

GIRISH: AN IRON WALL BETWEEN RTI AND PUBLIC INFORMATION

Madabhushi Sridhar Acharyulu*

ABSTRACT**

There is one order of the Supreme Court of India preceded by two decisions of the Central Information Commission (CIC) followed by another CIC order, supported by an Office Memorandum, which damaged the objectives of RTI Act, 2005. Whatever little was achieved through a continuous struggle (of people) to make public authorities accountable was almost defeated by this order. Girish Ramachandra Deshpande was the single-most pocket-pistol decision that shot dead millions of RTI applications and thousands of second appeals all over the country. Because of this decision, government employees are resisting the disclosure demands with the help of the exemption clause under Section 8(1)(j) of the RTI Act. This paper tries to underscore the critical (ir)relevance of the decision in light of the provisions and operative frameworks governing transparency laws vis-a-vis privacy laws. The paper makes an attempt to analyse the pros and cons of the ratio of Deshpande's case and draws certain inferences on the basis of the analysis of the case and related cases governing the same matter. It is a doctrinal study and employs analytical and descriptive methods to reach at conclusive findings.

* Central Information Commissioner, Central Information Commission, New Delhi. E-Mail-cicsridhar@gmail.com

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1. Introduction

The privacy of a public servant is becoming a highly contentious issue since the advent of the Right to Information Act, 2005 that has enabled Indian citizens to seek information about public authorities and their officers. An employee of the state is legally defined as a public servant and every citizen is a virtual employer of such a public servant in the electoral democracy. Can privacy hamper the regime of transparency and scrutiny of public conduct of a public servant? If government employees' privacy is limited, up to what extent does it restrict? The conflict between the right to privacy and the need for transparency is the centre of controversy in many cases before the Information Commissions and the Constitutional courts, more so in light of the *Girish Ramachandra Deshpande's* case. As it travelled from the second appeal in Central Information Commission (CIC) to the Supreme Court it had set a controversial standard for 'personal' information causing serious damage to the right to information. The Apex court's order of dismissing the Special Leave petition (SLP) in *Girish Ramachandra Deshpande* is being very frequently used as the Apex court's judicial declaration of law to deny any information about the memos, complaints, disciplinary action or conduct of a public servant.¹

The conflict between the right to privacy and the statutorily recognised need of transparency of persons involved in the administration is the premise of decision in *Girish* case. This case revolves around Section 8(1)(j) of RTI Act, which says: "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."

Section 8(2) of the RTI Act states: "Notwithstanding anything in the Official Secrets Act, 1923 (Act 19 of 1923) nor any of the exemptions permissible in accordance with

¹ K. S. Radhakrishnan & Deepak Mishra JJ in *Girish Ramchandra Deshpande v Central Information Commissioner & Ors* Special Leave Petition (Civil) No. 27734 of 2012 along with 14781/2012 (rejected on 3 October 2012) (2012) 9 SCALE 700.

sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”

A closer examination and analysis of Section 8(1)(j) and 8(2) would legally mean that information can be exempted from disclosure only if two essential components exist: (a) where the information requested is (i) a personal information; and (ii) the nature of information requested has apparently no relationship to any public activity or interest; (b) where the information sought is (i) a personal information; and (ii) the disclosure of information would cause unwarranted invasion of privacy of the individual concerned. There can be seven exceptions in which information can be parted even if the information sought is personal. The exceptions are as follows:

- (a) The information relates to public activity
- (b) The information relates to public interest
- (c) The information disclosure will not cause unwarranted invasion of privacy of the individual concerned
- (d) Though information is personal, and not related to public activity or interest, larger public interest justifies such disclosure
- (e) Though information is personal and its disclosure can cause unwarranted invasion of someone’s privacy it can still be disclosed if larger public interest so justifies
- (f) Though information is personal, not related to public activity or interest, disclosure causes unwarranted invasion of privacy of the individual, no larger public interest involved, yet it can be given to a citizen if it can be furnished to the Parliament or State Legislature [Proviso to Section 8(1)]
- (g) Though information is personal, not related to public activity or interest, disclosure causes unwarranted invasion of privacy of the individual, it can still be given if public interest in disclosure outweighs the public interest in its non-disclosure [Sec 8(2)].

