

**Right to Information and Good Governance**  
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**Lecture 74**

**Landmark Judgements Under the RTI Act - I**

Hi, this Raghav Parthasarathy and I am working at the Centre for Environmental Law Education Research in Advocacy, Nation Law School of India University, Bangalore. In this video, I will make an attempt to deal with some of the most prominent and landmark cases under the Right to Information Act of 2005. These landmark cases have dealt with several aspects of the Right to Information Law which starts from the disclosure aspect with regard to primacy, with regard to the exemptions and various other aspects of the Right to Information Law that is enacted in the year 2005.

As you know even before the Right to Information Act came into effect, the courts have time and again recognized the Right to Information as a fundamental right. This fundamental right is again guaranteed under the Constitution under Article 19(1)a. But due to the absence of a legal framework, the right could not be exercised. Subsequent to the passing of the Right to Information Act and prior to this the freedom of Information Act which never got notified, the interpretation of various provisions of the Act have been questioned.

In order to adjudicate and to give a proper understanding, there have been several decisions by the courts across the country including the High court, Supreme Court and even the Central Information Commission. Now, we will look at those cases as I will make an attempt to explain the facts and contentions of the parties in those cases.

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- RK JAIN V. UNION OF INDIA AND ANOTHER, (2013) 14 SCC 794
- INFORMATION SEEKING ANNUAL CONFIDENTIAL REPORT WHETHER EXEMPTED OR NOT?
- WHETHER DISCLOSURE OF THE ANNUAL CONFIDENTIAL REPORT IS IN THE PUBLIC INTEREST?
- COURT HELD THE DISCLOSURE ANY DETAILS LIKE SHOW CAUSE NOTICE, CENSURES, PUNISHMENTS, OR ANY REMARKS IS PURELY WITHIN THE ORGANISATION AND BETWEEN THE EMPLOYER AND EMPLOYEE AND GOVERNED BY THE SERVICE RULES.
- COURT STATED THAT THIS IS PERSONAL INFORMATION WHICH CANNOT BE DISCLOSED.
- ALSO TOOK NOTE OF THE FACT THAT THE TAX RETURNS, LIABILITIES, OR ASSETS ARE ALL CLASSIFIED UNDER THE PERSONAL INFORMATION.
- DISCLOSURE OF SUCH INFORMATION WOULD CAUSE UNWARRANTED INVASION OF PRIVACY OF THAT INDIVIDUAL.



The first case which I could like to deal with is regarding RK Jain versus Union of India. This case happened in the year or rather commenced in the year 2009 where mister RK Jain had applied seeking for the annual confidential report or as we know ACR from the Public Information Officer under Section 6 of the Right to Information Act. This specific document that was sought by Mister RK Jain was pertaining to the copies of all sheets of correspondence and pages of files relating to the judicial officer of the Customs Excise and Service Tax Tribunal.

However, this information was denied by the Central Public Information Officer on the grounds that the concerned file included personal information pertaining to the officer and this shall not be disclosed as it can be classified under the exempted, that exemption clause that is mentioned under Section 8(1) of the Right to Information Act. The appellant made further appeals to the director who is appellate authority and the Central Information Commission, Commissioner which also was denied by the Commission.

Well, the obvious grounds on which the information was denied was that it will not be disclosed for the simple reason that disseminating such information is not in the interest of public and also it is prejudicial to the interest of the officer. Aggrieved by this judgements of the lower authorities, Mister Jain approached the Delhi high court which also upheld the decision of the Central Information Commissioner on the ground that the annual confidential report of an officer shall not be disclosed to third person other than the officer himself or herself.

Again, as aggrieved by the decision of the Delhi high court, Mister RK Jain approached the Supreme Court as an appellant. It was contented that the appellant wanted the information in a separate file other than the ACR and sought information pertaining to the follow up action which was taken by the Ministry of Finance about the remarks against the integrity in the Annual Confidential Report of the member.

The court held that the information sought was not different and it was there along with the Annual Confidential Report, which means such information cannot be separated and it remains a part of the ACR or the file notings that is mentioned in the ACR. Therefore, the file contained essential report of the ACR and it was also submitted that the ACR of the public servant has a relationship with the public authority. And therefore, it comes under the realm of public interest and seeking such information is therefore justified.

He also contented that seeking such information does not amount to unwarranted invasion of privacy of the public servant and he also relied on the case of State of UP versus Rajnarain, which was decided way back in the year 1982. When information like that of the Annual Confidential Report can be submitted to the Parliament, then why not such information can be treated as personal or private document.

There our conflicting decisions on this issue. As I already mentioned, there have been various decisions by the High court across the country which have passed conflicting decisions. If you look at the contentions of the other side that is respondent, they have stated that the information pertaining to the ACR leads to personal information and if released, it may cause unwarranted invasion to the privacy of the individual concern.

