

CHAPTER-2

THE RIGHT TO INFORMATION ACT, 2005: STRUCTURAL AND FUNCTIONAL ANALYSIS

2. 1. An Overview

The Right to Information Act, 2005 has made it practically possible for every citizen to make the public officials answerable for their action or inaction. The Act has reaffirmed the worth of a common man as the source of all powers and has made the government accountable to public.

The Right to Information Act, 2005 is divided into six Chapters. Chapter I lays down the extent and applicability of the Act, Chapter II focuses on the Right to Information and obligations of Public Authorities, Chapter III and IV highlights the Constitution, term of office, conditions of service and removal of the Central and the State Information Commissions respectively. Powers and functions of the Information Commissions and the provisions of Appeal and Penalties are included in the Chapter V. Chapter VI is a collection of miscellaneous provisions. The two schedules in the Act include oath or affirmation made by the Commissioners and a list of twenty-six Intelligence and Security organisations that are immune from making disclosure owing to security reasons.

2.2. Object and Purpose of the Right to Information Act, 2005

The Preamble of the Act justifies the objective and purpose envisioned in the legislation. It signifies that the citizens may now have the right to access information that is under the control of government. Access to information is an essential requirement in promoting transparency and accountability in achieving the goals of good governance.

Therefore, the purpose of the Act is three-fold – (i) to confer rights to the citizens to seek information; (ii) to promote transparency and accountability in public administration; (iii) and to contain corruption.

- (i) Conferring rights to the citizens**– The Act has conferred on the citizens the right to demand information on matters that concern them and check misuse of administrative discretion. It has given an opportunity to the citizens to seek answers from the government which is necessary to evaluate the integrity and fairness of its decisions. If information requested is denied by the public authorities, the citizens have the right to be informed about the reason for such refusal.
- (ii) Promoting transparency and accountability**- The Act has brought in a culture transparency and accountability by providing accessibility to information relating to all kinds activities that impact the public. Monitoring, overseeing, investigating, scrutinising and reviewing government actions have been made possible with access to information.
- (iii) Containing corruption**- Corruption is a major threat to a nation’s development. The right to information is the key to combat corruption and foster an environment which is pro-transparency, pro-democracy and ultimately pro-people friendly.¹ Absence of scrutiny of the decisions taken by the government encourages corruption. The Right to Information has given this opportunity to the citizens to scrutinise and inspect all records that relates to public affairs combating the menace of corruption.

The Preamble further reflects that the right to information is not absolute and there are certain categories of information that are exempted from disclosure in larger public interest. Therefore, the determination of the sensitiveness of information is made on the basis of the facts and circumstances of each case.

¹ Triranjana Raj and Sanjeev Kumar Sharma, “Right to Information Act.2005” LV 3 *IJPA* 486 (2009)

2.3. Extent, Scope and Application of the Right to Information Act, 2005

Although the Right to Information Act, 2005 came into force on October 12, 2005 some of the sections such as Sections 4(1), 5(1), 12, 13, 15, 16, 24, 27 and 28 came into force with immediate effect i.e. with effect from 15th June, 2005. The remaining provisions came into force on 12th October, 2005.

Prior to the passage of the Act, eight states and one Union Territory had their own information laws. Therefore, besides Delhi, the states that had their legislations on Right to Information include Tamil Nadu, Rajasthan, Assam, Goa, Jammu & Kashmir Karnataka, Maharashtra Madhya Pradesh. Post the enactment of the Right to Information Act, 2005, the Act extends not only to the public authorities of the Central government but also the state and local level authorities. This means that citizens in every state of India is able to access information of the Central and State Governments offices whether or not a separate state information law is in place. Although the Right to Information Act, 2005 does not apply to the state of Jammu & Kashmir, the establishment in India to which the Act applies are not exempt if they function in Jammu & Kashmir.²

One of the key features of the Act is that it is made available only to the citizens of India and are not available to non-citizens such as foreign tourists, students, refugees etc. Although companies and corporations cannot apply for information under the Act, but their directors can approach the public authorities for such information. The citizens, who fall under the category of below poverty line (BPL) as determined by the appropriate government, are exempted from paying any fees for accessing information. The duty to provide information rests with public authorities established, owned, or substantially financed by the Central Government, the State Governments and the Administration of the Union territories including Panchayats, Municipalities and other local bodies. The private sector although not included, may also be approached for information through the government department that holds such information.

² N.K Acharya, “*Commentary on The Right to Information Act, 2005*” 4 (Asia Law House, Hyderabad 8th edn., 2010)

2.4. Legislative Framework of the Right to Information Act, 2005

The Right to Information Act, 2005 has been lauded by various international organisations as one of the most progressive legislations of the world. The Act prescribes a simple procedure to seek information from the government officials at a nominal fee and easy appellate procedure.

The Act lays down the procedure for seeking information by the citizen, the obligation of the Public authorities to make available all the information and records for the easy access of citizens. The exemptions clause that excludes certain categories of information that cannot be made public subject to certain exceptions. These exemptions are not absolute and subject to disclosure in public interest. The refusal or delay in the disclosure of information can be made before the FAA, a senior officer of the same department. Further if not satisfied with the First Appellate Authority, the appellant or the complainant can approach the Information Commissions that receive and inquire into such appeals/complaints received from the citizen.

2.4.1. Important Definitions under the Right to Information Act, 2005

(i) Appropriate Government

Under the Act, where a public authority is a department of the Central and State governments, it is the appropriate government that has the power to make rules for their respective institutions and establishments to carry out the functions of the Act.³

(ii) Competent Authority

The competent authority heads the public authority and acts on behalf of him. In the Lok Sabha or the Vidhan Sabha, it is the Speaker of the House; in the Rajya Sabha, and the Vidhan Parishad, it is the Chairman; Chief Justices of the Supreme Court and the High Courts respectively; the President and the Governor in case of authorities of the Central and State governments, and also the administrator in case of Union Territories constituted under the Constitution of India.⁴

³ Right to Information Act, 2005 s.2(a)

⁴ *Id.* s. 2(e)

The Act empowers the competent authority to frame rules for proper implementation of the Act. In *Amarchand Bawaria v. Union of India*⁵, a cantonment board being outside the purview of the term “competent authority” under Section 2(e) was not considered competent to make rules.

(iii) Information

Since the very objective of the Act is to make information available to the citizens, the definition of information is very significant and includes documents, material in print or electronic form, records, papers, e-mails, models, logbooks, samples, circulars, models, press releases and also opinions.⁶

(iv) Record

The Act also makes accessible any records held by the public authorities in the form of any document or file in any form (print or electronic) and also includes reproduction of such images.⁷

Although the definitions under the RTI Act do not specify the kind, nature or quality of information that may be disclosed, the Act defines the two terms – “Information” and “Record” in its widest amplitude and includes directory of its officers, their remuneration, functions, minutes of board meetings, list of beneficiaries of government schemes in electronic and non-electronic form. It not only includes information like documents, manuscript, memos, e-mails, opinion, etc. but also samples and models. However, it has to be kept in mind that the definition does not include all kinds of information and records and is confined to those which is in relation to administration and includes information that the public officials are obliged to publish or obliged to be keep in record for the purposes of this Act.

