96 minute RTI workshop

Understanding RTI in 9 minutes

Ratnakar Gaikwad 22 minutes 5 cases in 20 minutes

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12 minutes 3 hearings

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10 minute Video Conference

IT working 3.4 minutes

Open Society includes paperless working three hearings 9 minutes

RTI Presentation

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RTI constricted

Right To Information constricted

RTI usage and propagation is moving at a fast pace because of citizen enthusiasm and desire for accountable governance. The biggest gain has been in empowering individual citizens to translate the promise of ‘democracy of the people, by the

people, for the people' into a living reality. The law as framed by Parliament has outstandingly codified this fundamental right of citizens. When framing the law cognizance had been taken of various landmark decisions of the Supreme Court on this subject. One of the objectives of this law mentioned in its preamble is to contain corruption. It is a simple, easy to understand statute, which common people can understand. However, there are some decisions of information commissions and courts which are constricting this fundamental right of citizens which is neither sanctioned by the constitution or the law. This paper is an effort to highlight one such instance,- the Girish Ramchandra Deshpande judgment,- which is resulting in an effective amendment of the law without Parliamentary sanction. The denial of information has been justified on the basis of Section 8 (1) (j) which allows denial of information, when:

- 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.

The RTI Act mandates that all citizens have the right to information subject to the provisions of the Act. Section 7 (1) clearly states that information can only be refused for the reasons specified in Section 8 and 9. Section 22 of the Act ensures that no prior laws or rules can be used to deny information. I would also draw attention to the fact that the

reasonable restrictions which may be placed on the freedom of expression under Article 19 (1) (a) have been mentioned in Article 19 (2) in the constitution as affecting "*the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.*"

It is worth remembering two judgments of the Supreme Court. A five judge bench has ruled in P. Ramachandra Rao v. State of Karnataka case no. appeal (crl.) 535.: "Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature". In Rajiv Singh Dalal (Dr.) Vs. Chaudhari Devilal University, Sirsa and another (2008), the Supreme Court, after referring to its earlier decisions, has observed as follows. "The decision of a Court is a precedent, if it lays down some principle of law supported by reasons. Mere casual observations or directions without laying down any principle of law and without giving reasons does not amount to a precedent."

The Supreme Court's judgment in the Girish Ramchandra Deshpande[1] judgment is being treated as the law throughout the country and I will argue that this has the effect of amending Section 8 (1) (j) without legitimacy. This paper will seek to show that the impugned judgment does not lay down the law and is being wrongly used to constrict the citizen's fundamental right to information.

Girish Ramchandra Deshpande had sought copies of memos, show cause notices and censure/punishment awarded to a public servant. He had also demanded details of assets and gifts

received by him. Since the Central Information Commission gave an adverse ruling he finally went to the Supreme Court. The main part of the judgment states:

"12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

13. *We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such*

information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

14. *The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information."*

A careful reading of the law shows that personal Information held by a public authority may be denied under section 8(1)(j), under the following two circumstances:

1. Where the information requested, is personal information and the nature of the information requested is such that, it has apparently no relationship to any public activity or interest; or

1. Where the information requested, is personal information, and the disclosure of the said information would cause unwarranted invasion of the privacy of the individual.

If the information is personal information, it must be seen whether the information came to the public authority as a consequence of a public activity. Generally most of the information in public records arises from a public activity. Applying for a job, or ration card are examples of public activity. However there may be some personal information which may be with public authorities which is not a consequence of a

public activity, eg. Medical records, or transactions with a public sector bank. Similarly a public authority may come into possession of some information during a raid or seizure which may have no relationship to any public activity.
Even if the information has arisen by a public activity it could still be exempt if disclosing it would be an unwarranted invasion on the privacy of an individual. Privacy is to do with matters within a home, a person's body, sexual preferences etc as mentioned in the apex court's earlier decisions in Kharak Singh and R.Rajagopal cases. This is in line with Article 19 (2) which mentions placing restrictions on Article 19 (1) (a) in the interest of 'decency or morality'. If however it is felt that the information is not the result of any public activity, or disclosing it would be an unwarranted invasion on the privacy of an individual, it must be subjected to the acid test of the proviso: *Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.*

The proviso is meant as a test which must be applied before denying information claiming exemption under Section 8 (1) (j). Public servants have been used to answering questions raised in Parliament and the Legislature. It is difficult for them to develop the attitude of answering demands for information from citizens. Hence before denying personal information, the law has given an acid test: Would they would give this information to the elected representatives. If they come to the subjective assessment, that they would provide the information to MPs and MLAs they will have to provide it to citizens, since the MPs and MLAs derive legitimacy from the citizens.

