

EXEMPTION FROM DISCLOSURE OF INFORMATION UNDER THE RIGHT TO INFORMATION ACT, 2005: AN ANALYSIS

***Dr. Komal Krishan Mehta**, Assistant Professor, Department of Laws, Guru Nanak Dev University, Regional Campus, Jalandhar-144007,

Email ID: komal_jallaw@gndu.ac.in

***Harkirandeep Kaur**, Assistant Professor, Department of Laws, Guru Nanak Dev University, Amritsar-143005,

Email ID: harkirandeep.law@gndu.ac.in

*“The best weapon of a dictatorship is secrecy,
but the best weapon of a democracy should be the weapon of openness.”*
-Niels Bohr¹

ABSTRACT

The judicial thinking on the subject of right to know and criticism by the various agencies of the non-disclosure of the information by the Government departments has compelled the Central Government to enact the long awaited law on the subject to make the public authorities open, transparent and accountable. Free flow of information for the citizen's support from existing legal framework and an attitude of secrecy within the civil services.

KEYWORDS : Right to Information, Exemption from Disclosure of Information, Disclosure of 20 Years Old Information, Transparency, Accountability

INTRODUCTION

Article 19 of the Constitution of India and Universal Declaration of Human Rights, 1948 also recognize the Right to Information, which states that everyone has a right to freedom of opinion and expression. This right includes freedom to hold opinion without interference and to seek, receive and impart information through any media. The revolution in India was made possible after the enactment of the Right to Information Act, 2005. The Right to Information Act provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.² The era of information being shrouded in the veils of secrecy is a thing of the past. It marked the end of the struggle to obtain information which was formerly withheld. Information and knowledge are the epitomes of power and key to the healthy functioning of a democracy.³

OBJECTIVES OF THE RIGHT TO INFORMATION ACT

Whereas the Constitution of India has established 'Democratic Republic' and whereas the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed, and whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and whereas it is necessary to harmonize these conflicting interests while preserving the paramountcy of democratic ideals, whereas it is expedient to provide for furnishing certain information to citizens who desire to have it, the Act was enacted by the Government of India.⁴ The Act is a big step towards making the citizens informed about the activities of the Government. The main objectives⁵ of the Right to Information Act are as follows:

- i. To bring transparency & accountability in the working of every public authority;⁶
- ii. The right of any citizen of India to request access to information and the corresponding duty of Government to meet the request;
- iii. A responsibility on all sections;
- iv. A responsibility of the Government;
- v. The duty of Government to pro-actively make available key information to all;
- vi. To curtail corruption and to hold Government & their instrumentalities accountable to the governed;
- vii. To ensure informed citizenry and transparency in governance;
- viii. To ensure less expensive and time bound information; and
- ix. Matters connected to Public Authority or incidental thereto.⁷

It is a power that has to be given to every citizen in re-organization of the fact that it is government of the people, for the people and by the people, the essence of democracy.⁸

RIGHT TO INFORMATION CONFERRED ON CITIZENS

Section 3 of the Right to Information Act, 2005, states that all citizens shall have the right to information subject to the provisions of the Act. In other words, it empowers every person, who is a citizen can apply for information from the Government or take copies of any government document, inspect any government document or take samples of materials of any government work, irrespective of age, gender or location within the territory of India.⁹ It may be relevant to mention that 'only citizens' have the right to

information. The right to information has been imparted to the individual citizens and not to the institutions, companies and organizations. Thus, the institutions or organizations may obtain the information through individuals.¹⁰ The Act gives the citizens a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any citizen.¹¹

RIGHT TO INFORMATION IS NOT ABSOLUTE RIGHT

The Supreme Court in **State of Andhra Pradesh v. Canara Bank**¹² held that the right to information is not an absolute right. It is a part of right to freedom of speech and expression under Article 19(1) (a) of the Constitution of India. Section 8(1) of the RTI Act balances right to privacy and right to Information. It recognizes that both rights are important and requires protection and in case of conflict between two rights the test of overriding public interest is applied to decide whether information should be withheld or disclosed.

