court and the other competent authorities under the act and entrusts upon them an additional responsibility of ensuring that the RTI Act is implemented in letter and spirit. In view of this, the contention of the respondent public authority that the*

provisions of Right to Information act are not applicable in case of Supreme Court cannot be accepted.

17. The learned counsel appearing on behalf of the Supreme Court during the course of hearing argued that the information concerning the declaration of assets by the judges is provided to the Chief Justice of India in his personal capacity and it is "voluntary' and "confidential". From what was presented before us. It can be inferred that the declaration of assets are filed with the Chief Justice of India and the office of the Chief Justice of India is the custodian of this information. The information is maintained in a confidential manner and like any other official information it is available for perusal and inspection to every succeeding Chief Justice of India. The information, therefore, cannot be categorized as "personal information" available with the Chief Justices in their personal capacity.

18. The only issue that needs to be determined is as to whether the Chief Justice of India and the Supreme Court of India are two distinct Public Authorities or one Public Authority. In this context, it would be pertinent to refer again to the provisions of section 2 (h) of the Right to Information Act, the relevant part of which reads as under:

> *"2(h)"Public authority" means any authority or body or institution of self – government established or constituted…"*

19. The Public Authority, therefore, can only be an "authority" 'body' or an "institution" of self, government, established or constituted, by or under the Constitution or by any other law, or by an order made by the appropriate government.

20. The words "Authority, "body" or "institution" has not been distinctly defined in the Act, the expression "authority" in its etymological sense means a Body invested with power to command or give an ultimate decision, or enforce obedience or having a legal right to command and be obeyed. Webster's Dictionary of the English language defined "authorities as "official bodies that control a particular department or activity, especially of the Government. The expression other authorities has been explained as authorities entrusted with a power of issuing directions, disobedience of which is punishable as an offence, or bodies exercising legislative or executive functions of the state or bodies which exercise part of the sovereign power or authority of the State and which have power to make rules and regulations and to administer or enforce them to the detriment of the citizens. In the absence of any statutory definition or judicial

interpretation to the contrary, the normal etymological meaning of the expression, has to be accepted as the true and correct meaning.

21. According to the dictionary meaning, the term "institution" means a body or organization or an association brought into being for the purpose of achieving some object. Oxford Dictionary defines an "institution as a establishment, organization or an association instituted for the promotion of some objects especially one of public or general utility, religious, charitable, educational etc., The definition of the 'institution', therefore, includes an authority as well as a body. By very implication, the three terms exclude an "individual". Even the Hon'ble Apex Court in Kamaraju Venkata Krishna Rao Vs. Sub – collector, Ongole – AIR 1969 SC 563 has observed that it is by no means easy to give definition of the word "institution" that would cover every use of it. Its meaning must always depend upon the context in which it is found.

22. If the provisions of Article 124 of the Constitution are read in view of the above perspective, it would be clear that the Supreme Court of India, consisting of the Chief Justice of India and such number of judges as the Parliament may by law prescribe, is an institution or authority of which the Hon'ble Chief Justice of India is the Head. The institution and its Head cannot be two distinct public authorities. They are one and the same. Information, therefore, available with the Chief Justice of India must be deemed to be available with the Supreme Court of India. The Registrar of the Supreme Court of India, which is only a part of the Supreme Court cannot be categorized as a Public Authority independent and distinct from the Supreme Court itself.

23. In view of this, the question of transferring an application under Section 6(3) of the Right to Information Act by the CPIO of the Supreme Court cannot arise. It is the duty of the CPIO to obtain the information that is held by or available with the public authority. Each of the sections or department of a public Authority cannot be treated as a separate or distinct public authority. If any information is available with one section or the department, it shall be deemed to be available with the Public Authority as one single entity CPIO cannot take a view contrary to this.

24. In the instant case, admittedly, the information concerning the judges of the Supreme Court is available with the Supreme Court and the CPIO represents the Supreme Court as a public authority. Under the RTI Act, he is, therefore, obliged to provide this information to a citizen making an application under the RTI Act unless the disclosure of such information is exempted under the law.

25. During course of hearing, it has been argued that the declaration of assets submitted by the judges of the Supreme Court are confidential and the information has been provided to the chief justice of India in a fiduciary relationship and as such, its disclosure is exempted under Section 8(1) (e) of the RTI Act.

26. In this context it will be pertinent to reiterate what the appellant has asked for in his RTI Application and which is as follows:

I will be obliged if your honour very kindly arranges to send me a copy of the said resolution passed by the judges of the Supreme Court on 7.5.2007.

I will be obliged if your honour kindly provides me information on any such declaration of assets etc ever filed by Honourable judges of the Supreme Court.

Kindly also arrange information if High Court judges are submitting declaration about their assets etc to respective Chief Justices in States.

27. The information in regard to point (i) as above has already been provided. As regards the information covered by point No. (ii) & (iii) above, the same has been denied on the ground that it is not held by or under the control of the Registrar of the Supreme Court of India and, therefore, cannot be furnished by the CPIO.

28. The First Appellant Authority while deciding the matter assumed that the CPIO of the Supreme Court was not holding the information concerning the declaration of the assets made by the High Court judges and that this information is held by the chief justices of the State High Courts and accordingly, he observed that the appellant is justified in contending that if the CPIO was not holding the information, he should have considered the question of invoking Section 6(3) of the RTI Act. accordingly, the matter was remanded back by him to the CPIO of the Supreme Court for fresh consideration on limited point i.e. transfer of application to various High Courts u/s 6(3) of the RTI Act. It will not be out of context to reproduce what the Appellate Authority has decided in his order:

> *"In the above circumstances, the impugned order to the above extent is liable to be remanded back. The matter is remanded to the CPIO to consider the question whether section 6(3) of the Act, is liable to be invoked by the CPIO.*
>
> *The matter is remanded to the CPIO for afresh consideration on the above limited point after giving a reasonable opportunity of being heard to the appellant."*

29. CPIO on receiving the matter back on remand rejected the application of the appellant. It appears that both the CPIO and the first Appellant Authority have remained silent as regards the information concerning declaration of assets by the judges of the Supreme Court. At the time of hearing, it was admitted that the information concerning declaration of the assets by the judges of the Supreme Court is not available with the Registry, but the office of the Chief Justice of India holds the same. The information requested under the RTI Act was denied only on the ground that the Registry does not hold the information. But the first appellate authority did not find as to where the information is available. The CPIO maintained silence as regards this matter even after he received the matter on remand. At the time of hearing before this Commission, however, it was submitted that the information might be available with the office of the Chief Justice of India. It is clear that neither the CPIO nor the First Appellate Authority has claimed that the information asked for by the appellant is exempt either under Section 8 (1) (e) of the Act being received in fiduciary relationship or that this information is 'personal information' attracting exemption under section 8 (1) (j).

30. The appellant Shri S.C. Agrawal is apparently not seeking a copy of the declarations or the contents therein or even the names etc. of the judges filing the declaration, or is he requesting inspection of any such declaration already filed. He is seeking simple information as to whether any such declaration of assets etc., has ever been filled by the judges of the Supreme Court or High Courts. What he is seeking cannot be held to attract exemption under Sections 8(1)(e) or 8(1) (j).

31. The only question that remains to be decided is as to whether CPIO was justified in turning down the request of the Appellant to transfer the RTI application to the concerned CPIO of the High Courts even after the Fist Appellate Authority remanded the case to him. In this connection, it may be mentioned that the request for transfer under section 6(3) of the Right to information Act has been turned down on the ground that the appellant was well award that the information is available with the respective High Courts which are separate and distinct public authorities. This point has not been pressed at the time of hearing as Such, it is not necessary to decide this issue at this stage.

32. In view of what has been observed above, the CPIO of this Supreme Court is directed to provide the information asked for by the appellant in his RTI application as to whether such declaration of assets etc. has been filed by the Hon'ble Judges of the Supreme Court or not within ten working day form the date of receipt of this decision notice."

6. When presented, the CPIO was the sole writ petitioner; later, however, the Registrar, Supreme Court was added as a party. The petitioners were represented by the (then) Solicitor General, Mr. Goolam E. Vahanvati (hereafter referred to as "the petitioners' counsel"); Mr. Prashant Bhushan argued on behalf of the respondent applicant.

7. It is argued at the outset that the petition, is not filed with a view to raise technical objections to avoid declaring assets of the judges, but on a fundamental question of law with regard to scope and applicability of RTI; it is also clarified that the learned judges of the Supreme Court are not opposed to declaring their assets, provided that such declarations are made in accordance with due procedure laid down by a law which would prescribe (a) the authority to which the declaration would be made (b) the form in which the declaration should be made, with definitional clarity of what are 'assets'; and (c) proper safeguards, checks and balances to prevent misuse of information made available.

8. The petitioners argue that the information sought for, by the applicant, is not in the public domain. In support, it is submitted that the expression "right to information" defined by Section 2(j) envisions information *"accessible, in this Act, which is held by or under the control of any public authority…"* The petitioners contend that the source of the right to seek information, is not any law, but a non-binding obligation, on account of the 1997 resolution. It is argued that there is no Constitutional or legal obligation to furnish such declaration. Though it was urged that the CJI is not a public authority, the counsel submitted that the terms of the Act would show that in fact, he is one. In the petition it has been submitted that the office of the CJI is distinct from the Registry, and the CIC's findings in that regard are erroneous; the petitioners emphasize that the CJI is required, by provisions of the Constitution, and different laws, and also the decision in *Supreme Court Advocates on Record Association v. Union of India,* (1993) 4 SCC 441 to

perform various functions that are distinct from his role as Chief Justice of the Supreme Court. Therefore, the impugned order, according to them, is unsustainable.

9. The petitioners urge that for anything, to constitute information, it should be in the public domain, and should be held by a public authority under the mandate of law; the law should prescribe that something should be done, or not be done, and must be accompanied by sanction for its non-performance. In support, reliance is placed on the judgment reported as *Kruze v. Johnson* 1895 All ER 105; *Dwarkanath Tewari v. State of Bihar* AIR 1959 SC 259 and *Indian Airlines Corporation v. Sukhdev Rai* 1971 (2) SCC 192. It is urged that individual judges have the choice of declaring, or not declaring assets; an autonomy that cannot be commented upon, or interfered with by the CJI. It is likewise argued that non-disclosure does not result in any breach of law, or attract any sanction, which clearly demonstrate that the 1997 resolution is not binding. The petitioners' counsel submits that the resolution cannot also be described as containing "Rules". In this context, counsel urges that rules are made unilaterally by the concerned authority, and are not dependent upon their binding nature on the choice or exercise of volition of anyone, subjected to them. Reliance is placed on *Sirsi Municipality v. Cecilia Con. Francis Tellis* 1973 (1) SCC 409.

10. Learned counsel for the petitioner urges that the ruling in *Indira Jaising v. Registrar General* 2003 (5) SCC 494 held that deliberations during the "in house procedure" evolved as a result of the resolution of the Chief Justices' Conference (in 1999) cannot be the subject matter of disclosure. Reliance is placed on the following observations:

> *"Therefore, in the hierarchy of the courts, the Supreme Court does not have any disciplinary control over the High Court Judges, much less the Chief Justice of India has any disciplinary control over any of the Judges. That position in law is very clear. Thus, the only source or authority by which the Chief Justice of India can exercise this power of inquiry is moral or ethical and not in exercise of powers*

under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made the subject-matter of a writ petition to disclose a report made to him."

It is submitted that there is nothing in the 1997 Resolution involving processes of government; reliance is also placed on the following passage from *Indira Jaising*:

> *"Heavy reliance has been placed upon the decisions of this Court in S. P. Gupta v. Union of India (1981 Supp SCC 87), State of U.P. v. Raj Narain ((1975) 4 SCC 428), Union of India v. Assn. for Democratic Rights ((2002) 5 SCC 294) and Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal ((1995) 2 SCC 161). The principles stated in these decisions have been reconsidered by this Court in People's Union for Civil Liberties (PUCL) v. Union of India ((2003) 4 SCC 399 : JT (2003) 2 SC 528). It is no doubt true that in a democratic framework free flow of information to the citizens is necessary for proper functioning particularly in matters which form part of a public record. The decisions relied upon by the learned counsel of the petitioner do not also say that right to information is absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002, to which also reference has been made by the learned counsel of the petitioner, does not say in absolute terms that information gathered at any level in any manner for any purpose shall be disclosed to the public. The inquiry ordered and the report made to the Chief Justice of India being confidential and discreet is only for the purpose of his information and not for the purpose of disclosure to any other person. The principles stated in the above decisions are in different context and those principles cannot be invoked in a case of this nature, which is of an exceptional category. Therefore, the first contention advanced on behalf of the petitioner by Shri Shanti Bhushan for a direction to release the said report has got to be rejected in limine."*

11. It is next argued that any disclosure made by judges, pursuant to the 1997 resolution, is not a public act done in the discharge of duties of their office. The petitioners elaborate this by saying that the Act is aimed at ensuring access to all actions of public officials done or performed during the course of their official duties. Such being the case, the declaration of personal assets, by individual judges, has nothing to do with their duties, as judges. The petitioners again emphasize the voluntary nature of such disclosure, and absence of any legal sanction as a result of non-disclosure.