The Public Records Act of 1993 lays down identical definition of public records. The Act lays down provisions regulating the management, administration and preservation of public records of the Central Government, Union Territory, public sector

⁵ AIR 2009 MP 121

⁶ The Right to Information Act, 2005 s.2(f)

⁷ *Id* s.2(i)

undertakings, statutory bodies and corporations, commissions and committees constituted by the Central Government or a Union Territory.

Information relating to any private body also falls under the definition of information if it is legally accessible by a public authority and can be in electronic or non-electronic form. Taking into consideration the ever increasing powers of the government, it is very difficult for a common man to ascertain as to what extent or what kind of information would be made available to him. However, only information may be sought and the applicant cannot question the authority anything pertaining to the reasons for any decision taken by the government. No information can be created that is not a part of the record. Also no hypothetical questions would be required to be interpreted by the public authority under the Act.

(v) Right to Information

The Right to information gives the opportunity to the citizens to have a wider access to public information that includes the right to inspect, take notes, certified samples of documents under the custody of the public authority.⁸

The Act emphasises on the citizens empowerment to demand information and the duties and responsibilities of the public authorities to make information available and most importantly on voluntary publication and dissemination of information by the public authorities. However, it is also made clear that such information can be given to the extent it is available and possible, without affecting the fundamental rights of others.

(vi) Public Authority

According to the Act, a Public Authority includes Union, State and local governments, public sector undertakings, members of Rajya Sabha and Lok Sabha and all municipal and Panchayat bodies. The Act does not define “substantially financed” but in *Thalappalam Service Cooperative Bank Ltd. v. Union of India*,⁹ the Apex Court held that “substantially financed” means that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.¹⁰

⁸ *Supra* note 7 s.2(j)

⁹ AIR 2009 (NOC) 2185 (Ker.)

¹⁰ The Right to Information Act,2005 s.2(h)

Art 12 and Public Authority

Except sub-clause (d)(i) and (ii) of Sec 2(h) that are liable to give information by virtue of the provisions in the RTI Act, all categories mentioned above fall under the definition of the term ‘state’ under article 12 of the Constitution of India. Since Right to Information is implicit under Article 19 (1)(a), it may be included even in articles 14 and 21 and the right is available against authorities or bodies that come within the meaning of the word ‘state’ in article 12 of the Constitution.¹¹

In *Ajay Hasia v. Khalid Mujib Sehravardi*,¹² the Apex Court observed that there would be considerable erosion of the efficiency of fundamental rights in case the term ‘authority’ is interpreted narrowly.

In *Subhash Chandra Agarwal v. Office of Attorney General*,¹³ the Delhi High Court overruled the decision of Central Information Commission holding that Attorney General of India is a public authority under the Right to Information Act, 2005. The Division Bench upon hearing an appeal filed by the Central government reversed the judgment of the Central Information Commission and held that the Attorney General of India is not a Public Authority under the Act and stated “essentially, the function being that akin to an Advocate of the Government of India, he is in a fiduciary relationship with the government of India and cannot put in the public domain his opinions or the materials forwarded to him by the Government of India.”

Art 226 and Public Authority

The Constitution of India confers extensive powers on the High Courts to issue writs to any person and authority for the enforcement of fundamental Rights and for any other purpose. In comparison to the powers of Supreme Court, the High Court has wider powers as it cannot only issue writs for enforcement of Fundamental Rights but for the enforcement of other rights also. The implication of this provision would mean that it may cover any other person or bodies performing public functions and not be confined only to statutory authorities and instrumentalities of the State. The form of the body or

¹¹ S.P.Sathe, “Right to Information” 134, (Lexis Nexis Butterworths, New Delhi 1st Ed., 2006)

¹² (1981) 1 SCC 722

¹³ LPA 168/2015&C.M.No.5470/2015 decided on February 03, 2017

institution is irrelevant; what is of relevance is the nature of the obligation imposed, the breach of which is complained against, or the enforcement of which is sought.¹⁴

Binny Limited v. Sadasivan,¹⁵ it was held by the Supreme Court that Article 226 of the Constitution is couched in a way that even a writ can be issued against a body which is discharging public function.

Determination as to whether a particular body or institution falls under the ambit of section 2(h) or not is a very important factor for the applicant for seeking information. Many times requests have been refused on the ground that the concerned authority does not fall under the definition.

Private Organisations

The state has given wider interpretation to the definition of public authority including private organisations receiving aid from the state liable to give information and some statutes have included even bodies registered under Acts such as Companies Act and the Cooperative Societies Acts within the purview of the RTI of their states.

In *Sarabjit Roy v. Delhi Electricity Regulatory Commission*¹⁶ it was held by the Central Information Commission that utility companies that are privatised fall under this category. Information from the private entities can also be demanded from the public authority under which the authority is registered but only such information that outweighs public interest can be sought for and not all information.

In *Ms. Sadhana Dixit v. Directorate of Education*,¹⁷ the appellant had demanded a certified copy of service book, copies of her appointment letter issued and staff statements of all the employees from a private school in Delhi. The school did not disclose any information in spite of being provided with all the information by the Directorate of Education on the grounds that private schools did not come under the purview of the RTI Act. The information Commissioner directed the school to disclose all the information and held that private schools governed by laws like the Delhi

¹⁴ Prof. Madabhushi Sridhar, "RTI Use & Abuse" 196 (Allahabad Law Agency, Haryana 1st edn. 2015)

¹⁵ (2005) 6 SCC 657

¹⁶ CIC/WB/A/2006/00011

¹⁷ CIC/AD/A/2013/000658-SA

Education Act will also be governed by the provisions of the Right to Information Act, 2005.

Security and Intelligence Organisations

The security and intelligence agencies function under the authority of the Central Government but they do not constitute Public Authority. The Act specifically lists 26 Security and Intelligence organisations that are exempted from providing information and empowers states to exempt similar organisations under their control under the Second Schedule of the Act.

It should be noted here that although these organisations are exempted from disclosure, matters relating to corruption and human rights violations are not excluded. Therefore these organisations are mandated to appoint Information Officers and Appellate Authorities in their department to handle such requests.¹⁸

(v) Third party

The purpose of defining a “third party” is to provide access to information relating to other citizens, institutions or authorities who may be involved in a transaction either as applicants, beneficiaries, claimants and interested parties. If the third party treats particular information as confidential, the request for disclosure of such information may be rejected on the consideration of representation of the third party.

In *Sri Bhavana Rishi Co-operarative House Building Society v. A.P. Information Commission*,¹⁹ the court reaffirmed that information relating to third parties are contemplated as liable to be furnished under RTI Act.

It is however to be noted that the third party information is always not available and depends on the merit of the case. In *Shri Sameer Bhandari v. PIO, Syndicate Bank, Chandigarh*,²⁰ the Central Information Commission upheld decision of PIO and the First Appellate Authority refusing information relating of the locker of appellant’s wife,

¹⁸ *Nabarun Mazumdar v. National Technology Research Organisation*, CIC/WB/C/2006/00221

¹⁹ AIR 2010 AP127

²⁰ CIC/VS/A/2012/001753/05738

statement of her savings bank account and details of fixed deposits. The husband being the third party was not entitled to receive such information.