2. Privacy of a Public Servant: Girish Orders

Mr. *Girish* submitted an application on 27th August 2008 before the Regional Provident Fund Commissioner (Ministry of Labour, Government of India) calling for various details relating to the third respondent. The response² of the public authority was:

² The response is quoted verbatim with minor copy corrections.

- (a) Copy of the appointment order of Shri. A. B. Lute is in three pages. You have sought the details of salary in respect of Shri. A. B. Lute, which relates to personal information the disclosure of which has no relationship to any public activity or interest; it would cause unwarranted invasion of the privacy of individual, hence, denied as per the RTI provision under Section 8(1)(j) of the Act.
- (b) Copy of the order of granting Enforcement Officer Promotion to Shri. A. B. Lute, is in 3 Number. Details of salary to the post along with statutory and other deductions of Mr. Lute are denied to provide as per RTI provisions under Section 8(1)(j) for the reasons mentioned above.
- (c) All the transfer orders of Shri. A. B. Lute, are in 13 Numbers. Salary details are rejected as per the provision under Section 8(1)(j) for the reason mentioned above.
- (d) As to Point No. 4: The copies of memo, show cause notice, censure issued to Mr. Lute, are not being provided on the ground that it would cause unwarranted invasion of the privacy of the individual and has no relationship to any public activity or interest. Please see RTI provision under Section 8(1)(j).
- (e) As to Point No. 5: Copy of EPF (Staff & Conditions) Rules 1962 is in 60 pages.
- (f) As to Point No. 6: Copy of return of assets and liabilities in respect of Mr. Lute cannot be provided as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No. 1.
- (g) As to Point No. 7: Details of investment and other related details are rejected as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No. 1.
- (h) As to Point No. 8: Copy of report of item-wise and value-wise details of gifts accepted by Mr. Lute, is rejected as per the provisions of RTI Act under Section 8(1)(j) as per the reason explained above at point No. 1.
- (i) As to Point No. 9: Copy of the details of movable, immovable properties of Mr. Lute, the request to provide the same is rejected as per the RTI Provisions under Section 8(1)(j).
- (j) As to Point No. 10: Mr. Lute is not claiming for TA/DA for attending the criminal case pending at JMFC, Akola.
- (k) As to Point No. 11: Copy of Notification is in 2 numbers.
- (l) As to Point No. 12: Copy of certified true copy of charge sheet issued to Mr. Lute – The matter pertains with head Office, Mumbai. Your application is being forwarded to Head Office, Mumbai as per Section 6(3) of the RTI Act, 2005.

- (m) As to Point No. 13: Certified True copy of complete enquiry proceedings initiated against Mr. Lute – It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest. Please see RTI provisions under Section 8(1)(j).
- (n) As to Point No. 14: It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence, denied to provide.
- (o) As to Point No. 15: Certified true copy of the second show-cause notice – It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence, denied to provide.

Deciding the second appeal on 18th June 2009,³ the CIC said, “the question for consideration is whether the aforesaid information sought by the Appellant can be treated as ‘personal information’ as defined in clause (j) of Section 8(1) of the RTI Act. It may be pertinent to mention that this issue came up before the Full Bench of the Commission in Appeal No.CIC/AT/A/2008/000628 (*Milap Choraria v Central Board of Direct Taxes*) and the Commission vide its decision dated 15.6.2009 held, “the Income Tax return have been rightly held to be personal information exempted from disclosure under clause (j) of Section 8(1) of the RTI Act by the CPIO and the Appellate Authority, and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information. This logic would hold good as far as the ITRs of Shri. Lute are concerned. I would like to further observe that the information which has been denied to the appellant essentially falls in two parts– (i) relating to the personal matters pertaining to his services career; and (ii) Shri Lute’s assets & liabilities, movable and immovable properties and other financial aspects. I have no hesitation in holding that this information also qualifies to be the ‘personal information’ as defined in clause (j) of Section 8(1) of the RTI Act and the appellant has not been able to convince the Commission that disclosure thereof is in larger public interest.”

Aggrieved by the CIC order, the petitioner filed a writ petition,⁴ which was dismissed by a Single Judge of Bombay High Court, Nagpur Bench. Then he filed a Letters Patent

³ CIC Decision in *Girish R Deshpande v Ministry of Labour and Employment & EPFO* No 1989/IC(A)/2008 in F. No. CIC/MA/A/2007/00825, 863 (decided 21 February 2008).