12. The second limb of the petitioners' submission is that the information, about assets of judges, if such facts are deemed "information" is exempt from disclosure, by virtue of Section 8(1) (e) which casts a fiduciary duty on the CJI to hold the asset declarations in confidence. Here, the petitioners emphasize that the Resolution which says that the *"declaration made by the judges or the Chief Justice as the case may be, shall be confidential.."* It is submitted that such being the case, asking disclosure, would be compelling the CJI to breach the fiduciary nature of his duty to keep the asset declarations confidential. The petitioners submit that the fiduciary nature of duty applies even in respect of the nature of information sought, i.e. details of whether judges declared their assets, to the CJI.

13. The petitioners contend that though the question of what has been declared (contents of individual asset details provided by the judges to CJI) is not subject matter of these proceedings, the question of its access would arise, if it is held that such declarations are "information" under the Act. The contention is that the information – if asset declarations are to be deemed as such, are exempt by virtue of Section 8(1) (j) of the Act, which provides that:

> *"(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*
>
> *Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."*

14. Counsel argues that in the absence of any legally binding norm, declaration of assets by judges, if construed to be "information" is private, and as such exempt from the Act. Counsel points to the non-obstante clause in Section 8 and submits that Parliament intended that such personal matters are kept out of bounds, as they involve

issues of privacy and confidentiality. The petitioners lastly argue that there is lack of clarity in the resolutions, about "assets" and "investments" which can easily lead to confusion, and that lack of appropriate guidelines in this regard, would lead to unknown consequences.

Respondents' contentions

15. The respondent applicant contests the argument that information which is not in the public domain cannot be accessed, and terms it as begging the question. The Act, says the applicant, defines which information will be in the public domain and is widely cast, to allay any doubts in that regard. Referring to the definition, it is submitted that irrespective of whether such notes, e-mails, advice, memos, etc. were marked confidential and made by civil servants to be kept outside the public domain, the Act expressly places them in the public domain and available to the people on the principle laid down in the matter of *State of UP v. Raj Narain*, AIR 1975 SC 865. Reliance is placed on the following observations in that judgment:

> *"[I]n a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be put 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 way, when secrecy is claimed for transactions which can, at any rate, have n o repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of public."*

The respondent contends that in a democracy, people are the masters and all civil servants or any other public servants are their servants and therefore, the masters have a right to know what their servants are doing in every detail and in every aspect which includes the decision making process. That is why notings, e-mails, memos, correspondence, advice, etc., were expressly included within the definition of

information accessible under the Act. Learned counsel submitted that the Act has overriding effect, by reason of Section 22.

16. The respondent next submits that Section 8 of the Act, in the statutory scheme, exempts certain classes of information. (The provision begins with a *non-obstante clause*); it is argued that exemptions contain several legitimate grounds for excluding information from public scrutiny in public interest. No other ground for excluding information which exists with any public authority can be deduced under the Act, particularly in respect of information merely marked "confidential". The only exemption there in connection with this is the exemption under clause 8 (1) (j) which deals with information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. However this information may also be disclosed if the Central Public Information officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information. It is argued that by no stretch of imagination can the query whether judges have declared their assets, be considered exempt; there is no question of any confidentiality or privacy. The respondents argue that the information sought is only in this regard. It was however argued, that the question of contents of asset declarations and access are also intrinsically linked to this issue, since they involve the examination of the same legal *regime.*

17. It is submitted that this issue has been settled by the Supreme Court in 2002, and 2003 in its judgment in *Union of India v. Association for Democratic Reforms,* AIR 2002 SC 2112, and *People's Union for Civil Liberties v. Union of India,* AIR 2003 SC 2363, where the Court held that the fundamental right of citizens, under Article 19 (1) (a) includes the citizens' right to know the assets and liabilities of candidates contesting elections to parliament or to the State Legislatures, thereby seeking to hold positions of

responsibility in Government. In para 50 of their judgment in the *Association for Democratic Reforms* case, it was held that:

> *"Mr. Ashwni Kumar, learned senior counsel appearing on behalf of the intervenor submitted that the aforesaid observations are with regard to citizens right to know about the affairs of the Government, but this would not mean that citizens have a right to know the personal affairs of MPs or MLAs. In our view this submission is totally misconceived. There is no question of knowing personal affairs of MP's or MLAs. The limited information is whether the person who is contesting elections is involved in any criminal case and if involved, what is the result ? Further, there are widespread allegations of corruption against the persons holding post and power. In such a situation, question is not of knowing personal affairs but to have openness in democracy for attempting to cure cancerous growth of corruption by few rays of light. Hence, citizens who elect MPs or MLAs are entitled to know that their representative has not misconducted himself in collecting wealth after being elected. This information could be easily gathered only if prior to election, the assets of such person are disclosed…"*

18. The respondent also refers to a Code of Conduct, (hereafter "the Code") evolved in the Chief Justices' Conference, (hereafter, "the Conference") in 1999, which reiterated and adopted the 1997 resolution, and says that the said Code established a mechanism and an in-house procedure to enquire into complaints against Judges, through a Committee of Judges, constituted by the CJI, to take action against those violating the Code. A copy of the resolution has been produced; the respondent says that the CJI has implemented this mechanism in several past instances, which reveals that judges have considered that these are binding standards. Extending the logic, it is emphasized that, therefore, the 1997 resolution cannot be disclaimed, as it was a conscious decision taken by judges, who hold high public office, under the Constitution of India. Counsel contends therefore, that the said resolution has the force of law, and alludes to the 1999 Conference Resolution, which states that it is a *"restatement of pre-existing and universally accepted norms, guidelines and conventions.."* Reacting to the petitioners' submission that the 1997 resolution or the 1999 Conference resolution cannot be enforced legally, it is argued that the binding nature of either resolution

cannot be undermined, and that it is for the CJI or the individual High Court Chief Justice, to take such appropriate measures as are warranted to ensure that declaration of assets takes place.

19. The respondent disputes that the information given by judges (of the Supreme Court) to the CJI is retained by him in a fiduciary capacity, and say that "fiduciary" relationship has been defined in *Black's Law Dictionary* as *"one founded on trust or confidence reposed by one person in the integrity and fidelity of another."* Similarly, the respondent places reliance on the following extracts from the definition in the Permanent Edition of *"Words and Phrases"*:

> *"Generally, the term 'fiduciary' applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another….*
>
> *… a 'fiduciary' or confidential relation in sense that a 'fiduciary' is required to render an account exists in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing the confidence.*
>
> *..The word fiduciary implies that the relationship exists only when there is a reposing of faith, confidence and trust and the placing of reliance by one upon the judgment and advice of another."*

20. It is argued that a fiduciary relationship, therefore, is based on trust and good faith, rather than legal obligation. Such relationship obligates the fiduciary to act for the benefit and interests of him, who reposes the trust in him (i.e. the fiduciary), in regard to the matter of trust. It is argued that judges, while declaring their assets, do so in their capacity as judges, and not as private individuals; the Chief Justice does not act as a fiduciary, while keeping the information given to him by them. But for the status as judge, the individual concerned would not have furnished any declaration to the CJI. According to the respondent, the process of information gathering, by the CJI is an

official process, in his official capacity; hence, no fiduciary relationship is involved. The CJI does not exercise any control over the judges, as they are holders of Constitutional office, in their right.

21. Dealing with the contention regarding exemption under Section 8(1)(j), the respondent argues that asset information of electoral aspirants are not deemed private or personal information, and blanket exemption cannot be granted; reliance is placed on the *Association for Democratic Reforms* case. It is also contended that likewise judges are public functionaries, and in their official capacity, make declarations, and immunity cannot be granted to them. Counsel disputes the petitioners' submission that independence of the judiciary would be undermined, if access to asset declaration is permitted. It is emphasized that if information is given to the Government, possibly independence of the judiciary would be compromised; however, public disclosure of the declaration, under the Act will allow access to the public, which would thwart attempt at blackmailing of individual judges, or "corrosion" of their independence.

22. The Delhi High Court Bar Association, ("DHBA") added as a party, with consent of the petitioners and the respondent, argues that the Supreme Court, and the High Court are authorities under the Constitution of India and squarely covered by the definition "public authority" similarly, it is argued that CJI and Chief Justices of High Courts are public authorities. The DHBA adopts the respondent's arguments, and further submits that the petitioners' stand that asset declarations and information about who gave declarations not being "information" is untenable. It is submitted that right to information is now a part of right to freedom of speech, and the Act merely confers statutory recognition. The definition of "information" is sufficiently wide to cover all kinds of records and information. It is submitted that the 1997 resolution was to reinforce faith in the judiciary, and the present denial of information tends to

undermine it. DHBA argues that the Act nowhere restricts information furnished to be only in respect of duties of public servants or officials.

23. Counsel for DHBA submits that the issue of judges' asset disclosure should not be considered in isolation, but in the context of the 1999 Conference resolution; here too reference is made to the "in-house" procedure or mechanism to deal with complaints against judges. It is emphasized that the Code, adopted by the Conference in 1999, is to be followed with a view to affirm people's faith in the judiciary. Contrasting the position in the case of the lower judiciary, who are obligated by specific service rules, to declare their assets, through annual returns, the DHBA submits that such specific rules may not exist in the case of the higher judiciary, yet the duty to do so arises by virtue of the high office their members occupy. Reliance is placed on the observations of the Supreme Court in *C.Ravichandran Iyer v. Justice A.M. Bhattacharjee & Others* 1995 (5) SCC 457:

> *"21. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society...."*

24. The DHBA also refers to observations made by the Supreme Court, in *K.Veeraswami v. Union of India* 1991 (3) SCC 655, and says that judges are "public

servants" under the Indian Penal Code. Observations from *S.P.Gupta v. Union of India* AIR 1982 SC 149 are relied on to say that while an independent judiciary is a must to cure legislative and executive excesses or transgressions of law or the Constitution, judges should not claim special privileges and immunities, while they impose duties of transparency upon other public officials and legislative candidates. It was submitted that the Constitution has designed elaborate safeguards to secure the tenure, salary and conditions of service of judges, with the aim of insulating them from outside influences, as they are expected to act fairly and fearlessly. This imposes a duty upon them to maintain high standards and ensure public faith. The DHBA relies on observations in the judgment reported as *Supreme Court Advocate on Record Association v. Union of India* (1993) 4 SCC 441 and says that absence of statute law does not mean that declaration of assets by judges to the CJI is without legal sanction; judges function under the Constitution, and owe their existence to it. If, in the course of their tenure, decisions to declare their personal assets are taken, with a view to establishing conventions, for future adherence, such practices have the sanctity of law, as conventions of the Constitution.

25. Mr. P.N. Lekhi, appeared for the intervenor, with the permission of the court. He challenged the petitioners' *locus standi* and submitted that they are fighting a "proxy" battle for Supreme Court judges. He submitted that judicial review can be availed of only if there is a *lis,* and the court should refrain from examining the various issues that are sought to be canvassed in these proceedings. It is argued that what the petitioners are seeking to achieve would strike at the foundation of democracy, under the Indian Constitution, and place judges of the higher judiciary above other sections of the people of India, which conflicts with its "basic structure". He therefore urged that the writ petition should be dismissed.

26. Before further discussion, it is relevant to extract the 1997 Resolution, as well as the Judicial Conference of 1999's resolution, followed by material provisions of the Act, which are reproduced below.

The 1997 Resolution:

"RESOLUTION

The following two Resolutions have been ADOPTED in the Full Court Meeting of the Supreme Court of India on May 7, 1997:

RESOLVED that an in-house procedure should be devised by the Hon'ble Chief Justice of India to take suitable remedial action against Judges who by their acts of omission or commission do not follow the universally accepted values of judicial life including those indicated in the "Restatement of Values of Judicial Life."