2.4.2. Citizens' Right to Information

Prior to the enactment of the RTI Act, the citizens had access to public records under the Evidence Act, 1872. Sections 74 and 76 empowered the citizens to provide access to public records on payment of copying charges. Post independence, this right was not expressly constitutionalised in 1950 but with the help of interpretation of the judiciary the right was recognised as a fundamental right under the horizons of right to freedom of speech and expression.

However, it is to be noted here that the right is conferred only on the citizens of India and Members of Corporate and Associations can avail the information through individuals representing the management. In *Dr. D.D. Devdasa v. Indian Bureau of Mines*²¹, it was held that an application will be maintainable if the citizen applies in his personal capacity and places the name of the company in the application for identification. A company is not eligible to file an application under the Act.

2.4.3. Duties and Responsibilities of Public Authorities

A public authority has been given a number of duties to facilitate the Right to Information under Section 4 of the Act that ensures maintenance of record, publication of information designation of Information Officers within the prescribed time period to facilitate the implementation of the Act.

(i) Maintenance of records

The Act makes it obligatory on every public authority to maintain all its records duly catalogued, indexed and computerised. To provide easy access to information, the Act stipulates the manner and form in which the access to the records are facilitated.²²

In addition to RTI Act, another legislation that regulates the management, administration and preservation of public records of the Central Government or the Union Territory Administrations is the Public Records Act, 1993. Under the Act, the

²¹ CIC/AT/A/2006/00443

²² The Right to Information Act, 2005 s 4 (1) (a)

duty to arrange, maintain and preserve public records is assigned to a Records Officer designated by the public authority.²³ The Act prescribes that no record created before the year 1982 shall be destroyed except without the approval of the Director General or the Head of the Archives. The Act imposes penalty on the Records Officer for contravention of the provisions of the Act.²⁴

Therefore, both the Right to Information Act, 2005 and Public Records Act, 1993 makes it obligatory upon the public official to maintain public records and to protect them from destruction.

(ii) Information to be published within 120 days

The Act mandates designation of officers in all public offices within a time frame of 120 days for facilitating information to the information seekers. A comprehensive list of seventeen categories of information are to be published by the public authorities which include the details of of the concerned organisation, its functions and duties; the powers and duties of its officers and employees; procedure involved in decision making by the public officials; the rules, regulations, instructions, manuals and records, under the control of such employees discharging the functions; details of any provision that involves the public in the implementation of such policies; a directory of its officers and employees; salaries and provisions relating to compensation of the public officials, details of budget of the concerned department and other expenditures and the mode of disbursement.

The list should also consist of information relating to subsidy programmes meant for the beneficiaries and the details of the recipients. In addition to this the public authorities should also make available details of information under its custody and the procedure involved in seeking such information.

The offices will also voluntarily disclose names, designation and other relevant information about the Public Information Officers enabling easy access to the citizens and update them every year.

²³ Public Records Act,1993, s. 5

²⁴ *Id* s. 9

(iii) *Suo motu* disclosure of information

Suo motu disclosure or pro active disclosure of information is one of the most essential features of the Act. The *suo motu* disclosure should be made accessible by the citizens in the department websites and should be regularly updated.²⁵ The idea behind inclusion of such a provision is to avoid the exercise of seeking and providing information and save time and money of the citizens and also to lessen the burden of the Information Officers.

(iv) Dissemination of Information

Dissemination of information by the public authorities has been strictly mandated under the Act.²⁶ All published material may be made available to the citizens at a reasonable price in the local language of the citizens as determined by the concerned department in compliance with the rules.²⁷ Moreover, such information can be communicated through notice boards, newspapers, public announcements, media broadcasts, internet or any other means.

The Central Government have prescribed Rs.10 as application fee and Rs 2 per page created or copied for obtaining information. However, the disparity in the amount of fee in different states sometimes make it difficult for the citizens to obtain information and defeats the purpose of the Act.²⁸ For the applicants falling under the category of Below Poverty Line (BPL), the information is provided free of cost.²⁹

(v) Designation of Public Information Officers

The Act provides for designation of Central Public Information Officers or State Public Information Officers (PIOs), within one hundred days of the enactment of the Act for the purpose of providing information to the information seekers.³⁰ In addition, Assistant Public Information Officers for the Central and State government offices may also be appointed at the sub-divisional or district level for receiving applications or

²⁵ *Supra* note 22 s.4(2)

²⁶ The Right to Information Act, 2005, s 4(3)

²⁷ *Id* s.4(4)

²⁸ The Right to Information Rules, 2012, Rule 3

²⁹ The Right to Information Act, 2005 *Proviso* to s.5

³⁰ *Id* s.5(1)

appeals addressed to the PIOs for which an additional time period of five days is provided to these officials for forwarding the same.³¹

These PIOs are expected to extend reasonable assistance to the citizens and may also seek assistance of other officers to expedite the delivery of information and is to be treated as the PIO for the said purpose.³²

2.4.4. Procedure for obtaining Information

(i) Conditions to be fulfilled by the Applicant

According to the Act, the applicant seeking information has to make a request to the public authority in writing either through electronic medium in English, Hindi or the official language of the area accompanied with the prescribed fee.³³ The application should clearly specify the particulars of the information sought and reasonable assistance shall be rendered to person who is unable to communicate in writing. The Information Seeker is not obliged to state reasons for requesting information or any other personal details except those that may be required for supplying the information.

Transfer of application may be made by the public authority to another public authority that holds the requisite information as early as possible and in such cases an additional five days time has to be given for processing such requests.³⁴

(ii) Disposal of Request

The Act makes it obligatory on the part of the Public Information Officer to provide information when a request is made to him as expeditiously as possible.³⁵ The time limit specified under the Act is thirty days within which information has to be provided. The time frame limits to forty-eight hours if the information involves life and liberty of a person. Refusal can be made only on the reasons and grounds specified under the Act and has to be communicated to the applicant expeditiously. However, it would

³¹ *Id* s 5(2) and its *Proviso*

³² *Id.* s.5(5)

³³ *Supra* note 30 s.6

³⁴ *Id.* *Proviso* to s.6(3)

³⁵ *Id.*, s.7

be taken as refusal if the public officials fail to answer requests within the time period of thirty days.³⁶

If decision has been taken that the information shall be provided on payment of further fee representing the cost of information, in addition to the prescribed fee, it shall be intimated by the Public Information Officer to the applicant seeking the information.

No fee shall be charged from person who are determined to be below poverty line (BPL) by the appropriate government. Where the public authority fails to comply with the time limit of 30 days for regular applications and 48 hours concerning life and liberty of a person, the information shall be provided free of cost to the person making the request.

2.4.5. Exemptions from Disclosure of Information

To safeguard and secure sensitive information, the government of all countries classify their documents into various categories. In India, although every five years regular review has been mandated, enforcement of declassification and reporting of data is not done on a regular basis. However, the information Commission can compel disclosure of information or declassification under the RTI Act. Like all other countries, the Right to Information is not an absolute right in India and various provisions in the Act which restricts the rights of the citizens to access all sorts of information.

