Chapter-4

Analysis of Right to Information Act, 2005
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ANALYSIS OF RIGHT TO INFORMATION ACT, 2005

“Where is the life, we have lost in the living.
Where is the Wisdom, we have in the knowledge.
Where is the knowledge, we have lost in the information.”

—Thomas Stearns Eliot

4.1 INTRODUCTION

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. 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 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. The era of information being shrouded in the veils of secrecy is a thing of the past. This revolution in India was made possible due to the enactment of the Right to Information Act, 2005. 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. The Act is divided in six chapters, one; preliminary which includes definition and commencement clause, two; citizen’s right to information and obligation of public authorities, three and four; constitution of central and states

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2 Statement of Objects and Reasons, Right to Information Act, 22 of 2005.
information commissions, five; powers and functions of the commissions, and six includes miscellaneous provisions.

4.2 CONSTITUTIONAL VALIDITY OF THE RIGHT TO INFORMATION ACT, 2005

Entry 12 of the Concurrent List of the Seventh Schedule to the Constitution of India gives legislative power to the Parliament with regard to “Public acts and records and judicial proceedings.” There can be no doubt as to the legislative competence of the Parliament as well as the State legislature with regard to the subject dealt within this Act. The Right to Information Act has created the Central Information Commission, the Chief Information Commissioner and Information Commissioners, Central Public Information Officer, State Information Commission, State Chief Information Commissioner, State Information Commissioners and State Public Information Officer to provide information to persons requesting for the information and to decide the complaints under the Act.

The question before the Court was regarding the constitutional validity of the Right to Information Act, 2005, in Virender Singh Choudhary v. Union of India & Others. The question raised before the Court was, whether the appointment of Chief Information Commissioner or Information Commissioner under sections 12(5), 12(6), 15(5) and 15(6) of the Act is in violation of Article 14 of the Constitution of India. The entire scheme of the Act taken into consideration for the purpose of not including certain categories is to have neutrality, objectivity and avoidance of conflict of interest. The Court held that the exclusion of certain categories is not unreasonable. Hence, the provisions are not hit by Article 14 of the Constitution of India.

Again, the Supreme Court in Namit Sharma v. Union of India dealt with the constitutional validity of sections 12(5), 12(6), 15(5) and 15(6) of the Right to Information Act, 2005. Sections 12(5) and 12(6) deal with the eligibility criteria for appointment to the post of Chief Information Commissioner and Central Information

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Commissioners. Sections 15(5) and 15(6) deal with the appointment to the post of State Chief Information Commissioner and State Information Commissioners. Under sections 12(5)/15(5) the members of the State and Central Information Commission should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. Furthermore, sections 12(6)/15(6) elaborates that such members should not be a Member of Parliament or Member of the Legislature of any State or Union territory or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. The petitioner approached the Hon’ble Supreme Court with the grievance that even though the members of the Central and State Information Commissions exercise judicial and quasi-judicial powers under the Act, the eligibility requirements prescribed for their appointment under the Act are too vague, general, ultra vires the Constitution, specifically Articles 14, 16 and 19(1)(g) and contrary to the established principles of law laid down by a plethora of judgments of the Supreme Court.

The Hon’ble Supreme Court discussed the scheme, objects and reasons of the Act, and also compared the Act with the Freedom of Information Act, 2002. After an elaborate discussion on the above, the Hon’ble Supreme Court came to the following conclusions:

(a) **Constitutional validity of section 12(5)/15(5):**

The Hon’ble Supreme Court observed that sections 12(5)/15(5) of the Act have two components: (i) persons should be of public eminence; and (ii) persons should have knowledge and experience in their respective fields. Even though these provisions do not provide for any qualifications, they are not arbitrary as knowledge and experience by implication would mean and include satisfaction of basic qualification in their respective fields. Sections 12(5)/15(5) have inbuilt guidelines to the effect that knowledge and experience, being two distinct concepts, should be construed in their correct perspective. Certainty to vague expressions like ‘social service’, ‘mass media’ or ‘administration and governance’ can be explained by framing proper rules under sections 27 and 28 of the Act. Therefore, sections 12(5)/15(5) are not ultra vires the Constitution of India.
(b) Constitutional validity of section 12(6)/15(6):

Section 12(6)/15(6) of the Act state that the members of the Information Commissions should not hold ministerial positions, office of profit or be connected with a political party or carry on business or profession whereas sections 12(5)/15(5) requires the member to have eminence in public life and wide knowledge and experience in the specified field. When sections 12(5)/15(5) and section 12(6)/15(6) are read together, the purpose of sections 12(5)/15(5) is defeated as virtually no person will be able to become a member of the Information Commission. Sections 12(6)/15(6) lacks clarity, reasonable classification and has no nexus to the object of the Act and if construed on its plain language, it would result in defeating the provisions of sections 12(5)/15(5) to some extent. Also, these clauses do not specify any time period for which a person should not have carried on any business or profession. The Supreme Court has reasoned that these disqualifications are not pre-appointment but operate post-appointment.

(c) Quasi-Judicial Authority:

The Information Commission is vested with penal powers under the Act which include the power to impose fines and conduct enquiries. Under the Act, the Commissions determine the outcome of disputes between the parties by striking a balance between right to privacy and right to information. Therefore, the powers of Information Commissions are adjudicatory in nature and not merely administrative. This requires performance of judicial functions of hearing a dispute between two parties, weighing the arguments of the parties and pronouncing a decision in accordance with the rule of law. The Information Commissions are, therefore, quasi-judicial authority or tribunals performing judicial functions.

(d) Information Commissions supplant the Civil Courts:

Section 23 of the Act ousts the jurisdiction of civil courts in respect of any suit, application or other proceedings in respect of any order made under the Act. The complete code for appeal and challenge has been laid out in the Act. The appeal from the decision of the information officer lies with the first appellate authority and a subsequent second appeal to the Information Commission. Exclusion of jurisdiction of
civil courts does not preclude the right to approach the High Court and the Supreme Court under their writ jurisdictions. The Hon’ble Supreme Court on several occasions has held that tribunals exercising quasi-judicial functions should have legally trained and experienced members because they are required to supplant the High Court.

(e) **Structure of Information Commission:**

(i) The Supreme Court held that the Information Commissions will work in a bench of two members, one judicial member and another qualified person from the specified field (expert member).

(ii) The judicial member should have degree in law and experience in performing judicial functions. A law officer or a lawyer who has practiced law at least for a period of twenty years will be eligible for appointment as a judicial member. Such lawyer should also have experience in social work. Preference should be given to a person who is or has been a Judge of the High Court for appointment as Information Commissioner. The Chief Information Commissioner at the Centre or State level should only be a person who is or has been a Chief Justice of the High Court/a Judge of the Supreme Court. The judicial members will be appointed in consultation with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

(iii) Under section 12(3) of the Act, the members of the Information Commissions are to be appointed by the President upon the recommendations of the High Powered Committee. The Act is silent upon the procedure to be followed. The Hon’ble Supreme Court directed that a panel of prospective members will be created by the Department of Personnel and Training or the concerned state level ministry, as the case may be after due advertisement. The panel will be placed before the High Powered Committee to make selections in accordance with section 12(3) of the Act.

(iv) The Supreme Court recommended that first appellate authority under the Act should be a person possessing a degree in law or having adequate knowledge and experience in the field of law.

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(f) Amendments to the Act and framing of rules:

The Supreme Court has laid down the provisions of sections 12(5), 12(6), 15(5) and 15(6) to uphold their constitutional validity. However, the Supreme Court has observed that it is necessary for the legislature to suitably amend the Act. The Supreme Court also directed the Central Government and the competent authority to frame rules within 6 months from the date of the judgment to make the practice and procedure of the Information Commissions in accordance with rule of law.

(g) Rule of precedence:

In its judgment the Supreme Court has also held that the Information Commission must bear in mind the rule of precedence in respect of not only Supreme Court and High Court judgments but judgments of larger Information Commission benches in case of a smaller bench.

The field of “public acts and records” is already occupied by certain laws relating to “right to Information” passed by many State Legislatures. The Official Secrets Act, 1923, also covers the same field of public records, documents, manuscripts and files. However, section 22 of the Right to Information Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act and in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Wherever there is inconsistency between the existing law and this Act, the RTI Act shall prevail.

4.3 OBJECTIVES OF THE RIGHT TO INFORMATION ACT

An Act to provide 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.

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.  

The Patna High Court has observed that the Right to Information Act, 2005 has been put into effect with the main object of open governance, transparency and a participatory government which only shall fulfill the needs or assurance of the people as envisaged under the Constitution of India.  

The Allahabad High Court has also observed that from the perusal of the objects and reasons for enacting Right to Information Act, 2005 it is apparent that the Government desired to establish a practical regime of right to information for citizens to have access to information under the control of public authorities in order to promote transparency and accountability in their working.  

The Right to Information Act is one of the strongest indications of India’s growing strength and reputation as democratic country. The main objectives of RTI Act, 2005, are to promote openness, accountability, transparency in the functioning of the Government Agencies. The Act is a big step towards making the citizens informed about the activities of the Government. The main objectives of the right to information Act are as follows:

i. **To bring Transparency & Accountability in the working of every public authority**: The RTI Act will make Government functioning more transparent and accountable. Transparency and openness in the functioning of the Government and

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other agencies will keep a check on doing and misdoings of the Government. If the Act is implemented properly, it will bring the efficiency and check on corruption.

ii. The right of any citizen of India to request access to information and the corresponding duty of Govt. to meet the request: It can bring a sense of empowerment to its citizens of the country. RTI Act will promote citizens participation in official decisions that directly affect their lives. It enables the citizens to get most information held by the Government. It can bring a sense of safeguard to the citizens about their rights.

iii. A responsibility on all sections: The rights of the citizens are very much important in the democracy to keep active and alive. The achievement of technology may bring long-term benefits for the society and can improve the quality of the administrative services. RTI Act is the property of the people, it will guide to the modern administrative policies and framing the civil society.

iv. A responsibility of the Govt.: The implementation of the RTI Act will build public trust in the government’s functioning and in those leaders who have had the courage and vision to enact and implement effectively the right to information.

v. The duty of Govt. to pro-actively make available key information to all: It will bring more effective and efficient records management techniques that are needed to facilitate the provisions of information in response to public interest. Under section 4(i) of the Act, it was obligatory for the public authority to maintain all its records duly catalogued and indexed. Under section 4(b) every public authority is required to publish within 120 days from the enactment of the Act as many as 17 manuals.

vi. To curtail corruption and to hold Govt. & their instrumentalities accountable to the governed: It provides a weapon to honest politicians and bureaucrats to fight corrupt practices in their jurisdictions. Only those officials, who have something to hide, should fear the new law and will feel the heat of the Act once it is fully implemented.
vii. **To ensure informed citizenry and transparency in governance:** It will enable the common citizen to question the working and non-working of Government departments and agencies.

viii. **To ensure less expensive and time bound information:** It will enable the officials to obtain the information inexpensively and within a time bound framework. So, each Ministry or Department has to organize its materials and its working and system in order to be able to respond the future requirements of the public.

ix. **Matters connected to Public Authority or incidental thereto:** This is the first Act in India which provides the controlling power to the citizens in which Public Authorities are compelled to disseminate the information which is either directly or indirectly connected to them. Even if sought information does not belong to particular Public Authority, in such a case, that Public Authority is compelled to transfer to the relevant Public Authority instead of rejection.\(^\text{12}\)

It is a power that has to be given to every citizen in reorganization of the fact that it is government of the people, for the people and by the people—the essence of democracy.\(^\text{13}\)

The objectives of the right to information can also be judged from the report of the National Commission to Review the Working of the Indian Constitution that was established under the Chairmanship of Justice M.N. Venkatachaliah, former Chief Justice of India. On the issue of access to information, the Commission had observed that “major assumption behind a new style of governance is the citizen’s access to information. Much of the common man’s distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes. He remains ignorant and unaware of the process, which vitally affects his interest. Government procedures and regulations shrouded in veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases because of the latter’s snobbish attitude and bow-wow

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style. Right to Information should be guaranteed and needs to be given real substance. In this regard government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent and participatory. Right to minimizing and dilatory tactics of the babudom, and, last but most importantly putting a considerable check on graft and corruption.”

The above quoted lines reiterate the fact that more open and transparent the functioning of the government is, the more credibility it enjoys. When there is no veil of secrecy, it can safely be assumed that the activities of the governance are being carried out properly and with the most honest intentions. And this is what RTI does, it removes secrecy and brings about transparency in administration.

4.4 RIGHT TO INFORMATION ACT, 2005

The basic purpose of the Right to Information Act, 2005 is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governments accountable to the governed. In fact, the RTI Act is meant to serve two fold puposes, viz.,

(i) effectuating the right to know already enshrined in Article 19(1) (a) of the Indian Constitution; and

(ii) greater access to information in order to ensure maximum disclosure and minimum exemptions.

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 authority. Moreover, this Act seeks to provide a workable and balanced formula which makes available information that ought to be public and at the same time protects certain information which must remain confidential in order to protect legitimate governmental functions.

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4.4.1 Preamble of the Right to Information Act

The preamble is an integral part of the Statute. When there is any confusion or dilemma about the meaning or interpretation of the provisions, it should be tested on the touchstone of the preamble. Just as the basic features of the Constitution are unalterable, and form the basis for interpretation of laws, the preamble of an Act should be understood to arrive at the objectives of the Act. It also suggests that what the Act was intended to deal with, if the language used by the Parliament is ambiguous, the Court is permitted to look into the Preamble for construing the provisions of an Act.

The Preamble of the Act spells the purpose of the RTI Act as under:

(a) for setting out the practical regime of right to information for citizens;
(b) to secure access to information under the control of public authorities;
(c) to promote transparency & accountability in the working of every public authority;
(d) to ensure informed citizenry and transparency in governance;
(e) to curtail corruption and to hold Government & their instrumentalities accountable to the governed;
(f) to harmonize conflicting public interests in disclosure and exemptions;
(g) constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto.

The Preamble of the RTI Act provides that:

1) whereas the Constitution of India has established democratic Republic; and
2) whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to curtail corruption and to hold Governments and their instrumentalities accountable to the governed; and

15 Davies v. Kennedy, (1869) IR 697.
3) 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

4) whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

5) Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.19

The fact that the Right to Information is part of the fundamental rights of citizens under Article 19(1) of the Constitution of India has been recognised by various Courts, since the landmark decisions in the Raj Narain’s case20, S.P.Gupta’s case21 and others. This is not a new right conferred on the citizens but is a part of our fundamental right to freedom of speech & expression under Article 19(1)(a) of the Indian Constitution. The legislative intent is clear when it admits the need for an informed citizenry, “to curtail corruption and to hold Governments and their instrumentalities accountable to the governed.”22 Thus, the objective of this Act is to enable citizens to hold all the instrumentalities of the Government accountable. In the next paragraph it recognises that in doing this, there may be a conflict with other public interests including running the Government and limited fiscal resources. The preamble unequivocally states that ‘confidentiality of sensitive information’ shall be preserved and what all that could be supplied only in ‘certain’ information and that too which is under the control of public authorities.23 In the next paragraph, preamble unequivocally declares, “and whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal.” Thus, it is clear that in making the law, Parliament has recognised the need to harmonise different needs for running the Government and

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20 AIR 1975 SC 865.
21 AIR 1982 SC 149.
harmonise them with the paramountcy of the democratic ideal. Very often the various functionaries arrogantly assume that they are a better judge of what is good for governance, and therefore, misinterpret all laws through their paradigm of what will lead to good governance. They must understand that these aspects have been considered actively by the lawmakers when framing the law. It is essential that all the elements of society: all the public servants in the legislature, judiciary and the executive; and the citizens—the masters of the democracy, follow all laws. The essence of democracy is that each individual citizen is a sovereign in his own right, and he gives part of the sovereignty to the State, in return for which he gets the rule of law. Thus, it is a negotiation of each individual sovereign with the State for the common rule of law. The preamble touches the core issue that the dissemination of information is fundamental to the functioning of the Government and also its openness and transparency. These purposes permeate all the 31 sections of the Act, hence is the importance of the Preamble.

The preamble is the soul of the Act. There can be no doubt that the court must construe the preamble as a key to the construcion of the statute. It is a settled rule that the preamble cannot be made use of to control the enactments themselves where they are expressed in clear and unambiguous terms. The Earl of Halsbury observed that:

“Two propositions are quite clear, one that a preamble may afford useful light as to what a statute intends to reach and the other that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment.”

The Supreme Court held in Bhatia International v. Bulk Trading S.A. & Another that in interpreting a statute, a construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results.

26 Powell v. Kempton Park Race Course Co., (1899) AC 143.
If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. In selecting out of different interpretations the Court will adopt that which is just reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice.

4.4.2 Applicability of the Right to Information Act

The Right to Information Act, 2005 extends to the whole of India except the State of Jammu and Kashmir.\(^{28}\) According to section 1(3), it came into force in two parts:

i. In first part, the provisions of section 4(1), sections 5(1) and 5(2), sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once (came into force w.e.f. 15\(^{th}\) June, 2005), and

ii. The remaining provisions of this Act shall come into force on the 120\(^{th}\) day of its enactment (came into force w.e.f. 12\(^{th}\) October, 2005).\(^{29}\)

The Hon’ble Delhi High Court held that section 1(2) of RTI Act provides that Act does not extend to State of Jammu and Kashmir. It means if there are public authorities under control of the State of Jammu and Kashmir and located exclusively within State of Jammu and Kashmir and they hold information, then such information cannot be accessed by filing application under this Act with such public authorities in State of Jammu and Kashmir. But, where the information is held by authority pertaining to Central Government and all other requisites of the Act have been fulfilled, then such authority cannot take protection of non-applicability of the Act. In such circumstances, they are bound to furnish information according to the provisions of the Act, Army personnel in the State of Jammu and Kashmir does not preclude such personnel or their relatives from seeking information concerning themselves through application made under the Act to Army. Petitioner proceeded on misinterpretation of section 1(2) of the Act. It was erroneous on part of the petitioner to contend that information pertaining to

\(^{28}\) Section 1(2) of the RTI Act, 2005.

son and husband of two respondents respectively, cannot be provided. Therefore, dismissed petitions and directed that impugned order will be complied with by petitioner within a period of 15 days.\(^30\)

This is because of the arrangements and understandings and also of the relevant provisions of the Constitution of India under Article 370 and the Constitution of the Jammu and Kashmir.

### 4.4.3 Important Definitions under Right to Information Act

It is settled principle of interpretation that when definition clause is added to an Act, the definitions of the word given therein merely define the meaning of the words to make the terms definite in the sense in which these are used in various sections of the Act. In other words, the meaning of the words used in the Act must take colour from the context in which they appear. The Right to Information Act, 2005 gives some of the important definitions as under:

(1) “**Appropriate Government**”\(^31\) means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly:

- (i) by the Central Government or the Union territory administration, the Central Government;

- (ii) by the State Government, the State Government;

Appropriate Government is the Government in relation to the public authority dealing with the right to information. Such authority is established, constituted, owned, controlled or substantially financed by the Central Government, Union Territory Administrations or the State Governments.\(^32\)

In other words, public authorities are: all Ministers of the Central Government or the State Governments and all Civil Authorities and Defence Authorities, Universities,

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\(^31\) Section 2(a) of the RTI Act, 2005.
Reserve Bank of India, Public Sector Banks, Government Companies, Cooperatives
Societies, Local Self-Government Bodies like Panchayat, Municipal Body, Municipal
Corporation, Urban Improvement Trust, Registered Societies, Non-Governmental
Organizations financed by any Government.  

