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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GIRISH RAMACHANDRA DESHPANDE VS.
CENTRAL INFORMATION COMMISSION 2012 AIR
SCW 5865, 2013

AUTHORED BY - DR. SAJI SIVAN¹ & PRATHIKSHA SADAGOPAN²

INTRODUCTION

Girish Ramachandra Deshpande vs. Central Information Commission (2013) decision represents an important ruling in India's Right to Information (RTI) jurisprudence concerning the balance between transparency and privacy under Section 8(1)(j) of the RTI Act, 2005. The Supreme Court decision held that the personal information of public officials - e.g., service records, assets, received gifts, and the state of disciplinary proceedings against the officials - may be withheld because of the right to privacy, unless there is a significant public interest demonstrated. In doing so, the judgment created a helpful balance between invasions of privacy and the accountability standard operating procedures. The decision is of importance because it provides a distinction within the Indian model of transparency. Although an individual has a fundamental right to access information under the RTI Act, the right is not unqualified or without bounds. Moreover, in this judgment, the Court specifically indicated public servant's privacy rights must be taken into account before providing information.

The Court's strong preference for applicants to show legitimate public interest instead of allowing for unfettered disclosure of personal information prevented the misuse of RTI requests as a means of harassment or vendetta against officials, while maintaining the underlying aim of the Act - which is to expose corruption and mismanagement. The measured consideration for different democratic values, namely, privacy versus transparency, has made Girish Deshpande one of the first case law references in RTI related discussions, and has influenced subsequent court decisions involving the demand for disclosure of asset and service records of public officials. It continues to have significance in public discussions regarding access to information, especially, most recently, with the public discussion around the proposed Digital Personal Data Protection Act, 2023, which complicates this difficult history of

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negotiating values in relation to public sector ethical governance frameworks even more. Ultimately, while protecting and expanding both the spirit of governmental transparency and an individual's fundamental democratic right to privacy, the judgement ultimately enhanced the governance framework of the nation by reinforcing RTI as tool for engaged and responsible citizen empowerment, rather than a tool for invasion.

FACTS

The initial case stemmed from a request under RTI submitted by Girish Deshpande for certain information relating to a government employee, and to also disclose the employee's immovable property declarations to the department, manner of gifts received during service, and details of any disciplinary action taken against the employee. The PIO denied the request citing Section 8(1)(j) of the RTI Act which protects against disclosing personal information and in relation to public action or public interest, or information that would cause unwarranted invasion of privacy. Deshpande was unhappy with the PIO response, submitted a First Appeal to which was also denied, as noted by the PIO, in relation to the employee's or individual's privacy. Deshpande, dissatisfied with this rejection, turned to the First Appellate Authority, which territorialized the PIO's decision on the premise that the disclosable information was protected from public disclosure due to privacy exemption.

But, when the matter reached the Central Information Commission (the CIC), it adopted the opposite view and ordered the requested information to be released, stating that public servants owe a degree of accountability to the public and that there are only limited ways to protect public servants from disclosing their information to the public. This order from the CIC was followed by an appeal by the Government employee pursuing the impulse for the private information to the Supreme Court for relief from the order of disclosure which, in turn, provided the Supreme Court the opportunity to specifically evaluate the interchange between the right to information and the right to privacy in relation to the public servants functions. So, the Supreme Court was required to resolve this dispute between the two statutory bodies (i.e., the PIO/FAA and the CIC) and provide prescriptive principles about the disclosure of public officials private information under the RTI.

ARGUMENTS PRESENTED

The legal arguments in *Girish Deshpande vs CIC*, presented before the Supreme Court, exemplified a fundamental tension between privacy rights and obligations of transparency in governance. The appellant (government employee - G.D.) mounted a three prong defence. The first line of defence was to submit that the personal info in question (asset declaration, record of gifts) was private info and thus protected by Section 8(1)(j) of the RTI Act. Section 8(1)(j) expressly renders any disclosure of private information a disclosable document unless the requestor can demonstrate a larger public interest justification for the breach of privacy. Second, the appellant argued the RTI applicant had not established there was a substantive public interest to advance a breach of privacy accomplished by disclosing the requested documents, which made the disclosed documents a partial and illegitimate vehicle for transparency purposes.