⁴ Mr. Justice B P. Dharmadhikari of Bombay High Court, Nagpur Bench in *Girish R Deshpande* No. 4221 of 2009 (decided on 16 February 2010).

Appeal (LPA)⁵ before the Division Bench, Bombay High Court at Nagpur and that also was dismissed. The appellant then filed an SLP before the Supreme Court. He contended that some documents sought for were pertaining to the appointment and promotion, assets and liabilities and gifts received by the third respondent, and the disclosure of those details would not cause unwarranted invasion of privacy. He argued that the meaning of privacy under Section 8(1)(j) of the RTI Act widens the scope of documents warranting disclosure and if those provisions are properly interpreted, it could not be said that documents pertaining to the employment of a person holding the post of an enforcement officer could be treated as documents having no relationship to any public activity or interest. He also pointed out that in view of Section 6(2) of the RTI Act, the applicant making request for information is not obliged to give any reason for the requisition and that the CIC was not justified in dismissing his appeal.

The appellant did not find any remedy in the Supreme Court either. Not heeding to the arguments put forward by the appellant, the Apex court judges, Mr. K. S. Radhakrishnan and Dipak Mishra, JJ dismissed the SLP on October 3, 2012 saying, “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 organisation 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. 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 it 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. The

⁵ D D Sinha and A P Bhangale, JJ of Bombay High Court before the Division Bench of at Nagpur in *Girish R Deshpande* LPA No. 358 of 2011 on 21 December 2011.

petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.”

Thus, the Division Bench (DB) of the Supreme Court agreed with the conclusions of the DB of the Bombay High Court. Naturally, the decision assumed great significance and Public Information Officers (PIOs) started using it to deny information about complaints filed against public servants and also about action taken, if any. The decision also had significant effect on CIC. In a second appeal by Mr Manoj Arya, RTI Activist versus PIO Cabinet Secretariat, Learned Commissioner Shri. Satyanand Misra, the then Chief Information Commissioner,⁶ refused to provide the copies of complaints and other related information about a public servant quoting the Division Bench order of the Hon’ble Supreme Court in *Girish*.

The Supreme Court order had its way to the executive as well. On 14th August 2013, the Department of Personnel and Training (DoPT) issued an Office Memorandum (OM) No. 11/2/2013-IR (Pt.) on disclosure of personal information under RTI Act, quoting the operative part of the order of the Supreme Court in *Girish*. The Memorandum stated, “The Central Information Commission in one of its decisions has held that information about the complaints made against an officer of the Government and any possible action the authorities might have taken on those complaints, qualifies as personal information within the meaning of provision of Section 8(1)(j) of RTI Act, 2005.”

The impact of this OM was tremendous and widespread among public authorities as any request for information about assets/income, service book details, complaints against public servants during their service and action taken thereon were being refused. With three orders of CIC (two before and one after *Girish*), the order of the Bombay High Court

⁶ *Shri Manoj Acharya v Central Public Information Officer* CIC/SM/A/2013/000058 (decided on 26 June 2013).

(through a Single Judge and a Division Bench) at Nagpur, the dismissal of the SLP by the Supreme Court and the OM from the nodal agency DoPT, it is natural that such information is totally denied by PIOs across the country. Therefore, citizens who are filing RTI applications and seeking information (about public servants) like certified copies of complaints filed against, and action taken on disciplinary proceedings under Civil Servants Conduct Rules, their Income Tax Returns, Annual Property Statements, Annual Confidential Reports (ACRs), etc., are hitting the iron wall erected by *Girish*.

Legally, the matter of seeking copies of Income Tax Returns filed by public servants is settled as the Apex court and the Commission declared they were ‘personal information.’ There is clarity in ACRs, as the Apex court declared that every public servant had a right to know the remarks about his performance through ACRs and also a right of appeal against adverse remarks.⁷ However, the court held that citizens or other parties cannot seek the ACR of another public servant. Regarding the annual assets statements, the hide and seek game is continuing though the Parliament made its intention obvious that every public servant has to declare the assets every year under the Lokpal Act. The only point remained in *Girish* is whether the copies of complaints and action taken thereon in any disciplinary proceedings over the charges framed under Civil Service Conduct Rules could be shared with the citizen or be secured as personal information under Section 8(1)(j) of the RTI Act.