The areas of exceptions have been thoughtfully restricted, beyond which disclosure can be rightfully demanded. Section 8(1) (a) to Section 8(1)(j) lays down a list of ten categories of information that are exempted from disclosure. In addition to these sections, Section 24 excludes the application of the Act to the intelligence and Security organizations as specifically mentioned in the Second Schedule.

The specified grounds for denial of disclosure of information are examined in detail below with the help of case laws.

³⁶ *Id.* s. 6(2)

(i) Disclosure Affecting the State

Access to information of matters affecting the sovereignty, integrity and security of India cannot be made available to citizens as disclosure of these information may cause unwarranted harm to the nation.³⁷ Disclosure of military information or strategic defence secrets is also restricted under Article 19 (2) of the Constitution of India.

Information relating to economic interests such as currency or exchange rates, regulation and supervision of banking and insurance, proposals concerning borrowing and foreign investment can be refused under the Act as it would harm the national economy if made public prematurely.

Recently, in *Ramswaroop v. PIO, Department of Posts*³⁸, complaint relating to the denial of information by the Prime Minister's Office (PMO) concerning printing of currency notes post demonetisation under the exemption of Section 8(1) (a) of the RTI Act was dismissed by the Central Information Commission. In his judgement, Prof. Acharyalu held that "it is the duty of every public authority to spell out all relevant facts and reasons besides giving details at least in the post demonetisation period."

Similarly, disclosure of sensitive information relating to foreign state or information that can incite crime is also exempted under the Act. Interception of telephones governed under the Indian Telegraph Act 1885 may be exempted from disclosure under Sec.8 (1) (a) of the Act if it concerns the security of the state.³⁹

In another case of *Ritesh Parmar v. Commissionerate of Customs*⁴⁰, information relating to disclosure of proposal containing relevant details of the smuggling activities under the COFEPOSA Act was refused as the disclosure would be detrimental to the economic interests of the state.

³⁷ *Supra* note 30 s.8(1)(a)

³⁸ CIC/POSTS/A/2017/108193

³⁹ *S.C Sharma v Ministry of Home Affairs* CIC/AT/A/2006/00056

⁴⁰ F.NO. CIC/MA/A/2006/000598

However, it should be borne in mind that this protection of exemption from disclosure should not be misused and is not available if it involves corruption and violation of human rights.

In *CPIO, Intelligence Bureau v. Sanjiv Chaturvedi*⁴¹, the High Court upheld the decision of the Central Information Commission and went in favour of a whistleblower from the Indian Forest Service (IFS), Sanjiv Chaturvedi's right to access IB report of exonerating him in a number of cases and to provide a copy of the report to him. The Ministry of External Affairs had earlier contended that it was discretion of exempted organisation and not the right of appellant to seek information. The Chief Information Commission responding to this contention has held that the public authorities such as IB and Ministry of External Affairs are not entitled to exemption in matters relating to corruption and human rights violation.

(ii) Disclosure forbidden by courts/Tribunals

The information which has been specifically forbidden to be published by any court of law or tribunal may be refused to be disclosed to the public.⁴² It also excludes disclosure of information which may constitute contempt of Court. The purpose of such restriction is to avoid any interference with the administration of justice.⁴³

All matters that are *sub-judice* does not fall under the exemption clause. In *K.M.Talera v. Cantonment Board, Pune*,⁴⁴ it was held that exemption under Section 8 is available only when the *sub-judice* matter is specifically forbidden from disclosure by a Court or Tribunal and does not provide blanket exemption from disclosure.

(iii) Disclosure breaching privileges of Parliament/State Legislature

The provision reflects that if a public authority discloses the confidential deliberations of a Parliamentary Select Committee, it would amount to breach of parliamentary privilege.⁴⁵

⁴¹ W.P.(C) 5521/2016 & CM No.23078/2016

⁴² The Right to Information Act,2005 s.8(1) (b)

⁴³ *Supra* note 10 at 87

⁴⁴ F.No. CIC/AT/A?2006/000193

⁴⁵ *Supra* note 43 s.8(1)(c)

In *Priya Pal Bhante v. Rajya Sabha Secretariat*,⁴⁶ the Information Commission held that unless placed before the Parliament, proceedings of a Select /Joint Committee are not accessible to public.

Relevant information and the files and records regarding allocation of 2G spectrum and grant of UAS licence to Dish net Wireless Ltd. held by the Department of Telecommunication under Ministry of Communication and IT, handed over to the Joint Parliament Committee (JPC) and the CBI was exempted from disclosure as it would amount to breach of parliamentary privileges.

(iv) Disclosure of commercially confidential information of Third Party

To promote a spirit of competition in the market economy in the era of liberalisation, privatisation and globalisation, the companies are better protected of their commercially confidential information if a ground is conferred on them to refuse information.⁴⁷ However, such information can be divulged if it serves public interest.

(v) Disclosure of Information held in a fiduciary relationship

According to Black Law Dictionary, the term “fiduciary relationship” is “a relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships – such as trustee-beneficiary, guardian-ward, agent-Principal, and attorney – client-require the highest duty of care. Fiduciary relationships usually arise in one of four situations: (1) when one person places trust in the faithful integrity of another ,who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.”⁴⁸

⁴⁶ CIC/WB/A/2008/01294

⁴⁷ *Supra* note 43 s.8(1)(d)

⁴⁸ Bryan A Garner(ed.) Black’s Law Dictionary, 640 (West Publishing Co. USA 1999)

In *Union of India (UOI) thr. Director, Ministry of Personnel, PG and Pension v. Central Information Commission and Shri P.D. Khandelwal*⁴⁹ the court held that since the term ‘fiduciary relationship’ has not been defined in the RTI Act, it has to be interpreted keeping in mind the object and purpose of the Act. Determination of whether exemption under this section would be allowed or not would depend upon the interpretation based on the merit of each case.

In *CPIO, Supreme Court of India, New Delhi v. Subhash Chandra Agarwal*⁵⁰, the Registry of the Supreme Court rejected the application of the applicant relating to the assets of the judges declared by them to the Chief Justice of India. The ground of rejection was that the Chief Justice of India holds the information regarding assets in a fiduciary capacity and is thus not obliged to supply the required information due to exemption provided under Section 8(1) (e).

In *Reserve Bank of India v. Jayantilal Mistry*,⁵¹ the issue brought forth by the Supreme Court was that whether all the information sought for under the Right to Information Act, 2005, can be denied by the Reserve Bank of India and other banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other? The Court answered in negative. It stated that the RBI does not place itself in a fiduciary relationship with the financial institutions, because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust and the both do not act in the interest of each other.

(vi) Disclosure of confidential information received from foreign government

Information received in confidence from foreign government or information is exempted from disclosure under the Act.⁵² In *Arun Jaitley MP (Rajya Sabha) v. Central Bureau of Investigation*⁵³ the information regarding correspondence exchanged between

⁴⁹ WP (Civil) No.16907/2006

⁵⁰ WP (C) 288/2009

⁵¹ (2016) 3 SCC 525

⁵² *Supra* note 43 s.8(1)(f)

⁵³ CIC/MA/A/2006/00230

the crown prosecution service of United Kingdom ,Interpol and CBI advices received from expert counsels on various issues relating to the case and ongoing investigation were covered under the exemption category of section 8(1) (c) and (h) and the communication with other external agencies which are cooperating on the matter are privileged communications and hence exempt from disclosure under section 8(1)(f) of the RTI Act.