EXEMPTION FROM DISCLOSURE OF INFORMATION

In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having elected by them, seek to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations. It is by no means absolute. In transactions which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.¹³

The Delhi High Court in the case of **Secretary General, Supreme Court of India v. Subhash Chandra Agarwal**¹⁴ has observed that:

“The right to information, being integral part of the right to freedom of speech, is subject to restrictions that can be imposed upon that right under Article 19(2). The revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and, therefore, with a view to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal, Section 8 has been enacted for providing certain exemptions from disclosure of information.”¹⁵

Section 8 of the Right to Information Act, 2005, has provided certain categories of exemptions, where the Government has no liability or responsibility or obligation to give information to any citizen. Ordinarily all information should be given to the citizens but there are certain informations which have been protected from disclosure. It means this is an attempt to harmonize the public interest with the individual's right to information. Though the Act envisages imparting a progressive and participatory right to the citizens in a meaningful manner, still the wider national interest have to be harmonized in it. The words 'Notwithstanding anything contained in this Act' symbolized that this section is an exception to the general principles contained in the Act that it is an obligation of the PIO to provide information to the citizens unless ordered to the contrary by the Central or State Information Commission. The information which has been exempted under the provisions of Section 8(1) of the Act is as under:

a) Broadly concerning Sovereignty and Integrity of Nation etc.¹⁶

No information shall be provided the disclosure of which would prejudicially affect the:

- i. Sovereignty and Integrity of India;
- ii. Security, Strategic, Scientific or Economic Interests of the State;
- iii. Relation with Foreign State; and
- iv. Lead to Incitement of an Offence.

In the case of **Sayantana Dasgupta v. Ministry of Home Affairs (MHA)**¹⁷ the complainant submitted an application under Right to Information Act, 2005 on 22nd June, 2006 before the Central Public Information Officer of the Respondent Public Authority seeking certified copies of all documents exhibited before the Netaji Enquiry Committee of 1956 constituted under the Chairmanship of Shri Shah Nawaz Khan and the one-man Commission of Enquiry constituted under the Chairmanship of Justice G.D. Khosla to enquire into the circumstances leading to the disappearance of Netaji Subhash Chandra Bose. In dealing this appeal the Commission held that the respondent Public Authority will furnish information sought by the complainant within a period of three months from the date of receipt of this order. The Public Authority (respondent) may in the meanwhile examine and analyze as to which specific documents are covered by Section 8(1)(a) and as such exempted from disclosure. In case the Public Authority decides not to disclose certain documents or any part thereof, it shall record reasons for such non-disclosure together with the name and designation of the authority arriving at

the conclusion of non-disclosure, and submit the same before this Commission not later than three months from the date of the receipt of this order. The reasons so recorded shall be submitted before this Commission on or before 30th September so as to enable this Commission to give further directions, if any, in this regard.

In a case of **Anuj Dhar v. Ministry of External Affairs**¹⁸ an application was filed with the PIO, Ministry of External Affairs, on 2nd August 2006 for seeking certified copies of the complete correspondence by the Ministry of External Affairs had with the Governments of the USSR and the Russian Federation over the disappearance of Netaji Subhash Chandra Bose. The application was denied by the Ministry of External Affairs on the ground that the disclosure of said information might affect the relation with a Foreign State. The Commission held and directed to the respondent to have the correspondence examined by the experts and in case the experts came to the conclusion that the relations between the Government of India and USSR would be affected through the disclosure of the information in question and the issue be settled only after a reference has been made to the Government of Russia. Again in the case of **Nusli Wadia, Mumbai v. Ministry of External Affairs, South Block, New Delhi**¹⁹ the matter pertaining to Jinha House at Bombay and the information sought by the appellant was declined on the ground that the disclosure of information would prejudicially affect the relations of India with a Foreign State. The first appeal of the appellant was also rejected. The Chief Information Commission finally directed the authority concerned to apply the provisions of Section 10 of the Act and the information to be disclosed was to be provided severing it from the part of the information which could not be disclosed.

b) Expressly forbidden by the Court or Tribunal²⁰

This clause provides that the information is exempted which has been expressly forbidden to be published by any Court of law or Tribunal or the disclosure of which may constitute 'Contempt of Court'.²¹