If the Central or the State Government has got one of the relations with such public
authority, such Government would be appropriate Government under the RTI Act. This
definition is close to the definition of “State” under Article 12 of the Indian
Constitution. However, the Appropriate Government or the Public Authority should not
be taken exactly the same as the “State” under Article 12 of the Constitution. The
concept of State in the Constitution is for the enforcement of the fundamental rights
where more effective and pervasive role and control of the Government is required. But
in the present context right to information is a statutory right which is basically
envisaged to tame corruption and to effect transparency in the administration.

In the same sense, the Kerala High Court in M.P. Varghese v. Mahatma Gandhi
University held that the Preamble of the Act does not indicate that purpose of Act, is
to confine its applicability to Government and instrumentalities of the Government.
Even though, the applicability of the Act is not confined to the bodies answering in the
definition of “State” under Article 12 of the Indian Constitution but it is to be
determined based on provisions of statutes also.

(2) “Competent Authority” means:

(i) the Speaker in the case of the House of the People or the Legislative Assembly
of a State or a Union Territory having such Assembly and the Chairman in the
case of the Council of States or Legislative Council of a State;

(ii) the Chief Justice of India in the case of the Supreme Court;

(iii) the Chief Justice of the High Court in the case of a High Court;

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36 Section 2(e) of the RTI Act, 2005.
(iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;

(v) the administrator appointed under article 239 of the Constitution.

The term ‘competent authority’ here means the authority heading the autonomous and independent institution functioning under the provisions of the Constitution. These are the institutions relating to the legislature and the judiciary including other constitutional bodies. The competent authority in relation to these institutions has more or less the same meaning as that of the appropriate Government in relation to Public Authorities defined under section 2(a) of the RTI Act, 2005. The competent authority has also been empowered with the power of delegated legislation to frame rules to carry out the provisions of this Act under section 28 of the Act. The ultimate responsibility for the enforcement of the Act in such institutions would be that of such authority. In this regard the competent authority may take all necessary steps to ensure the enforcement of the right to information in such organizations.

(3) “Information” means any material in any form, including:

- records,
- documents,
- memos,
- e-mails,
- opinions,
- advices,
- press releases,
- circulars,
- orders,
- logbooks,

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39 Section 2(f) of the RTI Act, 2005.
• contracts,
• reports,
• papers,
• samples,
• models,
• data material held in any electronic form and
• information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

The term ‘Information’ means knowledge communicated or received concerning a particular fact or circumstance or knowledge gained through communication research data etc.\textsuperscript{40} As per Oxford Dictionary, ‘information’ means facts or knowledge provided or learned as a result of research or study.\textsuperscript{41}

The Right to Information Act has been enacted with the object to provide effective mechanism to citizens for access to information and disclosure by authorities and an effective frame-work for effectuating the right to information recognized under Article 19(1)(a) of the Constitution of India.\textsuperscript{42} According to Right to Information Act, 2005, there are two modes to access to information like (i) access to information must be provided on request application by the information seeker and (ii) information which must be published and disseminated suo-moto (proactively) by public authorities.

The concept of information under the Act has been given a wide scope. It says that information means “any material in any form”, which would mean any material concerning the affairs of the Government, e.g. decision, action, plan or schedule. Further, it has been defined in detail including the various modes and forms of information which can be accessed under the Right to Information Act. In other words, section 2(f) of the Act provides an inclusive definition of the ‘information’ to be sought under the RTI Act but it may be extended beyond the purpose, objective and spirit of the Act.

\textsuperscript{40} Random House Webster’s College Dictionary at p. 670.
\textsuperscript{41} The Concise Oxford Dictionary at p. (sic).
It may also include personal interview with any personnel of the Government, copy of any part of file, copy of muster roll, sample and photo of construction material, copy of relevant correspondence, conversation on telephone, copy of video cassette, computer floppy, CD ROM or diskettes or any other electronic medium where the information is recorded or stored. There is no provision in the Act disallowing videography, and therefore, can not be excluded unless it violates the parameters of any information sought and agreed to be provided.43

The opinions of the individuals and departments and the institutions as part of official record is a piece of information under the Act. Such opinions conveyed in official dealings become part of the official record and the same becomes valid information under the Act and it may be sought as information under the provisions of the Act.

**File Noting and Note Sheet is an Integral part of file and form part of information**

The Delhi High Court in *Union of India v. R.S. Khan*44 held that file notings, which are in the form of the views and comments expressed by the various officials dealing with the files, are included within the definition of ‘information’ under section 2(f) of the Right to Information Act, 2005, unless file notings are specially excluded from the definition of section 2(f) of the Act. In other words, file notings can be disclosed except file notings containing information exempt from disclosure under section 8 of the Act.

In *Satya Pal v. CPIO, TCIL*45 the Central Commission observed that no file would be complete without the note sheets having ‘file notings’. The Commission has held that a combined reading of sections 2 (f), (i) and (j) would indicate that a citizen has the right of access to a file of which the file notings are an integral part. Thus, ‘file noting’ fall within the purview of ‘information’ and are accessible to a person.

In *Suchi Pandey v. Ministry of Urban Development*46 the Commission has observed that a combined reading of Sections 2(f), (i) & (j) would indicate that a citizen has the

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right of access to a file of which the file notings are an integral part. If the legislature had intended that “file notings” are to be exempted from disclosure, while defining a “record” or “file” it could have specifically provided so. The CIC ruled that, they are of the firm view that, in terms of the existing provisions of the RTI Act, a citizen has the right to seek information contained in “file notings” unless the same relates to matters covered under Section 8 of the Act. As far as the Penalty is concerned they ruled that since the concerned officer has already demitted office in the Ministry of Urban Development, a penalty can be levied moreover only on the CPIO, who in this case appears to have acted in good faith in light of the instructions of the DoPT, and so they saw no grounds for invoking a penalty.

In **Mahendra Gaur, Jaipur v. Department of Consumer Affairs** the Commission directed the CPIO to allow the appellant to inspect the file notings as sought for by him free of cost. The appellant has sought for compensation on the ground that he had to incur expenditure to visit Delhi from Jaipur a number of times. It would have found justification in his claim but for the fact that the decision of the appellate authority was based on the website information of the DoPT, even though wrongly, and not with the view to intentionally deprive the appellant of the information sought.

It is not the first time that after the decision of this Commission in Satya Pal case, a public authority has denied access to file notings on the basis of the website information of DoPT. A few other public authorities have also done so, due to which this Commission has to reiterate again and again its decision that information includes “file notings”.

In **Naresh Chaturvedi v. Department of Personnel & Training** the reasons cited by the public authority for non-disclosure of ‘file noting’ was the information posted on the DoPT website to the effect that ‘information’ did not include ‘file nothing’. The Ministry of Personnel, Public Grievances & Pensions was asked by the CIC to remove such administrative instructions from its website that are contrary to the RTI Act, 2005.

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49 Appeal No.CIC/WB/A/2006/00820.
as found by the Commission. The DoPT website was creating a lot of unnecessary confusion in the minds of the public.

In **Pyare Lal Verma v. Ministry of Railways, Railway Board and Ministry of Personnel, Public Grievances and Pensions**\(^{50}\) CIC cited the inclusiveness of the definitions of information and records under the Act to extend its applicability to cover file notings. It also narrated the Preamble of the Act and its Statement of Objects and Reasons to harmonize the interests of the public with those of the Government, and, thus file notings are classified as information and public authorities are bound to provide them to citizens seeking information.

The CIC cited the Preamble of the Act again to invoke the inherent powers of the CIC to order a single bench to preside over matters, as the Act demands a practical regime to provide information to the citizens, and it would be impossible for the CIC to function had it been expected to hear every matter in a full bench. It also cited provisions of section 12 that empowered the CIC to have total superintendence over the management and direction for the CIC.\(^{51}\)

In **Neeraj Kumar Singhal v. S.B. Gandhi, Sr. DGM North West Railway, Headquarter Office, Hasanpura Road, Jaipur**\(^{52}\) the Commission held that the conduct of examinations and for identifying and short-listing the candidates in terms of technical competence, the right attitude etc is a highly confidential activity and therefore, answer-sheets should not be disclosed. However, the award of marks need not be kept secret. The Appellate Authority is, therefore, directed that the true copies of the mark sheets of the successful candidates may be supplied to the Appellant within 15 clear days of the issue of this order.

In **Munna Lal and Shri Abdul Rafique v. Senior Personnel Officer, Diesel Loco Work Shop, North West Railway, Ajmer**\(^{53}\) the Commission held that in the post-RTI Act era, the examination system needs to be given a fresh look to make it as much transparent as possible. The Commission found no convincing reason for non-disclosure

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\(^{50}\) Appeal No. CIC/OK/A/2006/00154, Decision dated 29\(^{th}\) January, 2007.  
\(^{51}\) Ibid.  
\(^{53}\) CIC/OK/A/2006/58, dated 26\(^{th}\) June, 2006.
of mark sheets of the candidates and also the answer keys once the examination/selection process is completed. The Commission, therefore, directs the Respondents to provide the appellants the marks obtained by the candidates and the answer keys as demanded by them within 15 days and report compliance to the Commission within 21 days of the issue of this order.

In Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others an application for inspection and re-evaluation of his answer books has been filed by the applicant to Central Board of Secondary Education. The Central Board of Secondary Education rejected the said request. In Writ Petition before the Division Bench of the High Court, it was held that the evaluated answer books of an examinee writing a public examination conducted by the statutory bodies like Central Board of Secondary Education or an University, being a document manuscript record, and opinion fell within the definition of information as defined under section 2(f) of the RTI Act. It was further held that the provisions of the RTI Act should be interpreted in a manner which would lead towards dissemination of information rather than withholding the same and in view of the right to information, the examining bodies were bound to provide inspection of evaluated answer books to the examinees. Consequently, it directed Central Board of Secondary Education to grant inspection of the answer books to the examinee who sought information. The High Court, however, rejected the prayer made by the examinees for re-evaluation of the answer books, as that was not a relief that was available under the Act. In other words, Right to Information Act only provided a right to access information, but not for any consequential relief. The Supreme Court, on appeal by special leave, affirmed the order of High Court directing the examining bodies to permit examinees to have inspection of their answer books, subject to the clarifications regarding the scope of the RTI Act and the safeguards and conditions subject to which information should be furnished.

In Akash Agarwal v. Debts Recovery Tribunal (DRT) the appellant is way off the mark in his conclusions about the interpretation of the expressions ‘opinions and

54 (2011) 8 SCC 497:2011 (2) ID 101 (SC). Also see T. Balaji & Others v. TN Public Service Commission & Others, 2010 (1) ID 337 (Madras High Court).
55 CIC/AT/A/2006/446 dated 18th December 2006.
advices’ in section 2(f). The words ‘opinions’ and ‘advice’ in this section only mean opinion and advice obtained by a public authority in a given matter from any agency, department, persons, etc. and forming part of the file/record of such public authority. That is the reason why both these words are in plural. Reading of section 2(f) reveals quite conclusively that these words cannot be construed to mean that any citizen can solicit and obtain from the CPIO, of a public authority; the latter’s opinion on any given matter. The appellant’s interpretation of section 2(f) is wholly misconceived’.

In Shiv Kumar Gupta v. Central Excise Department\(^{56}\) and Arthur Monterio v. Registrar of Co-operative Societies\(^{57}\) and Vivek Singhal v. A. K. Khound (PIO & CGM) Reserve Bank of India, Deptt of Banking and Personnel\(^{58}\) the Commission held that the applicants have no right to receive opinions, advices and explanations under section 2(f) of the Right to Information Act.

In the case of Vibhor Dileep Barla, Nashik v. Central Excise & Customs\(^{59}\) the appellant put questions in the form of inquiry which was rejected by the CPIO on the grounds that they did not fall within the ambit of RTI Act, 2005. The Commission held that it is not the duty of the CPIO to cause an enquiry or undertake an investigation or prepare answers to the questions posed by the appellant. But the CPIO is certainly obliged to locate the information available with the public authority and held by it so that it could be made available to the information seekers under the RTI Act, seeking the assistance of any officer u/s 5(4).

**Information relating to any Private Body**

The common impression is that the RTI Act is used only to get information from government and public authorities. What is hardly known is that, in certain circumstances, it can also be used to get information from private bodies.\(^{60}\) It means information includes information relating to any private body. Where public authority

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\(^{56}\) CIC/AT/A/2008/14.

\(^{57}\) CIC/AT/C/2008/30.


possesses the information to a private body, request can be made to such public authority to part with the information contained in any document, report, return, paper, manuscript, microfilm etc. and such other data material belonging to private body.\textsuperscript{61} In Jehangir B. Gai, Mumbai v. Bureau of Secondary Education, Department of Secondary & Higher Education, Ministry of HRD, New Delhi\textsuperscript{62} the Commission held that prima facie the Council for the Indian School Certificate Examination (CISCE) is not covered by the definition of a public body since it is neither funded nor controlled by the Government or any other public body. However, going by the definition of the term information under Section 2(f) of the RTI Act, which includes ‘information relating to any private body which can be accessed by a public authority under any other law for the time being in force’. The Respondents are, thus, directed to obtain the information from the CISCE within 15 days and supply it to the Appellant within 21 days of the issue of this order.

In the case of Laxmi Chauhan, Chhattisgarh v. Ashok Kumar Mehta, CPIO, Ministry of Mines and Others\textsuperscript{63} the Commission has carefully considered the whole issue and is of the view that insofar as the request for information in this case is concerned, it is not necessary to determine and say a final word as to whether Bharat Aluminium Company Ltd. (BALCO) is a ‘public authority’ or not under the Act. However, going by the definition of the term information under Section 2(f) of the RTI Act, which includes ‘information relating to any private body which can be accessed by a public authority under any other law for the time being in force’. The Commission further held that being a shareholder of the company, with representation on its Board of Management, the information sought must be available with the Ministry of Mines, and what is available with the Ministry cannot be denied to an applicant under the Right to Information Act, 2005. Thus, it is very clear that the requested information relates exclusively to the Ministry of Mines, the Ministry is directed to respond to the RTI request submitted to them within 15 days from the date of receipt of this decision. It is


\textsuperscript{62} Appeal No. CIC/OK/A/2006/00127 dated 21\textsuperscript{st} July, 2006. Also see Ravinder Singh v. GIS Housing Finance Ltd., Appeal No. 531/IC/A/2007/00261 dated 9\textsuperscript{th} Feb., 2007.

\textsuperscript{63} Appeal No.CIC/AT/A/2007/00389 dated 27\textsuperscript{th} December, 2007.
further clarified for the sake of convenience to all stakeholders that the Ministry shall provide the information available with them and, if they do not hold the information, appellant must be so informed.

**Information not fall within the purview of section 2(f) of the RTI Act**

The documents untraceable cannot be physically disclosed and resultanty there is no disclosure obligation on the public authority. The CIC held that information relating to furture course of action which is not in any form is not information within section 2(f) of the Right to Information Act, 2005.\(^{64}\)

The frivolous and vaxatious queries do not qualify as information. The query is not covered under section 2(f) of the RTI Act. The CIC held that the hypothetical questions also could not be called in definition of ‘information’ under section 2(f) of RTI Act.\(^{65}\)

In the case of **Rakesh Kumar Gupta v. Income Tax Appellate Tribunal (ITAT) and Ors.**\(^{66}\) it is seen from the questions that the appellant has requested the CPIO to interpret rules. It is noticed that the purpose of appellant’s filing this appeal before the Commission is essentially to obtain an interpretation of Appellate Tribunal Rules 50(1) and 50(3) as well as other Rules in order to access information of a third party. The ITAT, through its order had apparently barred that information from disclosure and appellant was attempting the RTI-route in order to circumvent the Tribunal’s orders.

This is the first time a party has come up to the Commission asking for interpretation of a given law/rules as well as the interpretation of the powers of quasi-judicial body. The proper forum to test the order of a Tribunal is as laid down under the appropriate Act or as provided in the Constitution. It would be wholly inappropriate to invoke the provisions of the RTI Act for the interpretation of laws and rules. It should be made clear that the laws and rules are themselves ‘information’ and being in public domain are accessible to all citizens of the country.\(^{67}\)

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\(^{66}\) Decision No. CIC/AT/A/2006/00185 dated 18\(^{th}\) September, 2006.

\(^{67}\) Ibid.
In *Celso Pinto v. Goa State Information Commission*\(^6^8\) the Hon’ble High Court of Bombay (Panji Goa Bench) held that the definition of information cannot include answers to the question ‘why’ as that would be asking for a justification. The public information authorities cannot be expected to communicate to the citizen the reason why a certain thing was done or not done in the sense of justification because the citizen makes a requisition for information. Justifications are matter with in the domain of the adjudicating authorities and cannot properly be classified as information.

The redressal of grievances relating to service matter does not fall in right to information purview. In *P.L. Sanyal, New Delhi v. CPIO, Department of Agricultural & Cooperation, New Delhi*\(^6^9\) the question for disposal was that whether information sought upgrading a post and continuing the same employee in the upgraded post by granting adhoc promotion was proper. The CIC held that the queries only seek to question the action of the department and RTI Act is not appropriate law for redressal of such service related grievances.

In *Chitarmal Mahadev Gupta v. Western Railway, Mumbai*\(^7^0\) the Commission held that the Appellant is not seeking any information in the RTI request and has only provided some comments/suggestions with regard to the installation of the close circuit cameras. Thus, there was no scope for making suggestions/comments in an application under RTI Act. Again in the case of *Rajendra Prasad Verma, Jaipur v. Northern Western Railway, Headquarter Office, Jaipur (Rajasthan)*\(^7^1\) the PIO shows that all the information has been given to him as per the records. The CIC held that the appellant was seeking clarifications and interpretations of rules which is not information as defined under Section 2 (f) of the RTI Act.

In *Arvind Kejriwal v. Department of Personnel & Training (DoPT), Ministry of Pensions, Govt. of India*\(^7^2\) it has been clarified by the CIC that no authority was above the Act passed by the Parliament and no permission or consultation was required once the Commission directed to impart information. It could be specially in view of the

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\(^{68}\) (2008) 24 CLA-BL Supp (snr) 7:2008 (2) ID 386 (Bom. HC).


\(^{70}\) Appeal No. CIC/OK/A/08/743-AD dated 11th May, 2009.


provisions of section 19(7) of the RTI Act, 2005 which provides that the decision of the Commission shall be binding.

(4) “Public Authority”\(^73\) means any authority or body or institution of self-government established or constituted—

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any:

(i) body owned, controlled or substantially financed;

(ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

According to the dictionary meaning, public authority may be described as a person or administrative body entrusted with functions to perform for the benefit of the public and not for private profit. Even not every such person or body is expressly defined as a public authority or body because the meaning of a public authority or body may vary according to the statutory context.\(^74\)

As per Right to Information Act, 2005 the term ‘public authority’ means that the Government bodies or the bodies which are related to the Government directly or indirectly. It includes any authority, body or institution of self Government. These authorities, bodies or institutions created by any mode like:

(i) by or under the Constitution, e.g. the Vice President, the Prime Minister, Other Ministers in the Union Cabinet, the Judges of the Supreme Court, the Judges of the High Courts, Union Public Service Commission, Election Commission, the Chief Minister of States, Other Ministers in the State Cabinets, State Public Service

\(^73\) Section 2(h) of the RTI Act, 2005.

Commissions, the Comptroller and Auditor General of India, the Attorney General of India, Tribunals, Commissions and such other institutions as constituted. 

(ii) by any other law made by Parliament, all statutory organizations and institutions are covered under this category, e.g. Reserve Bank of India, Nationalised Banks, University Grant Commission, Central Universities, Securities and Exchange Board of India, Banking Service Commission, Telecom Regulatory Authority of India, Bar Council of India, Medical Council of India, International Airport Authority and such other institutions established.