(vii) Disclosure of information endangering life or physical safety of any person

If the public authority is of an opinion that there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of section 8(1)(g) of the Act.⁵⁴ In this case, a person claiming to be a public –spirited citizen sought information under the RTI Act from the Bihar Public Service Commission on a range of matters relating to interviews conducted by it in two days. The Commission disclosed the information save and except for the names of the interview board. On appeal, the High Court directed such disclosure.

In *Union of India v. R.S.Khan*⁵⁵, the Delhi High Court held that the Union of India cannot deny information under Section 8(1) (e) of the Act on the mere apprehension of danger or physical safety. There must be strong basis to invoke such a provision.

(viii) Disclosure of information impeding the process of investigation

An exemption from releasing information is granted if such information impedes the process of investigation or the prosecution of the offenders.⁵⁶ However, reasons for such refusal have to be given by the Public authorities so that there is no scope for misuse of this provision. The word ‘impede’ would mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of *investigation*.⁵⁷

⁵⁴ *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizvi* (2013) 120 SCL 197(SC)

⁵⁵ 173 (2010) DLT 680

⁵⁶ *Supra* note 43 s.8(1) (h)

⁵⁷ *Additional Commissioner of Police (Crime) v.CIC*, W.P.(C) No.7930 of 2009

In *B.S.Mathur v. Public Information Officer of Delhi High Court*,⁵⁸ an inquiry was conducted against the petitioner, a member of the Delhi Higher Judicial Service. The Public Information Officer denied disclosure of information relating to these inquiries under Section 8(1) (h) of the Act. Thereupon, he approached the first and second appellate authorities through which he was allowed partial disclosure which was of little relevance to him. Subsequently, he filed a writ petition before the Delhi High Court to determine as to whether the extent of the information not supplied to him impede the investigation against him under the Act. The Court observed that the burden of proof is on the public authority to show in what manner the disclosure of such information would impede the investigation.

(ix) Disclosure of Cabinet Papers/Deliberations of the Council of Ministers, Secretaries and other Officers

Cabinet papers and deliberations of the Council of Ministers, Secretaries and other officers are exempted from disclosure.⁵⁹ The proviso to section states that after a decision is taken or when the transaction is complete, such information may be made public.⁶⁰

(ix) Disclosure of Personal Information

Right to privacy is recognised as a fundamental right under Article 21 of the constitution of India. Disclosure of information that causes unwarranted invasion of privacy is exempted from disclosure under the Act.⁶¹ The personal information stored by the government about individuals can be refused by the government to a third person because such information may concerns his or her private life. The Right to Privacy is often seen to be in conflict with the Right to information as information that are personal and private and restricted from disclosure by the government. An individual's right to privacy is protected under the Act unless such privacy outweighs public interest.⁶²

⁵⁸ 180(2011)DLT 303

⁵⁹ Supra note 43 s.8(1)(i)

⁶⁰ *Addl. Commissioner of Police (Crime) v. Central Information Commisison*, W.P. (C) No. 7930 of 2009

⁶¹ Supra note 43 s.8(1)(j)

⁶² *Pritam Rooj v. University of Calcutta* AIR 2008 Cal 118

In *Vijay Prakash v. Union of India*,⁶³ a husband sought for his wife's service records, who was a Wing Commander, for settling his matrimonial disputes. The Public Information Officer refused to disclose such information on the ground that the particulars sought for, related to personal information exempted under Section 8(1) (j), and even a husband seeking such information is also not entitled to seek information about his wife's locker and other personal information from the bank as such information is exempt from disclosure under the Act.

In *Kewal Singh Gautam v. State of Chhattisgarh*,⁶⁴ The petitioner sought information by way of certified copies of the answer scripts of the departmental examination in which he obtained less marks than he expected. This information was his own performance and does not cause any invasion of privacy of any individual. Hence, the information was disclosed.

In *Subhash Chandra Aggarwal v. Registrar General, Supreme Court of India*,⁶⁵ the Delhi High Court's decision was upheld by the Supreme Court of India which had held that medical expenses of judges are exempted from disclosure under the purview of the Right to Information Act, 2005 unless it is shown that the same is in larger public interest.

To what extent is a public servant under an obligation to disclose information relating to his service career, the details of his assets and liabilities, movable and immovable properties was answered in the landmark case of *Girish Ramchandra Deshpande v. Central Information Commission*.⁶⁶ The Apex court held that copies of all memos, show cause notices and orders of censure/punishment, assets, income tax returns ,details of gifts received etc. by a public servant are personal information as defined in clause (j) of Section 8(1) of the RTI Act and hence exempted and cannot be furnished under RTI Act. This judgement has disempowered the citizens to a considerable extent in demanding accountability from the public servants.

⁶³ AIR 2010 Del 7

⁶⁴ AIR 2011 Chh.143

⁶⁵ W.P.(C) 1842/2012 & CM No.4033/2012

⁶⁶ (2013) 1SCC 212

Non-Obstante Clause

The *non-obstante* clause that provides for balancing of interest in closure and disclosure of information, overrides the exemptions under Section 8(1) and the Official Secrets Act, 1923 if public interest off-set the harm to the protected interest by non-disclosure.⁶⁷

The determination of 'public interest' is complicated and requires the authority deciding the matter to balance an individual's right to privacy with the public interest in disclosure of such information.

In *Aparna Chakraborty v. PIO, Department of Posts*,⁶⁸ the appellant sought information as to whether her name or her mother's name has been incorporated as nominee in the Service Book of her father. The CPIO informed her father's grade pay and basic pay but refused to disclose the nominee's name as it amounts to third party information under Section 11 of the Act. The Commission was of the view that a daughter has a right to know and a father cannot escape liability by suppression of information in larger public interest and directed the respondent to disclose the information within 21 days.

Maintenance of Records for 20 years

The Act casts an obligation on the public authority to provide information relating to any matter that took place before 20 years before the request has been made for seeking such information. The decision of the Central government shall be final in computing the period of twenty years.⁶⁹

In *Shri Arvind Kumar, Noida v. State Bank of India, Varanasi*,⁷⁰ the appellant sought copies of documents related to an employee's position with SBI branch, his duration of employment and also the pay-scale applicable to him. The CPIO intimated the appellant that the information sought by him pertained to records which were more than 20 years old and further, the nature of the desired information was exempt from

⁶⁷ The Right to Information Act, 2005 s.8(3)

⁶⁸ CIC/BS/A/2016/001111

⁶⁹ *Supra* note 67 s. 8(3)

⁷⁰ CIC/MP/A/2016/000955

disclosure under section 8(1)(d) and (j) of the RTI Act as it related to commercial confidence and personal information of a third party.