RESOLVED FURTHER THAT every Judge should make a declaration of all his/her assets in the form of real estate or investments (held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her) within a reasonable time of assuming office and in the case of sitting Judges within a reasonable time of adoption of this Resolution and thereafter whenever any acquisition of a substantial nature is made, it shall be disclosed within a reasonable time. The declaration so made should be to the Chief Justice of the Court. The Chief Justice should make a similar declaration for the purpose of the record. The declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential."

The 1999 Judicial Conference Resolution:

"RESTATEMENT OF VALUES OF JUDICIAL LIFE (CODE OF CONDUCT) ADOPTED IN THE CHIEF JUSTICES' CONFERENCE IN DECEMBER 1999

The Conference of Chief Justices of all High Courts was held on 3rd and 4th December, 1999 in the Supreme Court premises. During the said Conference, the Chief Justices unanimously resolved to adopt the "Restatement of Values of Judicial Life" (Code of Conduct).

WHEREAS by a Resolution passed in the Chief Justices' Conference held at New Delhi on September 18-19, 1992, it was resolved that it is desirable to restate the pre-existing and universally accepted norms, guidelines and conventions reflecting the high values of judicial life to be followed by Judges during their tenure of office;

AND WHEREAS the Chief Justice of India was further requested by that Resolution to constitute a Committee for preparing the draft restatement to be circulated to the

Chief Justices of the High Courts for discussion with their colleagues, which was duly circulated on 21.11.1993;

AND WHEREAS suggestions have been received from the Chief Justices of the High Courts after discussion with their colleagues;

AND WHEREAS a Committee has been reconstituted by the Chief Justice of India on April 7, 1997, to finalize the 'Restatement of Values of Judicial Life' after taking note of the draft Restatement of Values of Judicial Life prepared by a Committee appointed pursuant to the Resolution passed in the Chief Justices' Conference 1992 and placed before the Chief Justices' Conference in 1993;

AND WHEREAS such a Committee constituted by the Chief Justice of India has prepared a draft restatement after taking into consideration the views received from various High Courts to the draft which was circulated to them;

NOW THEREFORE, on a consideration of the views of the High Courts on the draft, the restatement of the pre-existing and universally accepted norms, guidelines and conventions called the 'RESTATEMENT OF VALUES OF JUDICIAL LIFE' to serve as a guide to be observed by Judges, essential for an independent, strong and respected judiciary, indispensable in the impartial administration of justice, as redrafted, has been considered in the Full Court Meeting of the Supreme Court of India on May 7, 1997 and has been ADOPTED for due observance.

RESTATEMENT OF VALUES OF JUDICIAL LIFE:

(1) Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.

(2) A Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.

(3) Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.

(4) A Judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.

(5) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

(6) A Judge should practice a degree of aloofness consistent with the dignity of his office.

(7) A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.

(8) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

(9) A Judge is expected to let his judgments speak for themselves; he shall not give interview to the media.

(10) A Judge shall not accept gifts or hospitality except from his family, close relations and friends.

(11) A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.

(12) A Judge shall not speculate in shares, stocks or the like.

(13) A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business).

(14) A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.

(15) A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf must be got resolved and clarified though the Chief Justice.

(16) Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

These are only the "Restatement of the Values of Judicial Life" and are not meant to be exhaustive but only illustrative of what is expected of a Judge.

Provisions of the Act

The relevant provisions of the Information Act, in the context of this case, are extracted below:

*"**2. Definitions.**-In this Act, unless the context otherwise requires,-*

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(e) "Competent authority means –

(i) the Speaker in the case of the house of the people or the legislative assembly of a State or a Union Territory having such assembly and the chairman in the case of the Council of States or Legislative.

(ii) The Chief justice of India in the case of the Supreme Court.;

(iii) The Chief justice of the High Court in the case of a High Court;

(iv) The President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution.

(v) The administrator appointed under Article 239 of the Constitution".

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(h) "Public authority" means any authority or body or institution of self – government established or constituted-

(a) by or under the Constitution of India.. <u>(rest omitted as not relevant)</u>

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(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

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(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

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***8. Exemption from disclosure of information.**- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*

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information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third part, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

(f) information received in confidence from foreign government.

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

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(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

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***11. Third party information.**-(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the*

Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under Section 6, if the third party has been given an opportunity to make representation under sub-section(2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

27. The previous narration of events and submissions would reveal that the petition involves the following points, that are to be ruled upon by the Court:

(1) Whether the CJI is a public authority;

(2) Whether the office of CPIO, of the Supreme Court of India, is different from the office of the CJI; and if so, whether the Act covers the office of the CJI;

(3) Whether asset declarations by Supreme Court judges, pursuant to the 1997 Resolution is "information", under the Right to Information Act, 2005;

(4) If such asset declarations are "information" does the CJI hold them in a "fiduciary" capacity, and are they therefore, exempt from disclosure under the Act;

(5) Whether such information is exempt from disclosure by reason of Section 8(1) (j) of the Act;

(6) Whether the lack of clarity about the details of asset declaration and about their details, as well as lack of security renders asset declarations and their disclosure, unworkable.

Point Nos. 1 and 2:

28. Both these points are taken up for consideration, together, for convenience, as they involve analysis of related issues. Before a decision on the point, a few words about the Act are necessary. Under the scheme of the Information Act, "record", "information", are held by defined "public authorities". By virtue of Sections 3, 5, 6 and 7, every public authority requested to provide information is under a positive obligation to do so; the information seeker is under no obligation to disclose why he requests it. Public authorities, as noticed above are defined by Section 2(h) as-

> *"means any authority or body or institution of self – government established or constituted-*
>
> *(a) by or under the Constitution of India."*

Section 4 obliges public authorities to publish various specified classes of information. The information provider or the concerned agency is, under the Act, obliged to decide the applications, of information seekers, within prescribed time limits. A hierarchy of authorities is created with the CIC, at the apex to decide disputes pertaining to information disclosure. In this Scheme, the Parliament has in its wisdom, visualized certain exemptions. Section 6 enjoins that information disclosure is the norm; in case the public authority who is approached, does not possess the information sought, the

Public Information Officer (PIO) has to forward the application, under Section 6(3) to the authority who actually holds the information; in that situation, the latter authority is accountable for disclosure of the information. Section 8 lists exemptions; it opens with a *non-obstante* clause, signifying the intention that irrespective of the rights of the information seeker, in regard to matters listed under that provision, the information providers can justifiably withhold access to the information seeker the record, information or queries sought for by him (i.e. the information seeker or applicant).

29. The Act arguably is one of the most important pieces of legislation, in the post independence era, to effectuate democracy. It may be likened to a powerful beacon, which illuminates unlit corners of state activity, and those of public authorities which impact citizens' daily lives, to which they previously had no access. It mandates disclosure of all manner of information, and abolishes the concept of *locus standi*, of the information applicant; no justification for applying (for information) is necessary; indeed, Section 6(2) enjoins that reasons for seeking such information cannot be sought- (to a certain extent, this bar is relieved, by Section 8). Decisions and decision making processes, which affect lives of individuals and collectives can now been subjected to gaze; if improper motives, or reasons contrary to law or avowed policies are discernable, those actions can be questioned. Parliamentary intention in enacting this law was to arm citizens with the mechanism to scrutinize government and public processes, and ensure transparency. At the same time, however, the needs of society at large, and governments as well as individuals in particular, to ensure that sensitive information is kept out of bounds, have also been accommodated, under the Act. This has been addressed at two levels: one, by taking a number of security and intelligence related organizations out of purview of the Act, and two, by enacting specified exemptions – from disclosure, on grounds of public interest.

30. As noted previously, "public authority" has been widely defined; it includes an authority created by or under the Constitution of India. The CIC concluded that the CJI is a public authority, on a facial reading of Article 124. The provision is under the heading "Establishment and constitution of the Supreme Court," and in the relevant part, it says that *"There shall be a Supreme Court of India consisting of a Chief Justice of India and…"* The Act, notes the CIC, also provides for competent authorities defined by Section 2(e). The CJI is one such specified competent authority, in relation to the Supreme Court, under Section 2(e) (ii) of the Act and Section 28 empowers him to frame Rules to carry out purposes of the Act. In view of these provisions, the court is of opinion that the CIC did not commit any error in concluding that the CJI is a public authority.

31. The second point, which flows out of the first, requires further examination. It is contended that the office of the CJI is different from that of the Registry (of the Supreme Court); the further contention here appears to be that the CJI performs a verisimilitude of functions, than merely as Chief Justice of the Supreme Court, and in such capacity, through his office, separately holds asset declarations, and information relating to it, pursuant to the 1997 resolution.

32. That the Constitution recognizes the CJI's prominent role in higher judicial appointments is stating the obvious. He is, unlike the United States (where the Chief Justice is the Chief Justice of the US Supreme Court) the Chief Justice of India. This prominent role as "head of the judiciary" or the judicial family, if one may use a well worn term, was underlined by a Constitution Bench of the Supreme Court in *K. Veeraswami v. Union of India* 1991 (3) SCC 655, where the court, by the majority and concurring judgments held that members of the higher judiciary (High Courts and the Supreme Court) are covered by the Prevention of Corruption Act, and can be prosecuted, provided the CJI is consulted beforehand, and consents to that course. Mr. Justice J.S. Verma (who later held the office of Chief Justice of India with distinction)

dissented; he held that the Prevention of Corruption Act, according to its scheme, as existing, does not apply to constitutional functionaries, such as Judges of the High Courts, Judges of the Supreme Court, the Comptroller and Auditor General and the Chief Election Commissioner. Though not a "vertical" superior (to borrow a phrase from the dissenting opinion in *Veeraswami*) nevertheless the CJI discharges various other functions. The question is whether those are exempted from the Act.

33. It would be necessary to recollect here that initially, in this case, the Appellate authority had remitted the matter for consideration of the respondent's query- which was in two parts, one, being information about whether declarations were made by Supreme Court judges, and two, being about declarations made by High Court judges to the respective Chief Justices. The appellate authority held, *inter alia,* that:

> *"The order of the CPIO is silent regarding Section 6 (3) of the Right to Information Act. To the above extent, I feel that the appellant is justified in contending that if the CPIO was not holding the information, he should have considered the question of Section 6 (3). Regarding the respective States, if the CPIO was not holding information, he should have considered whether he should have invoked the provision under Section 6 (3) of the Right to Information Act."*

The first petitioner (CPIO), however, after remand did not address the issue fully; he only asked the applicant to approach the concerned States for what he sought. Thus, whether the information relating to asset declaration was held by the CJI or separately in another office of the CJI, was left unanswered.

34. Now, there cannot be any two opinions about the reality that the Chief Justice of India performs a multitude of tasks, specifically assigned to him under the Constitution and various enactments; he is involved in the process of appointment of judges of High Courts, Chief Justices of High Courts, appointment of Judges of Supreme Court, transfer of High Court judges and so on. Besides, he discharges *administrative* functions under various enactments or rules, concerning appointment of members of quasi judicial

tribunals; this may be by him, or nominees (other Supreme Court judges) appointed by him. He is also involved in the administration of legal aid, and heads policy formulation bodies, under law, in that regard, at the national level; he heads the judicial education programme initiative, at the national level. It is quite possible therefore, that the Chief Justice, for convenience maintains a separate office or establishment. However, the petitioners did not urge about these aspects, or bring any other facts to this court's notice.

35. What this court cannot ignore, regardless of the varied roles of the CJI, is that they are directly relatable to his holding the office of CJI, and heading the Supreme Court. His role as Chief Justice of India, is by reason of appointment to the high office of the head of the Supreme Court. The first petitioner did not assign the application to either the CJI or any other office or authority; it is not also urged that such office has a separate establishment, with its own Public Information Office, under the Act. There is no provision, other than Section 24, exemption organizations. That provision exempts, through the Second Schedule (to the Act), the Intelligence Bureau, Research and Analysis Wing of the Cabinet Secretariat; Directorate of Revenue Intelligence; Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotic Control Bureau, Aviation Research Centre, various para-military forces, and named police establishments. Section 24(2) empowers the Central Government, by notification to vary the Second Schedule, and add other organizations. There is no clue in these provisions, that the office of the Chief Justice of India, is exempt; on the contrary, internal indications in the enactment point to even the President of India, being covered by the Act (Section 2(h) and Section 2(e) (iv)). To conclude that the CJI does not hold asset declaration information in his capacity as Chief Justice of India, would also be incongruous, since the 1997 resolution explicitly states that the information would be given to him. In these circumstances the court concludes that the CJI holds the information pertaining to asset declarations in his capacity as Chief Justice; that office is

a "public authority" under the Act and is covered by its provisions. The second point stands decided, accordingly.