(iii) by any other law made by State Legislature, e.g. State Universities, State Housing Boards, State Electricity Boards, Municipal Corporations, Improvement Trusts, Development Authorities, State Government Companies and such other institutions established.

(iv) by notification issued or order made by the appropriate Government, e.g. Central Information Commission under notification issued by the Central Govt., Controller of Certifying Authorities notified by the Central Govt. under Information Technology Act, 2000. In addition to it, those institutions which are owned, controlled or substantially financed by the Government and non-Government organizations which are substantially financed or controlled, directly or indirectly by funds provided by the Government, e.g. Central Cooperative Banks, State Cooperative Banks, Export Promotion Council, Aided Colleges and Schools.

Article 12 of the Constitution of India and Section 2(h) of the Right to Information Act

As far as the Right to Information is concerned, a body which is neither a ‘State’ for the purpose of Article 12 of the Constitution of India nor a body discharging public

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79 DAV College Trust Management Society v. Director of Public Instructions, AIR 2008 P&H 117.
functions for the purpose of Articles 226 & 32 of the Constitution of India might still be a ‘public authority’ within the purview of section 2(h)(d)(i) of the Right to Information Act, 2005. To explain further that it will be noticed that in all the decisions concerning the interpretation of the word ‘State’ under Article 12 of the Constitution, the test evolved is that of ‘deep and pervasive’ control whereas in the context of the RTI Act, there are no such qualifying adjectives ‘deep and pervasive’ vis-a-vis the word ‘controlled’.  

Just as the right to vote of the little citizen is of profound significance in a democracy, so is the right to information. It is another small but potent key in the hands of India’s little people that can unlock and lay bare the internal workings of public authorities whose decisions affect their daily lives in myriad unknown ways. The Hon’ble Delhi High Court finds no error having been committed by the CIC in its conclusion that Krishak Bharti Co-operative Ltd. (KRIBHCO) National Cooperative Consumer Federation of India Ltd. (NCCF) and the National Agricultural Cooperative Federation of India Ltd (NAFED) are “public authorities” within the meaning of section 2(h) of the RTI Act.  

The main purpose and objective behind the beneficial legislation is to make information available to citizens in respect of organizations, which take benefits by utilizing substantial public funds. This ensures that the citizens can ask for and get information and to know how public funds are being used and there is openness, transparency and accountability. Even though, those private organizations or institutions which are enjoying benefit of substantial funding directly or indirectly from the Governments fall within the definition of public authorities under RTI Act.  

Public Authorities  

In Navneet Kaur v. CPIO, Dept of Information Technology as well as Electronics & Computer Software Export Promotion Council the Commission held that the Department of Information Technology as well as Electronics of the Central

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81 Krishak Bharti Cooperative Ltd. v. Ramesh Chander Bawa, 2010(V) AD (Del.) 405.  
82 Ibid.  
Government substantially funded the organization in question and also it was under the administrative control of this department. It was a public authority, which is covered by the Act. Moreover, the Computer Software Export Promotion Council is an autonomous body under Dept of Information Technology as well as Electronics. Hence, the RTI Act is applicable to the Computer Software Export Promotion Council.

In Manju S. Kumar v. Sanskriti School, New Delhi\textsuperscript{85} the Commission held that though the Government did not give any grant for day-to-day running of the school but had given a substantial grant for setting up the school at the initial stage, hence, the school came under the purview of the RTI Act, 2005 as a ‘public authority’.

In Raj Kumari Agrawal and Others v. Jaipur Stock Exchange Ltd., National Stock Exchange of India Ltd, Securities Exchange Board of India, Ministry of Finance\textsuperscript{86}, the issue of coverage of Stock exchanges has been settled in a well reasoned order by a full bench decision of the Central Commission. The Commission, therefore, decides and holds that a stock exchange being a quasi governmental body working under the statute and exercising statutory powers has to be held to be a ‘public authority’ within the meaning of section 2(h) of the RTI Act, 2005. The Jaipur Stock Exchange and National Stock Exchange of India Limited are directed to put in place a RTI regime in their respective organizations within a period of one month from the date of receipt of this decision. They should appoint and notify the Central Public Information Officers and an officer senior to him to act as an appellate authority under the Act. They are directed also to comply with the mandated obligations under section 4(1) of the RTI Act. Other Stock exchanges are, however, allowed to comply with the requirements of the RTI Act within a period of 3 months from the date of receipt of this order. However, since the other Stock Exchanges have not been heard in the matter, they may file written submissions, if any, within a period of one month from the date of receipt of this order so as to enable the Commission to grant them a post decisional hearing. Thus, the Commission held that all Stock Exchanges and SEBI are public authorities and subject to Right to Information.

\textsuperscript{85} CIC/OK/C/2006/129 dated 23\textsuperscript{rd} January, 2007.
\textsuperscript{86} CIC/AT/A/2006/00684 & CIC/AT/A/2007/00106 decision dated 7\textsuperscript{th} June, 2007.
The Hon’ble Delhi High Court held in National Stock Exchange of India Ltd. v. Central Information Commission\(^{87}\) that a company which is recognized or established by notification or order issued by the appropriate Government is ‘public authority’ within the definition of section 2(h) of the RTI Act, 2005.

Whether the office of the ‘Official Liquidator’ is a ‘public authority’ within the ambit of the section 2(h) of the RTI Act came up before the Commission in the case of Namita Kumar, New Delhi and Another v. Official Liquidator.\(^{88}\) The Full Bench of the Commission while deciding the bunch of complaints and appeals held that the Official Liquidator was a statutory appointee of the Government and he was a public authority under section 2(h) of the RTI Act. His salary and allowances are paid by the Central Government. Although office of the official liquidator is not a part of the High Court even though as an authority they may be working under the directions of the Court. Thus, the official liquidator is covered under the ambit of the public authority under section 2(h) of the RTI Act and he was bound to provide the information under the RTI Act, unless, it was exempted under the provisions of the RTI Act.

The provisions of the Right to Information Act, 2005 are very much applicable on the Courts in India on administrative side and the Courts are bound to provide such information as and when required. In Subhash Chandra Agarwal v. Supreme Court of India\(^{89}\) the Commission held that Supreme Court of India was a public authority under section 2(h) (a) of the RTI Act and it was also a competent authority to make appropriate rules under section 28 of the RTI Act. Thus, the Supreme Court of India was bound to reveal such information which had nothing to do with the judicial proceedings. The Commission directed the CPIO of the Supreme Court to provide the information asked for by the appellant in his RTI application as to declaration of assets etc. by the Hon’ble judges of the Supreme Court.

In the case of CPIO, Supreme Court of India v. Subhash Chandra Agarwal\(^{90}\) the petitioners challenged an order of the Central Information Commission, dated 6\(^{th}\)

\(^{87}\) 2010 (100) SCL 464 (Del.).


\(^{90}\) 2009 (162) DLT 135.
January, 2009, upholding the request of the respondent who had applied for disclosure of certain information concerning such declaration of personal assets, by the judges (of the Supreme Court). In the ultimate analysis, the faith and confidence of the people in the institution of the judiciary cannot depend only on whether, and to what extent judicial ethics are evolved, or adhered to, that is no doubt important in a modern democracy. Yet what really matters is that impartiality and diligence are an inalienable part of every judge’s function; he or she has the responsibility of unceasing commitment to these values, and unwavering fidelity to the rule of law. It would be useful to quote Dr. Barrack, from ‘The Judge in a Democracy’ again, as it summarizes the values which every judge is committed to live by:

“As a judge, I do not have a political platform. I am not a political person. Right and left, religious and secular, rich and poor, man and woman, disabled and nondisabled, all are equal in my eyes. All are human beings, created in the image of the Creator. I will protect the human dignity of each. I do not aspire to power. I do not seek to rule. I am aware of the chains that bind me as a judge and as the president of the Supreme Court. I have repeatedly emphasized the rule of law and not of the judge. I am aware of the importance of the other branches of government - legislative and executive - which give expression to democracy. Between those two branches are connecting bridges and checks and balances. I view my office as a mission. Judging is not a job. It is a way of life. Whenever I enter the courtroom, I do so with the deep sense that, as I sit at trial, I stand on trial.”

The Court observed that this case and the present judgment has been a humbling experience; it required distancing from subjective perceptions to various issues, and a detached analysis of each point argued by the parties. The task was not made any lighter, since it involved balancing of varied sensitivities. That the court was called upon to decide these issues is an affirmation of the rule of law, and the intervener uncharitably characterized the petitioners as lacking locus standi. That these issues have to be addressed by Courts which are required to interpret the law and the Constitution, cannot be denied by anyone. That the petition involved consideration of serious and important legal issues, was also not disputed by the parties to these proceedings. In these circumstances, dismissal of the petition on the narrow ground of lack of standing would have resulted in the court failing to discharge its primary duty.\footnote{\textit{Ibid.}}
The Hon’ble High Court ruled in the favour of the Respondent. The Court held that the Chief Justice of India (CJI) is a ‘public authority’ under the Right to Information Act and the CJI holds the information pertaining to asset declarations in his capacity as Chief Justice; that office is a ‘public authority’ under the Act and is covered by its provisions. Regarding whether the asset declaration by the judges of the Supreme Court is covered under ‘information’ under the Act, The High Court submitted that the second part of the Respondent’s application, relating to declaration of assets by the Supreme Court judges, is ‘information’ within the meaning of the expression, under section 2(f) of the Act. The information pertaining to declarations given to the CJI and the contents of such declaration is ‘information’ and subject to the provisions of the Right to Information Act, 2005. Regarding whether the CJI holds the said information in a fiduciary relationship, the Court submitted that the Petitioners’ argument about the CJI holding asset declarations in a fiduciary capacity, (which would be breached if it is directed to be disclosed, in the manner sought by the Applicant) is insubstantial. The CJI does not hold such declarations in a fiduciary capacity or relationship. The Court held that the contents of asset declarations, pursuant to the 1997 resolution and the 1999 Conference resolution- are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under section 8(1)(j); they are not otherwise subject to disclosure. As far as the information sought by the Applicant in this case is concerned, the procedure under section 8(1)(j) is inapplicable.\(^\text{92}\)

The expression ‘public authority’ as used in the RTI Act is of wide amplitude and includes an authority created by or under the Constitution of India, which description holds good for Chief Justice of India (CJI).\(^\text{93}\)

In *S.C. Agarwal v. Leader of Opposition, Lok Sabha*\(^\text{94}\) the Commission observed that the office of Leader of the Opposition has been established by Notification issued by Govt. in the Ministry of Parliamentary Affairs and is financed directly by funds provided by the Govt. of India. It is not material as to who has issued orders of appointment so long as the personnel of the office of Leader of the Opposition function

\(^{92}\) Ibid.

\(^{93}\) Secretary General, Supreme Court of India v. Subhash Chandra Agarwal, AIR 2010 Del 159.

under the Control of the public authority to which they are appointed. In this case that is so, even though the staff may be under the administrative control of the Lok Sabha Secretariat. Thus the Commission held that the office of the Leader of the Opposition is a public authority in its own right, which then makes it subject to the obligations of any public authority under the RTI Act.

The Madras High Court in the case of Diamond Jubilee Higher Secondary School v. Union of India & Another\(^95\) held that aided school is the public authority within the meaning of section 2(h) of the RTI Act, 2005. A school run by NGO and has been substantially funded by the State Government, therefore, has to furnish the information under the Act.

The Hon’ble Delhi High Court in Indian Olympic Association (IOA) and Others v. Veeresh Malik & Others\(^96\) has held that Indian Olympic Association is a public authority under section 2(h) of the RTI Act, 2005. The Court observed that:

“Having regard to the pre-eminent position enjoyed by the IOA, as the sole representative of the IOC, as the regulator for affiliating national bodies in respect of all Olympic sports, armed with the power to impose sanctions against institutions – even individuals, the circumstance that it is funded for the limited purpose of airfare, and other such activities of sports persons, who travel for events, is not a material factor. The IOA is the national representative of the country in the IOC; it has the right to give its nod for inclusion of an affiliating body, who, in turn, select and coach sportsmen, emphasizes that it is an Olympic sports regulator in this country, in respect of all international and national level sports. The annual reports placed by it on the record also reveal that though the IOA is autonomous from the Central Government, in its affairs and management, it is not discharging any public functions. On the contrary, the funding by the government consistently is part of its balance sheet, and IOA depends on such amounts to aid and assist travel, transportation of sportsmen and sports managers alike, serves to underline its public or predominant position. Without such funding, the IOA would perhaps not be able to work effectively. Taking into consideration all these factors, it is held that the IOA is “public authority” under the meaning of that expression under the Act.”

\(^95\) 2007 (3) MLJ 77.
\(^96\) Writ Petition (Civil) No. 876/2007 in the High Court of Delhi at New Delhi, decided on 7\(^{th}\) January, 2010.
Justice Ravindra Bhat has also observed that:

“The Act marks a legislative milestone in the post independence era to further democracy. It empowers citizens and information applicants to demand and be supplied with information about public records. Parliamentary endeavor is to extend it also to public authorities which impact citizen’s daily lives. The Act mandates disclosure of all manner of information and abolishes the concept of locus standi of the information applicant; no justification for applying (for information) is necessary; decisions and decision making processes, which affect lives of individuals and groups of citizens are now open to examination. Parliamentary intention apparently was to empower people with the means to scrutinize government and public processes, and ensure transparency. At the same time, the need of society at large, and Governments as well as individuals in particular, to ensure that sensitive information is kept out of bounds have also been accommodated under the Act.”

In **Amardeep Walia v. Chandigarh Lawn Tennis Association (CLTA)** the Central Information Commission held Chandigarh Lawn Tennis Association to be a public authority under section 2(h) of the RTI act, 2005. The Commission observed that:

“The gravamen of the above judgments is that for a private entity to qualify to be a public authority, substantive financing does not mean ‘majority’ financing. What is important is that the funding by the appropriate Government is achieving a ‘felt need of a section of the public or to secure larger societal goals’. A huge property has been placed at the disposal of CLTA by the Chandigarh Administration at a notional rental of Rs.100/- per annum. Besides, grant of one lakh rupees was also given to CLTA in FY 2008-09. CLTA fulfills the felt need of a section of the society by way of imparting training to the budding tennis players.”

In the case of **Pradeep Bhanot v. Chandigarh Club, Chandigarh** the Central Information Commission held that the Chandigarh Club to be a public authority. The broad facts in this case were that a plot of land measuring 3.85 lacs sq.ft. was leased out to the Club at the rent of Rs. 1,08,208/- per month w.e.f. 20.7.2005 to 19.7.2010 with annual increase of 5%. The Finance Department of Chandigarh Administration had

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submitted before the Commission that the aforesaid rent was not at par with the market rent. Considering the totality of circumstances, the Commission had concluded that Chandigarh Club was public authority under section 2(h) of the RTI Act, 2005.

The political parties are the life blood of our polity. As observed by Harold Joseph Laski100 “The life of the democratic state is built upon the party system”. Elections are contested on party basis. The ruling party draws its development programs on the basis of its political agenda. It is responsible for the growth and development of the society and the nation. Political parties affect the lives of citizens, directly or indirectly, in every conceivable way and are continuously engaged in performing public duty. In other words political parties are the unique institution of the modern constitutional State. These are essentially political institutions and are non-governmental. Their uniqueness lies in the fact that in spite of being non-governmental, they come to wield or directly or indirectly influence exercise of governmental power. It would be odd to argue that transparency is good for all State organs but not so good for political parties, which, in reality, control all the vital organs of the State. It is, therefore, important that they became accountable to the public.101

In Subhash Chandra Aggarwal and Others v. Indian National Congress (INC)/All India Congress Committee (AICC) and Others102 the Commission held that INC/AICC, BJP, CPI, CPI (M), NCP and BSP have been substantially financed by the Central Government under section 2(h)(ii) of the RTI Act. The criticality of the role being played by these political parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h) of the Act. The constitutional and legal provisions also point towards their character as public authorities. The order of the Single Bench of this Commission in Complaint No. CIC/MISC/2009/0001 and CIC/MISC/2009/0002 is hereby set aside and it is held that INC/AICC, BJP, CPI, CPI (M), NCP and BSP are public authorities

100 British Political Theorist, Economist, Author and Lecturer.
101 Subhash Chandra Aggarwal and Others v. Indian National Congress/All India Congress Committee (AICC) and Other, Complaint No. CIC/SM/C/2011/001386 and CIC/SM/C/2011/000838 dated 3rd June, 2013.
102 Complaint No. CIC/SM/C/2011/001386 and CIC/SM/C/2011/000838 dated 3rd June, 2013. (Complaint against six major political parties of India)
under section 2(h) of the RTI Act, 2005. The Commission further directed the Presidents, General/Secretaries of these political parties to designate CPIOs and the Appellate Authorities at their headquarters in six weeks time. The CPIOs so appointed will respond to the RTI applications extracted in this order in four weeks time. Besides, the Presidents/General Secretaries of the above mentioned political parties are also directed to comply with the provisions of section 4(1)(b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause.

The Commission further observed that there is need for accountability and transparency in the functioning of the political parties. Transparency in the functioning of political parties was also recommended by the Law Commission of India in their 170th Report on ‘Reform of Electoral Laws (1999)’. The relevant para of the Law Commission’s report is given below:

“On the parity of the above reasoning, it must be said that if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the Political Parties which are integral to parliamentary democracy. It is the Political Parties that form the Government, man the Parliament and run the governance of the country. It is, therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the Political Parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside.”

The political parties constitute one of the most important institutions in a constitutional democracy. Harold Joseph Laski103 in his classic text “Grammar of Politics” has termed them ‘natural’, though not ‘perfect’. According to him, the life of a democratic State is built upon the party system. Without political parties, there would be no means available of enlisting the popular decisions in a politically satisfactory manner. To quote him:

“The life of the democratic State is built upon the party-system and it is important at the outset to discuss the part played by party in the arrangement of affairs. Briefly, that part may be best described by saying that parties arrange the issues upon which people are to vote. It is obvious that in the confused welter of the modern State, there must be

103 British Political Theorist, Economist, Author and Lecturer.
some selection of problems as more urgent than others. It is necessary to select them as urgent and to present solutions of them which may be acceptable to the citizen-body. It is that task of selection, the party undertakes. It acts, in Mr. Lowell’s phrase, as the broker of ideas. From the mass of opinions, sentiments, beliefs, by which the electorate moves, it chooses out those it judges most likely to meet with general acceptance. It organizes persons to advocate its own view of their meaning. It states that view as the issue upon which the voter has to make up his mind. Its power enables it to put forward for election candidates who are willing to identity themselves with its view. Since its opponents will do the same, the electorate, thereby, is enabled to vote as a mass and decision that would otherwise be chaotic, assumes some coherency and direction. What, at least, is certain, is that without parties there would be no means available to us of enlisting the popular decision in such a way as to secure solutions capable of being interpreted as politically satisfactory.”