Aggrieved by the decision of the CPIO, the appellant approached the FAA where the CPIO's decision was upheld. Thereafter, his appeal was heard by the Commission. The Commission observed that the CPIO, at first instance, should have mentioned that the records relating to the information sought were not available as per their record retention policy which was 20 years and the information sought for was 25 years old. The Commission therefore held that even the disclosable information sought cannot be provided to the appellant as the relevant records pertaining to the same were not available with the respondents.

Grounds for Rejection – Infringement of Copyright

Recognising plagiarism as a serious offence, the Act restricts the right to information to access the written work of an author or scientific inventions made and patented on a discovery. By restricting the copyright to a period of 60 years since the death of the author and by providing for compulsory licence of a literature or a discovery, the laws of copyright and patent strike a balance between the right to privacy and public access to knowledge. The Act also excludes disclosure of information if it amounts to infringement of copy-right of a person.⁷¹

Application of Doctrine of Severability

Doctrine of severability protects the validity of legislation by considering invalid only those provisions which are inconsistent with Part III of the Constitution. But if the provisions are so intertwined that they cannot be separated from one another, then the invalidity of a part may result in the invalidity of the Act in its entirety.

This doctrine is also applicable in interpreting the provisions of the RTI Act.⁷² By applying the rule of severability, information that is not exempted can be severed from the exempted information and has proved to be very useful for both the information seekers and the information providers. However, this has to be communicated to the applicant who has the right to appeal against the decision.

⁷¹ Supra note 10 pg-54

⁷² The Right to Information Act,2005 s10

In *Addl. Commissioner of Police (Crime) v. Central Information Commission*,⁷³ the court held that principle of severability can be applied where the disclosure of information does not affect the confidentiality and identity of the fiduciary relationship.

2.4.6. Disclosure of Third Party Information

Section 11 of the Act protects this right to privacy by giving protection to third party from disclosure. The information relating to third party can be disclosed by the consent of that party when Public Information Officer is satisfied that larger public interest warrants such disclosure and if such satisfaction is not expressed the provision does not apply.⁷⁴

It is clear that the provision expressly sets out the extent when the information of third party can be disclosed. Section 11(1) postulates two circumstances when the procedure has to be followed. Firstly, when the information relates to a third party and can prima facie regarded as confidential as it affects the right to privacy of the third party. Secondly, when information is provided and given by a third party to a public authority and *prima facie*, the third party who has provided information has treated and regarded the same as confidential.⁷⁵ This provision has to be read along with the exemptions which have to be provided in Section 8(1)(j) which requires balancing of two conflicting interests i.e. right to information and right to confidentiality or privacy and Section 8(1) (e) of the Act in this regard where the two conflicting rights has to be given privacy, depends upon larger public interest.⁷⁶

2.4.7. The Central and State Information Commissions

(i) Constitution of the Central and State Information Commissions

To ensure faster and efficacious solution to address grievances involving denial and delay of information, the RTI Act provides for establishment of the Central and the State Information Commissions by the Union and the State government respectively.⁷⁷ Each Central Information Commission and the State Information Commission shall

⁷³ W.P.(C) No.7930 of 2009

⁷⁴ *Yogendra Chandrakar v. State Information Commission*, AIR 2011 (NOC) 94 Chh.

⁷⁵ *Arvind Kejriwal v. Central Public Information Officer*, AIR 2012 Sel 29 (DB)

⁷⁶ *People's Union of Civil Liberties v. Union of India*, (2003)4 SCC 399

⁷⁷ *Supra* note 72 s.12(1) and 15(1)

consist of one Chief Information Commissioner and such other Commissioners not exceeding ten in number.⁷⁸

(ii) Appointment of Information Commissioners

The President of India appoints the Chief Information Commissioner and the other Information Commissioners of the Central Information Commission on the recommendations of a high power committee comprising of the Prime Minister the leader of opposition in the Lok Sabha and one Union Cabinet Minister, nominated by the Prime Minister.⁷⁹ In the absence of the leader of the single largest group in opposition of the Government in the Lok Sabha, it will be the leader of the opposition who would be a part of the Committee.⁸⁰

Likewise ,the Governor of the state appoints the State Chief Information Commissioner and the State Information Commissioners on the recommendations of a committee consisting of the Chief Minister of the state as its Chairperson; the Leader of Opposition in the Legislative Assembly; and (iii) a Cabinet Minister of Cabinet Rank in the state to be nominated by the Chief Minister.⁸¹

(iii) Superintendence, Direction and Management

The Chief Information Commissioners both at Central as well as State level are mandated to exercise the powers conferred on ,and to perform the functions assigned to them under the Act which includes the general superintendence, direction and management of the affairs of the Central Information Commission. The Information Commissioners shall in turn, assist the Chief Information Commissioner who may autonomously exercise his powers without any interference by any other authority under this Act.⁸²

(iv) Eligibility

The persons to be considered for appointment as Information Commissioners should be persons of eminence in public life and may be appointed from any field such

⁷⁸ *Id* s. 12 (2) and s .15(2)

⁷⁹ *Supra* note 72 s.12 (3)

⁸⁰ *Id.* Explanation to s.12 (3)

⁸¹ *Id.* s. 15(3)

⁸² *Id.* s. 12(4) and 15(4)

as law, science and technology, social service, management, journalism, mass communication or administration and governance.⁸³ They should not be member of either Parliament or Legislature of any state or Union Territory or hold any office of profit. Association with any political party or participation in any business or profession shall make such person ineligible for appointment.

It is interesting to note across all states and the also at the centre, mostly bureaucrats are considered eligible for the post. It was once argued in *Namit Sharma v. Union of India*⁸⁴ that since the Information Commissioners have quasi judicial powers, competent judges should be appointed for such posts. In response the government of India filed a review petition before the Apex Court and the decision was reviewed by declaring that possessing judicial qualification and experience was not necessary for carrying out such functions. It is disheartening to note that only bureaucrats have been found suitable for the posts. Further, the recent appointment of the Chief Information Commissioner and four new Information Commissioners from bureaucratic background is self – explanatory of the will of the government.⁸⁵

(v) Term of Office and Conditions of Service of the Information Commissioners

The term of office of the Information Commissioners is fixed to five years from the date of his joining or till he attains the age of sixty-five years whichever is earlier and is not eligible for reappointment except for appointment as a Chief Information Commissioner provided he vacates his office and the aggregate of his tenure of service does not exceed five years.⁸⁶ The salaries and allowances of the Chief Information Commissioners and the Information Commissioners are at par with the Chief Election Commissioner and the Election Commissioners.

⁸³ *Id.* s.12(5) and 15(5)

⁸⁴ 2013 (1) SCC 745

⁸⁵ Sri. Sudhir Bhargava, the present Chief Information Commissioner was the Secretary, Ministry of Social Justice & Empowerment, Sri Yashvardhan Kumar Sinha was the High Commissioner of India to the United Kingdom; Sri Neeraj Kumar Gupta was the Secretary, Ministry of Finance Department; and Smt. Vanaja N. Sarna, was the Chairman of the Central Board of Indirect Taxes & Customs and Sri Suresh Chandra was the Union Law Secretary of the Government of India before they were appointed as the Central Information Commissioners. *available at:* <https://cic.gov.in/cic-profile> (last visited on April 24, 2018ppp)

⁸⁶ The Right to Information Act, 2005 s.13(2) and 16(2)

(vi) Resignation or Removal of Information Commissioners

The Chief Information Commissioner or an Information Commissioner of the Central Information Commission may resign from his office by writing under his hand addressed to the President.⁸⁷ The State Chief Information Commissioner and the Information Commissioner shall write to the Governor.