The Kerala High Court in the case of **Joseph @ Baby v. Sub-Inspector of Police**²² held that it is high time, to caution the media, both print and electronic, that the proceedings in court must be published with much care and restraint and only after ascertaining the truth and not from any truncated or partial version. The sublimity of the court process must be imbibed by the reporter when he makes the report. No harm will

occur in such circumstances, if the publication is delayed by a day. It will not affect anybody's right to information which means the right to receive correct and true information. Report on a document like the judgment shall be based on its complete contents. It cannot be reduced to the type of report on a public speech or address. We hope that the media and the public will take this observation in its true spirit. We do not in any way mean to curb the free press in their activity. What is required is only a responsibility with some amount of restraint to deliver the true information to the public, so far as the court proceedings, which the people of the country consider with high esteem, are concerned and not to cause embarrassment to courts.²³

c) Breach of Privilege of Parliament or State Legislature²⁴

This sub clause says that any information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature, cannot be disclosed. It is important to mention here that Law of the Land i.e. the Constitution of India provides some privileges to the Parliament and the State Legislature, so it is clear that such information cannot be issued by the public authority.

d) Commercial Confidence, Trade Secrets or Intellectual Property²⁵

This clause provides that any information including commercial confidence, trade secrets or intellectual property cannot be disclosed. The disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. If a person, who seeks for documents, is a business competitor and if any trade secret is sought for, then such document may be denied. But, regarding a public document, if sought for by an individual that cannot be denied.²⁶

In **Om Parkash Malhotra v. Punjab National Bank²⁷** the Commission has observed that names and account numbers of the account holders were not allowed to be disclosed to the third party because such information enjoys protection under Section 8(1) (d) of the Right to Information Act. In this case CPIO was right in not disclosing the details of other accounts to the third-party account holders as such information was held by the Bank in commercial confidence and the disclosure of such information could adversely affect the competitive position of those account holders.

Moreover, no larger public interest would be served by disclosing such information to the third party.²⁸

e) Fiduciary Relationship²⁹

This clause says that any information is exempted to disclose, if available to a person in his fiduciary³⁰ relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. In other words, any information held by public authority in the fiduciary relationship can be protected under this clause. Examples of fiduciary relationship are teacher and student, advocate and client, doctor and patient, master and servant or employer and employee etc.

In **Mukesh Kumar v. Addl. Registrar, Supreme Court of India and Others³¹** a citizen made a request for securing a copy of recommendations or consultations of any one year during the past ten years submitted to the President of India under Article 124(2) of the Constitution on appointment of judges of various ranks in the Supreme Court and High Courts. The CIC held that the entire process of consultation between the President of India and the Supreme Court must be exempted from disclosure. Disclosure of the list of candidates prepared by the highest Court for the purposes of consultation with the President of India attracts the exemption of Section 8(1)(e) as well as the provisions of Section 11(1) of the RTI Act.

In **Canara Bank v. Central Information Commission, Delhi³²** the information requested by the employee of Nationalized Bank related to transfer and promotion of employees of the bank. Such information does not pertain to any fiduciary relationship of the petitioner bank with anybody coming within the purview of Section 8(1)(e). The information relating to posting, transfer and promotion of clerical staff of a bank do not pertain to any fiduciary relationship of the bank with its employees within the dictionary meaning of the word 'fiduciary' such information cannot be said to be held in trust by the Bank on behalf of its employees and, therefore, cannot be exempted under Section 8(1)(e).

f) Information from Foreign Government³³

This clause provides that any information is exempted to disclose, received in confidence from foreign Government. In the case, where any information pertaining to

foreign government is held by any public authority and the State is agreed upon that such information will be kept confidential, then information cannot be disclosed to any person in such circumstances.

g) Information endanger the Life or Physical Safety³⁴

This clause says that any information cannot be disclosed, if the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes. Whenever any person disclosed to the police regarding the commission of the cognizable offence and also the names of the offender or the persons involved in criminal act, the name of the informer or the person who disclosed the information cannot be disclosed by the investigation agency or police to any other person because it would endanger the life or physical safety of that person. It is protected under Section 8(1)(g) of the RTI Act, 2005. In another example, when the information from the Nationalized Bank was requested regarding the schedule of receiving or submitting the cash from the main branch alongwith the name of the agency which was engaged for doing so. That information cannot be disclosed by the Nationalized Bank because it would endanger the life or physical safety of person involved in this schedule.

In **A.R. Shah, Ahmadabad, v. United Bank of India, Kolkata³⁵** the Commission held that the information relating to the timings of loading and unloading of guns of the bank guard cannot be disclosed under Section 8(1)(g) of the Act as disclosure of the same might endanger the security and life of the public and the employees of the bank and also endanger the safety and security of the bank. Thus, the informations are to be kept secret in the larger public interest.