Most concerning, the appellant raised a third line of argument warning that disclosure of such personal info in a way that permits a random and indiscriminate "RTI process" could serve as a means to weaponize the RTI process, using it as an avenue to harass honest public servants and civil servants with wrongful or malicious allegations against those public employees.

Conversely, the other party in this case (RTI applicant) presented their arguments based on democratic accountability principles. Given their role as public servants, those entrusted with public power must operate with transparency regarding the finances used for their investments and their overall behaviour based on the principle of maintaining a public trust. They maintained that citizens absolutely have a right to know about the capacity of public servants to fulfil the standards of probity at the least when it comes to gifts and any disciplinary history as proxy measures of corruption and mischief as public servants.

In support of this argument, the applicant referenced landmark cases to illustrate their point - (1) *CBSE v. Aditya Bandopadhyay*, 2011 establishing that personal information enjoys a protection as information unless, the opposing interests from the public interest, outweigh the protection afforded. And (2) *R. Rajagopal v. State of TN*, 1994 establishing that public figures hold no privacy concerning general behaviour conducted in official capacities. The applicant argued that these two court decisions have established the law would use against privacy interested, all things being equal would take the side of accountability and transparency. So,

this case has burdened the Court with considering privacy of the individual with the right to know the public person when acting in the public office and authority.

JUDGEMENT

In its historic ruling, the Supreme Court provided a well-rounded judgment that impacted transparency law in India while also protecting privacy rights. The Court ruled resoundingly in favor of the appellant (government employee) and established three principles that will continue to govern RTI applications related to public servants. First, the Court found that personal information – property related to the public servant; gifts received; and person disciplinary records – was privileged under Section 8(1)(j) of the RTI Act as a category of exempted information. The Court explained that this privilege existed, but did not constitute absolute privilege – there was a presumption against access to personal information unless the applicant could show it revealed a significant public interest that outweighed the privacy interests.

Secondly, the ruling rejected the proposition that public servants permanently abdicate their privacy rights for everything they do both for work and outside work. The Court noted that just because an individual works in the public sector does not mean that every aspect of their life is fair game for public investigations – this finding is a key safeguard against the possible abuse of the RTI process for fishing expeditions or harassment. As a result of this ruling, the principle has been established that it is the information seeker who is required to demonstrate the public interest in the disclosure – not the public servant who is required to demonstrate why information that is personal or confidential should not be disclosed.

In relation to disciplinary records, the Court imposed a particularly important limitation: generally, disciplinary records should remain confidential unless there is a demonstrable cause for belief in corruption or serious wrongdoing. Thus, while disciplinary records would be afforded a protective shield from public disclosure, they would not be protected when substantial concerns existed regarding acts of misconduct. The consequence of this ruling was that a careful balance was struck between the RTI Act's principal goal - to promote accountability - and making it into a vehicle for an unlawful invasion of personal privacy. The precedent set by this ruling remains in play for how courts and information commissions consider applications for personal information regarding public officials, and whether

transparency or privacy justifies the constitutional priority.

ANALYSIS

The Supreme Court's decision in *Girish Deshpande vs. CIC* represents a significant juncture in the development of the transparency–privacy jurisprudence in India to the extent that it expressly recalibrated the balance between these conflicting aspects of democracy. The Court upheld stronger protections for principles of privacy under Section 8(1)(j) marking a tremendous advancement of the constitutional route of privacy rights as fundamental rights built on *R. Rajagopal vs. State of Tamil Nadu* (1994) and in anticipation of the eventual constitutional recognition of privacy rights in *Justice K.S. Puttaswamy vs. Union of India* by the Supreme Court in 2017. The aspect of that decision was a corrective move to avoid over-reaching of RTI applications around governance and accountability by establishing that the Indian RTI regime prioritizes functionality principle. Gujarati clarity, that when privacy is raised in accountability to democracy, any personal information related to a public servant must show account ability for democracy rather than just a prurient interest in the dissemination of personal information related to public servants.