3. Landmark verdicts of the Apex Court on Privacy

The main contention of the public authority and respondent in *Girish* case was that the information was personal to the public servant, unrelated to public activity and its disclosure would cause unwarranted invasion of his privacy. The expressions ‘privacy’ and ‘personal’ were defined and explained by a Division Bench of the Supreme Court consisting of B P Jeevan Reddy and S C Sen, JJ in *R Rajgopal v State of Tamilnadu*.⁸ The Supreme Court was required to balance the right of privacy against the right to free speech in this case, where the petitioner was a Tamil news magazine which had sought directions from the Court to restrain the respondent State of Tamil Nadu and its officers to not interfere in the publication of the autobiography of a death row convict—‘Auto Shankar’ which contained details about the nexus between criminals and police officers. The Supreme Court framed the questions in

⁷ *Dev Dutt v Union of India & Ors.* (2008) 8 SCC725.

⁸ *R. Rajgopal v State of Tamil Nadu* (1996) 6 SCC 632.

these terms: “Whether a citizen of this country can prevent another person from writing his life story or biography? Does such unauthorised writing infringe the citizen’s right to privacy? Whether the freedom of press guaranteed under Article 19(1)(a) entitles the press to publish such unauthorised account of a citizen’s life and activities and if so to what extent and in what circumstances?” While answering the above questions, a bench of two judges of the Supreme Court, for the first time, directly linked the right to privacy to Article 21 of the Constitution but at the same time excluded matters of public record from being protected under this ‘Right to Privacy.’

4. What is a Public Record Then?

Public record as defined in the Public Records Act, 1993 is any record held by any Government office. The Rajgopal order is clear as to the areas of privacy – such as family, marriage, procreation, motherhood, child bearing and education among other matters. Issuance of memos, initiating disciplinary action or imposing penalty does not fall in any of these categories and, thus, it cannot be said to be the personal or private information of the employee.

5. What is Personal? Conflict with Section 8 of RTI Act

This rule is similar to Section 8(1)(j) of RTI Act, which says the information which is related to public activity is not private information. The order in *Girish* is contrary to both the express provision of law and the laid down ratio by the Apex court in Division Bench. The order in *Girish* does not even mention *R Rajgopal’s* proposition and there was neither any analysis nor its overruling. When compared and analysed, the ratio in *Rajgopal* was in full-fledged writ appeal which was heard on merits was not overruled by the order of dismissal of SLP in *Girish*. The *ratio decidendi* in *Rajgopal* is in tune with Section 8(1)(j) while the dismissal of SLP in *Girish* is in conflict with that express provision of the law. The *Girish* order does not explain why the provisions of RTI Act are not the laws and by what rule of interpretation the new principle that employee-related information is personal information has been evolved? Without overruling the ratio in *Rajagopal*, it is not jurisprudentially possible to establish a different principle of law, that too in conflict with express provisions of law. As it was not a writ appeal, there was no opportunity to bring the ratio in *Rajagopal* to the notice of the Division Bench of the Supreme Court. Another vital point is that the memos, complaints or disciplinary-action-related information is not unconnected with public activity,

which was also not discussed in the order. It might have happened because it was not a full writ appeal but a hearing on SLP only.

6. Privacy & Domestic Enquiry Against a Public Servant

In stark contrast with the order in *Girish* wherein the Bombay High Court opined that the copies of all memos issued to a public servant, show cause notices and orders of censure/punishment, etc., are qualified to be personal information under Section 8(1)(j) of the RTI Act, a Division Bench of the Kerala High Court in *Centre for Earth Sciences* case⁹ opined that disclosure of information regarding domestic enquiry against a public servant was not prohibited under Section 8(1)(j) of the RTI Act. This order of the Kerala High Court (DB) sets off the Bombay High Court (DB) order in *Girish* to the extent that disclosure of information is about domestic inquiry. The Delhi High Court gave a significant judgment on the privacy claims over the complaints-related information in *UPSC v R. K. Jain*, in which Mr. R. K. Jain sought the following information from UPSC:

- (a) inspection of all records, documents, note sheets, manuscripts, records, reports, office memorandum, part files and files relating to the proposed disciplinary action and/or imposition of penalty against Mr. GSN, IRS, Central Excise and Customs Service Officer of 1974 Batch and also inspection of the records, files, etc., relating to the decision of the UPSC thereof Mr. GSN who is presently posted as the Director General of Inspection Customs and Central Excise.
- (b) copies of all the note sheets and the final decision taken regarding imposition of penalty/disciplinary action and decision of UPSC thereof.