The respondent also plated that the information sought by the appellant relating to the analysis of ACR of the officer shall be exempted under 8 Clause (1)(j) of the RTI Act. So, the main issue in this case was whether or not the ACR of an officer constitute as person information and can it be further classified as protected under Section 8(1)(j) of the Right to Information Act.

The other issue which was discussed and debated in the case was whether or not the dissemination of such information to the third party was in the interest of the public. Well, the

reasoning of the court and based on the, based on the contentions put forth by the parties, the court held that the details relating to the assets, liabilities, moveable and immovable properties of third part are personal information and also the performance of an employee, officer in an organisation know and recorded in the ACR cannot be disclosed.

It is also held that the CIC and the courts below detailed that the petitioner issued some of the memos and also some of the notes. Most of the details that are mentioned in the ACR which included the copies of the memos issued, the order of sensors, the show-cause notices or any other information can be qualified to be personal information that is mentioned under Section 8(1)(j) of the Right to Information Act. The performance of an employee, or an officer moreover in an organisation is a matter primarily between the employee and the employer.

These excerpts are governed by the applicable service rules which falls under the expression 'personal information'. The disclosure of this information has no relation to any public activity or public interest. Furthermore, disclosure of such information would actually cause invasion or unwarranted invasion on the privacy of that individual. However, the central and the state information commission have been granted the power to asserting if any information has to be released in the larger public interest or no.

This is a special power that is granted to the Information Commission to decide whether any information is in the interest of the public or not. further, it was also held that the details disclosed by a person in his Income Tax returns are also classified as personal information and it stands exempted from disclosure under Section 8(1) j of the Right to Information Act. But again, such information can be disclosed on the ground that there involves a larger public interest.

The court ultimately held that the information sought by the appellant and the follow-up action taken therein has no public interest whatsoever and thus, the appeal was dismissed holding, upholding the decisions of the lower courts.

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- SUBASH CHANDRA AGARWAL V. LOK SABHA SECRETARIAT. DELHI HIGH COURT JULY, 2, 2019
- QUESTION INVOLVED – WHETHER THE CONSULTATIONS AMONG THE LEADER OF OPPOSITION, LEADER OF THE HOUSE AND SPEAKER OF LOK SABHA ABOUT EXTENSION OF TENURE OF LOK SABHA SECRETARY GENERAL CONSTITUTES BREACH OF PARLIAMENTARY PRIVILEGE?
- DUTY OF CIC TO DECIDE WHETHER ANY INFORMATION SOUGHT IS PRIVILEGED OR NOT.
- EXTENSION OF TENURE OF SECRETARY GENERAL T K VISHWANATHAN AND THE CONSULTATIONS BETWEEN THE MEMBERS CONCERNED.
- CIC PLACED MATTER BEFORE THE SPEAKER TO DECIDE WHETHER RELEASING INFORMATION WOULD CONSTITUTE BREACH OF PRIVILEGE UNDER ARTICLE 105 OF CONSTITUTION OF INDIA.
- APPEAL TO HIGH COURT – FRAMED FIVE ISSUES AND DECIDED THAT THE INFORMATION WAS NOT EXEMPT FROM DISCLOSURE.



Moving onto the second case which I would like to discuss is pertaining to the Parliamentary privileges and the disclosure of information. This case was filed by Subash Chandra Agarwal who was a noted RTI activist against the decision of Central Information Commission about the Parliamentary privileges held by the Lok Sabha Speaker and the Secretary General of Lok Sabha.

The question involved in the case was whether the disclosure of information pertaining to the consultations among the leader of opposition, the leader of the House and the Speaker of Lok Sabha about the extension of tenure of Lok Sabha Secretary General constitutes a breach of privilege of parliament under Section 8(1) C of the Right to Information Act of 2005.

Let me now narrate the background of the case and the basis on which the case actually emerged. The (appli) the applicant, who is Subash Chandra Agarwal had sought information sometime in the year 2011 from the Lok Sabha Secretariat pertaining to the extension of Lok Sabha Secretary General TK Vishwanathan and that information was denied as the consultation that was held by the Speaker of the Lok Sabha with other functionaries of the House, in this case being the Leader of the opposition and the Leader of the House was held to be confidential and classified under the Parliamentary privileges.

This rejection was taken to the Chief Information Commission and the information commissioner there placed the matter before the Speaker of the Lok Sabha as the Speaker of the Lok Sabha was considered to be the constitutional authority. The reason why he placed

the matter before the Speaker of the Lok Sabha was basically to classify whether any information that has being sought by the applicant constitutes or can be classified as the Parliamentary privilege and breach of such and disclosure of such information, whether will it constitute breach of Parliamentary privilege.