The President of India is empowered to remove the Chief Information Commissioner and the Information Commissioners on the ground of proved misbehaviour or incapacity after an inquiry is made by the Supreme Court of India.⁸⁸ Till date, none of the ICs have been removed from the office under this provision.

An Information Commissioner would be guilty of misbehaviour if he is interested in any contract or agreement made by or on behalf of the government of India and benefits from such involvement.⁸⁹ The President may also suspend or prohibit the the Chief Information Commissioner or the Information Commissioners from attending the office pending such inquiry.⁹⁰

The grounds for removal of the Chief Information Commissioner or any Information Commissioner includes insolvency; conviction for offences involving moral turpitude; engagement in any employment in addition to his duties is; opined unfit by President owing to mental or physical infirmity or gaining financial or other interest affecting his position as the Chief Information Commissioner or an Information Commissioner.⁹¹

The Governor is vested with the power to remove the State Chief Information Commissioner or a state Information Commissioner. The grounds for such removal is proved misbehaviour or incapacity and is done on the basis of inquiry made by the the Supreme Court.⁹² Other provisions relating to suspension and removal of Information Commissioners remain identical to Sec-14 with the difference that for the Central Information Commission, the powers are with the President.

⁸⁷ *Id.s.13(4)*

⁸⁸ *Id. s.14(1)*

⁸⁹ *Supra note 84 s.14(3)*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Id.s.17(1)*

2.4.8. Powers and Functions of the Information Commissions

The Information Commissions primarily receive and inquire into complaints and appeals from the aggrieved persons who has been denied an opportunity to seek information; has been refused information by the PIOs; has not been furnished with the information within the time frame; has been asked to pay more than the prescribed amount ;has received false or incomplete information or any other ancillary matters.⁹³They are the authorities to deal with and dispose of appeals against the decisions of the PIOs and appellate officers, including imposing penalties on and recommending disciplinary actions against the erring PIOs. For these matters, the Commission is vested with the powers of a Civil Court under the Code of Civil Procedure, 1908.

The Commissions may also make recommendations to public authorities not conforming to the provisions or the spirit of the Act, specifying the steps to be taken for promoting such conformity.

2.4.9. Provision of Appeals

An aggrieved person who does not receive information within the specified time may prefer an appeal under Section 19 of the Act. There are two stages of appeal prescribed under the Act.

First Appeal

Under the Act, an appeal before the First Appellate Authority can be preferred by the aggrieved person within thirty days from the receipt of the decision. The time limit may be extended beyond thirty days if the reasons justify the delay.⁹⁴In addition to hearing appeals against the orders passed by the PIO, the first appellate authority may be asked by the Commission to conduct an enquiry into a complaint filed by the aggrieved person.

There are two different courses available with the First Appellate Authority to ensure compliance of its orders. If the PIO fails to comply with such orders, the FAA

⁹³ *Id.* s.18 (1)(a)

⁹⁴ *Supra* note 84 Proviso s.19(1)

may recommend to the Commission to initiate penal proceedings against such PIO under the provisions of Section 20 of the Act. In addition to this, CIC also observed that apart from this the FAA had got another option to proceed as per the provisions of the Indian Penal Code against the PIO for wilful violation of lawful orders promulgated by a public servant while exercising statutory powers.⁹⁵

Second Appeal

A second appeal against the decision of the appellate authority from the first appeal lies to the Central Information Commission or the State Information Commissions established the Central or the State governments as the case may be .

The time frame for filing an appeal before the Commission is ninety days from the date of the decision received which can be extended if the reasons for such delay satisfies the Information Commissioners.⁹⁶If the decision of the PIO against which an appeal is preferred relates to information of a third party, the Information Commission shall give a reasonable opportunity of being heard to that party.

The Act provides that appeal filed before the Information Commission shall be decided by it in accordance with the prescribed procedure and its decision shall be binding. The Information Commission has the power to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act and may also require direct the public authority to compensate the complainant for any losses suffered and impose any of the penalties provided under the Act.⁹⁷The Central Information Commission (Appeal Procedure) Rules, 2012 provides for the requisites for filing appeals before the Central Information Commission.

Appeals through Videoconferencing

Taking into consideration the hardships borne by the citizens in travelling long distances to reach the Information Commissions, appeals are made online and video conferencing has been allowed under the Act. Hearing second appeals through video conferencing help in reducing the expenses of the appellant and expedites the procedure

⁹⁵ *L.D.Chopra v. DCP(NW)*, CIC/WB/A/2009/00435

⁹⁶ *Supra* note 84s.19(3)

⁹⁷ The Right to Information Act, 2005 s.19(8)

of appeal. Although appeals have been made easily accessible, the number of appeals pending before the Commissions is disturbing.

2.4.10. Penalties for Non-compliance

Imposition of penalty deters the public officials from avoiding their obligations mandated by the Act. The PIOs may be penalised by the Information Commissions for not complying with the provisions of the Act which includes refusal to receive application without any reasonable cause; failure in providing the information within the prescribed time frame; deceitful denial of request for information or intentionally providing erroneous information.

The Act provides for a penalty of Rs.250 (two hundred and fifty rupees) each day until the request is received or the information is provided which shall not exceed Rs. 25,000 (twenty-five thousand rupees.)⁹⁸ Disciplinary actions may also be taken against the erring officials under the relevant service rules applicable to him.⁹⁹

In *Pankaj Tehran v. Registrar of Cooperative Societies*,¹⁰⁰ the Commission after having given several chances to the Public Information Officer, was not satisfied with his explanation and held him guilty for not furnishing proper information. He was imposed a maximum penalty of Rs.25, 000 from his salary. However, this provision is rarely used by the Information Commissions.

Non compliance of the order of FAA directing the PIO to furnish the information to the appellant and failure to provide any satisfactory explanation may result in imposition of penalty.¹⁰¹

2.4.11. Miscellaneous Provisions

(i) Protection of action taken in good faith

The term “good faith” is not defined under the Right to Information Act, 2005. Section 52 of the Indian Penal Code 1860 defines this term as “*Nothing is said to be done or believed in good faith, which is done or believed without due care and*

⁹⁸ *Id.*s.20(1)

⁹⁹ *Id.* s.19(2)

¹⁰⁰ CIC/AD/A/2013/000489SA

¹⁰¹ *Arvind Kumar Sharma v. Registrar, Cooperative Societies*, GNCTD,CIC/AD/A/2013/000990

attention". Section 3(22) of the General Clauses Act, 1897, "*a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not.*" This immunity is not only available to the officers for fearless discharge of functions but also to any person who has done or intended to do anything in good faith.¹⁰²

(ii) Overriding effect of the Act

To ensure free flow of information, the Act not only overrides the colonial legislation, the Official Secrets Act, 1923 but also any other law that obstructs transparency in governance.¹⁰³

In *CBSE v. Aditya Bandopadhyay*¹⁰⁴ the Supreme Court held that Section 22 clearly overrides anything contradictory contained in other law or rules or regulations. However, this provision is often not complied with. The proposed Personal Data Protection Bill, 2018 makes significant amendments in the Act in Sec 8(1) (j) overriding the RTI Act.