Not Public Authorities

In Pritam Singh, Faridkot v. Public Information Officer, Faridkot\textsuperscript{104} perusal of the relevant provisions of the Advocates Act, 1961, shows that Bar Associations are not created thereunder. The Bar Associations are voluntary associations of Advocates practicing at a particular place or court/s. These are funded by the contributions made by the members of such associations. These associations are formed by the Advocates only for the purpose of providing certain facilities to their members. These Bar Associations are, thus, purely private bodies with no statutory flavour. These are neither controlled nor financed directly or indirectly by the appropriate Government. The submission on behalf of the Complainant that the Bar Council for the States of Punjab and Haryana is a parent body in relation to the District Bar Associations and that the District Bar Associations are controlled by the Bar Council/s does not find any support from the provisions of the Advocates Act, 1961. Bar Council of India and the State Bar Councils have been created by the Advocates Act, 1961 and are thus, statutory bodies. These Bar Councils are bodies corporate having perpetual succession and a common seal. Section 6 of the Advocates Act, 1961 delineates the functions of the State Bar Councils. These functions primarily are the admittance of Advocates on their rolls, to entertain and determine cases of misconduct against Advocates, to safeguard the rights/privileges/interests of the advocates, to promote the growth of bar associations for

the effective implementation of the welfare schemes and to promote and support law reforms. The mere fact that the Advocates Act, 1961, casts a duty upon the Bar Councils to promote the growth of bar associations for the purpose of implementation of welfare schemes for the Advocates does not, by any stretch of imagination, mean that the District Bar Associations are controlled by the Bar Council or are the progeny thereof. District Bar Associations are not even under the regulatory control of the Bar Council. Apart from the foregoing, as per the definition of the Public Authority in section 2(h) of the RTI Act, 2005, for a non-government organisation to be a Public Authority. It has to be a body owned, controlled or substantially financed by the appropriate Government which in the instant case would be the Punjab Government. Therefore, even assuming for the sake of argument, that the Bar Association is controlled by the Bar Council, it would not bring the District Bar Association within the definition of ‘public authority’ under section 2(h), inasmuch as the Bar Council for the States of Punjab and Haryana is not the same thing as the appropriate Government.

The Commission held that the Respondent that is the District Bar Association, Faridkot is not a ‘public authority’ within the meaning of section 2(h) of the RTI Act, 2005. The Respondent is, therefore, under no obligation to provide the information demanded by the Complainant under the RTI Act, 2005, as the said Act does not apply to the respondent.105

In the case of Girish Chandra Mishra, Kanpur and Others v. Ms. Sonia Gandhi MP and Others106 the Commission concluded that individuals whether MPs, MLAs, Councillors or Members of Panchayats cannot in themselves be deemed public authorities under section 2(h) of the RTI Act. Nevertheless, the Organisations and Committees in which they fulfil their obligations under the Constitution are indeed organisations defined as public authorities. Such information on activities as are performed by these named representatives as members of such organisations is, therefore, to be deemed accessible to the citizenry under the definition of ‘right to information’ under section 2 (j) of the Act.

105 Ibid.
The Commission quoted the observation of Justice P.B. Sawant\textsuperscript{107} which is as follows:

“The RTI Act 2005 does not extend to the individual representatives of the people, whether they are members of the parliament or of the local bodies. The accountability of all the public functionaries may not be ensured by the same means and methods. The manner of securing their accountability may differ depending on the nature and the character of the functions they discharge. At present the people’s representatives are answerable to the collective demand or opinion of their constituents, whether expressed from time to time or at the time of the elections. Those who answer their constituents and satisfy a majority of them may retain their seats in the respective bodies. Though it is a popular, and not a legal mandate, and not as satisfactory, it is the only safe guard of the people at present.”

In \textit{Shanmuga Patro v. Rajiv Gandhi Foundation (RGF)}\textsuperscript{108} the Commission came to the conclusion that RGF is not a public authority in terms of section 2(h) (d) of the RTI Act. The CIC observed that the contribution of the Government is less than 4% of the total average income of the RGF since its inception. It, therefore, cannot be said to be ‘substantially financed’ by the Government. In support of their decision, the Commission cited Punjab & Haryana High Court decision in \textit{DAV College Trust and Management Society & Ors. v. Director of Public Institutions & Others.}\textsuperscript{109} In this regard, the Commission submitted that 45% grant in aid was held to be appropriate to declare DAV Institutions as Public Authority. Viewed in the light of this judgment, the RGF cannot be said to be Public Authority. The Commission submitted that as per the argument of the Appellant regarding the functioning of the Foundation from a sprawling premise and a palatial building, the Commission stated that the submission of the appellant that the Foundation is a Public Authority by virtue of its functioning from the premise cannot be accepted. Regarding the question of deputation of All India Services officers to the Foundation, it is needless to say that this is being done as per the All India Services Rules.

However, before parting with the matter, the Commission would like to mention that RGF has been constituted by the admirers of late Shri Rajiv Gandhi to promote his ideals and for socio-economic and cultural advancement of people. The nature of its

\begin{itemize}
\item \textsuperscript{107} Former Judge, Supreme Court of India.
\item \textsuperscript{108} Decision No. 6010/IC(A)/2010, F.No. CIC/WB/C/2009/000424 dated 15\textsuperscript{th} October, 2010.
\item \textsuperscript{109} AIR 2008 P&H 117 decided on 25\textsuperscript{th} February, 2008.
\end{itemize}
activities is such that it directly impacts the people. Hence, the Commission would suggest to the Board of Trustees of RGF to consider and continue to voluntarily placing maximum information regarding the activities of RGF on its website viz. constitution of RGF, its Bye-Laws, Rules and Regulations, its Annual Income and Expenditure, the nature of works undertaken/completed by it and such like information. It may be clarified that this would, however, be without any prejudice to our conclusion that RGF is not a Public Authority under the RTI Act.\(^{110}\)

Non-Governmental Organization (NGO) is independent of Government control in its affairs and is not concerned with it. The question always asked whether NGO fulfills the ‘substantial financing’ criteria spelt out in section 2(h) of the RTI Act, 2005. NGOs could be of any kind like registered societies, trusts, cooperative societies, companies limited by guarantee or other juristic entities but not established or controlled in their management or administration by Government, not covered under the ambit of section 2(h) of the RTI Act, 2005. The Jharkhand High Court held that when a NGO is not substantially financed directly or indirectly by funds provided by the appropriate Government, it is not ‘public authority’ as defined under section 2(h) of the RTI Act. In this case it has received less than 15% of its total budget from the Government.\(^{111}\)

The Hon’ble Uttrakhand High Court in the case of **Asian Education Charitable Society v. State of Uttarakhand**\(^ {112}\) held that private individuals, private institutions or charitable societies, which are neither owned, controlled or getting substantial financial aid from the Government nor owe its existence by any notification of the concerned Government, are not public authorities under section 2(h) of the Right to Information Act. Thus, the institution cannot be compelled to provide information under the provisions of the RTI Act, 2005.

**In Rakesh Kumar Gupta, Delhi v. Income Tax Appellate Tribunal (ITAT)**\(^ {113}\) the CIC held that the provisions of the RTI Act were not applicable to the judicial

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\(^{112}\) AIR 2010 Uttarakhand 72. Also see Chanakya Law College v. State Information Commissioner, Uttrakhand, MANU/UC/0545/2010.

\(^{113}\) Appeal No. CIC/AT/A/2006/00586 dated 18\(^{th}\) September, 2007.
proceedings being conducted by the various judicial or quasi-judicial bodies. The Commission has observed that:

“It is our conclusion, therefore, that given a judicial authority must function with total independence and freedom, should it be found that an action initiated under the RTI Act impinges upon the authority of that judicial body, the Commission will not authorize the use of the RTI Act for any such disclosure requirement. Section 8(1)(b) of the RTI Act is quite clear, which gives a total discretion to the court or the tribunal to decide as to what should be published. An information seeker should, therefore, approach the concerned court or the tribunal if he intends to have some information concerning a judicial proceeding and it is for the concerned court or the tribunal to take a decision in the matter as to whether the information requested is concerning judicial proceedings either pending before it or decided by it can be given or not.”

The Commission decides and directs as under:

(i) Section 4(1)(d) does not apply to a judicial proceeding conducted by a Court or a Tribunal as it refers only to administrative and quasi-judicial decisions of public authorities.

(ii) The non-obstante clause in section 22 of the Right to Information Act does not, repeal or substitute any pre-existing law including the provisions of the Income Tax Act concerning dissemination of information.

(iii) The appellant cannot take recourse to the RTI Act to challenge a judicial decision regarding disclosure of a given set of information, which properly belonged to the jurisdiction of that judicial authority. If the appellant is aggrieved with the decision of the ITAT, the remedy lies elsewhere.

(iv) It is reiterated and made clear that the RTI Act is not intended to come into conflict with a judicial decision regarding disclosure of information. Section 8(1)(b) of the Right to Information Act, 2005 makes it very clear that the information which has been expressly forbidden to be published by any court of law or tribunal cannot be disclosed as any such disclosure is also within the exemption clause.

The judicial proceedings being conducted by the various courts in India including judicial and quasi-judicial authorities has to be separated from their administrative work. It is only the administrative work of the judicial courts which is covered under the
RTI Act, 2005 and not the judicial proceedings being conducted by the various courts or tribunals. The proceedings of the courts and tribunals cannot be interfered with under any circumstances under the provisions of the RTI Act because such interference may be detrimental to the independence of the judiciary being basic structure of the Indian Constitution.114

In *Jarnail Singh v. Registrar, Co-operative Societies, Delhi*115 the Commission held that a co-operative society is not a public authority, but because the information sought by the applicant/appellant is available to the Registrar under the Delhi Co-operative Societies Act, such information can be provided to the applicant, under section 2(f) and 2(g) of the RTI Act, 2005. It was also ordered by the Commission that the applicant will be provided the required information from the office records of the co-operative society under the supervision of a competent officer of the Registrar Co-operative Societies.

In *Rajender Goel v. Registrar, Co-operative Societies*116 the Commission held that Co-operative Societies does not fall under the definition of ‘public authority’ under the Right to Information Act.

(5) “Record”117 includes:

(a) any document, manuscript and file;

(b) any microfilm, microfiche and facsimile copy of a document;

(c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(d) any other material produced by a computer or any other device;

The ‘record’ basically denotes the details or description of a subject which may consist of various documents in various forms, shapes and sizes. In other words, record means document or file on which information is kept. The above said definition of record takes care of the latest technology available in the maintenance of record. It broadens its

115 CIC/WB/C/2006/302.
117 Section 2(i) of the RTI Act, 2005.
sphere or horizon from the precincts of written documents to the endless limits of modern technology.

Even section 10 of the Right to Information Act, 2005 provides that only that part of the record may be prescribed which does not contain any information which is exempt from disclosure under the Act and which are reasonably severed from any part that contains exempt information.

(6) “Right to Information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

Right to information refers to an individual’s right or freedom to seek public information where information means any material relating to the affairs of administration or decision of a public authority. It is indisputable that in a democratic policy, to ensure and facilitate the continued participation of people in the effective functioning of the democratic process, people must be kept informed of the vital decisions taken by the Government and the basis thereof. Thus, right to seek and receive public information becomes a pillar of democratic set-up.

In this regard, every citizen is eligible to make an application to obtain information from a public authority and includes the right to inspection of documents, records, work carried out or being carried out, taking notes, extracts or certified copies of the documents or records, taking certified samples of material, obtaining information in

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118 Section 2(j) of the RTI Act, 2005.
the form of latest technology means like diskettes, floppies, tapes, video cassettes or in any other electronic modes or through printouts, which is held or controlled by such authority. This right extends to every piece of information which is of a public nature. This right is an integral part of right to freedom of speech and expression, which is fundamental right. The right to freedom of speech and expression is a fundamental right and can be enforced through the constitutional courts such as the Supreme Court and High Courts. Whereas right to freedom of information is a statutory right and it can be enforced through the mechanism which the concerned statute provides.\footnote{122}

The Hon’ble Delhi High Court in \textit{Poorna Prajna Public School v. Central Information Commission}\footnote{123} has held that the term ‘held by or under the control of any public authority’ in section 2(j) of the RTI Act has to be read in a manner that it effectuates and is in harmony with the definition of the term ‘information’ as defined in section 2(f). The said expression used in section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies definition of the term ‘information’ in section 2(f) of the RTI Act. The Court held that a private body need not be a public authority and the said term ‘private body’ has been used to distinguish and in contradistinction to the term ‘public authority’ as defined in section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is ‘information’ as defined under section 2(f) of the RTI Act and has to be furnished. It was further held by the Court that the term ‘third party’ includes not only the public authority but also any private body or person other than the citizen making request for the information. The school is a private body and a third party under section 2(n) of the RTI Act.

\textit{In Saidur Rehman v. CIC}\footnote{124} the CIC has given a crucial decision that the RTI Act, 2005 is not about seeking answers or asking questions. It is more about inspection of documents or records or taking notes, extracts or certified copies of the documents/records. Although the definition of the right to information is an inclusive one but still it has to be information available and existing. It must also be either held by

\footnote{122} Niraj Kumar, “Treatise on Right to Information Act, 2005” Bharat Law House Pvt. Ltd., New Delhi, 2009 p. 519.
\footnote{123} High Court of Delhi, Writ Petition (Civil) No. 7265 of 2007 decided on 25th September, 2009.
\footnote{124} Appeal No. CIC/AA/A/2006/00032&00034 dated 22nd June, 2007.
or under the control of the concerned public authority. A non-est information is no information. Similarly, in the name of seeking information, one cannot demand what is not there on the record. The appellant at the time of hearing was explained that what he is demanding is not information but only a decision. The CPIO did provide a copy of the document that was specified by the appellant in his RTI application dated 05-04-2007. Some of the issues were raised by the appellant are primarily legal issues pertaining either to interpretation of the RTI Act or the procedure followed by the Commission in regard to the appeals. The Commission held that the CPIO cannot answer questions regarding either interpretation of law or as regards the correctness or otherwise of a decision passed by the Commission in connection with a judicial proceeding. The CPIO cannot provide what he does not have and since he did not have any information concerning the issues raised by the appellant, he was left with no other alternative but to inform the applicant that no such information is available in this regard.

In Amol Ganpat Vasai (W) v. Rajendra (DIT Inv. II), S.S.N. Moorthy (CPIO, DGIT Inv.) and Appellate Authority Mumbai\(^{125}\) the Commission observed that the queries of the appellant in the nature of a questionnaire based on nothing more than his surmises and conjecture. Thus, the Commission held that public authority was not obliged to answer the said questionnaire.

The Commission also held that the PIO is required to ‘provide information’ which is available in any form with his/her office rather than giving her ‘personal opinions’ on the question asked by the requester.\(^{126}\)

In Mahavir Singhvi v. Ministry of External Affairs\(^{127}\) the Commission held and directed the appellant to ask for copies of documents containing the information, he desires and not to seek opinions through a questionnaire.

(7) “Third Party”\(^{128}\) means a person other than the citizen making a request for information and includes a public authority. Where a PIO intends to disclose any information or record or part thereof, which relates or has been supplied by a third party and has been treated as confidential by that third party, the concerned PIO is bound to

\(^{125}\) (2008) 1 ID 298 (CIC Delhi).
\(^{126}\) P.N. Kalra v. Commissioner of Customs & Central Excise, 65/C(a)/2006.
\(^{127}\) CIC/OK/A/2006/49.
\(^{128}\) Section 2(n) of the RTI Act, 2005.
give written notice to such third party within 5 days from the receipt of the request intimating that he intends to disclose the information or record or part thereof and invites the third party to make submissions in writing or orally whether such information should be disclosed or not. The third party is required to make representation against the proposed disclosure within 10 days from the receipt of such notice. On receipt of the representation of the third party, then PIO shall decide the point about disclosure of information. In case, PIO disclosed the information against the representation of the third party, the third party is entitled to prefer an appeal under section 19 of the Act to the higher officer and then second appeal to the Central or State Information Commissioner.129

4.4.4 Salient Features of Right to Information Act

Parliament has enacted the Right to Information Act, 2005, in order to ensure greater and more effective access to information under the control of Public Authorities in order to promote openness, transparency and accountability in the functioning of every public authority. Right to Information have already been regarded as essential pre-requisites of the democracy. The mother of all liberties, there also fundamental rights, Right to Information can neither be absolute nor unfetter. All citizens shall have the right to information, subject to the provisions of the Act. The key objectives of the Act are, viz., appointment of public information officers in each office, establishment of an appellate machinery with investigating powers to review decisions of the public information officers, penal provisions for failure to provide information, provisions to ensure maximum disclosure and minimum exemptions, an effective mechanism for access to information by the authorities.

4.4.4.1 Right conferred on Citizens

The main object of the RTI Act is to provide information to the information seeker from the public authority. This is necessary for promoting transparency and accountability in the working of every public authority. Without adequate information, a citizen cannot form an informed opinion. The Act also provides the ways in which the information can be accessed.130 Section 3 of the Right to Information Act, 2005, states that all citizens

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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.\textsuperscript{131} Another purpose of the Act is to harmonise the conflicting interests while preserving the paramountcy of the democratic ideals and to provide for furnishing certain informations to citizens who desire to have it, because the democracy cannot survive without free and fairly informed citizens.\textsuperscript{132}

This right has not been bestowed upon the non-citizens. It could be on the analogy of the democratic setup of the country. The citizens are the participants in the democratic process and therefore they have a right to know everything about the functioning of the Government.\textsuperscript{133}

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 person.\textsuperscript{134}

It may be relevant to mention that ‘only citizens’ have the right to information. A person may be a citizen but every person may not be a citizen. In other words, the citizenship is available with the individuals and the institutions or organizations are not citizens. In legal terminology, institutions or organizations may be called juridical persons. As per the provisions of the Right to Information Act, this right is available only to the citizens and juridical persons are not eligible to claim such right under this Act. The individual citizen has been imparted this right to know and right to be informed about the functioning of the public authorities working under the Government. In other words, individual has been made a partner in ensuring transparency and curtailing corruption in the functioning of the Government. Therefore, the right to information has been imparted to the individual citizens and not to the institutions,

companies and organizations. However, the institutions or organizations are always manned by the human beings and these individuals are citizens. Thus, the institutions or organizations may obtain the information through individuals.\textsuperscript{135}

In another case of \textbf{J.C. Talukdar v. C.E. (E) CPWD, Kolkata}\textsuperscript{136} the applicant requested for certain information from the PIO of the CPWD, Kolkata in his capacity as the Manageing Director of one Ganesh Electric Stores. The said application under RTI was refused under section 3 of the RTI Act. Thus, the applicant filed an appeal before the Central Information Commission. The Central Information Commission dealing with the said appeal observed that:

“This is at heart a question of whether a Company or its Director will fall under the definition of citizen under the RTI Act, 2005. A company or a Corporation is a ‘legal person’ and, as such, it has a legal entity. This legal entity is distinct from their shareholders, Managers or Managing Directors. This is a settled position in law since the Solomon’s case decided long back by the House of Lords. They have rights and obligations and can sue and are sued in a Court of Law. Section 3 of the RTI Act 2005 confers ‘Right to Information’ on all ‘citizens’. A ‘Citizen’ under the Constitution Part II that deals with ‘citizenship’ can only be a natural born person and it does not even by implication include a legal or a juristic person.”

The objective of the Right to Information Act is to secure access to information to all citizens in order to promote transparency and accountability. The Hon’ble Supreme Court in \textbf{Bennett Coleman & Co. v. Union of India}\textsuperscript{137} held that a shareholder is entitled to protection of Article 19 and that an individual’s right is not lost by reason of the fact that he is a shareholder of the company. The Bank Nationalization case has also established the view that the fundamental rights of shareholders as citizens are not lost when they associate to form a company. In \textbf{Delhi Cloth and General Mills Co. Ltd. v. Union of India}\textsuperscript{138} the Apex Court observed that the judicial trend is in the direction of holding that in the matter of fundamental freedoms guaranteed by Article 19, the right of shareholder and the company which the shareholders have formed are rather co-extensive and the denial to one of the fundamental freedoms would be denial to the other.

