

"The final judgment on the judiciary's right to privacy could have a bearing on other categories of people."

A Constitution Bench of the Supreme Court has finally concluded hearing a crucial appeal (after being nine years in cold storage) under the Right to Information Act (RTI), 2005. One of the three crucial questions raised in this case pertains to whether judges are required to publicly disclose their assets under the RTI Act in light of Section 8(1)(j). This provision prohibits the sharing of personal information that has no nexus to public activity or which amounts to an unwarranted invasion of privacy unless the larger public interest justifies such a disclosure.

The five judges hearing the matter face a difficult choice. Any attempt by them to assert the fundamental right to privacy as the basis for not disclosing assets to the public would necessarily require an implied overruling of landmark judgments in PUCL (2003) and Lok Prahari v. Union of India (2018), in which smaller benches of the court rubbished the privacy claims of the political class while forcing them to publicly disclose not just their assets but also the sources of their income. The final ruling of the Constitution Bench will also impact the contentious Section 44 of the Lokpal Act, 2013, which requires all public servants (this includes judges) to disclose their assets but is silent on whether the disclosure should be to the competent authority or the general public. This provision has already been the subject of an amendment in 2016.

As RTI application

This case has its origins in an RTI application filed in 2007 in which the Public Information Officer (PIO) of the Supreme Court was asked by Subash Agrawal whether the judges of the Supreme Court had complied with the terms of a resolution adopted in 1997, in which all judges had committed to disclosing information about their assets and liabilities to the Chief Justice of India (CJI). The resolution had specifically mandated that the information would remain "confidential". In 2005, Parliament passed the RTI Act, creating a legal right to demand information held by public authorities which arguably also includes the CJI.

Interestingly, Mr. Agrawal never actually asked for copies of the declarations filed by the judges with the CJI. He only wanted to be informed of whether any such declaration were filed by the judges of the Supreme Court and High Courts. Yet the PIO sought to invoke, among other sections, Section 8(1)(j) of the RTI Act to deny him this information.

This provision of the RTI Act prevents public authorities from disclosing any "personal information" of citizens if such "disclosure had no relationship to any public activity or interest" or if such disclosure constitutes "an unwarranted invasion of the privacy of the individual" unless the PIO is "satisfied that the larger public interest justifies the disclosure of such information".

When the matter reached the Delhi High Court, both the single judge and the Full Bench concluded that judges, like other public servants, had a fundamental right to privacy. This right, it held, could only be curtailed if the RTI applicant demonstrated a showing of “larger public interest” as required by Section 8(1)(j) of the RTI Act. In other words, public servants as a class of employees cannot be forced to disclose their personal assets to the public merely because they hold public posts. However, in individual cases, if the person seeking such information could demonstrate a “larger public interest” such as wrongdoing or impropriety on the part of the public official, the information could be disclosed.

The implications

It is likely that the Supreme Court will follow the Delhi High Court’s reasoning because of its own decision from 2012 in *Girish Ramchandra Deshpande v. Central Information Commissioner*. The court was faced with a case where an RTI applicant sought information on the service record and assets of a serving bureaucrat. In a very brief judgment, the Supreme Court ruled that the assets of the bureaucrat could not be revealed to an applicant under the RTI Act unless there was a showing of a larger public interest. The applicant could not demonstrate the larger public interest and was denied the information.

A lot has happened on the privacy front since 2012. The litigation and the civil society campaign against Aadhaar resulted in a unanimous judgment from nine judges of the Supreme Court declaring informational privacy as a component of the fundamental right to privacy. When the Constitution Bench decides on Mr. Agrawal’s appeal, it will most likely be viewing the privacy right enshrined in Section 8(1)(j) of the RTI Act through the lens of the Aadhaar judgment. If the Bench decides that all Supreme Court and High Court judges have a fundamental right to privacy (only two of the five judges hearing the case have voluntarily disclosed their assets) and that judges cannot be forced to disclose their assets to the public, questions will be asked as to why the court forced politicians to publicly disclose their assets and sources of income. It would then be only a matter of time before politicians and their spouses seek the overturning of the PUCL and Lok Prahari judgments, thereby turning back the clock on electoral transparency.

GS World Team...