The Delhi High Court in the case of **Union of India v. R.S. Khan³⁶** observed that the Union of India cannot rely upon Section 8(1)(e) of the RTI Act, 2005 to deny information to the petitioner in the present case. The Court finds no merits in any of the apprehensions expressed by the CPIO in the order rejecting the Respondent's application with reference to either Section 8(1)(g) of the RTI Act, 2005, and held that the disclosure of information sought by the petitioner can hardly endanger the life or physical safety of any person. There must be some basis to invoke these provisions. It cannot be a mere apprehension.

h) Impede the process of Investigation³⁷

This clause provides that any information, which would impede the process of investigation or apprehension or prosecution of offenders, cannot be disclosed. The researcher observed that where any information is gathered by the investigating agency to prosecute any criminal before the court, will be exempted from disclosure to any person then the person is under interrogation or the concerned authority.

In **S.K. Tiwari, Jabalpur v. West Central Railway, Jabalpur**³⁸ the Commission held that it was not enough to mention the provisions of Section 8(1)(h) of the RTI Act for exemption under it. Rather PIO has to record the reasons in writing as to how the disclosure of the information would impede the process of investigation, i.e. he has to pass the speaking order. The Commission observed that access to information, under Section 3 of the Act is the rule and exemptions under Section 8 are the exception. Section 8 being a restriction on this right is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. The Commission further observed that such reasons of refusal should be germane, and the opinion of the process being hampered should be reasonable and based on some material.

The Central Information Commission in **Mohan Lal v. Delhi Police**³⁹ held that the copy of the case-diary prepared by the investigation agency relating to the FIR could not be provided to the appellant since it impeded the process of investigation as provided under Section 8(1)(h) of the RTI Act, 2005.

The Commission in **Dharam Raj v. Directorate of Vigilance, GONCTD**⁴⁰ has observed that:

*“A matter being sub-judice is not the sole ground for denial of information sought under Section 8(1)(h) of the RTI Act, 2005. Moreover, when the supply of information would not impede the process of investigation, it will not attract the exemption provisions u/s 8(1)(h) of the Act.”*⁴¹

Thus, the Commission held that the enquiry report in respect of the appellant should be disclosed after separating that part which contains names of persons including the statements made and evidence provided by them which being exempted from disclosure under Sections 8(1)(g) and (h) and Section 11(1) of the Act.⁴²

The Delhi High Court in **Bhagat Singh v. Chief Information Commissioner and Others**⁴³ has observed that:

*“Access to information under Section 3 is the rule and exemptions under Section 8 are the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in a manner as to show the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation cannot be a ground for refusal to inform. The authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation. Such reasons should be germane, and the opinion should be reasonable and based on some material, sans this consideration, Section 8(1)(h) and other provisions of Section 8 would become the haven for dodging demands for information.”*⁴⁴

i) Cabinet Papers⁴⁵

This clause provides that any information is exempted for disclosure, if relates to cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers. It also provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over. It further provided that those matters which come under the exemptions specified in this section shall not be disclosed. Any kind of advice given to the Cabinet by the other functionaries or offices is also covered by this section.

The Commission in **Venkatesh Nayak v. Department of Personnel and Training**⁴⁶ held that the provisions of this Act would apply only when a note was submitted by the Ministry that had formulated it to the Cabinet Secretariat for placing this before the Cabinet. All concomitant information preceding that, which did not constitute a part of that Cabinet note will then be open to disclosure u/s 4(1)(c), but in a manner as would not violate the provisions of Section 8(1)(i). Thus, a clear demarcation was indicated between the actual formation of the Cabinet note and the preceding proceedings, the former was exempted u/s 8(1)(i) of the RTI Act and the latter was not exempted.

j) Personal Information⁴⁷

This clause says that any information cannot be disclosed, 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. It also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

In **S. Saran v. Rashtriya Ispat Nigam Ltd.**⁴⁸ the Commission held that the property returns filed by the employees do not constitute public action, as these are submitted under fiduciary capacity, which is exempt u/s 8(1)(e)&(j) of the Act from disclosure of information. As regards grievances of the appellant on service matters, there is no provision in the Act to deal with such matters. The appellant had not established the public interest in seeking personal information.