\textsuperscript{135} Bennett Coleman & Co. v. Union of India, AIR 1973 SC 106.
\textsuperscript{136} CIC/WB/C/2007/00104 & 105 dated 30\textsuperscript{th} March, 2007.
\textsuperscript{137} AIR 1973 SC 106.
\textsuperscript{138} AIR 1983 SC 937.
Even though, therefore, the companies and Corporations have not been held to be a citizen, there are number of cases where the Apex Court has granted relief to petitioner companies. One of the case, which can be cited as an example is the Express Newspapers Case\textsuperscript{139}. But in such cases, the petitioners have claimed fundamental rights as shareholders or editors of the Newspaper companies. The same was the situation in Sakal Papers (P) Ltd. Case\textsuperscript{140}.

A question may arise as to whether the case of a Firm is different from that of a company? In this regard following observations of Chagla, C.J. in \textbf{Iron and Hardware (India) Co. v. Firm Sham Lal and Bros.}\textsuperscript{141} are pertinent:

\begin{quote}
“In my opinion it is clear that there is no such legal entity as a firm. A firm is merely a compendious way of describing certain number of persons who carry on business as partners in a particular name, but in law and in the eye of the law the firm really consists of the individual partners who go to constitute that firm. Therefore, the persons before the tribunal are the individual partners of the firm and not a legal entity consisting of the firm.”
\end{quote}

Even if it were conceded that a company or a corporate body is a legal entity distinct from its share holders and it is not in itself a citizen, it is a fact that all superior Courts have been admitting applications in exercise of their extraordinary jurisdiction from Companies, Societies and Associations under Article 19 of the Constitution of which the RTI Act, 2005 is child. Very few petitions have been rejected on the ground that the applicants/petitioners are corporate bodies or Companies or Associations and, as such, not ‘citizens’. This Commission also has been receiving sizeable number of such applications from such entities. If the Courts could give relief to such entities, the PIOs also should not throw them out on a mere technical ground that the applicant/appellant happen to be a legal person and not a citizen. In conclusion we direct that an application/appeal from an Association or a Partnership Firm or a Hindu Undivided Family or from some other group of individuals constituted as a body or otherwise should be accepted and allowed.

\begin{footnotes}
\item[139] AIR 1958 SC 578.
\item[140] AIR 1962 SC 305.
\item[141] AIR 1954 Bom. 423.
\end{footnotes}
A citizen of a State is a person who enjoys full civil and political rights. As per the Indian Citizenship Act, 1955, the citizenship can be acquired:

i. by birth;\textsuperscript{142}

ii. by descent;\textsuperscript{143}

iii. by registration;\textsuperscript{144}

iv. by naturalization;\textsuperscript{145} and

v. by incorporation of territory.\textsuperscript{146}

It means only natural person is citizen and he shall be covered under section 3 of the Right to Information Act, 2005. The provisions of the Indian Constitution in Part II relating to Citizenship and the provisions of the Indian Citizenship Act, 1955, are not applicable to any juridical person. In the light of the above, the Central Information Commission clarified that the Commission consistently has taken a view that Directors of companies, Partners of firms and Office Bearers of societies, association of persons could also seek information on behalf of the companies, firms, societies and associations respectively.\textsuperscript{147}

4.4.4.2 Obligations of Public Authorities

Section 4 of the Right to Information Act provides that:

(1) Every public authority shall-

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

\textsuperscript{142} Section 3 of the Indian Citizenship Act, 1955.
\textsuperscript{143} Section 4 of the Indian Citizenship Act, 1955.
\textsuperscript{144} Section 5 of the Indian Citizenship Act, 1955.
\textsuperscript{145} Section 6 of the Indian Citizenship Act, 1955.
\textsuperscript{146} Section 7 of the Indian Citizenship Act, 1955.
(b) publish within one hundred and twenty days from the enactment of this Act,—

(i) the particulars of its organisation, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorisations granted by it;
(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) the names, designations and other particulars of the Public Information Officers;

(xvii) such other information as may be prescribed and thereafter update these publications every year;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation:- For the purposes of sub-sections (3) and (4), ‘disseminated’ means making known or communicated the information to the public through notice boards,
newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

India being a welfare State, it is the duty of the Government to protect and enhance the welfare of the people. It is obvious from the Constitution of India that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their Government is doing. It is possible only if people know how Government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy.148 The President of the United States, James Madison said that:

“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”149

The citizens right to know the true facts about the administration of the country is, thus, one of the pillars of a democratic State and that is why the demand for openness and transparency in the Government functioning is increasingly growing in different parts of the World.150 In this way, section 4 of the RTI Act is preparatory to actual enforcement of the Act. It enjoins all the public authorities to collect, maintain and computerize all the information available with them and connect them through a network all over the country on different systems or publish within 120 days from the enactment of this Act.151

Section 4 of the RTI Act is very important which imposes certain obligations on the public authorities to disclose certain information which are basic for the fair treatment in the office. The terminology used in section 4 of the Act that ‘every public authority shall’ explicitly imposes mandatory obligation on the public authority. The Supreme

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150 S.P. Gupta v. Union of India, AIR 1982 SC 149.
Court in the case of **Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others**\(^{152}\) held that the provisions of the Act should be enforced strictly and all efforts should be made to bring into light the necessary information under section 4, which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption.

The main objective of section 4 is to make the information available by a public authority at the doorstep of the citizens. Under section 4(1)(a) of the RTI Act, every public authority is required to maintain all its records duly catalogued, indexed, systematically placed and as far as possible to computerize and section 4(1)(b) prescribes as many as 17 manuals in which complete information regarding the functioning of every department and public authority has to be published on the public domain within the stipulated time period and update the said data on periodical basis as per the provisions of the Act. Section 4(1)(c) requires all public authorities to publish all relevant facts on policy formulation within their domain and section 4(1)(d) requires the public authorities to provide reasons for their administration or quasi-judicial decisions to affected persons. The said provisions intend to make automatic disclosure of maximum information about public authorities under the Act.

**Suo Motu or Pro-active Disclosure of Information**

Under section 4(1)(b) of the RTI Act, the duty has been imposed upon the public authorities to make constant endeavour to take all steps to provide as much information suo motu to the public at regular intervals through various means of communications including internet, so that the public have minimum resort to the use of this Act to obtain information. Every information pertaining to the functioning of the public authority shall be disseminated widely within the time limit of 120 days from the enactment of this Act. The public authorities are obliged to disclose suo motu information on the items mentioned from (i) to (xvii) of section 4(1)(b) of the RTI Act, like comprehensive detail of the establishment of organization, functions, procedure, rules, powers and duties of its officers and employees, decision making process,

\(^{152}\) 2011(2) ID 101 (SC): (2011) 8 SCC 497.
accountability, norms for discharging functions, binding law and bye-law, documents according to classification, methods of formulation of policy, constituted bodies, directories of its officers and employees, remuneration and compensation received by its officers and employees, budget allocation etc. Manner of execution of subsidy programmes, particulars of recipients of concessions, permits or authorizations, information held by public authority, particulars of facilities available to citizens for obtaining information, complete detail of public information officer, other information and their updation. In *Canara Bank v. The Central Information Commission, Delhi*\(^{153}\) the Kerala High Court held that the information mentioned in section 3 is not circumscribed by section 4 at all. Obligations of the public authorities under section 4 are to be compulsorily performed apart from the other liability on the part of the public authority to supply information available with them as defined under the Act subject of course to the exceptions laid down in the Act. The information detailed in Section 4 has to be compulsorily published by the public authority on its own without any request from anybody.

In the case of *Saroj & Others v. Deputy Commissioner South, Municipal Corporation of Delhi (MCD)*\(^{154}\) where complainants stated that Old Age Pension had not been paid to them by the Municipal Corporation Delhi (MCD) since April, 2007. They pleaded that under section 4 of the RTI Act, MCD should provide detailed information of the Pension Scheme on its website. Thus, the Commission directed the Municipal Corporation Delhi (MCD) to comply with the requirements of section 4 with regards to the Old Age Stipend/Pension Scheme within twenty working days from the date of the order and also directed to pay an adhoc amount of Rs. 1000/- to each of the complainants within one month from the date of the order under section 19(8)(b) of the RTI Act.

The public authorities sharing information proactively, without being asked for it, is a true indication of a democratic and transparent society. It marks a paradigm shift from the culture of secrecy to transparency. This proactive role of the state is of special

\(^{153}\) AIR 2007 Ker 225.

significance to a society like ours, where due to social and educational reasons, many people are not able to exercise a right provided to them.  

**Disclosure of Reason for Decision Making**

The administrative or quasi-judicial decisions affecting the individuals have to be transparent. That is why section 4(1)(d) of the RTI Act provides that every public authority is required to publish all relevant facts while formulating important policies or announcing the decisions which affect public. It also provides that every public authority shall give reasons for all its administrative or quasi-judicial decisions to affected persons. It is a suo motu responsibility placed on public authorities. In this regard, it is observed that if the affected persons are not given an opportunity to understand the reasons or logics behind such decisions, it would be against the principles of natural justice i.e. ‘audi alteram partem’. The Supreme Court in the case of **Raghunath Laxman Makadwada v. State of Maharashtra** held that the courts, tribunals or quasi-judicial bodies should make a speaking order when finally adjudicating the matter. The courts, tribunals or quasi-judicial bodies should not dismiss any application without giving reasons thereof. However, if a speaking order is made, it will be most helpful to this Court in dealing with applications under Article 136 of the Constitution.

Section 4(3) of the Act describes that every information needs to be disseminated widely and in such form and manner which is easily accessible to the public. It stresses upon the practical implication of the process and if a particular mode is not within the easy reach of the people, it would be a useless exercise to that extent. For example, if the information is released on the website or internet domain of the public authority, it may be useful for urban area people where this kind of facility is available, but it may not be properly working for rural people where this facility is not available or absent. Thus, in such type of cases other modes of dissemination have to be followed like notice boards, newspapers and public announcements etc. Further, section 4(4) mentioned that all material should be disseminated taking into consideration the cost,

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156 AIR 1986 SC 1070.
effectiveness, local language and effective mode of communication in the area, so that information is easily accessible in understandable manner in electronic form to the PIO. The Supreme Court has adjudicated in several cases the significance of ‘freedom of speech and expression’ which gives inherent right to citizens, namely, ‘right to impart and receive information’.\textsuperscript{157}

Thus, the entire effort put forth, under section 4 of the Right to Information Act, is to create an atmosphere and develop a mindset and a culture which may generate a public awakening regarding this newly enacted right. Here it is worthwhile to submit that if the suo motu efforts for dissemination of information are not made, a heavy majority of Indian citizens would remain away from the benefits of this Act. Moreover, it will not only to inform and educate the general public but it will also generate a mass movement of information.

\textbf{4.4.4.3 Designation of Public Information Officer}

Section 5 of the Right to Information Act mandates that:

(1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

\textsuperscript{157} Secretary, Ministry of Information & Broadcasting v. Cricket Associate of Bengal, AIR 1995 SC 1236.
Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

This section deals with the key functionary under the RTI Act. It provides for appointment of Central Public Information Officers (CPIO) and State Public Information Officers (SPIO) and mandates each public authority under the Act to do it within 100 days of enactment of this Act. These officers are to be appointed in each administrative unit or office working under the said public authority, to provide information under the Act. The PIO’s so appointed are the main functionaries who operate at the cutting-edge level. It is the PIO’s responsibility to ensure that the information is obtained from the appropriate department or section and made available to the applicant within the prescribed time. If the request pertains to another public authority, either in whole or in part, it is again the PIO’s responsibility to transfer or forward the concerned portions of the request to a PIO of the other department within 5 days. As a matter of fact, the actual working of the Act is not possible without such appointment and thus, such appointments are the initial force of the Act.
The Public Information Officer’s duties\textsuperscript{158} include:

i) In dealing with the requests from persons seeking information and where the requests cannot be made in writing, to render reasonable assistance to the person making the request orally to reduce the same in writing.

ii) If the information requested for is held by or is a subject matter closely connected with the functions of another authority, the PIO shall transfer, within five days that request to the other public authority and inform the applicant immediately.

iii) Any PIO may seek the assistance of any other officer for the proper discharge of his/her duties.

iv) Any PIO, on receipt of the request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed along with the application or reject the request for any of the reasons specified in sections 8 or 9.

v) Where the information requested concerns the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request.

vi) Where a request has been rejected, the PIO shall communicate to the applicant, the reasons for such rejection, the period within which the appeal against such rejection may be preferred, and the particulars of the Appellate Authority.

vii) PIO shall provide information in the form in which it is sought unless it would disproportionally divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

viii) In allowing partial access, the PIO shall give a notice to the applicant, informing:

a) That only part of the record, after severance of the record containing information which is exempted from disclosure, is being provided.

b) The reasons for the decisions, including any findings on any material, question of fact, referring to the material on which those findings were based.

c) The name and designation of the person giving the information.

d) The details of the fees calculated and the amount of fee which the applicant is required to deposit etc.

ix) If information sought has been supplied by third party or is treated as confidential by a third party, the PIO shall give a written notice to third party within 5 days from the receipt of the request and take its representation into consideration.

x) Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.

In the case of Suman Bakshi, New Delhi v. Directorate of Health Services, Government of NCT of Delhi\(^{159}\) the Commission held that Non-Governmental Organizations (NGOs) substantially financed by the Government must set up mechanism under sections 4 and 5 of the RTI Act to provide information while enquiring into a complaint concerning a NGO being financed by Central Government. Therefore, the Commission recommends that Ministries and Departments of the Central Government should make an assessment as to whether the NGOs who are being financed by them have set up a mechanism to provide information to the citizens who wish to obtain information under the RTI Act. If such a mechanism has not been set up by any of the NGOs receiving funds from the Central Government, it is recommended that the Government should not release any fund till the time such mechanism is set up and other obligations as contemplated under the Act are complied with.

In B. Bindhu v. Secretary, Tamil Nadu Circle Postal Co-operative Bank Ltd., Chennai\(^{160}\) an application was submitted by petitioner for the post of clerk in respondent bank. The application being not reached in stipulated time was not considered by Bank. This fact was communicated to the petitioner. She never challenged said communication but demanded the details of recruitment under the RTI. The Madras High Court held that the appointment in public employment is not automatic or free from any conditions. When conditions are imposed for appointment, the candidate

\(^{159}\) Complaint No. CIC/PB/C/2008/00723 dated 26\(^{th}\) November, 2008.

\(^{160}\) AIR 2007 Mad 13.
seeking it must satisfy such conditions and should also be eligible for the same. The conditions, in this case is the last date for receipt of application, which is not admitted satisfied by the petitioner, hence, this Court is of the considered view that the petitioner is not entitled to the details sought for by her under the provisions of the Right to Information Act, 2005.

4.4.4.4 Request for Obtaining Information

Section 6 of the Right to Information Act, 2005 provides that:

(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed to:

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information:

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made,
shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer.

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

This section specifies the manner in which requests may be made by a citizen of India to the appropriate authority for obtaining the information. The application may be in written or in electronic form. It may also be sent through manual despatch, posts or electronic means i.e. email, fax etc. It may be in English, Hindi or in the official language of the area in which such application is made. As per the provisions the choice of the language would be that of the applicant and PIO concerned cannot force the applicant to use a particular language. The applicant will have to furnish the details and particulars of the information sought by him. He may also specify the mode in which such information is required. Moreover, such application would be accompanied with the prescribed fees except the applicant is below the poverty line in which no fee is required to deposit.

The Hon’ble Calcutta High Court observed in the case of Satyendra Nath Mondal v. State of West Bengal\(^{161}\) that section 6 postulates that a person who desires to obtain any information under the Act shall make a request in writing or through electronic means to the authorities specifying the particulars of the information sought by him. Therefore, the Court disposed the writ petition by granting liberty to the petitioners to make a request for obtaining information under section 6 of the said Act before the authorities and the authorities shall furnish the information within a period of one month from the date of making such request subject to the compliance of formalities including payment of necessary fees.

The Act has not prescribed any format of application for seeking information, i.e. the application can be hand written or typed. But application should properly provide the name and address of the applicant as well as of the PIO. It is important to mention here

\[^{161}\text{AIR 2006 Cal. 151.}\]
that applicant is not required to give reasons for seeking information. The prescribed fee of Rs. 10/- under the RTI Act should be enclosed. The fee may be by way of cash receipt, demand draft, banker’s cheque but not the cheque of the applicant or Indian postal order in favour of the PIO. In *Sudesh Kumar, Advocate, Meerut v. Regional Passport Office, Ghaziabad*\(^{162}\) the Commission decided to club both the cases, i.e., case Nos. 00300 & 301, and noted that in both these cases, the Appellant had annexed a ten rupee note in the envelope along with his RTI application and sent it to the Passport Office, Ghaziabad. It may be noted that although cash is a valid mode of payment of the RTI fee, the currency note cannot be sent in an envelope. The cash has to be deposited at the counter and a receipt obtained. The two applications are, thus, invalid as far as the Commission is concerned.

Moreover, an applicant making request for seeking information under RTI Act shall not be required to give any reason for making such application or any other personal details except those information which is important with regards to such application like name and complete address of the applicant, information relates to which period, mode of information, fee deposit receipt, information requested related to right to life of the applicant, applicant belong to below poverty line etc. In *Madhu Bhaduri v. Director (LM) DDA, Delhi*\(^{163}\) the Commission held that where any public authority asked the reasons before providing the information from the applicant, it is purely the violation of the provisions of section 6(2) of the RTI Act, 2005. As per the provisions of the RTI Act no public authority can ask the reasons for making application under the RTI Act.

The Hon’ble Jharkhand High Court in the case of *State of Jharkhand and Others v. Navin Kumar Sinha and Others*\(^{164}\) held that section 6 of the RTI Act, 2005, request for information in respect of documents of various bidders of tender notice sought by respondent. The application was denied on the ground that respondent was neither tendered nor participated in bid, therefore, no locus-standi to make request, Provision of section 6 confers right to information on any person who desires to obtain information, denial to give information is not proper. It can not be treated as trade secret or

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\(^{164}\) AIR 2008 Jhar. 19.
commercial confidence. Citizens have right to know genuineness of documents submitted by tendered in matter or grant of tender. Once tender process is complete and contract has been awarded, it cannot be treated as confidential matter, information sought for does not come under purview of section 8(1)(a) and not exempted.

Where the application under the RTI Act is transferred by the PIO under section 6(3) of the Act, the order of the PIO must be speaking one. The order of the PIO must convey when and under what circumstances the application was transferred to another public authority. The PIO shall transfer the application in whole or such part which may be appropriate to that other authority, which either holds the information or is more closely connected with the subject matter of the application. The said transfer of the application shall be immediately and not in any case later than 5 days from the receipt of the application.

In Ram Vishal v. Dwarka Prasad Jaiswal\(^\text{165}\) the Court while dealing with the civil suit held that under section 6 of the Right to Information Act, 2005, if the petitioner applies for the certified copy of public record and that has been denied. There must be some reasons and these reasons ought to have been placed on record by filing appropriate record in this regard and needless to say that supported by an affidavit of petitioner.

