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Right to Information & Right to Privacy

Anjali Bhardwaj

**National Campaign for Peoples' Right to Information &
Satark Nagrik Sangathan (Society for Citizens Vigilance
Initiative)**

Relevant provision of the Indian RTI law

- Information exempt from disclosure:

S. 8(1) (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:

Mandatory exceptions to the exemptions

- Mandatory exceptions to the exemptions in the RTI Act
 - Public interest override 8(2)
 - Parliamentary access exception (proviso to 8(1))
 - Minimising exemptions after twenty years 8(3)
- Mostly ignored by adjudicators
- Restrictive interpretations of 8(1)(j) by adjudicators

Assets & Tax Returns

| Information | Available under RTI | Relevant judgments |
|---|--|--|
| Assets of candidates contesting elections | Yes, of candidates, spouses and dependent children | Supreme Court judgements (ADR & PUCL) and election laws <i>“question is not of knowing personal affairs but to have openness in democracy for attempting to cure cancerous growth of corruptions by few rays of light.”</i> ADR 2002 <i>“When there is a competition between the right to privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves larger public interest.”</i> PUCL 2003 |
| Assets of judges | Voluntarily disclosed, pending before constitution bench | Question pending before constitution bench- <i>“Whether the information sought for is exempt under Section 8(1)(j) of the Right to Information Act?”</i> |
| Assets of bureaucrats | No, unless larger public interest | Girish Ramchandra 2012: <i>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...</i> |
| Tax Returns of public servants | No, unless larger public interest | Girish Ramchandra 2012 |
| Tax Returns of members of public | No, unless larger public interest | SC Girish Ramchandra 2012 |

Performance evaluation, transfers and postings of public servants not accessible under RTI, unless larger public interest

- Supreme Court in 2012:
 - *“...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.” (Girish Ramchandra 2012)*
- Subsequently in 2017, information on transfer and posting, date of joining, designation, details of promotions denied under 8(1)(j). (Canara Bank judgment)

Information related to educational qualifications

- Central Information Commission directed disclosure of degree related information
- Delhi University has approached the Delhi High Court challenging the order
- University has invoked section 8(1)(j) and 8(1)(e)

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Right to privacy not fundamental right: Centre to Supreme Court

By *Samanwaja Rautray*, ET Bureau | Jul 28, 2017, 12.13 AM IST

11 Comments

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The Attorney General had yesterday told the bench the right to privacy could be a fundamental right, but could not be "absolute".

NEW DELHI: The government has said informational **privacy** or data privacy is not a fundamental right and insisted that the **Aadhaar** Act has enough inbuilt safeguards to ensure biometric records collected on enrolment are protected.

“Even if informational privacy is claimed, it cannot be a fundamental right,” attorney general KK Venugopal told a nine-judge bench on Thursday. The bench is debating whether the right to privacy should be declared a fundamental right.

Any information can be sought from a citizen on the grounds of legitimate state interests, he argued. However, he conceded that information procured during Aadhaar enrolment or any other state exercise such as census must be secured. Venugopal urged the court to desist from elevating a common law to a fundamental right as the founding fathers of the Constitution had “expressly considered” and “rejected” the idea

Supreme Court judgment on privacy

- Constitution bench of the Supreme Court of India in August 2017 held that privacy is a fundamental right

(Justice K. S. Puttaswamy and Anr. vs Union Of India And Ors.)

Chilling effect on the RTI

- Apprehensions that the judgement is likely to be quoted by PIOs to deny critical information
- Proactive disclosures of details of beneficiaries of social welfare programmes removed

Netas invoke privacy order in attempt to stop disclosure of spouse's information

By [CL Manoj](#), ET Bureau | Updated: Aug 29, 2017, 02:17 PM IST



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Comments



NEW DELHI: The Parliamentary Standing Committee on Personnel, Public Grievances and Law & Justice is set to request the [Election Commission](#) to reverse its rule that makes it compulsory for the spouses of candidates to make public details of their

Balancing privacy and peoples' right to information

Key principles:

- Public record
- Public interest
- Accountability- Expenditure of public funds
- Public activity
- Severability, where applicable
- For genuine security concerns- information may be withheld for a specific context and for a period of time