(iii) Bar of jurisdiction of courts

The jurisdiction of courts is barred in relation to any order made under Section 23 of the Act. The only remedy is way of an appeal. The Court cannot entertain any suit, application or proceeding under this Act. However, this provision does not curtail the powers of the civil court for issuing summons for production of documents.

In *Eldhose v. Yacob*,¹⁰⁵ a prayer made under Rule 6 of Order XVI of the Code of Civil Procedure was rejected by the Munsiff Court on the ground that the petitioner can very well obtain copy under the Right to Information Act. The Kerala High Court held that the Right to Information Act does not in any way curtail the powers of the civil court under Code of Civil Procedure. Even if a party to the suit has a right to obtain copy of a document under the Right to Information Act, that does not take away that person's right to apply under a writ petition.

¹⁰² *Id.* s.21

¹⁰³ *Id.* s.22

¹⁰⁴ (2011)8 SCC 497

¹⁰⁵ AIR 2009 Ker 104

(iv) Security and intelligence Organisation excluded

There are twenty –six Security and Intelligence Organisations mentioned in the Second Schedule established by the Central Government that are exempted from disclosure.¹⁰⁶ Alterations in this schedule may be made by the Central Government by notifying in the Official Gazette.¹⁰⁷ However such notification has to be shall be laid before each House of Parliament.¹⁰⁸ Although these organisations are immune from making disclosure, allegations of corruption and human rights violations are not excluded from disclosure and such information shall be made available to the applicant.

However with the approval of the Central State Information Commission, information pertaining to allegations of violation of human rights may be disclosed in 45 days from the date of the receipt of such request.

(v) Monitoring and reporting

The Annual Reports present a detailed report on the overall status of the applications filed, their disposal pending appeals. Therefore, after the end of each year, the Central Information Commission or State Information Commission takes initiatives to prepare it and hand over a copy to the concerned government.¹⁰⁹

(vi) Awareness Programmes

Awareness Programmes have a greater impact on the community and ensures enhanced participation of the target groups, which is one of the primary objectives of the Act.¹¹⁰ This is a medium to educate especially the disadvantaged groups involving the public officials, to have a better understanding of procedure for seeking information. The NGOs have played a major role in this regard and reached out to the grass root level in spreading awareness about the Act.

Other programmes include training the PIOs and circulate training materials for their use and also publish a guide with relevant information in its official language within eighteen months from the commencement of the Act for wider access to

¹⁰⁶ *Supra* note 98, s. 24

¹⁰⁷ *Id.* s.24(2)

¹⁰⁸ *Id.* s. 24(3)

¹⁰⁹ *Id.*s.25

¹¹⁰ *Id.* s.26

information. This guide should consist of all relevant details relating to the objects of the Act and the procedure involved in obtaining information under the Act.¹¹¹

(vii) Power to Make Rules

Section 27 and 28 lays down the rule making power of the Central and the State Government and authorities respectively. Keeping in view the federal structure and variable factors of the states, the Act leaves it on the State to frame rules for the effective implementation of the Act. Any change in the rules could be affected by the appropriate government without approaching the Parliament. A notification in the official gazette is enough to make rules regarding certain subjects mentioned in the Act. The Central Government for giving effect to the Act has passed Right to Information Rules 2012. All the States have also framed their own rules relating to the procedure for filing applications and appeals and is rarely uniform that often results in inconvenience to the citizens.

2.5. Implementation of Right to Information Act, 2005 in Various States

Since the Act does not override the other legislations except the Freedom of Information Act 2002, it is not clear whether all the nine states that had enacted their Freedom of Information laws, have repealed their legislations as they are occasionally in use by the states.

Also, the State Information Commissions have been established in all the States. Various State High Courts also have framed their own rules to make information available to the citizens of India. Since the rule making power rests with the states, there is lack of uniformity in the amount of fees charged, the mode of payment and the procedure relating to appeal which varies from state to state.

2.6. Amendments to the Right to Information Act, 2005

Several amendments were attempted to dilute the RTI Act since inception. The first attempt was made in the year 2006 through the Right to Information (Amendment) Bill, 2006 to exempt file notings from the Act. The second time the Parliament proposed an amendment was in 2013 by the Right to Information (Amendment) Bill 2013. This

¹¹¹ *Ibid.*

was brought in, right after the historic judgement of 2013 before the CIC wherein the Political Parties were brought under the purview of the Act.

Although file notings have been brought under the ambit of the Act except information exempted under Section 8 of the Act, the political parties have been declared out of the purview of the Act under the Election Commission of India.¹¹² It is surprising how the Election Commission can override the order given by the CIC.

Further, the government has proposed another amendment, the Right to Information (Amendment) Bill, 2018 that takes away the autonomy of the Central and State Information Commissioners. The Bill empowers the Central government to prescribe the salaries, allowances and other terms and conditions of service of the Chief Information Commissioners and the Information Commissioners of the Centre and States which is statutorily safeguarded. This change would eliminate the parity relating to conditions of service they have with Chief Election Commissioners and the Election Commissioners and the judges of the Supreme Court.¹¹³ These regressive amendments if passed will dilute the efficacy of the Act to a considerable extent.

2.7. A Sum up

The RTI has attracted immense attention for its revolutionary features that gave the citizens the right to access public information for the first time. This innovative right has brought in tremendous positive results bringing in openness in public administration. Public accountability relating to finances, proceedings and decisions of all economic and social matters has helped improve the quality and efficiency of services provided by the government post the enactment of the Act. The Act has made the government accountable for all the policy decisions and also for its action and inaction in the delivery of public services.

To bring greater transparency, the ambiguities relating to the interpretations of the provisions by the Information Commissions and the judiciary needs uniformity. Greater access to information by strict compliance of Sec-4 is the need of the hour,

¹¹² Bill to change RTI will not be introduced in monsoon session: Sources *available at* :<https://www.ndtv.com/india-news/bill-to-change-rti-will-not-be-introduced-in-monsoon-session-sources-1886499> (last visited on August 1, 2018)

¹¹³ "Sunlight and Shadow on amendments to the RTI Act" The Hindu, 23 July 2018

Absence of standard format for filing applications and guide or user manual or display boards have restricted the use of the Act.

Various outstanding features of the Act including disclosure of exempted information in public interest, disclosure of third party information, two- tier procedure of appellate, imposition of penalty for refusal of information make it an important medium to hold the public functionaries accountable. However, it is also true that the legislation remains a paper tiger if it is not implemented properly. The vigilance over the public officials by the citizens facilitates the process of policy formulation on issues of their concern. Proactive disclosure would be meaningless if the citizens are not concerned with such disclosure. Therefore, for the enhancement in the quality of information citizens can make the greatest contribution.