Point No. 3

36. The definition of "information" under Section (f) is as follows:

> *""information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.."*

As evident, the definition is extremely wide; the crucial words are *"any material in any form"*. The other terms amplify these words, explaining the kind of forms that information could be held by an authority. It also includes *"information relating to any private body which can be accessed by a public authority under any other law for the time being in force".* Facially, the definition comprehends all matters which fall within the expression "material in any form". There is no justification in cutting down their amplitude by importing notions of those materials which are mandatorily held by it. The emphasis is on the information available, having regard to the objectives of the Act; not the manner in which information is obtained or secured by the authority. Thus, *inter se* correspondence of public authorities may lead to exchange of information or file sharing; in the course of such consultative process, if the authority borrowing the information is possessed of it, even temporarily, it has to account for it, as it is "material" held. As far as the later part of the definition, i.e. accessing of information by or under any law, is concerned, it appears that this refers to what is with a private organization, but can be accessed by the public authority, under law. The court deduces this, because the theme is included by the conjunctive "and"; but for such inclusion, such private information would not have been subjected to the *regime* of the Act. Therefore, it is held that all "material in any form" includes all manner of information;

the absence of specific exclusion leads this court to conclude that asset declarations by judges, held by the CJI are "information", under Section 2(f).

37. The court would now proceed to discuss the decisions cited by the petitioners. In *Dwarkanath Tewari,* the question was take-over of management of a school, under provisions of an Education Code. The Supreme Court held that the action was unlawful, as the Education Code did not have the force of law:

> *"the Code has no greater sanction than an administrative order or rule, and is not based on any statutory authority or other authority which could give it the force of law. Naturally, therefore, the learned Solicitor General, with his usual fairness, conceded that the article relied upon by the respondents as having the force of law, has no such force, and could not, therefore, deprive the petitioners of their rights in the properties aforesaid."*

In K*ruze* v. *Johnson (supra)* the court considered the validity of a bye-law, framed by a county council, saying that it was one having the force of law as one affecting the public or some section of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. If validly made such a bye-law has the force of law within the sphere of its legitimate operation. The function of such bye-laws is to supplement the general law by which the legislature delegates its own power to make them. This holding was followed by our Supreme Court in *Indian Airlines Corpn. v. Sukhdeo Rai,* (1971) 2 SCC 192.

38. The above decisions were rendered at a time, when administrative law in this country was in a nascent stage of development. Early decisions of the Supreme Court had ruled that in absence of a duty under a statute or law, a writ of mandamus would not lie. This perception slowly changed, after the decision in *A.K. Kraipak v. Union of India* 1969 (2) SCC 262, where it was held that the line between quasi-judicial orders and administrative orders had thinned. The court said that arriving at a just decision was the

aim of both quasi-judicial enquiries as well as administrative enquiries and that an unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. Similarly, enforceability of non-statutory norms through writ proceedings was underlined, in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani,* (1989) 2 SCC 691:

> *"..They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied."*

It may be worthwhile mentioning, that far back, in *B.N. Nagarajan v. State of Mysore,*(1966) 3 SCR 682, a Constitution Bench of the Supreme Court rejected a submission that absence of rules framed under Article 309, or a legislation, constrained the executive from prescribing terms and conditions of service of its employees. The court observed that:

> *"We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that rule or act."*

For these reasons, and in the light of the previous conclusion regarding whether declarations had to be mandated by norms having the force of law, the court is of the view that the cases cited on behalf of the petitioners are not apt, for a decision in these proceedings.

39. The next limb of the question is the important ground for the petitioners' questioning the impugned order was that the 1997 Resolution is non-binding and entirely volitional, vis-à-vis judges of the Supreme Court. The petitioners argued that

though the Resolution commended declaration of assets to the CJI, it did not have any legal sanctity, and was not based on any legal obligation. Thus, if an individual judge were not to furnish a declaration, as was expected by the Resolution, the omission could not be addressed. It was emphasized that dependence on an individual's volition, afforded an extremely tenuous foundation, (equal to none) to say that there existed a legal obligation. At best the Resolution encapsulated a hope, and recorded an unenforceable moral declaration by those making it. The further argument was that the CJI had no power under the Constitution, or any law, to compel the individual Justice omitting to declare his assets, or take remedial measures, was underlined as a strong indicator that the obligation, if so termed, was moral, and not legal. Reliance was placed upon for the submission that duties to be termed as such are to be founded on some legal provision. The context of this argument was that any matter or material held without mandate of law, or not mandated by law, is not "information".

40. The respondent and the interveners countered the petitioners' submission by saying that the Resolutions were meant to be complied with, and not otherwise. Commenting on the lack of any mechanism for it's (the Resolution's) enforcement, it was argued that the method of dealing with it would be for the CJI to consider. The interveners argued that the Chief Justices' Conferences, held annually, are not sanctioned by law- in the sense understood; each High Court is autonomous, under the Constitution, and yet no one questions this annual practice, for which considerable public expenditure is incurred. These, say the interveners, establish that the foundations of the obligation (to declare personal assets) are not confined to the provisions of the Constitution, or any law, but on conventions and practices which develop around them, and crystallize into binding norms. For support, reliance was placed upon the judgment of the Supreme Court, in the *Supreme Court Advocates on Record Association* case.

41. The merits of the argument – about whether the Resolution's provisions for declaration (of assets, by judges) involve, to a great extent, an examination of Judges' role in society, and under the Constitution. India adopted her Constitution 62 years ago with the avowed objective of ushering a Democratic state. The scheme of power-sharing envisions both horizontal distribution (between the three branches, i.e. legislature, executive and judicial) and vertical -Centre, State, Local bodies and Panchayats. Autonomy is granted to certain specifically created bodies (Election Commission, Comptroller and Auditor Genral, Union Public Service Commission), which are mandated to be independent in their functioning, to effectuate democratic guarantees, and fairness in official functioning. The Courts play a pivotal role in this scheme; they arbiter disputes that arise between these wings, - between states, between individuals or citizens and states or their agencies, between disputing citizens and so on. The duty of interpreting the Constitution is that of the courts (the Supreme Court and the High Courts). Judicial review – through Articles 32 and 226 of the Constitution forms a critical component of this unique structure; it is deemed almost inviolate; and non-derogable (*L. Chandra Kumar v. Union of India* 1997 (3) SCC 261; *Minerva Mills v. Minerva Mills v. Union of India* 1980 (3) SCC 625; *Kesavananda Bharati v. Union of India* 1973 Supp SCR 1).

42. The underlying premise of every modern Constitution is that power, wherever given, is held and exercised in trust. Thus provisions are made to account for the use of such power; these are often alluded to as a system of checks and balances, whereby the tendency of one wing of the state overstepping its bounds, is curtailed. To the legislator or Parliamentarian, is added on additional check of public opinion, and the attendant voter rejection, (for perceived misdeeds, inaction or abuse of power) in an election. A minister's tenure is guaranteed as long as he has the confidence of the Chief Minister or Prime Minister, or as long as the Council of Ministers has the confidence of the legislature. A Civil Servant, however, enjoys greater assurance of tenure, and can be

removed or dismissed on previously prescribed grounds, after following fair procedures, mandated by rules of legal provisions. In this context, the judicial role is unique, and the measure of confidence placed on judges is reflected in the protection afforded to their tenure, as well as the extent their functioning is insulated from other branches (of government) and all sources of potential influence. The protection given, in India, is of a very high order, to members of the higher judiciary. They cannot be removed from office, except for proved misbehavior; the removal can be only by two-thirds majority of each House of Parliament followed by an address to the President; this is to be preceded by findings of a three-member inquiry; the composition of this tribunal lends objectivity to the process, of a very high order. One may well ask why such a high degree of protection is granted. If the answer were to be summed up in one word, it is independence. Independence is multidimensional - it is hierarchal (i.e. freedom to decide according to law, -which includes binding precedent- unconstrained by dictates of judicial hierarchy); it is the independence to decide irrespective of parties' expectations; to decide unconstrained by the individual judge's expectations of public approbation or condemnation, about the result; to decide on the basis of objectively known and discernable, binding, legal principles, rather than caprice or humour. The inalienable value of independence of the judiciary – achieved through entrenched provisions in the Constitution of India – has been repeatedly emphasized in several decisions, during the last 59 years (*J. P. Mitter v. Chief Justice, Calcutta* AIR 1965 SC 961; *Kesavananda Bharati (*supra); *Smt. Indira Nehru Gandhi v. Shri Raj Narain* 1975 Supp SCC 1; *In re the Special Courts Bill* 1979 (1) SCC 380; *S.P.Gupta v. Union of India* AIR 1982 SC 149; *K. Veeraswami* (supra); *Sub-Committee on Judicial Accountability v. Union of India* 1991 (4) SCC 699 [holding that independence of the judiciary is *"an essential attribute of the rule of law"* and therefore, a part of the basic structure of the Constitution of India]; *Supreme Court Advocates on Record Association* (supra) *C. Ravichandran Iyer* (supra); *L.*

Chandra Kumar (supra); and *Re Special Reference No. 1 of 1998* (1998 [7] SCC 739 and *I.R. Coelho v. State of Tamil Nadu* 2007 (2) SCC1).

43. A judge's independence, paradoxically imposes duties on him (or her): duty to decide according to law and binding precedent, rather than individual choice of the judge's notion of justice of the case; the duty to not only do justice, but follow a fair procedure which accords with notions of justice: "appear to be doing justice", which in turn would mean that the judge is not completely "free" to follow a personal agenda, but has to decide the merits of the case, according to facts presented by parties. This aspect is summed up by Dr. Frances Kahn Zemans, in her article *"The Accountable Judge: Guardian of Judicial Independence,"* 72 S. CAL. L. REV. 625, 646-47 (1999) as follows:

> *"The impression that the judge relies on fairness as the standard against which to measure decisions can have dangerous implications that the judge is free to follow her conscience despite the law. Sometimes the law itself is unfair or unwise, but lacking a constitutional infirmity the judge is bound by it. And unless there is a legal basis, the judge cannot right every wrong. In addition, judges do not set their own agendas. Thus, they are dependent on others to bring claims before them. While these are quite obvious to judges and lawyers, they may not be so obvious to those who need to be convinced that judicial independence is to be valued and protected…"*

44. The second duty – another dimension of independence- is that judges do not decide cases by dictates of popularly held notions of right and wrong. Indeed a crucial part of the judge's mandate is to uphold those fundamental values upon which society organizes itself; here, if the judge were to follow transient "popular" notions of justice, the guarantees of individual freedoms, entrenched in the Constitution, would be rendered meaningless. Again, Justice Micheal Kirby, an outstanding contemporary jurist, underlined this value of independence in the following words:

> *"In a pluralist society judges are the essential equalisers. They serve no majority or any minority either. Their duty is to the law and to justice. They do not bend the knee to the governments, to particular religions, to the military, to money, to*

tabloid media or the screaming mob. In upholding law and justice, judges have a vital function in a pluralist society to make sure that diversity is respected and the rights of all protected."

Dr. Aharon Barack, former Chief Justice of Israel, in his acclaimed work *"Judges in a Democracy"* underlines that transient "popular" notions of justice can never be the basis of a proper verdict. He summarizes this paradox as follows:

"...An essential condition for realizing the judicial role is public confidence in the judge. This means confidence in judicial independence, fairness and impartiality. It means public confidence in the ethical standards of the judge. It means public confidence that judges are not interested parties to the legal struggle and that they are not fighting for their own power but to protect the constitution and democracy. It means that public confidence that the judge does not express his own personal views but rather the fundamental beliefs of the nation...This fact means that the public recognizes the legitimacy of judicial decisions, even if it disagrees with their content.

The precondition of 'public confidence' runs the risk of being misunderstood. The need to ensure public confidence does not mean the need to ensure popularity. Public confidence does not mean following popular trends or public opinion polls. Public confidence does not mean accountability to the public in the way the executive and the legislature are accountable. Public confidence does not mean pleasing the public; public confidence does not mean ruling contrary to the law or contrary to the judge's conscience to bring about a result that the public desires. On the contrary, public confidence means ruling according to the law and according to the judge's conscience, whatever the attitude of the public may be..."