The Commission in the case of **Farida Hoosenally, Mumbai v. Chief Commissioner of Income Tax-IX, Mumbai**⁴⁹ held that Income Tax Returns filed by the assessee are confidential information, which include details of commercial activities and that it relates to third party. These are submitted in fiduciary capacity. There is also no public action involved in the matter. Disclosure of such information is therefore exempted under Section 8(1)(d)&(j).

The Kerala High Court⁵⁰ held that the disclosure of information relating to transfer of employee of Nationalized Bank does not cause unwarranted invasion of privacy of other employees and such an information cannot be withheld u/s 8(1)(j) of the RTI Act, 2005.

In **Rajan Verma v. Union of India, Ministry of Finance, Banking Division, New Delhi**⁵¹ the petitioner was seeking the details of accounts of other private individuals and concerns and on that account, the same has been rightly declined. Instead of making the payment of the loan amount, for which he is legally bound, the petitioner has resorted to rush the hierarchy of the bank by filing application under the RTI Act in respect of information for which the bank is exempted under Section 8(j) of the RTI Act. The Court held that the information in respect of customers and private individual's etc. fall under the exemption category under Section 8(1)(j) of the RTI Act, 2005. It so seems that the petitioner has misused the provisions of RTI Act.

In the case of **Milap Choraria v. Central Board of Direct Taxes (CBDT)**⁵² the daughter-in-law of the applicant has filed criminal case against his son and other family members under Section 498 of Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act and Domestic Violence Act. One of the grounds in the FIR accused the family for demanding dowry valued at about Rs. 50 lakhs. It is in this context that the appellate has requested for information relating to year-wise income and expenditure shown by his daughter-in-law in her income tax returns for the last few years. Authority refused to disclose the information in terms of Sections 8(1)(d), 8(1)(e), 8(1)(g) and 8(1)(j) of the RTI Act, 2005. The appellant pleaded before the Commission that this information is required by him to defend him in the criminal case. The Commission held that the information sought by the applicant is third party information and is exempted from disclosure under Section 8(1)(j) of the RTI Act. Accordingly, the appeal for disclosure was refused.⁵³

The Hon'ble Kerala High Court in the case of **Centre for Earth Science Studies, Thiruvananthapuram v. Dr. Anson Sabastian, Scientist**⁵⁴ has held that the Annual Confidential Report (ACR) of the employee maintained by the appellant can be treated as records pertaining to personal information of an employee. Thus, the publication of the same is prohibited under Section 8(1)(j) of the Right to Information Act, 2005.

The Madras High Court held that personal information of a school teacher cannot be disclosed under the RTI Act, 2005, because such information is protected u/s 8(1)(j) of the Act.⁵⁵

The Chief Information Commission in **M. Raja Manohar v. Ordnance Factory Board, Kolkata**⁵⁶ has observed that to obtain exemption from disclosure under Section 8(1)(j) of the RTI Act, the information sought must be personal information not involving any one of these two:

- i. either not connected to any public interest or not connected to any public activity; and
- ii. constitute invasion of privacy.

PUBLIC INTEREST TO BE WEIGHTED IN TAKING DECISION

Section 8(2) of the RTI Act, 2005, provides that notwithstanding anything in the Official Secrets Act, 1923, nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. This is a general provision striking a balance between the public interest and the protected interest. In other words, this power is given to the Public Authority and not to the Public Information Officer (PIO) and thus, an officer who is empowered to take a decision on behalf of the public authority should only decide to allow access to information, where public interest in disclosure outweighs the harm to the protected interest. The information sought in public interest or for serving a public purpose shall not be deemed as exempt from disclosure.

The Central Information Commission in the case of **Manish Bhatnagar, Delhi v. Additional Director Women & Child Development, Govt. of NCT, Delhi**⁵⁷ has made this observation in view of the welfare aspect of the Right to Information Act. It is basically the public interest which has been given due place simultaneous with the personal right of a citizen to seek information.

The exemptions mentioned in Section 8(1) of the Right to Information Act, 2005, are subject to a public interest override, contained in Section 8(2) which provides that notwithstanding anything in the Official Secrets Act, 1923, nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to protected interests. The Second Administrative Reforms Commission, in its first Report on June, 2006 has correctly identified Right to Information as the “master key to good governance” and has recommended the abolition of India’s Official Secrets Act, 1923.