In the case of Arvind Kejriwal, Delhi v. Department of Personnel and Training (DoPT), Ministry of Pensions, Government of India, North Block, New Delhi\(^\text{166}\) the information concerning empanelment of Additional Secretaries and Secretaries to the Government of India was concerned. It appears that the information is held not by the DoPT but by the Cabinet Secretariat. It has been made to appear before us that the Appellant submitted his RTI application initially with the DoPT which was subsequently transferred by the DoPT on 30-11-2005 on the ground that the matter was dealt by the Cabinet Secretariat. However, the Cabinet Secretariat has rejected his application stating that the Appellant should submit a fresh application with the requisite fees in a form issued by the Cabinet Secretariat. It is not understood as to why and how DoPT has responded back to this RTI request even though it was initially

\(^{165}\) AIR 2005 MP 68.
\(^{166}\) CIC/MA/A/2006/00204, 0207 & 0208 dated 27\textsuperscript{th} November, 2008.
transferred to the Cabinet Secretariat under section 6(3) of the RTI Act. The Commission held that once the RTI application was transferred to the actual custodian of the records, it was incumbent on the part of the Cabinet Secretariat to respond to the RTI request. The Cabinet Secretariat did not respond to the RTI request and instead, the reply was furnished by the DoPT probably after consulting the Cabinet Secretariat. The Cabinet Secretariat has, therefore, clearly evaded their responsibility. Being the custodians of the information, it was mandatory on their part to have decided the matter. Therefore, the Commission, directs the DoPT and the Cabinet Secretariat to allow inspection of the relevant files concerning empanelment of Additional Secretaries and Secretaries to the Government of India and to provide copies of the documents and records, as might be specified by the Appellant after inspection. As inordinate delay has already been caused for no fault of the Appellant, providing of copies of the documents shall be free of cost.

It may be clarified further that once the application is duly transferred to the PIO under the provisions of the RTI Act, it is the responsibility and liability of the concerned PIO to which the application is transferred to provide the information, which is in its possession or custody or connected with the subject matter of the application. If such PIO fails to provide the information, it is not the responsibility of the transferring authority.

The objective behind enacting this provision by the legislature is obviously to lessen the travails of an information seeker; last the information seeker is last in the labyrinth of procedural technicalities.167

4.4.4.5 Disposal of Request

Section 7 of the Right to Information Act, 2005, emphasized that:

(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer,

as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving:

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.
(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request:

(i) the reasons for such rejection;

(ii) the period within which an appeal against such rejection may be preferred; and

(iii) the particulars of the appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

The above said provisions prescribed that the PIO shall as expeditiously as possible either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9 relating to exemptions from disclosure of information or if involves infringement of copyright. The PIO has to provide the information or reject the RTI application within a period of 30 days on the
receipt of the application. In case, the information sought concerning the life and liberty of a person, has to be provided within 48 hours on the receipt of the request application under RTI. In Shekhar Singh and Aruna Roy & Other v. Prime Minister’s Office\textsuperscript{168} the appellants had applied for information about the recommendations of the Group of Ministers for the rehabilitation of the project affected persons of the Narmada Project, according to the provisions of section 7(1) of the RTI Act. Section 7(1) deals with providing information within forty eight hours in case of threat to life and liberty of a person. The applicants contended that there was an immediate threat as the protesters were on an indefinite hunger strike. The Central Information Commission directed that the report of the ministers which was made public be supplied to the applicants. The information commission, however, held that for an application to be treated as one concerning life and liberty under section 7(1), it must be accompanied by substantive evidence that a threat to life and liberty exists. In the present case, the Central Information Commission rejected the application under section 7(1). However, the Commission held that agitation with the use of ‘ahinsa’ or non-violence must be recognised as a bona fide form of protest and, therefore, even if the claim of concern for life and liberty is not accepted in a particular case by the public authority, the reasons for not doing so must be recorded in writing before disposing off the application.

However, in the case of information regarding the violation of human rights pertaining to the organizations exempted under section 24 of the Act, the information should be supplied within 45 days from the receipt of the application. If the PIO fails to provide the information or reject the application within the prescribed statutory time limit, it would be presumed as deemed refusal and the applicant can go in appeal.

\textsuperscript{168} CIC/WB/C/2006/00066 dated 19\textsuperscript{th} April, 2006.
<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Situation</th>
<th>Time limit for disposing of applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Supply of information in normal course.</td>
<td>30 days</td>
</tr>
<tr>
<td>2.</td>
<td>Supply of information if it concerns the life or liberty of a person</td>
<td>48 hours</td>
</tr>
<tr>
<td>3.</td>
<td>Supply of information if the application is received through APIO.</td>
<td>5 days shall be added to the time period indicated at Sr. No. 1 and 2.</td>
</tr>
<tr>
<td>4.</td>
<td>Supply of information if application/request is received after transfer from another public authority:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>i) In normal course</td>
<td>i) Within 30 days of the receipt of the application by the concerned public authority.</td>
</tr>
<tr>
<td></td>
<td>ii) In case the information concerns the life or liberty of a person.</td>
<td>ii) Within 48 hours of receipt of the application by the concerned public authority.</td>
</tr>
<tr>
<td>5.</td>
<td>Supply of information by organizations specified in the Second Schedule:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>i) If information relates to allegations of human rights.</td>
<td>i) 45 days from the receipt of application.</td>
</tr>
<tr>
<td></td>
<td>ii) In case information relates to allegations of corruption.</td>
<td>ii) Within 30 days of the receipt of application</td>
</tr>
<tr>
<td>6.</td>
<td>Supply of information if it relates to third party and the third party has treated it as confidential.</td>
<td>Provided after following certain prescribed procedure given in the Act under Section 11</td>
</tr>
<tr>
<td>7.</td>
<td>Supply of information where the applicant is asked to pay additional fee.</td>
<td>The period intervening between informing the applicant about additional fee and the payment of fee by the applicant shall be excluded for calculating the period of reply.</td>
</tr>
</tbody>
</table>
Hierarchy of the RTI Organization:

<table>
<thead>
<tr>
<th>Central Public Authorities</th>
<th>State Public Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Central Information Commission</strong> (1 Chief + not exceeding 10 members)</td>
<td><strong>State Information Commission</strong> (1 Chief + not exceeding 10 members)</td>
</tr>
<tr>
<td><strong>First Appellate Authority</strong> (Head or Senior Officer of the Department)</td>
<td><strong>First Appellate Authority</strong> (Head or Senior Officer of the Department)</td>
</tr>
<tr>
<td><strong>Central Public Information Officer</strong></td>
<td><strong>State Public Information Officer</strong></td>
</tr>
<tr>
<td><strong>Central Assistant Public Information Officer</strong></td>
<td><strong>State Assistant Public Information Officer</strong></td>
</tr>
</tbody>
</table>
In **Shama Parveen, Bijnor v. National Human Rights Commission**\(^{169}\) the Commission allowed the information free of cost to the applicant belonging to Below Poverty Line (BPL) Category, however, it was directed that the PIO shall ensure that the applicant was genuinely BPL and nobody should be allowed to misuse the specific benefit allowed to a particular category.

If the request made has been rejected by the PIO under section 7(1) of the Act, the person making the request shall be communicated by the PIO the reasons for rejection, i.e. he has to pass the speaking order for rejection of the application; the period within which an appeal against the rejection order may be preferred and the particulars of the Appellate Authority to whom the appeal will be made.\(^{170}\) Moreover, where the information requested is exempted from disclosure under sections 8 or 9 of the Act, this should also state the reasons for rejection. In **Madhuri Singh v. Surguja Kshetriya Gramin Bank**\(^{171}\) the Commission held that the information cannot be denied simply by saying ‘NO’ to the applicant. Since it is a statutory right it has to be seen strictly as per the statutory provisions of the Act. The rejection has to be as per the said provisions.

In **Nasim Ahmed v. Staff Selection Commission, New Delhi**\(^{172}\) the appellant desired to know the marks obtained by him in the written examination as well as interview in the Section Officer (Audit) Exam. 2005, conducted by Staff Selection Commission (SSC). He also asked for the cut-off marks for OBC in the said examination. The CPIO declined to furnish the information sought, without specifying the reason for denial of information. In a number of appeals/complaints received from the examinees against the CPIO of the SSC. The Commission has held that the marks sheets should be furnished to the candidates along with cut off marks for various categories of candidates by the SSC. In pursuance of those decisions, the SSC is expected to comply with the requests for mark sheet.

\(^{169}\) CIC/OK/A/2006/00717 dated 18\(^{th}\) April, 2007.
\(^{170}\) Ravinder Kumar, Advocate, New Delhi v. Joint Commissioner of Police (Vigilance), New Delhi, Appeal No. CIC/AT/A/2006/00005 dated 8\(^{th}\) March, 2006.
\(^{172}\) CIC/MA/A/2006/344 dated 17\(^{th}\) August, 2006.
In the case of **Kuldeep Singh v. Northern Railway**\(^{173}\) in this case the application under RTI is rejected by the PIO on the ground that the relevant file was missing and therefore, the information could not be supplied. But it is not enough, the public authority must place on record the efforts made by such authority to trace the relevant file. It is only when such authority was able to satisfy the Commission that the file was actually missing and in spite of concerted efforts it could not be traced, only then the information could be declined otherwise also the Commission had all the powers to order to locate the missing file. Moreover, the Commission may also ask the public authority to file an affidavit regarding such files explaining the actual position of such missing files.

The PIO shall ordinarily provide information in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. Thus, the efforts should be made to provide information in the format in which the information has been sought. In case information is not kept ordinarily by the public authority in that format then effort should be made to compile it, if it is possible to do so. It is convenient to have it in electronic format if the size of the information is large. Similarly it may be convenient to have a photocopy of a smaller document. But if the computerization is not available or possible with a particular authority, the PIO cannot be forced to give it in computerized or electronic format.

**No Creation of Record**

Any ‘information’ as defined under section 2 (f) of the Right to Information Act, 2005, held by or under the control of a ‘public authority’ shall be liable to disclosure on application by a citizen, unless the information is exempt from disclosure. The public authority under the RTI Act, 2005, is not supposed

(i) to create information, or

(ii) to interpret information, or

(iii) to solve the problems raised by the applicants, or

(iv) To furnish replies to hypothetical question.

Only such information can be had under the Act which already exists with the public authority.\(^\text{174}\)

In *Ujjwal Kumar Choudhary v. Indian Oil Corporation Ltd.*\(^\text{175}\), the Commission held that the information seekers as well as the information providers have erred in interpreting the definition of ‘information’. The CPIO of any public authority is not expected to create and generate fresh information because it has been sought by an appellant. And the appellant is, therefore, advised to specify the required information which may be provided, if it exists, in the form in which it is sought by him.

In *Ajit Kumar Jain v. High Court of Delhi*\(^\text{176}\) and *Prabhat Kumar v. Central Administrative Tribunal*\(^\text{177}\) the Commission held that it is not possible for information to be created in order to service an RTI Application i.e. under this Act, record cannot be created for giving information.

The Commission held that if the requested information is not available in electronic form as required by the applicant, it does not have to be created for him.\(^\text{178}\)

4.4.4.6 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.\(^\text{179}\)

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\(^{175}\) 278/IC/(a)2006.

\(^{176}\) CIC/WB/A/2007/312.

\(^{177}\) CIC/WB/A/2008/58.

\(^{178}\) CIC/MA/A/2006/2.

The Delhi High Court in the case of Secretary General, Supreme Court of India v. Subhash Chandra Agarwal\(^{180}\) 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 paramountacy of the democratic ideal, Section 8 has been enacted for providing certain exemptions from disclosure of information.

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**

No information shall be provided, disclosure of which would prejudicially affect the i) sovereignty and integrity of India, ii) the security, strategic, scientific or economic interests of the State, iii) relation with foreign State, or iv) lead to incitement of an offence.

The complainant submitted an application under Right to Information Act, 2005 (hereinafter referred to as “Act”) on 22\(^{nd}\) June, 2006 before the Central Public

\(^{180}\) AIR 2010 Del 159.
Information Officer (CPIO) 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.\(^\text{181}\)

In a case of \textbf{Anuj Dhar v. Ministry of External Affairs}\(^\text{182}\) an application was filed with the PIO, Ministry of External Affairs, on 2\textsuperscript{nd} 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 \textbf{Nusli Wadia, Mumbai v. Ministry of External Affairs, South Block, New Delhi}\(^\text{183}\) the


\(^{182}\) CIC/OK/A/2006/00671 dated 23\textsuperscript{rd} March, 2007.

\(^{183}\) Appeal No. CIC/OK/A/2008/00245 dated 1\textsuperscript{st} October, 2008.
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 CIC 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.

The Hon’ble Delhi High Court in the case of Maj. Gen. V.K. Singh (Retd.) v. Union of India is unable to appreciate how, within the scope of its powers under the RTI Act, the Central Information Commission (CIC) can possibly sit in appeal over the subjective satisfaction of the Group of Ministers (GOM) that certain portions of its Report should be deleted since it could have security implications. For that matter even this Court cannot possibly sit in appeal over such determination by the GOM. In matters concerning security, it would be very difficult for either the CIC or this Court to override the views of the agencies on security issues. The CIC, or even this Court, lacks the expertise to evaluate the various inputs that go into such decision. In other words, the determination by the GOM which prepared the Report that the chapter on intelligence should be deleted as its disclosure would prejudicially affect the security interests of the state are not capable of being judicially reviewed either by the CIC or this Court.

b) Expressly forbidden by the Court or Tribunal

This part 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. And 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.

The Kerala High Court in the case of *Joseph @ Baby v. Sub-Inspector of Police*\(^\text{185}\) 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.

c) **Breach of Privilege of Parliament or State Legislature**

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, Trade Secrets or Intellectual Property**

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.

In *Divya Jyoti Jaipuria Paatla v. University of Delhi, Delhi*\(^\text{186}\) the Appellant pleaded that the PIO had wrongly denied him the information as section 8(1)(a) and 8(1)(d) of the Act are not applicable in his case. Section 8(1)(a) is attracted where disclosure

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\(^{185}\) 2005 (2) KLT 269 decided on 20th January, 2005.

would prejudicially affect the sovereignty and integrity of India, the country’s security, strategic, scientific or economic interests or relations with foreign States or lead to incitement of offence. Similarly section 8(1)(d) is applicable where disclosure of information would harm the competitive position of a third party being in the nature of commercial confidence, trade secret, or intellectual property rights. He maintained that he had asked for information, which related to his performance in the examination in order to see the mistakes he had committed which led to his poor performance so that he could improve next time. On an inquiry from the Commission, he clarified that teaching and examinations at each one of the three centers of Faculty of Law are conducted under the control and supervision of the Professor-in-charge and these centers function independently of each other.

The Commission took serious notice of the absence of the CPIO at the hearing without valid reasons although due notice was given to him. The Commission rejected the PIO’s contention that all the four points raised by the Appellant in his application concerning examination matters are of a confidential nature and attract the exemptions under section 8 of the Act.\footnote{Ibid.}

While reserving its judgment on the supply of answer sheets and the tabulation sheets to the petitioner, the Commission hereby directs the PIO, University of Delhi, to provide the Applicant the certified copies of the order appointing the examiners and of the file dealing with his application for re-totaling of the answer sheets as requested for by him in his application within 15 days and report compliance of the order within 21 days of the issue of this order.\footnote{Ibid.}

The Commission further directs that this Order shall be deemed to be a Notice under section 20(1) of the Act to the Respondent to intimate within 21 days of the issue of this Order, the reasons for malafidely denying the Appellant the information he was seeking and also as to how Sections 8(1)(a) and 8(1)(d) are attracted in this case and to show as to why penalties envisaged in this Section be not imposed upon Registrar/PIO of the Delhi University.\footnote{Ibid.}
The Madurai Bench of Madras High Court in *V.V. Mineral v. The Director of Geology & Mining*\(^{190}\) held that section 8(1)(d) only talks about a commercial confidence, trade secrets, which disclosure will harm competitive position of the third party. Further, this section does not prescribe any total bar and it is for the competent authority to be satisfied with a larger public interest, which warrants the disclosure of such information.

This is the unique provision made in the Act contrary to the bar created under the Official Secrets Act and other analogous enactments like section 21 of the Industrial Disputes Act or section 34A (1) of the Banking Companies Act, 1960. When a trade of bank employees challenged the vires of the said section as violative of the fundamental rights guaranteed to the workmen under the Constitution which enables them to form an Association under Article 19(1)(a) and which in turn guaranteed the right to seek informations from the employees, the Supreme Court replied their plea vide its decision reported in the *State Bank of India Staff Union and Others v. the National Industrial Tribunal (Bank Disputes) and Others*\(^{191}\) that the genesis of the legislation now impugned, it would be apparent that Government had to effect a reconciliation between two conflicting interests: one was the need to preserve and maintain the delicate fabric of the credit structure of the country by strengthening the real as well as the apparent credit-worthiness of banks operating in the country. It was really this principle which is vital to the economic life of the community that has been responsible for the changes that have been made from 1927 onwards as regards the form of balance-sheets and of the Profit & Loss Accounts of Banking Companies as distinguished from other trading and industrial organizations. There was urgent need to protect from disclosure certain items of appropriation by banks in order to preserve them as credit institutions. On the other hand, there was the need- an equally urgent need for enabling the workers in these institutions not to be denied a proper wage and other emoluments and proper conditions of service. The question was how far information which in the interests of national economy the banks were entitled to withhold from their shareholders and the general public, was to be made available for determining, the

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\(^{191}\) AIR 1962 SC 171.
capacity of the banks to pay their employees. It was in these circumstances that the
impugned legislation was enacted which while preserving industrial adjudication in
respect of disputes between the banks and their employees, entrusted the duty of
determining the surplus reserve which could be taken into account as part of the assets
for determining capacity to pay, to the Reserve Bank. Thus, understood there does not
appear to be anything unreasonable in the solution which the impugned legislation has
effect ed. From the above it is clear that when RTI Act was enacted it does not give any
full immunity for disclosure of a third party document. But, on the other hand, it gives
the authorities under RTI Act to weight the pros and cons of weighing the conflict of
interest between private commercial interest and public interest in the disclosure of such
information. Therefore, no total immunity can be claimed by any so-called third party.
Further, if it is not a matter covered by section 8(1)(d) of the Act, the question of any
denial by the Information Officer does not arise. Therefore, on appeal preferred by the
petitioner, the first respondent held that it is not an issue covered by section 8(1)(d) of
the Act. If it is only covered by section 8(1)(d) of the Act, the question of denial of
information by the authority may arise.

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 whatever the motivation of such individual in seeking
document has no relevancy as the Central RTI Act had not made any distinction
between a citizen and a so-called motivated citizen.192

e) Fiduciary Relationship

This sub-clause says that any information is exempted to disclose, if available to a
person in his fiduciary 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.

The traditional definition of a fiduciary is a person who occupies a position of trust in relation to someone else, therefore, requiring him to act for the latter’s benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. financial analyst, trustee, lawyer or advocate. It is also necessary that the principal character of the relationship is the trust placed by the provider of information in the person to whom the information is given. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information to receiver for using it for his benefit. When a committee is formed to give a report, the information provided by it in the report cannot be said to be given in a fiduciary relationship. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary.\textsuperscript{193}

**Consultation between the President and the Supreme Court**

In **Mukesh Kumar v. Addl. Registrar, Supreme Court of India and Others**\textsuperscript{194} 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 another case **Milap Choraria, New Delhi v. President Secretariat**\textsuperscript{195} where certified copies of all communications addressed to the President following the Fourteenth General Elections containing various suggestions on the formation of the Government including the letter forwarded by Smt. Sonia Gandhi, the then newly elected Leader of the Congress in Parliament to the President of India sought and the


\textsuperscript{194} CIC/AT/A/2006/00113 dated 10\textsuperscript{th} July, 2006.

\textsuperscript{195} Appeal No. CIC/WB/A/2006/01003 dated 16\textsuperscript{th} December, 2006.
PIO refused to disclose the information sought by the appellant seeking exemption under section 8(1)(e) of the Right to Information Act, 2005. The Commission observed that the fiduciary relationship is a relationship of trust and in some of its earlier decisions have dealt upon the ambit and scope of the word “fiduciary relationship” and decided that it has to be given a broader interpretation. The Commission, therefore, held that there is no doubt that the communication between the President of India and a Leader of a political party and the correspondence between them concerning formation of a Government is information exchanged in confidence and politically sensitive in nature. An information which is sensitive in nature and if the public interest warrants preservation of confidentiality, it cannot be ordered to be disclosed. An information which is confidential and sensitive in nature and if submitted in confidence should, therefore, be deemed to be covered within the ambit of Section 8(1)(e) and hence has to be held as exempted.