This information was denied by the UPSC but the CIC allowed the information to be disclosed. The UPSC filed a writ petition before the Delhi High Court. The single member Bench of Justice Vipin Sanghi held that the UPSC filed an LPA and the Division Bench of the Delhi High Court in *Union Public Service Commission v R K Jain*¹⁰ by Chief Justice and Justice Rajiv Sahai Endlaw, on 6th November 2012 reversed this in LPA citing the order of SC in *Girish*.

⁹ Kerala High Court Division Bench in *Centre for Earth Sciences Studies v Anson Sebastian* 2010 (2) KLT 233.

¹⁰ *Union Public Service Commission v R K Jain* LPA 618 of 2012 (decided on 6 November 2012).

The Delhi High Court in THDC India's case,¹¹ agreed with CIC that an employee could be given his own ACR. But it held that minutes of the departmental promotion committee were exempt under 8(1)(e) and 8(1)(j), then the matter was referred back to the CIC to determine whether there was larger public interest justifying their disclosure.

7. Right to Know the Transaction of a Public Servant:

The Apex court referred to its own decision in *Raj Narain's case*,¹² wherein a Constitution Bench considered the question - whether privilege can be claimed by the Government of Uttar Pradesh under Section 123 of the Evidence Act in respect of what has been described for the sake of brevity to be the Blue Book summoned from the Government of Uttar Pradesh and certain documents summoned from the Superintendent of Police, Rae Bareilly, Uttar Pradesh? The Court observed that "the right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one way, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. The Court further observed "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. - They are entitled to know the particulars of every public transaction in all its bearing..."

8. RTI Act: Definition of "Information"& "Record"

The information sought by the appellant in *Girish* and most of other cases will fall under the purview of definition of 'information' or 'record'. Of course it is subject to Section 8. 'Information' under Section 2(f) means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. 'Record' includes "any document, manuscript and file....."

¹¹ Justice Manmohan of Delhi High Court in *THDC India Ltd v R. K. Raturi* WPC 903 of 2013 (decided on 8 July 2014).

¹² *State of Uttar Pradesh v Raj Narain* (1975) 4 SCC 428).

As per the above definitions, a memo issued to a public servant for misconduct or any other reason is part of ‘information’ as per Section 2(f). The disciplinary proceedings taken up against the public servant, if resulted in report, i.e., ‘information’, and the entire file containing the proceedings is the ‘record.’ It is subject to Section 8, of course.

9. Rules of Interpretation and Section 8(1)(j)

A statute’s expression and its primary meaning should be given effect to by the executive and the judiciary. They have to give importance to the plain meaning, unless that leads to absurdity. When the words of a statute are clear, plain and unambiguous, i.e., they are reasonably susceptible to only one meaning the courts are bound to give effect to that meaning irrespective of the consequences.¹³ Lord Atkinson puts the point starkly in the House of Lords, in the case of *Vacher and Sons Ltd v London Society of Compositors*:¹⁴

“If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results. If the language of this subsection be not controlled by some of the other provisions of the statute, it must, since its language is plain and unambiguous, be enforced, and your lordships’ House sitting judicially is not concerned with the question whether the policy it embodies is wise or unwise, or whether it leads to consequences just or unjust, beneficial or mischievous.”

It may look somewhat paradoxical that the plain meaning rule is not plain and requires some explanation. The rule that plain words require no construction starts with the premise that the words are plain, which is itself a conclusion reached at after constructing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed.¹⁵ In the context of RTI Act, the exception on

¹³ Chief Justice Nicholas Conyngham Tindal in the *Sussex Peerage Case* (1884) 11 C1 & F 85 said: “...The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver.” See also Justice G P Singh, *Principles of Statutory Interpretation* (14th edn, Lexis Nexis 2016) 55.