DISCLOSURE OF 20 YEARS OLD INFORMATION

Section 8(3) of the Right to Information Act says that 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. It further provided that where any question arises

as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act. This means that this section casts a duty on the public authority to provide information regarding any occurrence, event or matter that has happened 20 years before the date of request for supply of information. In other words, the authorities are under obligation to maintain the information or record of last and for next 20 years in such a manner so as to facilitate the enforcement of the Right to Information Act, 2005.

The Supreme Court held that Section 8(3) of the RTI Act, 2005 is not a provision requiring all information to be preserved and maintained for 20 years, nor does it override any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority.⁵⁸

The Commission has clarified that the period of 20 years mentioned u/s 8(3) of the RTI Act allows the disclosure of information which is even exempted u/s 8(1) except those as provided under clauses (a), (c) and (i) of section 8(1). Therefore, to deny an information u/s 8(3) of the Act on the ground that it was more than 20 years old is not fair without ascertaining that the same was exempted under Section 8(1)(a), (c) and (i) of the Act. The Commission further observed that even if some information is denied under such exemptions it has to be based on reasons having direct nexus to such denial alongwith the justified purpose to be achieved through such denial.⁵⁹

The Commission again observed in **Ram Chandra Sahu, Kharagpur v. Dinesh Kumar, South Eastern Railway, Kharagpur**⁶⁰ that such interpretation of Section 8(3) of the RTI Act was contrary to its meaning. The CIC held that after 20 years only three out of ten exemption clauses of the RTI Act remain applicable. Rightly so, except the clauses given under clauses (a), (c) and (i) all clauses give way to disclosure after the expiry of 20 years of the date of creation of such information.

PROCEDURE FOR REJECTION OF REQUESTS OF INFORMATION

A PIO is required under the Act to either provide the information, on payment of the requisite fee or reject the request within the time limit prescribed. The Act stipulates that where a request for information is rejected by the PIO, the PIO will communicate the decision to the person making the request along with:

- (i) The reasons for rejection;
- (ii) The period within which an appeal against such rejection may be preferred (within 30 days of the date of the rejection); and
- (iii) The particulars of the Appellate Authority.⁶¹

REASONS FOR EXEMPTION TO BE RECORDED

The Act provides exemption under various sub-sections of Section 8 but these exemptions are duly qualified with certain specific conditions. Thus the exemptions cannot be applied ruthlessly in a routine manner without application of mind. Whenever, some exemption is applied the detailed reasons for rejection of exempted portion have to be communicated to the applicant.⁶² It means merely quoting the sub-section of Section 8 is not adequate. Giving information is the rule and denial is the exception.⁶³

GROUND FOR REJECTION TO ACCESS TO INFORMATION IN INFRINGEMENT OF COPYRIGHT⁶⁴

Section 9 of the RTI Act, 2005, provides that without prejudice to the provisions of Section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

These exemptions which crippled the right to a person to seek information though pruned to minimum as compared to those under Freedom of Information Act, 2002, are nevertheless wide enough for the authorities to mould it according to their convenience. The aggrieved person is then left with an only remedy to approach to the court to vindicate his rights under the Act, adding to the burden over the court already struggling with the backlog of cases.⁶⁵

In **Pramod Sarin v. University of Delhi**⁶⁶ the Commission held that the copies of test booklets, solutions etc. cannot be denied on the grounds that it would harm the competitive position of other candidates and solutions are the intellectual property of the University. The Commission also held that by no stretch of imagination can mere solutions of questions be treated as a matter of either copyright or intellectual property

and there is no element of creativity involved in setting an objective type question paper for any examination.

CONCLUSION

Keeping in view the above discussion, it is apparent that the Right to Information Act, 2005, has been seen as the key to strengthen participatory democracy and promoting people-centric governance. Access to information can empower the masses of the country to demand their rights. It is a boon for a country like India which is seeing a cancerous growth of corruption, lack of public accountability and bureaucratic indifference and numerous other ills. The researcher found that the main aim of the Act is to bring people close to governance by informed citizenry, transparency in administration as well as public accountability and minimizing corruption. Moreover under this Act every citizen has a right to receive and impart information, as part of his right to information. The State is not only under an obligation to respect this right of the citizens, but equally under an obligation to ensure conditions under which this right can be meaningfully and effectively enjoyed by one and all. The right to information is not an absolute right. It is a part of right to freedom of speech and expression. Sections 8 and 9 of the RTI Act balances right to privacy and right to Information. It recognizes that both rights are important and requires protection and in case of conflict between two rights the test of overriding public interest is applied to decide whether information should be withheld or disclosed. The CPIO or PIO, as the case may be, has to pass the speaking order on every application under the right to information specifically in the case of refusal or rejection of the information.