45. Having set this backdrop, it is necessary to examine the rival contentions. That the Resolution, so far as it mandates judges' asset disclosure to the CJI is not grounded on any law, or founded on a Constitutional provision, or that there are no provisions similar to the Ethics in Government Act, 1978 as in the United States, explicitly obliging judges and other public servants to disclose personal assets, cannot be doubted. Yet, the debate cannot end on that note itself. Judges, in a modern society – more so in India, in the legitimate exercise of their jurisdiction, handle complex social, political and economic issues. Very frequently, this means that significant policy gaps in legislation, or

executive determinations are to be commented, or ruled upon. Such filling in of the "gaps" is recognized as falling within the legitimate domain of the courts. Rights and liberties of individuals and collectives, as well as duties and limitations placed upon governments, or their myriad agencies, are routinely examined and adjudicated upon, by courts. In the exercise of such jurisdiction, courts generally and judges in particular act as neutral and impartial arbiters; while discharging such powers, they are custodians of the law. The power is undeniably vast and the impact of judgments, depending on what is in issue, wide and sweeping. If the courts and judges are placed in the context of a modern democracy, it is imperative that the value of independence and freedom from bias and other unwanted tendencies ought to be- *in principle*- accounted for. The system of checks and balances, which ensures, at two levels – internally (through appeals, reviews and overruling of precedents by larger bench decisions), and externally, through overbearing legislation of a verdict, deemed unworkable or not in accord with the law which is interpreted, guarantees institutional accountability.

46. If one considers that Legislators, Parliamentarians and Administrators are held to standards of disclosure (of personal assets) whether by express rules (as in the case of the civil services) or so mandated, by virtue of the elective office legislators aspire to (by reason of the law declared by the Supreme Court, in the *Association for Democratic Reforms case*) the petitioners' argument seems strained. Judges – of the Supreme Court and the High Courts, swear to uphold the Constitution and the laws. The oath poignantly reminds the judge who dons the robes would decide "without fear or favour" - an obvious reference to the independent role. It would be highly anomalous to say that in exercise of the legitimate jurisdiction to impact peoples' lives, property, liberties and individual freedoms, as well as interpret duties and limitations placed upon state and non-state agencies, barring the institutional accountability standards existing in the Constitution, judges have no obligation to disclose their personal assets, to someone or authority.

47. All power – judicial power being no exception – is held accountable in a modern Constitution. Holders of power too are expected to live by the standards they set, interpret, or enforce, at least to the extent their office demands. Conventions and practices, long followed, are known to be legitimate sources, and as binding upon those concerned, as the express provisions themselves. This was emphasized, by a nine-judge Bench, in *Supreme Court Advocates-on-Record Assn. case (supra)*:

> *"The primary role of conventions is to regulate the exercise of discretion — presumably to guard against the irresponsible abuse of powers. Colin R. Munro in his book Studies in Constitutional Law (1987 Edn.) has summed up the field of operation of the conventions in the following words:*
>
> > *"Some of the most important conventions, therefore, are, as Dicey said, concerned with 'the discretionary powers of the Crown' and how they should be exercised. But it is not only in connection with executive government and legislature-executive relations that we find such rules and practices in operation. They may be found in other spheres of constitutional activity too; for example, in relations between the Houses of Parliament and in the workings of each House, in the legislative process, in judicial administration and judicial behaviour, in the civil service, in local government, and in the relations with other members of the Commonwealth."*
>
> *....Sir Ivor Jennings puts it as under:*
>
> > *"The laws provide only a framework; those who put the laws into operation give the framework a meaning and fill in the interstices. Those who take decisions create precedents which others tend to follow, and when they have been followed long enough they acquire the sanctity and the respectability of age. They not only are followed but they have to be followed."*
> >
> > *"...We are of the view that there is no distinction between the "constitutional law" and an established "constitutional convention" and both are binding in the field of their operation. Once it is established to the satisfaction of the Court that a particular convention exists and is operating then the convention becomes a part of the "constitutional law" of the land and can be enforced in the like manner."*

(emphasis supplied)

The Supreme Court therefore, concluded, in that case, that the practice of accepting the Chief Justice of India's advice, for appointment of judges, had resulted in a binding convention.

48. The 1997 Resolution (and the 1999 Judicial Conference resolution) were intended, in this Court's opinion to reflect the best practices to be followed, and form the standards of ethical behaviour of judges of the higher judiciary. As observed earlier, independence and impartiality of judges are "core" judicial values. There are others, equally, if not more important. Those values – or canons, as the 1999 Judicial Conference Resolution puts it – flesh out what all judges should conform to, such as avoidance of certain types of conduct, rectitude in public and private life, avoidance of any relationship that could potentially conflict with judicial functions, avoidance of spouses' and children practicing in the Court of the judge concerned, prohibition of certain kinds of investment, avoiding airing views by the judge in the press or newspaper (in sensitive or controversial matters, or those likely to be considered by the Court) and so on. That these canons are an inalienable part of what a judge is and how he or she is expected to behave, is not doubted. The declaration of assets by such judges to their respective Chief Justices was a part of that codification process; the 1999 Judicial Conference Resolution sees the 1997 Resolution (of the Supreme Court) as such. It might arguably be stated that no such norm existed, before the 1997 Resolution, requiring declaration of assets by judges. That might be so; yet such ethical norms are neither static nor are in a vacuum. They are in one sense universal (as in the case of the need to be unbiased, impartial, independent and maintain probity and rectitude); at the same time, they are contextual to the times – particularly when they pertain to the kinds of behaviour, relationships and investments that could be deemed acceptable – or not acceptable- having regard to a judge's role and challenges faced by Court during

particular times. Seen from this dynamic, norms of judicial ethics are placed in a continuum, evolving with contemporary challenges. Therefore, the introduction of the stipulation of declaring personal assets, is to be seen as an essential ingredient of contemporary acceptable behaviour and establishing a convention.

49. This court is of the opinion that the volitional nature of the resolutions, should be seen as the higher judiciary's commitment to essential ethical behaviour, and its resolve to abide by it. Therefore, that such need to declare assets is not mandated by Parliamentary law, or any statutory instrument, becomes of secondary importance. The mere fact that Supreme Court judges (through the 1997 Resolution) and members of the higher judiciary (through the Judicial Conference Resolution) recognize these as normative, and governing their conduct, is sufficient to bind them. They formed a set of conventions of the Constitution. To conclude otherwise would *endanger credibility* of the institution, which prides – by its adherence to the doctrines of precedent, and *stare decisis* (in the discharge of its constitutional obligation in judging) – in consistency, and by meaning what it says, and saying what it means. This aspect is summed up aptly by an Australian Judge in the following manner:

> *"Some standards can be prescribed by law, but the spirit of, and the quality of the service rendered by; a profession depends far more on its observance of ethical standards. These are far more rigorous than legal standards.... They are learnt not by precept but by the example and influence of respected peers. Judicial standards are acquired, so to speak, by professional osmosis. <u>They are enforced immediately by conscience."</u>*
>
> [Ref. Justice J.B. Thomas; *Judicial Ethics in Australia, 2d ed.* Sydney: LBC Information Services,1997]

50. There is yet, perhaps one more powerful reason to hold that the 1997 Resolution binds members of the higher judiciary. In its interpretation of non-statutory instruments – be they orders, circulars, or policies- by state, or agencies (as understood under Article 12 of the Constitution of India) the Supreme Court has ruled on several occasions (Ref

Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489; *H.V. Nirmala v. Karnataka State Financial Corpn.,*(2008) 7 SCC 639; *G.J. Fernandez v. State of Karnataka* 1990 (2) SCC 488 and *Union of India v. Rajpal Singh* 2009 (1) SCC 216) that such executive determinations are binding on the authority making it (*"executive authority must be rigorously held to the standards by which it professes"- Ramana Dayaram; supra).* While there cannot be any dispute that the 1997 Resolution was made by a body- Full Court of the Supreme Court, and the 1999 Resolution, through a Chief Justices' conference – which is not accorded constitutional status, and granted that High Courts are not "subordinate" to the Supreme Court in the sense that the latter has no powers of superintendence, yet, those bodies (the conference) are undeniably collegial, consisting of the highest judicial authorities of each High Court, and the Supreme Court. The decisions taken, and resolutions adopted during their deliberations are aimed at arriving at common solutions to grapple problems that beset the legal system of the country as a whole. The resolutions and decisions are taken seriously, and with the intention of implementation. To put it otherwise, the resolutions were made (and similar resolutions, are made) to be followed and adhered to. In these circumstances, it would be robbing the solemnity of the Resolutions adopted in 1997 to say that they were made with the expectation of not being implemented.

51. This court, is also mindful that the law declared in Supreme Court, based on the existence of conventions of the Constitution, in the *Supreme Court Advocates on Record Association* case, ushered a new chapter in the annals of our Constitutional history, whereby the function of recommending appointments to the higher judiciary was left almost exclusively to the senior most echelons of the High Court and Supreme Court (for High Courts') and for the Supreme Court, exclusively to a defined collegial body of its five senior most judges. One (perhaps) implied and inarticulate premise of the judgment was the emergence of professionally better equipped judges, with the required degree of independence, insulated from potential conflicts and capable of handling complex

legal issues for the years to come. The 1997 Resolution, and the Judicial Conference Resolution of 1999 have to be placed in perspective, and this historical contest, where the higher judiciary – in the wake of the 1993 judgment, committed itself, for the first time, to a declared set of codified standards. In view of the above discussion, the court finds that the 1997 Resolution binds all those covered by it.

52. The last submission of the petitioners' counsel, on this point, was while emphasizing that the 1997 Resolution was at best a moral declaration, that it could not, in the event of its non-compliance be enforced. No doubt, the CJI is not a "vertical" superior (to borrow the phrase from the dissenting opinion in *K. Veeraswami*). In that sense, there is vacuum, in regard to a prescribed mechanism for ensuring compliance, by all those who make, and are governed, by the Resolution. Yet, as underlined in the preceding part of this judgment, this aspect of the matter cannot be viewed from the traditional duty-breach-enforcement perspective. The Resolution of 1997 is *meant to be adhered to;* the question of its non-adherence should not be debated. Members of the higher judiciary in this country occupy high Constitutional office; the Constitution designedly devised only one procedure for removal, and conferred immense confidence on these functionaries. The assumption was, and continues to be that holders of these offices are women and men of impeccable credentials, and maintain the highest standards of probity in their professional and personal lives. They are deemed to be aware of the demands of their office, and the role of judges. Therefore, if they consciously decide to create a self-regulatory norms, their adherence is guaranteed. That there is no objective mechanism to ensure its implementation is in the circumstances, of little or no moment, because the consequence of not complying – with the Resolution, is linked to the faith in the system: the thought alone is sufficient to incentivize compliance. Moreover, the question of enforceability should be seen in the context of a given situation. Peer pressure, the administrative options available with the

CJI and the Chief Justices of High Courts, would be weighed carefully, with the aim of seeing that asset declarations are made.

53. In view of the above discussion, it is held that the second part of the respondent's application, relating to declaration of assets by the Supreme Court judges, is "information" within the meaning of the expression, under Section 2 (f) of the Act. The point is answered accordingly; the information pertaining to declarations given, to the CJI and the contents of such declaration are "information" and subject to the provisions of the Right to Information Act.

Point No. 4

54. The petitioners argue that assuming that asset declarations, in terms of the 1997 constitute "information" under the Act, yet they cannot be disclosed – or even particulars about whether, and who made such declarations, cannot be disclosed – as it would entail breach of a fiduciary duty by the CJI. The petitioners rely on Section 8 (1) (f) to submit that a public authority is under no obligation to furnish *"information available to a person in his fiduciary relationship".* The petitioners emphasize that the 1997 Resolution crucially states that:

> *"The declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential."*

The respondent, and interveners, counter the submission and say that CJI does not stand in the position of a fiduciary to the judges of the Supreme Court, who occupy high Constitutional office; they enjoy the same judicial powers, and immunities and that the CJI cannot exercise any kind of control over them. In these circumstances, there is no "fiduciary" relationship, least of all in relation to making the asset declarations available to the CJI, who holds it because of his status as CJI. It is argued that a fiduciary relationship is created, where one person depends, on, or entrusts his affairs to

someone, who has superior knowledge, or enjoys an advantage, which would be beneficial to the person entrusting the subject matter of trust.