Another perspective is that personal information is to be denied to citizens based on the presumption that disclosure would cause harm to some interest of an individual. If however the information can be given to legislature it means the likely harm is not much of a threat since what is given to

legislature will be in public domain. It is worth remembering that the first draft of the bill which had been presented to the parliament in December 2004 had the provision as Section 8 (2) and stated: (2) Information which cannot be denied to Parliament or Legislature of a State, as the case may be, shall not be denied to any person. In the final draft passed by parliament in May 2005, this section was put as a proviso only for section 8 (1) (j). Thus it was a conscious choice of parliament to have this as a proviso only for Section 8 (1) (j). It is necessary that when information is denied based on the provision of Section 8 (1) (j), the person denying the information must give his subjective assessment whether it would be denied to Parliament or State legislature if sought.

It is worth noting that in the Privacy bill 2014 it was proposed that Sensitive personal data should be defined as Personal data relating to: "(a) physical and mental health including medical history, (b) biometric, bodily or genetic information, (c) criminal convictions (d) password, (e) banking credit and financial data (f) narco analysis or polygraph test data, (g) sexual orientation. Provided that any information that is freely available or accessible in public domain or to be furnished under the Right to Information Act 2005 or any other law for time being in force shall not be regarded as sensitive personal data for the purposes of this Act".

Only if a reasoned conclusion is reached that the information has no relationship to any public activity or that disclosure would be an unwarranted invasion on the privacy of an individual a subjective assessment has to be made whether it would be given to Parliament or State legislature. If it is felt that it would not be given, then an assessment has to be made as Section 8 (2) whether there is a larger public interest in disclosure than the harm to the protected interest. If no exemption applies there is no requirement of showing a larger public interest.

In the impugned judgment a RTI request for copies of all memos, show cause notices, orders of censure/punishment, assets, income tax returns, details of gifts received etc. of a public servant was denied. The court has ruled without giving any legal arguments merely by saying that this is personal information as defined in clause (j) of Section 8(1) of the RTI Act and hence exempted. The only reason ascribed in this is that the court agrees with the Central Information Commission's decision. Such a decision does not form a precedent which must be followed. It cannot be justified by Article 19 (2) of the constitution or by the complete provision of Section 8 (1) (j). As per the RTI act denial of information can only be on the basis of the exemptions in the law. The court has denied information by reading Section 8 (1) (j) as exempting:

"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."*~~

There are no words in the judgment,- or the CIC decision which it has accepted,- discussing whether the disclosure has any relationship to a public activity, or if disclosure would be an unwarranted invasion on the privacy. The words which have been struck above have not been considered at all and information was denied merely on the basis that it was personal information. Worse still the proviso 'Provided that the information…..' (underlined above) has not even been mentioned and while quoting the entire Section 8 (1) the

proviso has been missed . Effectively only 40 of the 87 words in this section were considered. This proviso is very important and the court should have addressed it. I would also like to quote the ratio of *R Rajagopal and Anr. v state of Tamil Nadu* (1994), SC

The ratio of this judgement was:

"28. We may now summarise the broad principles flowing from the above discussion:

(1) the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone." A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages Position may, however be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interest of decency (Article 19(2)) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offense should not further be subjected to the indignity of her name and the incident being published in press/media.

(3) There is yet another exception to the Rule in (1) above –

indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties."