*“Secrecy being an instrument of conspiracy,
ought never to be the system of regular government.”*

- Jeremy Bentham⁶⁷

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- ⁶ Dhara Singh Girls High School v. State of UP, AIR 2008 All. 92. Also see Bihar Public Service Commission v. State of Bihar (2009) 75 AIC 507 (Pat.).
- ⁷ Retrieved from <<http://www.rajender.myehome.in/Objectives%20of%20RTI%20Act.html>> last visited on 21st April, 2012.
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- ⁹ Rodney D. Ryder, "Right to Information-Your Access to Public Information (Law, Policy & Practice)" Wadhwa & Company Nagpur, New Delhi, 2006, p. 307.
- ¹⁰ Bennett Coleman & Co. v. Union of India, AIR 1973 SC 106.
- ¹¹ Retrieved from <<http://rti.india.gov.in/manual2.php?format=print>> last visited on 26th August, 2009.
- ¹² AIR 2005 SC 186 : (2005) 1 SCC 496.
- ¹³ Dinesh Trivedi, M.P. v. Union of India, (1997) 4 SCC 306:1997(3) SCR93:1997(3) SCALE 117: MANU/SC/1138/1997.
- ¹⁴ AIR 2010 Del. 159.
- ¹⁵ Ibid.
- ¹⁶ Section 8(1) (a) of the Right to Information Act, 2005.
- ¹⁷ Complaint No. CIC/AT/C/2006/00087 decision dated 5th July, 2007.
- ¹⁸ Appeal No. CIC/OK/A/2006/00671 decision dated 23rd March, 2007.
- ¹⁹ Appeal No. CIC/OK/A/2008/00245 decision dated 1st October, 2008.
- ²⁰ Section 8(1) (b) of the Right to Information Act, 2005.
- ²¹ The Contempt of Court means wilful disobedience or non-compliance or disregard of the order of the Court or Tribunal. Generally, Courts or Tribunals conduct the hearings or proceedings in public and decisions are announced in the open court. But sometimes keeping in view the sensitivity of the matter the proceedings of the case are conducted 'in camera' and are kept confidential. In such matters the Court or Tribunal may pass the specific orders forbidding the publicity of such information. If in spite of that the information is divulged or published, it would amount to the Contempt of Court.
- ²² 2005 (2) KLT 269 decision dated 20th January, 2005.
- ²³ Ibid.
- ²⁴ Section 8(1) (c) of the Right to Information Act, 2005.
- ²⁵ Section 8(1) (d) of the Right to Information Act, 2005.
- ²⁶ Retrieved from <<http://indiankanoon.org/doc/567858/>> last visited on 15th August, 2012.
- ²⁷ Appeal No. CIC/PB/A/2008/00751 and 00974-SM decision dated 4th May, 2009. Also see Dharam Raj v. Container Corporation of India, Nagpur, Appeal No. CIC/OK/A/2008/000777-AD decision dated 12th May, 2009.
- ²⁸ Retrieved from <<https://indiankanoon.org/doc/146502130/?type=print>> last visited on 6th May, 2020.
- ²⁹ Section 8(1) (e) of the Right to Information Act, 2005.
- ³⁰ Retrieved from <<https://cic.gov.in/sites/default/files/Disclosure%20vs.%20Non%20Disclosure%20of%20Information%20Under%20RTI%20Act%2C%202005%20by%20Nikhil%20Goel.pdf>> last visited on 10-05-2020. According to Black's Law Dictionary, the 'fiduciary' is a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scruples of good faith and candor which it requires, or a person having duty created, by his undertaking, to act primarily for another's benefit in matters connected with such undertaking.
- ³¹ CIC/AT/A/2006/00113 decision dated 10th July, 2006.
- ³² AIR 2007 Ker. 225.
- ³³ Section 8(1) (f) of the Right to Information Act, 2005.
- ³⁴ Section 8(1) (g) of the Right to Information Act, 2005.
- ³⁵ Appeal No. 699/ICPB/2007, F.No. PBA/07/213 decision dated 16th July, 2007.
- ³⁶ (2010) 173 DLT 680 (Writ Petition (Civil) No. 9355 of 2009 and CM No. 7144 of 2009 decision dated 7th October, 2010.
- ³⁷ Section 8(1) (h) of the Right to Information Act, 2005.
- ³⁸ Appeal No. CIC/SG/A/2009/000512 & 519 decision dated 11th May, 2009. Also see Mahendra Singh v. Western Railway, Appeal No. CIC/SG/A/2009/000513 decision dated 11th May, 2009.
- ³⁹ Appeal No. CIC/SS/A/2011/001578 decision dated 9th April, 2012.
- ⁴⁰ Appeal No. CIC/WB/A/2006/00455 decision dated 21st July, 2006.
- ⁴¹ Ibid.
- ⁴² Ibid.