55. It is necessary to first discern what a fiduciary relationship is, since the term has not been defined in the Act. In *Bristol & West Building Society v. Mothew* [1998] Ch 1, the term "fiduciary", was described as under:

> *"A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence."*

Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan,(2005) 1 SCC 212 and *Needle Industries (India) Ltd v. Needle Industries (Newey) India Holding Ltd* : 1981 (3) SCC 333 establish that Directors of a company owe fiduciary duties to its shareholders. In *P.V. Sankara Kurup v. Leelavathy Nambiar,* (1994) 6 SCC 68, the Supreme Court held that an agent and power of attorney holder can be said to owe a fiduciary relationship to the principal.

56. In a recent decision (*Mr. Krishna Gopal Kakani v. Bank of Baroda* 2008 (13) SCALE 160) the Supreme Court had to decide whether a transaction resulted in a fiduciary relationship. Money was sought to be recovered by the plaintiff, from a bank, who had moved the court for auction of goods imported, and retained the proceeds,; the trail court overruled the objection to maintainability, stating that the bank held the surplus (of the proceeds) in a fiduciary capacity. The High Court upset the trial court's findings, ruling that the bank did not act in a fiduciary capacity. The Supreme Court affirmed the High Court's findings. The court noticed Section 88 of the Trusts Act, which reads as follows:

> *"Section 88. Advantage gained by fiduciary.- Where a trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so*

bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained."

Affirming the High Court's findings that the bank did not owe a fiduciary responsibility to the appellant, it was held by the Supreme Court, that:

"9. An analysis of this Section would show that the Bank, to whom the money had been entrusted, was not in the capacity set out in the provision itself. The question of any fiduciary relationship therefore arising between the two must therefore be ruled out. It bears reiteration that there is no evidence to show that any trust had been created with respect to the suit money.."

The following kinds of relationships may broadly be categorized as "fiduciary":

- Trustee/beneficiary (Section 88, Indian Trusts Act, 1882)
- Legal guardians / wards (Section 20, Guardians and Wards Act, 1890)
- Lawyer/client;
- Executors and administrators / legatees and heirs
- Board of directors / company
- Liquidator/company
- Receivers, trustees in bankruptcy and assignees in insolvency / creditors
- Doctor/patient
- Parent/child:

57. *The Advanced Law Lexicon*, 3rd Edition, 2005, defines fiduciary relationship as

"a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the relationship….Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who is a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that

has traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer"

58. From the above discussion, it may be seen that a fiduciary relationship is one whereby a person places complete confidence in another in regard to a particular transaction or his general affairs or business. The relationship need not be "formally" or "legally" ordained, or established, like in the case of a written trust; but can be one of moral or personal responsibility, due to the better or superior knowledge or training, or superior status of the fiduciary as compared to the one whose affairs he handles. If viewed from this perspective, it is immediately apparent that the CJI cannot be a fiduciary vis-à-vis Judges of the Supreme Court; he cannot be said to have superior knowledge, or be better trained, to aid or control their affairs or conduct. Judges of the Supreme Court hold independent office, and are there is no hierarchy, in their judicial functions, which places them at a different plane than the CJI. In these circumstances, it cannot be held that asset information shared with the CJI, by the judges of the Supreme Court, are held by him in the capacity of a fiduciary, which if directed to be revealed, would result in breach of such duty. So far as the argument that the 1997 Resolution had imposed a confidentiality obligation on the CJI to ensure non-disclosure of the asset declarations, is concerned, the court is of opinion that with the advent of the Act, and the provision in Section 22 – which overrides all other laws, etc. (even overriding the Official Secrets Act) the argument about such a confidentiality condition is on a weak foundation. The mere marking of a document, as "confidential", in this case, does not undermine the overbearing nature of Section 22. Concededly, the confidentiality clause (in the 1997 Resolution) operated, and many might have *bona fide* believed that it would ensure immunity from access. Yet the advent of the Act changed all that; all classes of information became its subject matter. Section 8(1) (f) affords protection to one such class, i.e. fiduciaries. The content of such provision may include certain kinds of relationships of public officials, such as doctor-patient relations; teacher-pupil

relationships, in government schools and colleges; agents of governments; even attorneys and lawyers who appear and advise public authorities covered by the Act. However, it does not cover asset declarations made by Judges of the Supreme Court, and held by the CJI.

59. For the above reasons, the court concludes the petitioners' argument about the CJI holding asset declarations in a fiduciary capacity, (which would be breached if it is directed to be disclosed, in the manner sought by the applicant) to be insubstantial. The CJI does not hold such declarations in a fiduciary capacity or relationship.

Point No. 5

60. The petitioners argue that the information sought for is exempt from disclosure by reason of Section 8 (1) (j) of the Act. The argument here is that such class of information – about personal asset declarations has nothing to do with the individual's duties required to be discharged, as a judge, an obvious reference to the first part of Section 8 (1) (j); it is also emphasized that access to such information would result in unwarranted intrusion of privacy. The applicant counters the submission and says that details of whether declarations have been made, to the CJI can hardly be said to be called "private" and that declarations are made by individual judges to the CJI in their capacity as judges. It is submitted that the present proceeding is not concerned with the content of asset declarations.

61. The scheme of the Act, visualizes certain exemptions from information disclosure. Section 8 lists these exemptions; it opens with a *non-obstante* clause, signifying the intention that irrespective of the rights of the information seeker, in regard to matters listed under that provision, the information providers can justifiably withhold access to the information seeker the record, information or queries sought for by him. Section 8 (1) (j) says that disclosure may be refused if the request pertains to:

"personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual"

If, however, the information applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted, and after duly notifying the third party (i.e. the individual who is concerned with the information or whose records are sought) and after considering his views, the authority can disclose it.

62. The right to access public information, that is, information in the possession of state agencies and governments, in democracies is an accountability measure empowering citizens to be aware of the actions taken by such state "actors". This transparency value, at the same time, has to be reconciled with the legal interests protected by law, such as other fundamental rights, particularly the fundamental right to privacy. Certain conflicts may underlie particular cases of access to information and the protection of personal data, arising from the fact that both rights cannot be exercised absolutely in all cases. The rights of all those affected must be respected, and no single right must prevail over others, except in clear and express circumstances. To achieve these objectives, and resolve the underlying the tension between the two (sometimes) conflicting values, the Act reveals a well-defined list of 11 kinds of matters that cannot be made public, under section 8(1)(j). There are two types of information seen as exceptions to access; the first usually refers to those matters limited only to the State in protection of the general public good, such as national security, international relations, confidentiality in cabinet meetings, etc. The second class of information with state or its agencies, is personal data of individual citizens, investigative processes, or confidential information disclosed by artificial or juristic entities, like corporations, etc. Individuals' personal data is protected by the laws of access to confidential data and by privacy rights. Often these guarantees – right to access information, and right to privacy, occur at the same regulatory level. The Universal Declaration of Human Rights, through

Article 19 articulates the right to information; Article 12, at the same time, protects the right to privacy:

> *"no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".*

63. There can be no doubt that the Act is premised on disclosure being the norm, and refusal, the exception. As noticed, besides the exemptions, non-disclosure is also mandated in respect of information relating to second schedule institutions. Though by Section 22, the Act overrides other laws, the opening *non-obstante* clause in Section 8 ("notwithstanding anything contained in this Act") confers primacy to the exemptions, enacted under Section 8. Clause (j) of Sub-section (1) embodies the exception of information in the possession of the public authority which relates to a third party. Simply put, this exception is that if the information concerns a third party (i.e. a party other than the information seeker and the information provider), unless a public interest in disclosure is shown, information would not be given; information may also be refused on the ground that disclosure may result in unwarranted intrusion of privacy of the individual. Significantly, the enactment makes no distinction between a private individual third party and a public servant or public official third party.

64. Ironically the right to privacy, a recognized fundamental right by our Supreme Court, has found articulation – through a safeguard, though limited, against information disclosure, under the Act. In India, there is no law relating to data protection, or privacy; these have evolved through the interpretive process. The right to privacy, characterized by Justice Brandeis in his memorable dissent, in *Olmstead* v. *United States*, 277 US 438 (1928) as *""right to be let alone… the most comprehensive of rights and the right most valued by civilised men"* is recognized under our Constitution by the Supreme Court in four rulings - *Kharak Singh* v. *State of U.P.* (1964) 1 SCR 332; *Gobind v. State of M.P.,* (1975) 2 SCC 148; *R. Rajagopal v. State of T.N.,* (1994) 6 SCC 632; and *District Registrar*

and Collector v. Canara Bank,(2005) 1 SCC 496. These judgments, however did not explore the latent tension between the two values of information rights and privacy rights; *Rajagopal,* which is nearest in point, was concerned to an extent with publication of material that was part of court records.

65. It has been held by a Constitution Bench of the Supreme Court that an individual does not forfeit his fundamental rights, by becoming a *public servant*, in *O.K. Ghosh v. E.X. Joseph* AIR 1963 SC 812. In *Kameshwar Prasad v. State of Bihar* AIR 1962 1166, the Supreme Court repelled an argument that public servants do not possess fundamental rights, through another Constitution Bench, as follows:

> *"It was said that a Government servant who was posted to a particular place could obviously not exercise the freedom to move throughout the territory of India and similarly, his right to reside and settle in any part of India could be said to be violated by his being posted to any particular place. Similarly, so long as he was in government service he would not be entitled to practice any profession or trade and it was therefore urged that to hold that these freedoms guaranteed under Art. 19 were applicable to government servants would render public service or administration impossible....*
>
> *..... ....*
>
> *We find ourselves unable to accept the argument that the Constitution excludes Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons were specifically named.*
>
> *14. In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Art. 33. That Article select two of the Services under the State-members of the armed forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them - from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the Services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider*

that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Art. 19(1)(e) and (g)."

(emphasis supplied)

The above discussion would mean that an individual or citizen's fundamental rights, which include the right to privacy – are not subsumed or extinguished if he accepts or holds public office. Section 8(1) (j) is an affirmation of this; it ensures that all information furnished to public authorities – including personal information (such as asset disclosures) are not given blanket access; the information seeker has to disclose a sustainable public interest element for release of the information.

66. It could arguably be said that that privacy rights, by virtue of Section 8(1)(j) whenever asserted, would prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests personal information about a public servant, - such as asset declarations made by him- a distinction must be made between the personal data inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict. If public access to the personal data containing details, like photographs of public servants, personal particulars such as their dates of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the balancing exercise, necessarily dependant and evolving on a case by case basis, would take into account of many factors which would require examination, having regard to circumstances of each case. These may include:

i) whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;

ii) whether the information is deemed to comprise the individual's private details, unrelated to his position in the organization, and,

iii) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

Section 8(1)(j)'s explicit mention of privacy, therefore, has to be viewed in the context. Lord Denning in his "*What next in Law",* presciently emphasized the need to suitably balance the competing values, as follows:

> *"English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."*

67. A private citizen's privacy right is undoubtedly of the same nature and character as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection, therefore, afforded to the two classes – public servants and private individuals, is to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if an important value

in public disclosure of personal information is demonstrated, in the particular facts of a case, by way of objective material or evidence, furnished by the information seeker, the protection afforded by Section 8(1)(j) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a "third party" and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the objective of Section 8(1)(j); Parliamentary intention in carving out an exception from the normal rule requiring no "locus" by virtue of Section 6, in the case of exemptions, is explicit through the *non-obstante* clause.

68. This court cannot be unmindful of the fact that several categories of public servants, including Central and State Government servants, as well as public sector employees and officers of statutory corporations are required by service rules to declare their assets, periodically. Settled procedures have been prescribed, both as to periodicity as well as contents of such asset disclosure. The *regime* ushered under the Act no doubt mandates, by Section 4, disclosure of a wide spectrum of information held by each public authority to be disseminated to the public; it can even be through the medium of the internet. Yet, that provision is overridden by Section 8 – by virtue of the *non-obstante* clause. This means that such personal information – regarding asset disclosures, need not be made public, unless public interest considerations dictate it, under Section 8(1)(j). Any other interpretation would rob this clause of its vitality, as the value of privacy would be completely eroded, and the information would be disseminated without following the procedure prescribed.