Public record as defined in the Public Records Act is any record held by any Government office. This judgement at point 2 clearly states that for information in public records, the right to privacy can be claimed only in rare cases. This is similar to the proposition in Section 8 (1) (j) which does not exempt personal information which has relationship to public activity or interest. It also talks of certain kinds of personal information not being disclosed which has been covered in the Act by exempting disclosure of personal information which would be an unwarranted invasion on the privacy of an individual. At point 3 it categorically emphasizes that for public officials the right to privacy cannot be claimed with respect to their acts and conduct relevant to the discharge of their official duties. The Girish Deshpande judgment is clearly contrary to the earlier judgment R.Rajagopal judgment, since it accepts the claim of privacy for Public servants for matters relating to public activity which are on Public records

2. **2**. The Supreme Court judgement in the ADR/PUCL Civil Appeal 7178 of 2001 has clearly laid down that citizens have a right to know about the assets of those who want to be Public servants (stand for elections). It should be obvious that if citizens have a right to know about the assets of those who want to become Public servants, their right to get information about those who are Public servants cannot be lesser. This would be tantamount to arguing that a prospective groom must declare certain matters to his wife-to-be, but after marriage the same information need not be disclosed!

The Girish Ramchandra Deshpande judgment should not be treated

as a precedent which must be followed for the following reasons:

1. It is devoid of any detailed reasoning and does not lay down a ratio.
2. It does not analyse whether a public servant's work and assets is information which is a public activity or not. The judgment when stating that certain matters are between the employee and the employer misses the fact that the employer is the 'people of India'.
3. It has completely forgotten the proviso to Section 8 (1) (j) which requires subjecting a proposed denial to this acid test.
4. It has not considered the clear ratio of the Rajagopal judgment or the ADR/PUCL judgment.

A major provision of the RTI Act has been amended by a judicial pronouncement which appears to be flawed. A major tool of citizens to bring the shenanigans, arbitrary and corrupt acts of public servants has been affected adversely without a proper reasoning. Commissioners must discuss this and it must be recognized that Girish Ramchandra Deshpande does not lay down the law on Section 8 (1) (j) of the RTI Act., and it is contrary to the ratio of the R.RajagopaI and ADR judgments. A five judge bench has ruled in P. Ramachandra Rao v. State of Karnataka case no. appeal (crl.) 535.: "Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature."

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Former Central Information Commissioner

[1] Special Leave Petition (Civil) No. 27734 of 2012; Girish Ramchandra Deshpand Versus Cen. Information Commr. & Ors; KS

Radhakrishnan & Dipak Misra; 3 October 2012; (2013) 1 SCC 212

‘Misuse’ of RTI

‘Misuse’ of RTI

As an Information Commissioner who dealt with over 20000 cases I had the opportunity of interacting with a large number of RTI users and Public Information Officers (PIOs).

Generally PIOs would refer to most applicants who file RTI applications regularly as blackmailers, harassers and those who were misusing RTI. I would broadly divide those who filed a large number of RTI applications in the following categories:

1. Those who filed RTI applications with the hope of exposing corruption or arbitrariness and hoped to improve and correct governance.
2. Those who filed RTI applications repetitively to correct a wrong which they perceived had been done to them. Their basic intention is to get justice for themselves.
3. Those who used RTI to blackmail people. This category largely targets illegal buildings, mining or some other activity which runs foul of the law.
4. Those who use this to harass a public official to get some undue favour.

All these categories together comprise around 20% of the total appeals and complaints before the Commission. These represent persistent users of RTI who are generally knowledgeable about appeals and procedures. Nobody will deny that the first

category certainly deserves to be encouraged. In the second category there are some who have been able to get corrective action and some whose grievance may defy resolution. When faced with such applicants, PIOs should speak to the concerned officer to evaluate whether the grievance can be redressed. Generally most of us have a strong aversion for the third and fourth category who are making it a money-earning racket or putting pressure to get an undue favour. The last two categories certainly does not exceed 10% of the total appeals and complaints. I would like to note that most of the average citizens who do not get information are unaware of the process of appeals. Over 40% of those who attempt filing appeals at CIC are discouraged with imperious returns. Thus it appears that the third and fourth category will be much smaller than 10% in terms of RTI applications.

I would argue that in the implementation of most laws some people will misuse its provisions. The police often misuse their powers to subvert the law, and so also criminals misuse our judicial system to prolong trials. The misuse of any laws is largely dependent on the kind of people in a society and whether the justice system has the capability of punishing wrongdoers. There are people who go to places of worship with the sole objective of committing theft or other crimes. But society does not define these as the main characteristic of temples. Is it reasonable to expect that only angels will use RTI?