In Canara Bank v. Central Information Commission, Delhi\(^{196}\) 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). In fact, without knowing this information, one employee cannot know his rights vis-à-vis other employees. In this connection, it has to be noted that one of the information requested for its transfer guidelines pertaining to clerical staff. Any member of the staff of the bank is, as of right, entitled to know what are those guidelines, even apart from the Right to Information Act. Further, these informations have necessarily to be divulged if we are to have an informed citizenry and transparency of information which are vital to the functioning of the bank and to contain corruption so as to hold the bank which is an instrumentality of the State, accountable to the people, which are the avowed objects of the Act, as proclaimed in the preamble to the Act.

\(^{196}\) AIR 2007 Ker. 225.
The Madras High Court in The Superintendent, Office of the Public Prosecutor, High Court, Chennai v. The Registrar, Tamil Nadu Information Commission, Chennai\(^{197}\) held that no barrister, attorney, pleader or vakil shall at any time be permitted, unless with the express consent of his client to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

Section 8(1)(e) of the RTI Act exempts from disclosure information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.\(^{198}\)

f) Information from Foreign Government

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 Safety

This part 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 along with 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 case of A.R. Shah, Ahmedabad, v. United Bank of India, Kolkata\(^{199}\) 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. Khan\(^{200}\) 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 Investigation

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*\(^{201}\) 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, 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. Under section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. 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. Without such reasonable explanation by the PIO, there may be some possibility of misuse of the provision of section 8(1)(h) of the RTI Act.

The Central Information Commission in *Mohan Lal v. Delhi Police*\(^{202}\) 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.

In the case of *S.P. Singh, Noida v. Central Board of Excise & Customs, Ministry of Finance, New Delhi*\(^{203}\) the documents sought were pertaining to the sanction of prosecution against the appellant in which charge-sheet has been filed by the CBI in the Court of Special Judge. The CPIO claimed exemption u/s 8(1)(h) of the RTI Act, 2005, since the matter is pending before the trial court for adjudication. There is a due process of law under which natural justice would be ensured to him. The Commission held that as the process of prosecution has been initiated, the decision of CPIO and appellate

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\(^{202}\) CIC/SS/A/2011/001578 dated 9\(^{th}\) April, 2012.

authority to claim exemption u/s 8(1)(h) from disclosure of information sought is justified.

In **Dharam Raj v. Directorate of Vigilance, GONCTD**\(^{204}\) the Commission 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. 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 section 8(1)(g) and (h) and section 11(1) of the Act.

**i) Cabinet Papers**

This sub-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**\(^{205}\) 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.

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j) Personal Information

This sub-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. 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 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 Court 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. More importantly, the proviso to the section qualifies the section by stating that information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

208 Canara Bank v. Central Information Commission, Delhi, AIR 2007 Ker. 225.
In *Surupsingh Hrya Naik v. State of Maharashtra*\(^{209}\) an application was made by private citizen seeking information regarding Medical Report of the Petitioner, MLA of the State of Maharashtra, during the period of imprisonment from the PIO of Sir J.J. Hospital Mumbai. This application was set out that it was in public interest to know why a convict is allowed to stay in an air conditioned comfort of the hospital and there had been intensive questioning about this aspect in the media and the peoples mind. There is, therefore, a legitimate doubt about the true reasons for a convict being accommodated in air conditioned comfort of the hospital, thereby ensuring that the convict escapes the punishment imposed on him and also denies a scarce facility to the needy. The information, sought was set out therein. But the authorities contended that Regulation 2.2 and 7.14 framed under the Medical Council of India Act that information about a patient in respect of his ailment normally cannot be disclosed because of the Regulations, which is subordinate legislation except where the Regulation provides for. The Court held that Right to Information Act, is an enactment by Parliament and the provisions contained in the enactment must, therefore, prevail over an exercise in subordinate legislation i.e. Regulations framed under Indian Medical Council Act, if there be a conflict between the two. Thus, the Court held that the Regulations framed under the Indian Medical Council Act, will have to be read with Section 8(1)(j) of the Right to Information Act and it is within the competence of the concerned Public Information Officer to disclose the information in larger public interest or where Parliament or State Legislature could not be denied the information.

The exception from disclosure of information as contained in section 8 has some important aspects. Section 8(1)(j) provides that 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 shall not be disclosed unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied, that the larger public interest justifies the disclosure of such information. In other words, if the information be personal or would amount to invasion of privacy of the individual, what the concerned Public Information Officer has to satisfy is whether the larger public interest justifies the disclosure.\(^{210}\)

\(^{209}\) AIR 2007 Bom 121.

\(^{210}\) Ibid.
In *Rajan Verma v. Union of India, Ministry of Finance, Banking Division, New Delhi*\(^{211}\) 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(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)*\(^{212}\) 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. The appellant is not without remedy to protect himself from malicious prosecution as he can move the appropriate Court and obtain orders for the production of Income Tax Returns before the Court which the Income Tax Department is duty bound to do and decide to disclose or otherwise. Accordingly, the appeal for disclosure was refused.

The Hon’ble Kerala High Court held that the Confidential Report (CR) of the employee maintained by the appellant can be treated as records pertaining to personal information.


\(^{212}\) CIC/AT/A/2008/628, dated 15\(^{th}\) June, 2009.
of an employee, thus, the publication of the same is prohibited under section 8(1)(j) of the Right to Information Act, 2005.\textsuperscript{213}

The Delhi High Court in the case of \textit{Secretary General, Supreme Court of India v. Subhash Chandra Agarwal}\textsuperscript{214} held that the Act makes no distinction between an ordinary individual and a public servant or public official. The Court observed that an individual’s or citizens fundamental rights, which include right to privacy, are not subsumed or extinguished if he accepts or holds public office. Section 8(1)(j) ensures that all information furnished to public authorities, including personal information (such as asset disclosures) are not given blanket access. When a member of the public requests personal information about a public servant, such as asset declarations made by him, a distinction must be made between personal data inherent to the person and those that are not, and, therefore, affect his/her private life. The Court held that if public servants are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or interest. That the public servant has to make disclosures is a part of the system’s endeavour to appraise itself of potential asset acquisitions which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties or investing their income. The obligation to disclose these investments and assets is to check the propensity to abuse a public office, for a private gain. Such personal information regarding asset disclosures need not be made public, unless public interest considerations dictates it, under section 8(1)(j). This safeguard is made in public interest in favour of all public officials and public servants. The Court further held that the contents of asset declaration, pursuant to the 1997 Resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed u/s 8(1)(j) of the Act, that they are not otherwise subject to disclosure. Therefore, as regards contents of the declarations, information application would have to, whenever they approach the authorities, under the Act satisfy them u/s 8(1)(j) that such disclosure is warranted in large public interest.

\textsuperscript{213} Centre for Earth Science Studies, Thiruvananthapuram v. Dr. Anson Sabastian, Scientist, W.A. No. 2781 of 2009 decided on 17th February, 2010.

\textsuperscript{214} AIR 2010 Del 159 (Decided on 12th January, 2010).
The Madras High Court in *Diamond Jubilee Higher Secondary School, Erode v. Union of India*\(^\text{215}\) 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.

In the case of *Chief General Manager, State Bank of India, Chennai v. K. Thaksinamurthy and Others*\(^\text{216}\) the 1st respondent herein made an application to the Deputy General Manager who is designated as Central Public Information Officer calling for the documents relating to disciplinary proceedings in respect of the 1st respondent as well as 14 other Bank officials during 1996-1998. The application was considered and rejected by the Central Public Information Officer on the ground the information sought has no public interest and is an unwarranted invasion into the privacy of 3rd parties and is exempted under section 8(i)(j) of the Right to Information Act. The order of the Central Information Commissioner is challenged by way of appeal before the Chief General Manager/Appellate authority by the 1st respondent. The appellate authority also confirmed the order of the original authority on the same ground and rejected the appeal and the correctness of the order of the appellate authority was challenged before the Central Information Commission and directed the Central Information Officer to provide the photocopies of charge sheet, reply to the charge sheet and the final order passed by the disciplinary authority in respect of each of the 14 officers listed in the application on the ground that the information sought for would not come under the exemption clause and the proceedings are instituted in the public interest for the alleged misconduct of the employees and the records are generated by the public authority and after the proceedings are over, all such records can be disclosed. The correctness and validity of the order is challenged in this writ petition. The Court held that it cannot be denied that the disclosure of information sought for is about the disciplinary proceedings initiated against 14 bank officials. The disclosure of information sought for are the charge sheet, reply given by the employees and the final order passed by the authorities concerned in the disciplinary proceedings initiated against them, as such the information sought for, particularly the reply submitted by the

\(^{216}\) MANU/TN/3548/2010 (Writ Petition No. 7703 of 2010 decided on 7th December, 2010).
employees, relates to information of 3rd party, the 2nd respondent herein is u/s 19(10) of the Act bound to decide the appeal in accordance with the procedure, laid down only after giving due opportunity to such third parties for being heard where as the 2nd respondent disposed of the appeal without complying with such statutory requirement as admittedly the third parties are deprived of such opportunity as such the impugned order is passed contrary to the procedure and is in violation of the principles of natural justice as contemplated u/s 19(4) of the Act. The Court set-aside the order of the Central Information Commission and the matter is remanded back to the CIC for fresh disposal after giving due opportunity to all the 14 employees/bank officials for being personally heard. The whole exercise shall be completed within three months from the date of receipt of the copy of this order. Consequently, connected miscellaneous applications are closed.

In the case of Bishamber Dayal Tyagi v PIO, Delhi Jal Board, New Delhi217 the Commission held that to qualify for exemption under section 8(1)(j) the information must satisfy the following criteria:

1. It must be personal information. Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective ‘personal’ to an attribute which applies to an individual and not to an institution or a corporate. From this, it flows that ‘personal’ cannot be related to institutions, organizations or corporates. (Hence we could state that section 8(1)(j) cannot be applied when the information concerns institutions, organizations or corporates).

2. The phrase ‘disclosure of which has no relationship to any public activity or interest’ means that the information must have some relationship to a public activity. Various public authorities in performing their functions routinely ask for ‘personal’ information from citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a public authority as an employee, or asks for a permission, licence or authorization, all these are public activities.

3. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade on the privacy of a Citizen. In those circumstances special provisions of the law apply, always with certain safeguards. Therefore, it can be argued that where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

4. Certain human rights such as liberty, freedom of expression or right to life are universal and, therefore, would apply uniformly in all countries uniformly. However, the concept of ‘privacy’ is related to the society and different societies would look at these differently. India has not codified this right so far, hence in balancing the right to information of citizens and the individual’s right to privacy, the citizen’s right to information would be given greater weightage.

Therefore, the Commission concluded that disclosure of information which is routinely collected by the Public authority and routinely provided by individuals, would not be an invasion on the privacy of an individual and there will only be few exceptions to this rule which might relate to information which is obtained by a public authority while using extraordinary powers such as in the case of a raid or phone-tapping.218

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 seemed as exempt from disclosure.

218 Ibid.
The Central Information Commission 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.\textsuperscript{219}

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 RTI 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 Commission observed that it has been established under the Act and being an adjudicating body under the Act, it cannot take upon itself the role of the legislature and import new exemptions hitherto not provided. The Commission cannot of its own

\textsuperscript{219} Manish Bhatnagar, Delhi v. Additional Director Women & Child Development, Govt. of NCT, Delhi, CIC/SG/A/2010/001790 dated 9\textsuperscript{th} August, 2010.
impose exemptions and substitute their own views for those of Parliament. The Act leaves no such liberty with the adjudicating authorities to read law beyond what it is stated explicitly. There is absolutely no ambiguity in the Act and tinkering with it in the name of larger public interest is beyond the scope of the adjudicating authorities. Creating new exemptions by the adjudicating authorities will go against the spirit of the Act.220

The Supreme Court held that section 8(3) of the RTI Act, 2005 is 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.221

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.222

The Commission again observed in **Ram Chandra Sahu, Kharagpur v. Dinesh Kumar, South Eastern Railway, Kharagpur**223 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.

Since Right to Information is a right of citizens, where denial has to be only on the basis of the exemptions under section 8(1), it is necessary to carefully explain the reasons of

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how any of the exemptions apply, when a PIO wishes to deny information on the basis of the exemptions. Merely quoting the sub-section of section 8 is not adequate. Giving information is the rule and denial the exception. In the absence of any reasoning, the exemption under section 8(1) is held to have been applied without any basis.\textsuperscript{224}

4.4.4.7 Grounds for Rejection to Access to Information in Infringement of Copyright

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.\textsuperscript{225}

\textbf{In Pramod Sarin v. University of Delhi}\textsuperscript{226} 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.

The scope of rejection of a request for information u/s 9 of the Act is limited only to the copyright subsisting in a third party. The copyright protection is given to the persons

\textsuperscript{224} G.S. Gangadharappa v. Sr. Personnel Officer and PIO, Rail Wheel Factory, Ministry of Railways, Bangalore, Appeal No. CIC/SG/A/2009/000889 dated 8\textsuperscript{th} June, 2009.
\textsuperscript{226} CIC/OK/A/2007/1307.
with copyright of original ideas, artistic work or some other literally work, where protection is recognized worldwide and Intellectual Property Act provides for protection of such copyrights. Thus, the copyright vested in the public authority is not exempted from disclosure and such access cannot be refused under the RTI Act, 2005.

4.4.4.8 Doctrine of Severability

Section 10 of the Right to Information Act is based on the doctrine of severability. It ordains as follows:

1. **Severability to provide partial access to information which is not exempted from disclosure:** Section 10(1) of the Act says that where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

Mostly, an application has been requested for whole or the part of the information held by the public authority on the matter concerned. The information requested falls under exemptions provided under the Act and part of it is not. The part of information likely to be provided under the Act has to be severed or separated from the exemption part of the information.

2. **Requirements for Part Information Granted/Denied:** Section 10(2) of the Act requires certain obligations on the part of the Central Public Information Officer or State Public Information Officer, where access is granted to a part of the record under sub-section (1),

a) **Notice of the Part Denied:** The CPIO or the SPIO shall give a notice to the applicant, informing that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided.

b) **Reasons for such Denial:** The CPIO or the SPIO shall give reasons for such decision, including any findings on any material question of fact, referring to the material on which those findings were based.
c) **Particulars of the Deciding Officer:** The CPIO or the SPIO shall intimate the name and designation of the person giving the decision of severability.

d) **Details of Fee:** The CPIO or the SPIO shall inform the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit.

e) **Right to Review and Appeal:** The CPIO or the SPIO shall inform to the applicant about his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

If after such severing the remaining part of the information remains reasonable and it makes sense even after such separation, the same may be provided or allowed under the provisions of the Act. Before doing so, it may be kept in mind that the CPIO or SPIO, as the case may be, is declining a part of information requested by the applicant and thereby he is declining the right to information to that extent. Moreover, when the substantial right available under the Act is declined, the interests of the applicant are being adversely affected. So, as per the requirements of natural justice the applicant has to be given a notice, reasons, particulars of the deciding officer, fee detail and right to appeal and review with the particulars of the Appellate Authority in this regard.

**4.4.4.9 Third Party Information**

As the researcher have already discussed that the right to information guaranteed under the Right to Information Act, 2005 is not absolute but is subject to restrictions imposed under the Act and one of such restrictions regards to the right to privacy which can be claimed by a third party\(^\text{227}\) under section 11 of the RTI Act.

The right to privacy is our right to keep a domain around us, which includes all those things that are part of us, such as our body, home, property, thoughts, feelings, secrets

\(^{227}\) Section 2(n) of the RTI Act defines ‘third party’ which means a person other than the citizen making a request for information and includes a public authority.
and identity. The right to privacy gives us the ability to choose which parts in this
domain can be accessed by others, and to control the extent, manner and timing of the
use of those parts we choose to disclose.228 The right to privacy as an independent and
distinctive concept originated in the field of Tort Law, under which a new cause of
action for damages resulting from unlawful invasion of privacy was recognized. This
right has two aspects but which are two faces of the same coin:

i. the general law of privacy which affords a tort action for damages resulting from
an unlawful invasion of privacy; and

ii. the statutory recognition given to the right to privacy which protects personal
privacy and confidentiality against unlawful governmental invasion.229

Section 11 of the RTI Act lays down that the disclosure of such information or record
which relates to or supplied by a third party except in the case of trade or commercial
secrets protected by law, may be allowed if the public interest in disclosure outweighs
in importance any possible harm or injury to the interests of such third party. In the
present world of internet, wi-fi, 3G and e-governacne, it is very difficult to have privacy
and confidentiality.

This section provides complete mechanism on providing third party information to the
applicant with certain obligations on the part of PIO and the third party, viz.

i. notice to third party regarding disclosure;

ii. third party to make representaion within 10 days from the date of receipt of such
notice;

iii. decision to be taken by the PIO in 40 days after receipt of the request under
section 6 in third party case; and

iv. right to appeal by third party.

The Central Information Commission in **J.B. Kohli v. New Delhi Municipal Council (NMDC)** clarified the following two issues on the information supplied by the third party:

i) every document provided by the third party is not governed by the provision of section 11(1) of the Act. It is only those documents which are personal or private in nature attract the provisions of section 11(1). Otherwise, when public documents are provided by the third party because of their public nature, such documents are not governed by this section. It may also be due to the added reason that such public documents are already in public domain and no consent for disclosure of such information is required from any individual. Thus, section 11(1) of the RTI Act is applicable to only that information which has been given in good faith or in confidence by a third party.

ii) the second issue clarified in this matter that the third party who was involved at lower level, has to be heard by the Commission at appeal level also. Such third party has a right to be heard when he was involved at a lower level. If it is not allowed it would be against the principles of natural justice and fairplay, such third party has a right to protect his interest at every level, once he is involved in the proceedings.

The notice from the PIO was required only when there was an intention to disclose information supplied by a third party. It means that the provision of section 11(1) attracts only when there is an intention to disclose the information by the PIO.231

Justice D.N. Patel observed in **Reliance Industries Ltd. v. Gujarat State Information Commission** that it is the duty vested in the Public Information Officer (PIO) to give an opportunity of personal hearing to the third party, to get his submissions. Whether third party treats the information as confidential? Otherwise information should be disclosed i.e. if the information is relating to or is supplied by the third party, then PIO is duty bound to declare that information. Therefore, section 11(1) of the Right to

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232 AIR 2007 Guj. 203.
Information Act, 2005 gives mandate to Public Information Officer to give written notice to third party, if PIO intends to disclose information relating to third party.

In the case of **Ujjal Dasgupta v. Centre for Development of Advanced Computing (C-DAC), Pune** the appellant asked for the information pertaining to the project ANVESHAK, it was software developed by C-DAC, Pune. This software was developed for Research and Analysis Wing (R&AW). The information was rejected on account of its sensitive and secret nature. The appeal was also rejected and a writ petition was filed by the appellant before the High Court. The case was remanded back to CIC by the High Court and the relevant observations of the Court are as under:

“It is plain to this Court from a reading of sections 11 and 19(4) of the RTI Act that once the CIC acknowledges that the information sought pertains to a third party, in this case, R&AW, then without notice to such third party and hearing its views in the matter, the CIC cannot proceed further in the matter. Whether in fact the public interest in the disclosure of the information outweighed in importance any possible harm or injury to the interest of such third party in terms of the provisions of section 11(1) of the RTI Act, had to be decided by the CIC only after hearing such third party in terms of the provisions of section 11(1) of the RTI Act, had to be decided by the CIC only after hearing such third party. Inasmuch as the software of the Project Anveshak has been developed exclusively for the R&AW, the question of disclosure of any such information had to be decided only after hearing the R&AW.”