69. There is another aspect to this issue. The obligation to spell out what class of information exists with each public authority, is provided in Section 4; the relevant part reads as follows:

> *"Section 4. Obligations of public authorities*: *(1) Every public authority shall-*
>
> *(a) Maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time, and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated;*
>
> *(b) publish within one hundred and twenty days from the enactment of this Act:-*
>
> *(i) particulars of its organization, functions and duties;*
>
> *(ii) the powers and duties of its officers and employees;*
>
> ---
>
> *(iv) the norms set by it for the discharge of its functions;*
>
> ---
>
> *(vi) a statement of the categories of documents that are held by it or under its control*
>
> ---
>
> *(xiv) details in respect of the information, available to or held by it, reduced in electronic form;*
>
> ---
>
> *(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communication, including internet, so that the public have minimum resort to the use of this Act to obtain information…."*

70. The obligation to provide unimpeded access, to information, even through the internet, however, is lifted in case of the 11 categories or classes of information, mentioned in Section 8; this is apparent from the opening words *"Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen…"* If these two provisions are seen together, the primary obligation to facilitate public access – even through internet, cast by Section 4, does not apply in respect of information that

would fall under Section 8. The norm, (by virtue of the subject matter of Section 8, and the *non-obstante* clause) is non-disclosure, of those categories which fall under the exemptions. Now, Section 8 (1) (j) clearly alludes to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. If public servants – here the expression is used expansively to include members of the higher judiciary too – are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or "interest". As observed earlier, a public servant does not cease to enjoy fundamental rights, upon assuming office. That the public servant has to make disclosures is a part of the system's endeavor to appraise itself of potential asset acquisitions, which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties, or investing their income. The obligation to disclose these investments and assets is to check the propensity to abuse a public office, for private gain. If the information applicant is able to demonstrate what Section 8(1) (j) enjoins the information seeker to, i.e. that *"the larger public interest justifies the disclosure of such information"* the authority deciding the application can proceed to the next step, after recording its *prima facie* satisfaction, to issue notice to the "third party" i.e. the public servant who is the information subject, why the information sought should not be disclosed. After considering all these views and materials, the CPIO or concerned State PIO, as the case may be can pass appropriate orders, including directing disclosure. This order is appealable.

71. Section 8 (1) in the opinion of the court, confers substantive rights even while engrafting procedural safeguards, because of the following elements:

(1) Personal information and privacy rights being recognized by Section 8 (1) (j), as the substantive rights of third parties;

Due satisfaction of the CPIO or the State PIO, that disclosure of such personal information is necessary and in the public interest – which is to be arrived at on the basis of objective materials;

The satisfaction being recorded after hearing or considering the views of the third party whose information is in issue, in accordance with the procedure prescribed in Section 11;

(2) The satisfaction being recorded in writing, through an order, under Section 11 (3);

(3) The order, if adverse to the third party, is appealable (Section 11 (4)).

72. The respondents had relied on the *Assn. for Democratic Reforms*, case, and contended that in a democracy, public officials, including members of the higher judiciary are under a duty to disclose their assets. The context of that decision was whether electoral aspirants, i.e. candidates to elective office, in the absence of statutory obligation, could be compelled to disclose their assets. The Supreme Court said that they could be, affirming this court's decision, and significantly observing that if a law had existed, courts would have been bound by its terms. The court held that:

> ***"19.*** *At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules.*
>
> ***20.*** *However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted.*
>
> ***21.*** *Further, it is to be stated that: (a) one of the basic structures of our Constitution is "republican and democratic form of government"; (b) the election to the House of People and the Legislative Assembly is on the basis of adult suffrage, that is to say, every person who is a citizen of India and who is not less than 18 years of age on such date as may be fixed in that behalf by or under any*

law made by the appropriate legislature and is not otherwise disqualified under the Constitution or any law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election (Article 326); (c) holding of any asset (immovable or movable) or any educational qualification is not the eligibility criteria to contest election; and (d) under Article 324, the superintendence, direction and control of the "conduct of all elections" to Parliament and to the legislature of every State vests in the Election Commission. The phrase "conduct of elections" is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections."

…… …… ……

The aforesaid decision of the Constitution Bench unreservedly lays down that in democracy the little man — voter — has overwhelming importance on the point and the little-large Indian (voter) should not be hijacked from the course of free and fair elections by subtle perversion of discretion of casting votes. In a continual participative operation of periodical election, the voter does a social audit of his candidate and for such audit he must be well informed about the past of his candidate. Further, Article 324 operates in areas left unoccupied by legislation and the words "superintendence, direction and control" as well as "conduct of all elections" are the broadest terms. The silence of statute has no exclusionary effect except where it flows from necessary implication. Therefore, in our view, it would be difficult to accept the contention raised by Mr Salve, learned Solicitor-General and Mr Ashwani Kumar, learned Senior Counsel appearing on behalf of the intervenor that if there is no provision in the Act or the Rules, the High Court ought not to have issued such directions to the Election Commission. It is settled that the power of the Commission is plenary in character in exercise thereof. In statutory provisions or rules, it is known that every contingency could not be foreseen or anticipated with precision, therefore, the Commission can cope with a situation where the field is unoccupied by issuing necessary orders."

…… …… ……

…it can be deduced that the members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate. If there is a disclosure by a candidate as sought for then it would strengthen the voters in taking appropriate decision of casting their votes…"

73. It is evident that the court consciously declared the law, in that case, in a statutory vacuum. The value it reached out to, underlines the foundation of our republic i.e. democracy, and the voter's right to make an informed choice while exercising his franchise. Being a participant in the democratic process, where law and policy makers

are elected, the court reasoned that the "little" man cannot be kept in the dark, about the individuals who offer themselves as candidates, in elections. The situation here is radically different, to say the least. One, a statute occupies the field, in the form of the Right to Information Act, *whose provisions were not considered by the Supreme Court,* in the above case. Two, India did not choose the US model of either electing judges, or subjecting their appointment to a confirmation process (as in the case of the Federal Judiciary) where the legislature plays a prominent participatory role. Three, any obligations and safeguards have to be seen in the context of the statutory mandate, and the court cannot, on vague notions of transparency, detract from well established values of independence. It is one thing to say that judges are accountable, and have to make asset declarations; for extension of complete and uninhibited access to the contents, of asset declarations, by invoking transparency, a mere demand is insufficient, as the court would be decreeing something which the law not only does not provide, but for which the existing law makes explicit provisions to the contrary. Most importantly, it would be wrong for the court to, for this purpose equate the two class of public servants – i.e. legislators and members of the higher judiciary. Apart from the inalienable value of independence of the judiciary, which is entrenched in the Constitution, and guaranteed by various provisions, judges' tenure is secured till retirement, subject to good behaviour (the threshold of their removal being very high), whereas legislators, Parliamentarians and the top most echelons of the Government, at ministerial level, occupy office as long as the people choose to keep them there, or as long as the concerned individual has the confidence of the Prime Minister or Chief Minister (in the case of a minister, in the cabinet or council of minister). Rhetoric and polemics apart, there is no reason to undermine the protections provided by law, merely because some members of the public believe that judges ought to permit unimpeded disclosure of their personal assets to the public. The obligation to give access or deny access to information, is today controlled by provisions of the Act, as it

presently exists. It nowhere obliges disclosure of assets of spouses, dependants and children – of judges. Members of the higher judiciary are, in this respect entitled to the same protection – and exemptions- as in the case of other public servants, including judicial officers up to the District Judge level, members of All India services, and other services under the Union. The acceptance of such contentions, in disregard of express provisions of law, can possibly lead to utterly unreasonable demands for all kinds of disclosure, from all classes of public servants – which would be contrary to statutory intendment.

74. In this court's opinion Section 8(1)(j) is both a check on the power of requiring information dissemination, (having regard to its potential impact on individual privacy rights,) as well as a mechanism whereby individuals have limited control over whether personal details can be made public. This safeguard is made in public interest in favour of all public officials and public servants. There can be no manner of doubt that Supreme Court and High Court judges are public servants (*K. Veeraswami* established that). They are no doubt given a high status, and afforded considerable degree of protections, under the Constitution; yet that does not make them public servants any less. If that is the true position, the protection afforded by Section 8(1) (j) to judges is of no lesser quality than that given to other public servants, in this regard. To hold otherwise would be incongruous, because, members of the higher judiciary are held to self imposed obligatory Constitutional standards, and their asset disclosures are held, (by this judgment), to be "information" held by the CJI, a public authority, under the Act; yet, they would be deprived of the protection that the same enactment extends to all those covered by it. It cannot be that judges' being held to high standards, on the basis of norms articulated by the 1997 resolution and the judicial conference resolution of 1999, should place their asset declarations outside of the Act – a demand never made by the applicant, whose case from inception of these proceeding has been that they are subjected to the Act, being "information". Therefore, as regards contents of the

declaration, information applicants would have to, whenever they approach the authorities, under the Act, satisfy them under Section 8(1)(j) and cross the threshold of revealing the "larger public interest" for disclosure, as in the case of all those covered by the said provision. For the purposes of this case, however, the particulars sought do not justify or warrant that protection; all that the applicant sought is whether the 1997 resolution was complied with. That kind of innocuous information does not warrant the protection granted by Section 8 (1)(j).

75. In view of the above discussion, it is held that the contents of asset declarations, pursuant to the 1997 resolution – and the 1999 Conference resolution- are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); they are not otherwise subject to disclosure. As far as the information sought by the applicant in this case is concerned, (i.e. whether the declarations were made pursuant to the 1997 resolution) the procedure under Section 8(1)(j) is inapplicable.

Point No. 6

74. This point was urged by the petitioners, in support of the submission that the 1997 resolution does not state with clarity, what are "assets" and "investments" and that this ambiguity, which renders the system unworkable.

75. The 1997 resolution says, *inter alia,* that:

> *"...every Judge should make a declaration of all his/her assets in the form of real estate or investments (held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her) within a reasonable time of assuming office..."*

It is no doubt true that the resolution lacks particulars about what constitutes "assets" and "investments". The lack of clarity, understandably means the likelihood of individual

Justices of the Supreme Court, interpreting the expression differently, leading to some confusion. In that sense, the argument does raise some concern.

76. The Ethics in Government Act, 1978 was enacted by the US Congress; it applies to all levels of federal judges (known as "Article III judges" since they are usually appointed for life, and cannot be removed except through a process analogous to impeachment). The enactment obliges federal judges to disclose personal and financial information each year; the sources of income, other than what is earned as an "employee of the United State" (since judges in the US are free to receive remuneration through writing, teaching, and lecturing, provided such activity does not hinder their duties) received during a preceding calendar year, the source, description and value of gifts beyond a defined value too are to be declared. The US Congress passed what are known as "redaction" provisions to the Ethics in Government Act, for the first time in 1998, allowing members of the judiciary to withdraw, or withhold certain information "to the extent necessary to protect the individual who filed the report". Redaction is permitted after the individual judge demonstrates the existence of objective factors which justify withholding of part of the information, mandated to be revealed. The US Judicial Conference (which is a statutorily created body, by virtue of Congressional law, and comprises of 13 representatives among District Judges, equal representation from Circuit (Appeal Court) judges, and two judges of the US Supreme Court, with the Chief Justice of the US Supreme Court as the Chairman) submits reports; it also examines redaction applications, by judges, through a committee known as "Subcommittee on Public Access and Security". The procedure followed has been described in the article *"Re-examining Financial Disclosure Procedures for the Federal Judiciary"* (The Georgetown Journal of Legal Ethics, Summer 2005, by Sarah Goldstein):

> *"The Committee has developed a multi-phase process for reviewing judges' redaction requests and public requests for copies of judges' reports. When a member of the public requests a copy of a judge's financial disclosure report, the*

Committee sends a notification of the request to the judge in question and concurrently contacts the United States Marshals Service ("USMS") for a security consultation. The public request must be made on "an original, signed form listing the judges whose reports [the requester is] seeking and any individuals on whose behalf the requests are being made." When the Committee notifies the judge of the public request for the report, it asks the judge to respond in writing within fourteen days as to whether the judge would like to request new or additional redactions of information; however, the Committee can extend this response period if the judge so requests. If the judge does not request a redaction from his or her report at this time, the Committee staff sends a cost letter to the requester, the requester pays for the report, and the Committee then releases a copy of the report to the requester. However, if the judge requests a redaction upon receiving notification of the request for a copy of the report, the Committee staff sends the results of USMS security consultations, original requests for the judge's report, and the judge's redaction requests to members of the Subcommittee. The Subcommittee then votes on the redaction requests, with a majority needed to approve or deny the request, and the Subcommittee vote is forwarded to the Committee staff. As with reports where the judge has not requested a redaction, the staff then sends a cost letter to the requester, and the requester pays for the report. Finally, the Committee releases a copy of the report, with approved redactions, to the requester."