From a practical standpoint, the preventive element of the judgment for preventing misuse of RTI has been particularly important. With reference to cases like *Canara Bank vs. C.S. Shyam* 2018, the Court established protective devices to stave-off fishing expeditions into the RTI, and as a result, prevent slothful administration from being incapacitated civilly, procedure, or morally with vexatious, frivolous, or even revenge motivated requests. These protective devices have facilitated honest officials' work in relative freedom from harassment, in the pursuit of responding reasonably, while also helping to try to ensure a valid reply, which can fit in transparency relevant prompting of the RTI process has directed RTI applications into perennial and sensitive issues of public interest.

It is clear that the Court exercised a delicate balancing assessment when considering anti-corruption or anti-corruption morality types of issues. Critics will write that the judgment created the use of privacy protections for corrupt officials is a different reality. The *Subhash Chandra Agarwal v. PIO* in a series of judgments (2019), in many ways demonstrated that the principles from *Girish Deshpande* principles facilitated increased transparency precisely because they required RTI applicants to demonstrate some motivation for their seeking

sensitive information regarding high level public bureaucracies, like IAS officers and Judges.

The evolving legal landscape, most notably with the passage of the Digital Personal Data Protection Act (DPDPA) 2023, has presented additional challenges in finding a balance. The DPDPA's heightened privacy protections might seem to be a direct challenge to the RTI's public accountability mandate, but in subsequent cases about the legitimate use of electoral bonds (like the appeal in *Anjali Bhardwaj vs. PIO* (2021)), the courts have made clear that they continue to privilege the public disclosure of information in public accountability cases involving elected officials. The consistency of this case law suggests that the *Girish Deshpande* framework established a test for measuring transparency against privacy going forward - one that weighs the type of material sought to be disclosed, the status of the public official, and the public engagement with it, rather than invoking an a priori blanket disclosure rule. The real contribution of the judgment is in the provision of a flexible, yet principled framework by which India's transparency law has changed from a simple disclosure investigating operational attachment of disclosure, to one of nuanced accountability in governance.

CONCLUSION

The Supreme Court's ruling in *Girish Ramachandra Deshpande vs. Central Information Commission* (2013) marked a significant turn in India's Right to Information (RTI) law, managing to pay respect to both the right to privacy, and the need for transparency in governance. It held that the exemption under Section 8(1)(j) of the RTI Act applies to personal information of public servants such as service records, asset declarations, gifts received, and disciplinary action histories, is to be protected from disclosure unless one can show a larger public interest in disclosure. The case creates some regime protections from abuse of the RTI Act for purposes of harassment and vengeance; however, in doing so did not create an absolute cloak of confidentiality, rather it put the burden of disproving privacy upon the information seeker in the interest of accountability to the public. This nuanced consideration created a balance which proved handy in later cases that ultimately thwarted collateral and ill intentions behind otherwise frivolous RTI requests while preserving the greater objective of the Act to stamp out corruption and maladministration.

The ruling also factored in future legal developments, in addition to the acceptance in *Justice K.S. Puttaswamy vs. Union of India* (2017) that privacy is a fundamental right, and the

complications brought about by the Digital Personal Data Protection Act (DPDPA) 2023. While the law continues to evolve, Girish Deshpande still operates as a primary starting point, when judging claims that the public's right to access transparency information interfere with an individual's right to privacy, ensuring that the RTI regime is a vehicle for responsibly empowering citizens rather than infringing an individual's right to privacy (interfering with). In the end, this decision strengthened India's democratic framework (system) by reconciling two competing constitutional values-recognition in governance and the right to privacy- and laid out an proportional and principled approach that continues to govern transparency law in India.