¹⁴ *Vacher and Sons Ltd v London Society of Compositors* 1913 AC 107.

¹⁵ *Dr. Saibaba v Bar Council of India* AIR 2003 SC 2502.

personal information under Section 8(1)(j) is simple and plain enough to say that if the disclosure of information has any relation with public activity or interest, it cannot be denied.

10. Three Plain Rules of RTI Act, 2005

- (a) 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 [Section 8(1)(j)].

When Section 8(1)(j) of the RTI Act, 2005 is so unambiguously clear, how can a court draw a different meaning? If the complaints or disciplinary action details of a public servant are concerning the public duty or functions or responsibilities in a public organisation or a Government department, it has relationship with public activity and also public interest. The PIO cannot deny the disclosure if it causes any invasion of privacy, if so, whether it was a warranted invasion?

- (b) Provided that the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.

The second plain provision, which says all that information that could be given to the legislator, shall be accessible to a citizen. To give effect to this provision, one has to examine whether the information sought, i.e., complaints, memos, disciplinary action reports, etc., could be given to a legislator and discussed in the legislative house. If the answer is yes, it has to be given to a citizen also.

- (c) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 shall be provided to any person making a request under that section.

This means if the information sought, i.e., complaints, memos, disciplinary action reports, etc, is 20-years old, as per this proviso, it is subject only to three exceptions mentioned in (a), (c) and (i). It is not subject to exception 8(1)(j) at all.

All these three statutory expressions are unambiguous and obvious, which do not give rise to more than one meaning, hence, the intention of the Parliament to get this information to the citizen cannot be altered by a court of law, including constitutional courts. A study of the contents of the judgments in *Girish* shows that these points were neither raised nor answered.

11. Conclusion

Thus, on facts and law, the information sought cannot be straight away denied. The following inferences can be drawn from the above discussion and analysis.

- (a) There is no legal basis for considering the conduct of public servants in the service of public or public authority as his/her 'private' or 'personal' information. The legal boundaries of personal or private were specified by the Division Bench of the Supreme Court in *R Rajagopal*, which remain in force as precedent as it was not specifically overruled. It is neither logical nor legal to say that the public conduct of a public servant has no relation with public activity or public interest. He cannot sit in that position if he is not performing public activity. The decision of the Supreme Court in *R Rajagopal* on the privacy and personal information was clearly defined and the information about conduct of a public servant in his public office will not fall under the categories of information defined as personal information in that case.
- (b) When the employer is 'the State' (public in democracy) its relation with the employees, i.e., public servants is totally different from the relation with private employees. And the information about service and service-related conduct of the public servant during his employment in public authority may be public information and may not be personal information of that employee. This question has to be decided in each and every case based on facts and circumstances of that case. The information about disciplinary action, memos, reports, etc., against that public servant is part of 'information' as defined under Section 2(f) of RTI Act, 2005, and it can be disclosed subject to Sections 8 and 9 of that Act.

- (c) As far as the assets-related information is concerned, the Supreme Court's order in *PUCL v UoI* and *ADR v UoI* besides the Lokpal Act 2003 laid down the law that a public servant's assets-related information is *not personal information* but has to be disclosed under a statutory obligation and, thus, could be disclosed under RTI Act.
- (d) In view of several other decisions of the Supreme Court quoted above and the objectives of the Right to Information Act, 2005, the information about disciplinary action taken against a public servant can be shared as per the Act.

The privacy of public servants is strictly limited to his personal affairs, while his conduct in public service cannot be considered inaccessible to a citizen under RTI Act. The relationship between public servant's conduct in office and public is an inevitable relationship. The citizens are, however, not concerned with family members and issues pertaining to them, except when they later were accused of receiving the corrupt gains of the public servant. Their service records, leave records may have to be disclosed depending on their relevance to the 'public money', public conduct and 'misconduct.' Complaints of corruption, sexual harassment, disobedience, destruction of records, misbehaviour, non-performance, penal actions like suspension, dismissal or cut in increments or admonition, transfer, salary or pension-related information appears to be personal but cannot be prevented from disclosure. For instance sexual harassment complaints against a teacher or an officer are matters straight away connected to the public conduct of a public servant and, hence, members of public in general have a right to know. It is a part of governance or administration or performance of public service or implementation of schemes for public, implemented with public money.