77. As may be seen from the above discussion and from the extracts quoted, fairly well established norms defining what kinds of information should be disclosed; the safeguards, and provision for public disclosure of the information furnished by the concerned US federal judges, exist. Absence of particularization or lack of uniformity about the content, of asset declarations, pursuant to the 1997 resolution, can therefore, result in confusion. However, these are not insurmountable obstacles; the CJI, if he deems it appropriate, may in consultation with the Supreme Court judges, evolve uniform standards, devising the nature of information, relevant formats, and if required, the periodicity of the declarations to be made. The forms evolved, as well as the procedures followed in the United States, - including the redaction norms- under the Ethics in Government Act, 1978, reports of the US Judicial Conference, as well as the Judicial Disclosure Responsibility Act, 2007, which amends the Ethics in Government Act of 1978 to: (1) restrict disclosure of personal information about family members of

judges whose revelation might endanger them; and (2) extend the authority of the Judicial Conference to redact certain personal information of judges from financial disclosure reports may be considered. Such forms may be circulated to various High Courts, for consideration. Under the scheme of the Constitution, High Courts are independent, and would have to decide on such matters after due deliberation (See *Indira Jaising* where it was held that *"in the hierarchy of the courts, the Supreme Court does not have any disciplinary control over the High Court Judges, much less the Chief Justice of India has any disciplinary control over any of the Judges."*).

78. There is one more area, which may be appropriately considered. With this court holding that asset declarations are "information", in the event of applications under the Act, seeking access to content of such declarations, it may become necessary for the CPIOs concerned to examine, while considering the requests, the existing information. The evolution of formats assumes importance in this context; if such forms are evolved, claim of various applicants will have to be effectively adjudicated. The CJI may consider the feasibility of constituting a CPIO of sufficient seniority, as well as an Appellate authority, in this regard. The court would refrain from expressing anything more, as those are administrative concerns, which are not within the purview of discussion, here.

Postscript

79. The intervening developments have focused on "accountability" of judges. As this judgment has sought to demonstrate, a judge is not "unaccountable" as is sometimes wrongly understood; and is subject to several constraints. The judicial branch lacks either the "sword or the purse" controlled by the other two branches. Through its judgments, upholds values such as equality, fundamental human rights, freedom of speech and the press, dignity of human beings, and acts as bulwark against contemporary majoritarian impulses, that could threaten democratic values – be it on the basis of region, class, caste, religion, or even political persuasion (such as against

McCarthyism). Even while independent, judges are under several visible constraints unlike the executive branch, they are to conduct proceedings in open court. This holds great value, since publicity of proceedings is, in the words of Lord Shaw (Ref. *Scott –vs- Scott* 1913 AC 417):

> *"the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial..."*

Again, unlike Parliament, which enacts laws, which apply generally, the judge is an occasional, or casual law-maker, "filling in" small gaps, through his interpretive role; he never does that in vacuum. Most importantly, judgments of courts are to be based on reason, and discuss fairly, what is argued. Judges, unlike other sections of members of the public cannot meet unjustified personal attacks or tirades carried out against them, or anyone from their fraternity; no clarifications can be issued, no justification is given; propriety and canons of judicial ethics require them to maintain silence. Standards of judicial ethics require that judges are not heard in public (See Canons of Ethics, Judicial Conference Resolution of 1999 that *"(8)A Judge shall not enter into public debate or express his views in public on political matters* <u>*or on matters that are pending or are likely to arise for judicial determination.*</u>*"* The judge is thus unable to go and explain his position to the people. An honest, but strict or unpopular judge can be unfairly vilified, without anyone giving his version; similarly, unfounded allegations of improper personal behaviour cannot be defended by the judge in public, even though they can be levelled freely; they may tarnish his reputation or worse, and he would have to smart under them, under the haunting prospect of its being resuscitated every now and then.

80. Anecdotal references to corruption - in the absence of any empirical materials, by those who formerly held high judicial offices, have tended to undermine the judicial branch; this denigration persists, unfortunately, even as regards the judicial *role*. Those who know, keep quiet about the crushing burdens that members of the judiciary – including the higher judiciary have to shoulder. The number of cases filed, continue to

increase; expenditure on the judicial branch is infinitesimal. The CJ's conference of 2008, in its agenda, noted that the Ninth (five year) Plan (1997-2000) released, for priority demands of the judiciary released a meager 0.071 percent of the total expenditure; for the tenth plan, the expenditure was 0.0078 percent.

81. The perception that the wheels of justice grind too slowly, in the meanwhile, continues. For the litigant, who pins his hopes on speedy resolution of his disputes, these explanations may wear thin; yet the judge who tries cases is not superhuman; the judge is as human as any other citizen. In 1987, the Law Commission recommended appointment of 107 judges per million people, when it found that at that time the ratio was only 10.5 judges per million people and it wished the same to begin with appointment of 50 judges per million people. Most states have not been able to achieve it even today. The popular public perception is that judges do not work after official hours, and enjoy long vacations, a hangover of the British Raj. On the contrary, a crushing load ensures that judges put in equal number of hours, sometimes more, than what is spent by them, in open court, resulting typically in 10-14 hour working days, at times more. Most Saturdays are working days, if the judicial officer or the judge has to be "on par" with the judgments and orders that are to be prepared and announced. If judges have to understand and deal with all the cases listed before their courts, they would also have to spend some time, beforehand, reading up the previous day. They would have to also spare time to think, reflect and write judgments; the day's orders have to be corrected and signed by them, each day; often, these are extremely urgent, and concern vital matters, such as bails, interim injunctions, and the like. If an analysis of the number of judgments impacting litigants were to be made, some startling facts would emerge. These are not peculiar to Indian courts; Courts in the United Kingdom, too have a similar structure, as the website of the Judiciary of England and Wales, suggests (http://www.judiciary.gov.uk/keyfacts/legal_year/judicial_sitting_days.htm;

accessed at 20:20 hours, 29th July, 2009). There, Court of Appeal and High Court judges are expected to devote themselves to judicial business throughout the legal year

> *"..which usually amounts to somewhere in the region of 185-190 days….Circuit judges are expected to sit for a minimum of 210 days, although the expectation is for between 215-220 per year….District judges are expected to sit for a minimum of 215 days….Judges also have out of court duties to perform such as reading case papers, writing judgments, and keeping up to date with new developments in the law."*

82. In a report (*"Too many cases"* Vol. 26, issue No. 1, January 3-16, 2009, "The Frontline") a commentator – Nick Robinson noted that the Supreme Court of India heard 57,000 "admission" matters, and accepted 6900 for hearing in 2007, when it decided 5000 cases. The report noted that in the United States, an appeal to the Supreme Court is "fairly easy", yet, the court accepts about 1 per cent of those appeals and *"generally hears less than a hundred cases each year."* The report noted that curtailing court's vacation was not a good idea:

> *"Judges in India though appear far more days in court than their counterparts in most other countries (the Supreme Court heard arguments for 190 days in 2007, while the U.S. Supreme Court sat for only 38 days). Additionally, many judges use their "vacation time" to research and write major decisions, go through briefs to prepare for cases, and engage in professional development such as reading recent legal publications or attending conferences…"*

83. The intervening events after the hearings were concluded in this case, has seen some developments; the Full Court of the Supreme Court has resolved to place the information in the Court website, after modalities are duly worked out. A statement to this effect was made by the petitioner's counsel, who has, in the meanwhile been appointed as the Attorney General for India. Some High Courts, including the Delhi High Court, have resolved similarly to make the information public. This judgment does not wish to comment on those developments; the findings in this case, should place everything in their legal and contextual perspective. In the ultimate analysis, the faith

and confidence of the people in the institution of the judiciary cannot depend only on whether, and to what extent judicial ethics are evolved, or adhered to; that is no doubt important, in a modern democracy. Yet what really matters is that impartiality and diligence are an inalienable part of every judge's function; he or she has the responsibility of unceasing commitment to these values, and unwavering fidelity to the rule of law. It would be useful to quote Dr. Barrack, from *"The Judge in a Democracy"* again, as it summarizes the values which every judge is committed to live by:

> *" As a judge, I do not have a political platform. I am not a political person. Right and left, religious and secular, rich and poor, man and woman, disabled and nondisabled, all are equal in my eyes. All are human beings, created in the image of the Creator. I will protect the human dignity of each. I do not aspire to power. I do not seek to rule. I am aware of the chains that bind me as a judge and as the president of the Supreme Court. I have repeatedly emphasized the rule of law and not of the judge. I am aware of the importance of the other branches of government – legislative and executive – which give expression to democracy. Between those two branches are connecting bridges and checks and balances.*
>
> *I view my office as a mission. Judging is not a job. It is a way of life. Whenever I enter the courtroom, I do so with the deep sense that, as I sit at trial, I stand on trial."*

To this court, this case and the present judgment has been a humbling experience; it required distancing from subjective perceptions to various issues, and a detached analysis of each point argued, by the parties. The task was not made any lighter, since it involved balancing of varied sensitivities. That the court was called upon to decide these issues, is an affirmation of the rule of law, and the intervener uncharitably characterized the petitioners as lacking *locus standi.* That these issues have to be addressed by courts – which are required to interpret the law and the Constitution, cannot be denied by anyone. That the petition involved consideration of serious and important legal issues, was also not disputed by the parties to these proceedings. In these circumstances, dismissal of the petition on the narrow ground of lack of standing, would have resulted in the court failing to discharge its primary duty.

84. The above discussion and conclusions in this judgment are summarized as follows:

Re Point Nos. 1 & 2 *Whether the CJI is a public authority and whether the CPIO, of the Supreme Court of India, is different from the office of the CJI; and if so, whether the Act covers the office of the CJI;*

Answer: The CJI is a public authority under the Right to Information Act and the CJI holds the information pertaining to asset declarations in his capacity as Chief Justice; that office is a "public authority" under the Act and is covered by its provisions.

Re Point No. 3: *Whether asset declaration by Supreme Court judges, pursuant to the 1997 Resolution are "information", under the Right to Information Act, 2005;*

Answer: It is held that the second part of the respondent's application, relating to declaration of assets by the Supreme Court judges, is "information" within the meaning of the expression, under Section 2 (f) of the Act. The point is answered accordingly; the information pertaining to declarations given, to the CJI and the contents of such declaration are "information" and subject to the provisions of the Right to Information Act.

Re Point No. 4: *If such asset declarations are "information" does the CJI hold them in a "fiduciary" capacity, and are they therefore, exempt from disclosure under the Act*

Answer: The petitioners' argument about the CJI holding asset declarations in a fiduciary capacity, (which would be breached if it is directed to be disclosed, in the manner sought by the applicant) is insubstantial. The CJI does not hold such declarations in a fiduciary capacity or relationship.

Re Point No. 5: *Whether such information is exempt from disclosure by reason of Section 8(1) (j) of the Act.*

Answer: It is held that the contents of asset declarations, pursuant to the 1997 resolution – and the 1999 Conference resolution- are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); they are not otherwise subject to disclosure. As far as the information sought by the applicant in this case is concerned, (i.e. whether the declarations were made pursuant to the 1997 resolution) the procedure under Section 8(1)(j) is inapplicable.

Re Point No. (6) *Whether the lack of clarity about the details of asset declaration and about their details, as well as lack of security renders asset declarations and their disclosure, unworkable.*

Answer: These are not insurmountable obstacles; the CJI, if he deems it appropriate, may in consultation with the Supreme Court judges, evolve uniform standards, devising the nature of information, relevant formats, and if required, the periodicity of the declarations to be made. The forms evolved, as well as the procedures followed in the United States, - including the redaction norms- under the Ethics in Government Act, 1978, reports of the US Judicial Conference, as well as the Judicial Disclosure Responsibility Act, 2007, which amends the Ethics in Government Act of 1978 to: (1) restrict disclosure of personal information about family members of judges whose revelation might endanger them; and (2) extend the authority of the Judicial Conference to redact certain personal information of judges from financial disclosure reports may be considered.

85. In this case, the appellate authority had recorded *inter alia,* that:

> *"A perusal of the application dated 10.11.2007 discloses that the appellant had sought for information relating, to the declaration of assets by the Hon'ble Judges of the Supreme Court as well as the Chief Justice of the States."*

In view of the findings recorded above, the first petitioner CPIO shall release the information sought by the respondent applicant,- about the declaration of assets, (and not the contents of the declarations, as that was not sought for) made by judges of the Supreme Court, within four weeks. The writ petition is disposed of in terms of this direction; in the circumstances, the parties shall bear their own cost.

Copies of this judgment be given Dasti to counsel for the parties.

S. RAVINDRA BHAT
(JUDGE)

SEPTEMBER 2, 2009