Right to Information Act (RTI), 2005

Why in the discussion?

- Recently, the demand of bringing the Chief Justice's office under the right to Information in India is going on.
- However, after the debate on bringing the Chief Justice's office under the realm of the RTI, the Supreme Court has reserved the verdict.
- Apart from this, Attorney General Venugopal opposed it. He said that this could affect the judiciary's independence.
- Venugopal also said that the independent judiciary is a part of the basic structure of the

Constitution. Making public the Collegium's decisions and information of recommendations and other information is not in the public interest.

Major provisions

- The Right to Information Act came into force on October 12, 2005.
- It has been mandated for each public authority to provide the information within a stipulated 30-day time period. If the information sought is related to life and personal liberty then there is a provision to provide information within 48 hours.
- Appeal can be made from the local to the state and central information commission for dissatisfaction in relation to the contents of

the information received, non-receipt of information in the prescribed period etc.

- Freedom has been provided from the obligation to disclose the information that adversely affects the sovereignty, unity-integrity, strategic interests etc. of the nation.
- Through this Act, constitutional bodies like the Supreme Court, the High Court, the CAG and the Election Commission, as well as the related posts, have been brought under the purview of Right to Information, along with President, Vice President, Prime Minister, Parliament and State Legislature.
- Under this Act, provision has been made to set up a Central Information Commission at the center level with a Chief Information Commissioner and a membership of or less than 10 Information Commissioners. A State Information Commission will be constituted on the same lines at the state level.

What is the rule in the Right to Information Act?

- Under the Right to Information Act, 2005, the Information Commission is the biggest and the last option for obtaining information.
- Under this law, the applicant first applied to the Public Information Officer of the Government Department.
- If the answer is not received within 30 days, then the applicant sends his application to the first appellate officer.
- If the answer is not received from here within 45 days, then the applicant appeals to the Central Information Commission or the State Information Commission.
- Under this law, the Central Information Commission make the hearing on second appeals and complaints. In the appropriate cases, the Central Information Commission also imposes a penalty on the Public Information Officer.
- If the Commission thinks that a Public Information Officer has deliberately disturbed the petitioner or has not provided the information, then CIC can impose the penalty

up to Rs. 25 thousand on him.

Central Information Commission's Chief Powers and Functions?

- The powers and functions of the Central Information Commission have been mentioned in the Sections 18, 19, 20 and 25 of the Right to Information Act.
- In this mainly obtaining and investigating complaints based on the inability to file information applications etc.; to make judgments for the appeal again to provide information is important.
- Apart from this, instructions for maintenance of documents, disclosure of motivation, receipt of complaints on the inability to file an RTI, and investigation etc. are also included in its works.
- Also the powers associated with financial penalties and monitoring and reporting etc. are also contained in the Commission.
- The decisions of the Commission are final and binding, but they can be challenged in the High Court or the Supreme Court.

Structure of Central Information Commission

- There is a provision for establishing state information commissions in Chapter 4 of the Right to Information Act, 2005, and the establishment of Central Information Commission in Chapter-3.
- The provision for the establishment of central Information Commission in section 12 provision for the posting and service conditions of information commissioners in section 13 and removal of them in section 14 of this law has been made.
- There is a provision of a Chief Information Commissioner and up to 10 Central Information Commissioners in central Information Commission and is appointed by the President.
- These appointments are made on the recommendation of the committee headed by the Prime Minister, in which the leader of the opposition in the Lok Sabha and the Cabinet Minister nominated by the Prime Minister are the members.

Expected Questions (Prelims Exams)

1. **1. Consider the following statements:-**
1. RTI Act was implemented on 12th October, 2005.
 2. There is a provision in RTI Act for public authority to provide the information within fixed 30 Day.

Which of the above statement is/are correct?

- (a) Only 1 (b) Only 2
(c) 1 and 2 Both (d) Neither 1, Nor 2

Expected Questions (Mains Exams)

- Q. **If Judiciary gives the Judgement by Considering to bring its Property in the realm of investigation under the RTI Act as violation of privacy, then what will be its effect? Discuss.**

(250 Words)

Note: Answer of Prelims Expected Question given on 5 APR. is 1(c)