Article 105 of the Constitution of India specifically deals with the powers, privileges and immunities of Parliament and its member. Therefore, the Information Commission placed the matter before the Speaker for his decision. But ultimately the Speaker also decided against the disclosure of such information and he cited that the reason was the disclosure would amount to breach of Parliamentary privilege under Article 105 Clause 3 of the Constitution.

Subsequently, this matter went on in an appeal before the High court, and Agarwal challenge this decision on CIC and the Lok Sabha Speaker before the Delhi high court. The Delhi high court framed 5 questions for its determination and those 5 questions are: whether the Parliamentary previlage as understood under Article 105 Clause 3 of the Constitution apply to the information that is sought by Subash Chandra Agarwal?

The second question was whether the interstate communication and the consultation (between) between the Leader of opposition, Leader of the House and the Speaker forms a part of the proceedings in Parliament in relation to which the Parliamentary privilege will be claimed. The third question are was what are the boundaries and contours of the right to receive information under the Right to Information Act Vis-à-vis the claim of Parliamentary privilege?

The fourth question was under the Right to Information Act, who is the arbiter? Whether to claim a Parliamentary privilege is tenable in relation to a given subject matter in the context of an RTI query? And the last question was, does the direction contained in the CIC order dated 20/2/2013 whereby it has been left to the Speaker to decide if a Parliamentary privilege is to be claimed in relation to the information sought amongst to abdication of the role of CIC under the RTI Act? Or to put it alternatively, does it amount to CIC delegating its power under the RTI Act to the Speaker?

Justice Anup Bhambhani has discussed several aspects and several cases, both from the Supreme Court of India as well as of the United Kingdom about the extension of the powers,

privileges, and immunities that are granted to the members of the Parliament and it was stated that the information was not exempt from the disclosure and the RTI applicant's statutory Right to Information actually trumped the plea of the Parliamentary privilege.

He also said that the information relating to the consultation and communications that went on between Leader of opposition and the Leader of the House and the Speaker in relation to the extension of the Secretary General's term enjoys no exemption from the disclosure. More so on the ground of Parliamentary privilege and it cannot be claimed. And such information should have been disclosed.

He also said that the Parliamentary of Parliamentary privilege affects the petitioner's statutory right to receive information which is founded on the fundamental right, the claim of privilege is amenable to judicial review by this court. It was also held that the petitioner's statutory right to information always trumps the plea of Parliamentary privilege as the information that is sought is not pertaining to the protection of preserving of a Legislative function.

Justice Bhambhani also discussed about the role of the Speaker of Lok Sabha and his administrative discretion that is granted. He noted that while administering the Secretariat, the Speaker does not engage in any Legislative or Parliamentary role. the Speaker does not moderate any Parliamentary debate, nor does he receive any money bills, motions in the table, nor does he call any votes, bills or motions so moved.

So, there are several functions which he does the do and specially the law-making function. By the very nature and the intent of the RTI Act, it must be construed in a manner so as to advance its purpose and not to defeat it. The judge also discussed about the Information Commission's obligation under the Right to Information Act to decide about the issue of Parliamentary privilege.

It was argued before the court that the question of Parliamentary privilege and an issue to, or directive to disclose the answer to the query, the CIC could not have spent of could not have directed or could not have forwarded the query to the Speaker of the Lok Sabha. The High court held that the CIC was tasked with deciding whether the information sought in a given

case was to be disclosed or was covered under any of the privilege or exemption granted under Section 8(1).

Whereas, what the CIC did was mere abdication of the duty and delegation of their duty to the Speaker of Lok Sabha which is a direct infringement of the provisions contained in the Act. It goes without saying that the CIC's decision on the issue of exemption under Section 8(1) c would of course be amenable to judicial review by the Constitutional Court, but the CIC would be required to decide the issue of Parliamentary privilege based on the legal principles laid down in the judgements of the Supreme Court as well as other courts.

Well, the CIC also vested with the duty to decide whether any information has to be disclosed or not. The High court also held that the CIC actually committed an error in disposing of the matter by leaving it to the discretion of the Speaker of the Lok Sabha to decide whether disclosure of such information would amount to breach of privilege of Parliament. The CIC ought to have itself decided the issue of breach of privilege in exercise of the powers conferred upon it under the Right to Information Act.

Well, they were supposed to apply the settled legal principles relating to Parliamentary privilege and such decision of course being amenable to judicial review. Based on the reasoning granted by the court, Justice Bhambhani set aside the order of the Information Commission as well as the Speaker of the Lok Sabha and ordered that the information sought by the petitioner, that is Subash Chandra Agarwal has to be provided without any encumbrance whatsoever. Well, this is what is classified, what amounts to Parliamentary privilege and what amounts to the right of the informant who is seeking information.