To be able to blackmail an officer or someone who has indulged in an illegal activity, there are some illegal actions. Noticing and curbing these is the job of various government officers and the citizen is actually acting as a vigilance monitor. I have often questioned government officers how the blackmailers operate. They state that the RTI blackmailer threatens an illegal action with exposure and thereby extorts money. I have sometimes wondered why society has such touching empathy for the victims who have committed illegal acts. The

fourth category must be discouraged and Information Commissioners can do this fairly easily. This can be done by either ordering an inspection of the files by the appellant.

Two simple tips to PIOs to handle repetitive RTI queries:

1. Ensuring that the information is provided in less than 10 days by taking applications from such applicants on priority. Ensuring that letter asking for additional fees is sent well in time. I have found such an approach usually leading to reduction of such applications. If however this does not have any effect, then the matter should be highlighted before the Information Commissioner in second appeal.
2. Another good practice which could be adopted would be to upload all queries and the replies on the website. Where information has already been provided applicants may not ask for it. Even if they do ask, the PIO would find it easy to provide it. Besides in a few cases where an applicant is filing what appears to be frivolous or repetitive applications, this would be a restraint since it would expose such applicants.
3. If someone is indeed filing requests for the same information repetitively make him pay each time.

The constant refrain of some people to highlight ‘misuse’ of RTI is an attempt to muzzle the citizen’s fundamental right. Freedom of speech and media which also are covered under Article 19 (1) (a) have been expanding with time. There is a national debate when a movie is subjected to cuts or people or media are muzzled by government, political class or ruffians. Yet the nation goes along with this big lie of RTI threatening the peace, harmony and integrity of India. If RTI is curbed the day is not far when we will have to give reasons to speak and establish our identity. A person can be defamed by speech or writing. Should we now have a demand to allow only those persons to speak who give reasons and established their identity ? On the other hand RTI can only seek information

which exists on records.

One of the most problematic statements by the Supreme Court is quoted in many places: *"Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. "*

This needs to be contested. The statement "*should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens*" would be appropriate for terrorists, not citizens using their fundamental right to information. There is no evidence of RTI damaging the nation. As for the accusation of RTI taking up 75% of time, I did the following calculation: By all accounts the total number of RTI applications in India is less than 10 million annually. The total number of all government employees is over 20 million. Assuming a 6 hour working day for all employees for 250 working days it would be seen that there are 30000 million working hours. Even if an average of 3 hours is spent per RTI application (the average is likely to be less than two hours) 10 million applications would require 30 million hours, which is 0.1% of the total working hours. This

means it would require 3.2% staff working for 3.2% of their time in furnishing information to citizens. This too could be reduced drastically if computerised working and automatic updating of information was done as specified in Section 4 of the RTI Act. It is unfortunate that the apex court has not thought it fit to castigate public authorities for their brazen flouting of their obligations under Section 4, but upbraided the sovereign citizens using their fundamental right.

I would submit that the powerful find RTI upsetting their arrogance and hence try to discredit it by often talking about its misuse. There are many eminent persons in the country, who berate RTI and say there should be some limit to it. It is accepted widely that freedom of speech is often used to abuse or defame people. It is also used by small papers to resort to blackmail. The concept of paid news has been too well recorded. Despite all these there is never a demand to constrict freedom of speech. But there is a growing tendency from those with power to misinterpret the RTI Act almost to a point where it does not really represent what the law says. There is widespread acceptance of the idea that statements, books and works of literature and art are covered by Article 19 (1) (a) of the constitution, and any attempt to curb it meets with very stiff resistance. However, there is no murmur when users of RTI are being labelled deprecatingly, though it is covered by the same article of the constitution. Everyone with power appears to say: “I would risk my life for your right to express your views, but damn you if you use RTI to seek information which would expose my arbitrary or illegal actions.“ An information seeker can only seek information on records. We rate amongst the top five in the world in terms of provisions of the law and 66 in terms of implementation. Any amendments or obstructionist acts will push us closer to our low rank in implementation.

I would also submit that such frivolous attitude towards our fundamental right is leading to an impression that RTI needs to be curbed and its activists maybe deprecated, attacked or murdered.

Shailesh Gandhi