- ⁴³ 146 (2008) DLT 385 : 2008 (64) AIC 284 Del. 1.
- ⁴⁴ Ibid.
- ⁴⁵ Section 8(1) (i) of the Right to Information Act, 2005.
- ⁴⁶ Complaint No. CIC/WB/C/2010/000120 decision dated 3rd August, 2010.
- ⁴⁷ Section 8(1) (j) of the Right to Information Act, 2005.
- ⁴⁸ Appeal No. CIC/MA/A/2006/00509 decision dated 11th September, 2006.
- ⁴⁹ Appeal No. 22/IC(A)/2006, F.No. 11/52/2006-CIC decision dated 30th March, 2006.
- ⁵⁰ Canara Bank v. Central Information Commission, Delhi, AIR 2007 Ker. 225.
- ⁵¹ (2008) 149 PLR 253:(2008) 63 AIC 529.
- ⁵² Appeal No. CIC/AT/A/2008/628 decision dated 15th June, 2009.
- ⁵³ Ibid.
- ⁵⁴ W.A. No. 2781 of 2009 decision dated 17th February, 2010. Also see in R.K. Jain v. Union of India & Ans., (2013) 14 SCC 794 : JT 2013 (10) SC 430.
- ⁵⁵ Diamond Jubilee Higher Secondary School, Erode v. Union of India, (2007) 3 MLJ 77 (Writ Petition No. 36901of 2006 decision dated 16th March, 2007).
- ⁵⁶ Appeal No. CIC/WB/A/2007/00683 and 00684 decision dated 1st September, 2008.
- ⁵⁷ Appeal No. CIC/SG/A/2010/001790 decision dated 9th August, 2010.
- ⁵⁸ Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others 2011(2) ID 101 (SC): (2011) 8 SCC 497.
- ⁵⁹ Sayantan Dasgupta v. Ministry of Home Affair (MHA), New Delhi, Apeel No. CIC/AT/C/2006/0087 decision dated 5th July, 2007.
- ⁶⁰ Appeal No. CIC/SG/A/2009/000525 decision dated 12th May, 2009.
- ⁶¹ The Right to Information Act, 2005, A Guide for Civil Society Organizations, National Implementing Agency- Capacity Building for Access to Information Project, July, 2006, p. 48.
- ⁶² Abhey Singh Yadav, "The Right to Information Act, 2005- An Analysis" Central Law Publications, Allahabad, Edi. 2012, p.51.
- ⁶³ G.S. Gangadharappa v. Sr. Personnel Officer and PIO, Rail Wheel Factory, Ministry of Railways, Bangalore, Appeal No. CIC/SG/A/2009/000889 dated 8th June, 2009.
- ⁶⁴ Section 9 of the Right to Information Act, 2005.
- ⁶⁵ Prachiti Kishor Dadra, "Right to Information-A Floodgate to Courts" AIR, Journal Section, 2007 pp. 157-158.
- ⁶⁶ CIC/OK/A/2007/1307.
- ⁶⁷ English Philosopher, Jurist and Social Reformer regarded as the founder of Modern Utilitarianism (1748-1832) Retrieved from <https://www.brainyquote.com/quotes/jeremy_bentham_386566> last visited on 30th April, 2020.