Section 11(4) of the Act provides also for intimation to the third party regarding his right to appeal by way of the notice of decision as provided under section 11(3). The third party has a right to appeal under section 19 of the Act in case he or she is not satisfied with the decision of the PIO conveyed to him or her under section 11(3). The statement to this effect to be incorporated in the notice is simply to make the proceedings more transparent and to ensure that the interest of the third party do not suffer due to the ignorance of the provisions of the Act.

**Duties and Responsibilities of the Public Information Officer (PIO)**

As per the various provisions of the Right to Information Act, 2005, certain duties and responsibilities of the Public Information Officer can be drawn out, which are as under:

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1. It is the duty of the Public Information Officer (PIO) of the public authority to receive applications from citizens seeking information along with the prescribed fee.

2. It is an obligation of the PIO to assist a person making an oral request to reduce it into writing.

3. If information requested is fully or partially held by another public authority or the subject matter of the application is more closely connected with the functions of another public authority, it is the duty of the PIO to transfer the application or the concerned or relevant part of the application to such public authority and also intimate to the applicant in writing of such transfer.

4. It is an obligation on the part of the PIO to pass and intimate written order rejecting the application along with reasons and details of appellate authority.

5. PIO is duty bound to provide the information within the stipulated time i.e. ordinarily within 30 days from the receipt of the application or within 48 hours, if the matter concerns the life and liberty of a person.

6. It is the responsibility of the PIO to inform the applicant in writing about the additional fees chargeable as cost of providing the information, if required so.

7. It is also the responsibility of the PIO to provide the requested information in the form or manner in which it has been requested or demanded, as far as possible. Otherwise to give the reasons for not to do so.

8. PIO is also required to give a notice to the applicant concerning severability of the information called into exempted and non-exempted information and provide non-exempted information to the applicant.

9. It is the duty of the PIO to give written notice to the third party, if information requested was given to the PIO by the third party who treated it as confidential, on the point whether such information should be disclosed to the requestor or not.

10. It is the responsibility of the PIO to intimate to the third party’s right of appeal, if the PIO discloses the information to the requestor even the information prohibited by the third party.
4.4.4.10 Central Information Commission

The object behind the establishment of a Central Information Commission or the State Information Commission seems to be that proceedings in a Civil Court would be more lengthy and time consuming and would keep the persons for whose benefit the Act is intended, engaged in the pursuit of litigation for a good part of their time, which they could have otherwise employed more usefully in their legitimate occupation and that such proceedings would be more expensive and would eat away the great part of the return of their labour. It is with this object of the Act to set up such a Commission which would create more confidence and a greater sense of security in the minds of the citizens.

The Hon’ble Mr. Justice Badar Durrez Ahmed and Ms. Justice Veena Birbal of Delhi High Court has observed in Delhi Development Authority v. Central Information Commission\textsuperscript{234} that:

“Thus the flow of information is not to be an unregulated flood. It needs to be controlled just as the flow of water is controlled by a tap. Those empowered to handle this tap of information are imbued with great power. Under the said Act, this power is to be exercised by the Information Commissions (State and Central). But, the power is clearly not plenary, unrestricted, limitless or unguided. The Information Commissions are set up under the said Act and they have to perform their functions and duties within the precincts marked out by the legislature.”

Chapter III of the Right to Information Act, 2005, deals with Central Information Commission at the Centre Level. The central organization which control and moniters all authorities created under the Act to make service of supplying information to the citizens is the Central Information Commisson (CIC) at the Centre Level and the State Information Commission (SIC) at the State Level. The various provisons concerning the constitution of the Central Information Commisson (CIC) are as follows:

1. **Constitution of the Central Information Commisson:** Section 12(1) of the RTI Act provides that the Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commisson to

\textsuperscript{234} Writ Petition (Civil) No. 12714 of 2009 decided on 21\textsuperscript{st} May, 2010.
exercise the powers conferred on and to perform the functions assigned to it under this Act.

2. **Composition of the CIC:** Section 12(2) of the RTI Act says that the Central Information Commission shall consist of a Chief Information Commissioner; and such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

3. **Appointing Authority:** Section 12(3) of the RTI Act provides that The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of:

   i. the Prime Minister, who shall be the Chairperson of the committee;

   ii. the Leader of Opposition in the Lok Sabha; and

   iii. a Union Cabinet Minister to be nominated by the Prime Minister.

For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

4. **Sovereignty to Commission:** Section 12(4) of the RTI Act provides that the general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

5. **Qualifications for Appointment of Commissioners:** Section 12(5) of the RTI Act provides that the Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
6. **Dis-qualification for appointment of Commissioners:** Section 12(6) of the RTI Act provides that the Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

7. **Headquarters of CIC:** Section 12(7) of the RTI Act provides that the headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

8. **Tenure of the Office of CIC:** Under the provisions of section 13(1) and (2) of the RTI Act, the Chief Information Commissioner and every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment. Further, the Chief Information Commissioner shall not hold office as such after he has attained the age of sixty-five years. However, every Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12. In case any Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

9. **Oath or Affirmation:** Section 13(3) of the RTI Act provides that the Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

10. **Resignation of CIC:** Section 13(4) of the RTI Act provides that the Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office. However, the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.
11. **Salary and Allowances:** Under the provisions of section 13(5) of the RTI Act, the salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner and salaries and allowances payable to and other terms and conditions of service of the Information Commissioner shall be the same as that of an Election Commissioner. In case, if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity. Further, the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits and the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

12. **Staff for CIC:** Section 13(6) of the RTI Act provides that the Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

13. **Removal of CIC from Office:** Section 14(1) of the RTI Act provides that subject to the provisions of sub-section (3), the Chief Information Commissioner or any
Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity. For this purpose a reference in this regard shall be made to the Supreme Court by the President and then Supreme Court may constitute a committee of judges which shall inquire the matter and make a report to the President that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought to be removed on such ground.

14. **Suspension from Office:** Under the provisions of section 14(2) of the RTI Act, the President may suspend from office the Chief Information Commissioner or Information Commissioner. They can be prohibited from attending the office during inquiry in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

15. **Grounds of Removal:** Section 14(3) of the RTI Act provides that irrespective of the provisions contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner, if the Chief Information Commissioner or a Information Commissioner, as the case may be (i) is adjudged an insolvent; or (ii) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or (iii) engages during his term of office in any paid employment outside the duties of his office; or (iv) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or (v) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or an Information Commissioner.

16. **Deemed Guilty of Misbehaviour:** Section 14(4) of the RTI Act provides that If the Chief Information Commissioner or an Information Commissioner, otherwise than as a member and in common with the other members of an incorporated company (i) is, in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India; or (ii) participates in any way in the profit thereof; or (iii) in any benefit or emolument arising therefrom, shall be deemed to be guilty of misbehavior for the purposes of sub-section (1).
4.4.4.11 State Information Commission

Chapter IV of the Right to Information Act, 2005, deals with State Information Commission. Every State Government is empowered to constitute a body to be known as State Information Commission. The State Information commission shall perform the duties and functions laid down under the various provisions of the RTI Act, 2005. The main aim and objective of the State Information Commission is to provide mechanism to promote openness, transparency and accountability in the working of the public authorities and provide relief to the citizens by making every information available under the Act. The various provisions regarding the constitution of the State Information Commission (SIC) are as follows:

1. **Constitution of the State Information Commission:** Section 15(1) of the RTI Act provides that every State Government shall, by notification in the Official Gazette, constitute a body to be known as the........(name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

2. **Composition of the SIC:** Section 15(2) of the RTI Act provides that the State Information Commission shall consist of the State Chief Information Commissioner, and such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

3. **Appointing Authority:** Section 15(3) of the RTI Act provides that The State Chief Information Commissioner and State Information Commissioners shall be appointed by the Governor of the State on the recommendation of a committee consisting of—

   i. the Chief Minister, who shall be the Chairperson of the committee;

   ii. the Leader of Opposition in the Legislative Assembly; and

   iii. a Cabinet Minister to be nominated by the Chief Minister.

For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.
4. **Autonomy to State Information Commission:** Section 15(4) of the RTI Act provides full autonomy to the State Information Commission. The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

5. **Qualifications for Appointment of State Chief Information Commissioner and State Information Commissioners:** Section 15(5) of the RTI Act provides that the State Chief Information Commissioner and State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. It is not a post in the ordinary sense of the term. The law enjoins that an individual appointed on such position should be distinguished or eminent person with varied knowledge in any of the aforesaid fields.

6. **Dis-qualification for appointment of Commissioners:** Section 15(6) of the RTI Act provides that the State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

7. **Headquarters of State Information Commission (SIC):** Section 15(7) of the RTI Act says that the headquarters of the State Information Commission shall be at such place in the State as the State Government may specify. The State Information Commission may with the prior approval of the State Government, establish offices at other places in the State.

8. **Term of the Office of SIC:** Under the provisions of section 16(1) and (2) of the RTI Act, the State Chief Information Commissioner and every State Information
Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment. Further, the State Chief Information Commissioner and every State Information Commissioner shall not hold office as such after he has attained the age of sixty-five years. However, every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15. In case any State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

9. **Oath or Affirmation:** Section 16(3) of the RTI Act provides that the State Chief Information Commissioner or a State Information Commissioner shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

10. **Resignation of SIC:** Section 16(4) of the RTI Act says that the State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office. However, the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.

11. **Salary and Allowances of SIC:** Under the provisions of section 16(5) of the RTI Act, the salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner shall be the same as that of the Election Commissioner and salaries and allowances payable to and other terms and conditions of service of the State Information Commissioner shall be the same as that of an Chief Secretary to the State Government. In case, if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief
Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity. Further, the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits and the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

12. **Officers and Staff for SIC:** Section 16(6) of the RTI Act provides that the State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

13. **Removal of State Chief Information Commissioner and the State Information Commissioners from Office:** Section 17(1) of the RTI Act says that subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.
14. **Suspension from Office:** Under the provisions of section 17(2) of the RTI Act, the Governor has power to suspend from office the State Chief Information Commissioner or a State Information Commissioner. They can be prohibited from attending the office during inquiry in respect of whom a reference has been made to the Supreme Court until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.

15. **Grounds of Removal:** Section 17(3) of the RTI Act provides that irrespective of the provisions contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner, if the State Chief Information Commissioner or a State Information Commissioner, as the case may be (i) is adjudged an insolvent; or (ii) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or (iii) engages during his term of office in any paid employment outside the duties of his office; or (iv) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or (v) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

16. **Deemed Guilty of Misbehaviour:** Section 17(4) of the RTI Act provides that If the State Chief Information Commissioner or a State Information Commissioner, otherwise than as a member and in common with the other members of an incorporated company (i) is, in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of State; or (ii) participates in any way in the profit thereof; or (iii) in any benefit or emolument arising therefrom, shall be deemed to be guilty of misbehavior for the purposes of sub-section (1).

In Virender Singh Choudhary v. Union of India & Others\(^{235}\), the question before the Court is that whether the appointment of Chief Information Commissioner or Information Commissioner under sections 12(5), 12(6), 15(5) and 15(6) of the Act is in violation of Article 14 of the Constitution of India. The entire scheme of the Act is taken into consideration for the purpose of not including certain categories to have

\(^{235}\) AIR 2007 MP 26.
neutrality, objectivity and avoidance of conflict of interests. The Court held that the exclusion of certain categories are not unreasonable. Hence, the provisions are not hit by Article 14 of the Constitution of India.

4.4.4.12 Powers and Functions of the Information Commissions, Appeal and Penalties

Chapter V of the Right to Information Act, 2005, deals with various provisions regarding the powers and functions of the Information Commissions, appeals and penalties. Everyone must not forget that any legislation would fail if the enforcement mechanism is not fully equipped and is not given adequate powers. Without adequate powers, it would be like a paper lion or a toothless tiger. The Right to Information Act, 2005, is thus, no exception. For the successful implementation of the RTI Act, it is very much important that due care should be taken to maintain the integrity, sovereignty and independence of the Information Commissions and that they are provided adequate powers.

Powers and Functions of the Information Commissions

To understand the working of the Information Commissions in the real sense, there is a need to analyze the powers enjoyed by these Commissions under the RTI Act and their duties and responsibilities. For this purposes of the present study, the powers of the Information Commissions are analyzed as follow:

1. Duty to Receive and Inquire Complaints:

The CIC or the SIC has to perform various statutory functions to oversee the smooth implementation of the Act. The petitions can be filed before the Information Commissions in two ways (i) as a complaint and (ii) as an appeal. The complaints are filed under section 18 and whereas appeals are filed under section 19(3) of the RTI Act respectively. Section 18(1) of the Act says that it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person. Moreover, the complaint is a kind of grievance filed before the Information Commission by the person, who had requested information under the RTI Act but has not been able to get it because of the following grounds or reasons:
i) **Non Appointment of PIO’s:** No such officer has been appointed under this Act.

ii) **Refusal to Accept Application:** The Central Assistant Public Information Officer (CAPIO) or State Assistant Public Information Officer (SAPIO), as the case may be, has refused to accept his or her application for information or appeal under this Act, for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be.

iii) **Refusal to Access to Information:** If any one has been refused access to any information requested under this Act.

iv) **No Response to Request:** If any one has not been given a response to a request for information or access to information within the time limit specified under this Act.

v) **Unreasonable Calculation of Fee:** If any one has been required to pay an amount of fee which he or she considers unreasonable.

vi) **No Proper Information:** If any one believes that he or she has been given incomplete, misleading or false information under this Act.

vii) **Other Reasons relating to Access to Information**\(^\text{236}\): In respect of any other matter relating to requesting or obtaining access to records under this Act.

2. **Powers of the CIC/SIC:**

Section 18(2) of the Act provides that the Central or State Information Commission may initiate an inquiry in respect thereof if he is satisfied that the reasonable grounds exist to inquire into the matter. The Central or State Information Commission, as the case may be, while inquiring into any matter under this section, shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

\(^\text{236}\) The term ‘access to information’ under the RTI Act means that either the information seeker has been given the opportunity to examine the records or has been provided with the copy thereof. Dheera Khandelwal and Krishna K. Khandelwal, “A Commentary and Digest on the Right to Information Act, 2005” Bright Law House, New Delhi 2007, p. 197.
i. summoning and enforcing the attendance of persons and compel them to give oral
or written evidence on oath and to produce the documents or things;

ii. requiring the discovery and inspection of documents;

iii. receiving evidence on affidavit;

iv. requisitioning any public record or copies thereof from any court or office;

v. issuing summons for examination of witnesses or documents; and

vi. any other matter which may be prescribed.237

3. Power to Examine any Other Record during Inquiry

Under the provisions of section 18(4) of the RTI Act, notwithstanding anything
inconsistent contained in any other Act of Parliament or State Legislature, as the case
may be, the Central or State Information Commission may during the inquiry of any
complaint under this Act, examine any record (i) to which this Act applies (ii) which is
under the control of the public authority, and (iii) no such record may be withheld from
it on any grounds. But those records or informations which are exempted under the
various provisions of the Act are not covered.

4.4.4.13 Appeals

In order to understand the provision of section 19 relating to appeal as mentioned in the
RTI Act, it is necessary to understand the meaning of the term ‘appeal’. The expression
‘appeal’ has not been defined in the Right to Information Act, 2005 but it may be
defined as “the judicial examination of the decision of an inferior court by the higher
court”. In other words, appeal is a complaint to the higher authority against the order
passed by the lower authority. The Hon’ble Supreme Court has held that “an appeal
means actively or carefully listening of the grievances of the appellant in connection
with the decision rendered by a Subordinate or Lower Court or Tribunal or Lower
Authority on rehearing. The essential requirement of an appeal is rehearing of a
grievance on merits”.238 The fresh grounds for information cannot be allowed to be

237 Section 18(3) of the RTI Act, 2005.
urged at the appellate level unless found to be of a nature that would warrant their admittance, if the same has not been brought up at the primary level. Right to prefer an appeal is a statutory right. When a party gets a right to prefer an appeal against an order of a Court or Tribunal or Authority, that right when recognized by a statute, once vested cannot be divested. Such a right to prefer an appeal is not merely a procedural right but it is a substantive right. Thus appeal is a creation of statute and it is not an inherent right of the subject.

Under this Act, two tier appeal system has been created, where the first authority has to be under the public authority while the second has to be created afresh known as Centre/State Information Commission at the Centre/State level. Unlike other such laws, this Act has put an upper limit on disposal time for appeals by first appellate authority and has given wide powers to the information Commission. No fee has been prescribed for filing appeals.

i. **First Appeal before First Appellate Authority:** Section 19(1) of the RTI Act provides that any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority. The appellate authority may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

ii. **Appeal by concerned Third Party:** Under the provisions of section 19(2) of the RTI Act, where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be,
under section 11 to disclose third party information, the appeal by the concerned third party shall be made within a period of thirty days from the date of the order.

iii. **Second Appeal before Central or State Information Commission:** Section 19(1) of the RTI Act provides that a second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission. The Central or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

iv. **Reasonable Opportunity of being heard to concerned Third Party:** Section 19(4) of the Act lays that if the decision of the Central/State Public Information Officer against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

v. **Onus to Prove:** Section 19(5) of the Act lays that in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central/State Public Information Officer who denied the request.

vi. **Time Limit for Disposal of Appeal:** Under the provisions of section 19(6) of the Act, an appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

vii. **Binding Decision of the CIC/SIC:** Under the provisions of section 19(7) of the Act, the decision of the Central/State Information Commission shall be binding.

viii. **Powers of CIC/SIC to Secure Compliance with the RTI Act:** Section 19(8) of the Act provides that the Central/State 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 this Act, which includes:
a. by providing access to information, if so requested, in a particular form.

b. by appointing a Central Public Information Officer or State Public Information Officer, as the case may be.

c. by publishing certain information or categories of information.

d. by making necessary changes to its practices in relation to the maintenance, management and destruction of records.

e. by enhancing the provision of training on the right to information for its officials.

f. by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4.

g. require the public authority to compensate the complainant for any loss or other detriment suffered.

h. impose any of the penalties provided under this Act.

i. reject the application.

ix. **Notice of its Decision:** Section 19(9) of the Act says that the Central/State Information Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

x. **Procedure of Appeals:** Section 19(10) of the Act says that the Central/State Information Commission shall decide the appeal in accordance with such procedure as may be prescribed. The Central/State Information Commission shall decide the appeal in accordance with the rules made under the said Act by the appropriate Government or the Competent Authority and not otherwise.241

### 4.4.4.14 Penalties for Non-compliance

This enactment anticipates the possibility of deliberate infringement or violation or non-compliance of the provisions of the Act and prescribes penalty on that account. The enforcement of a law has to be coupled with its capability to force the institutions or

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persons responsible for such execution to perform the functions assigned to them. The Act specifies certain statutory provisions to impart information and concerned officers are duty bound to provide such information as required by the information seeker. Such officers have to be penalized under the RTI Act, 2005, if such officer deliberately, wilfully or knowingly refuses to perform the duties under the Act or knowingly violates the statutory provisions.

**Penalty in Terms of Cash**

Section 20(1) of the Act provides that at the time of deciding any complaint or appeal, the Central/State Information Commission shall impose a penalty, of two hundred and fifty rupees each day till application is received or information is furnished, however, the total amount of such penalty shall not exceed twenty-five thousand rupees, if the Central/State Information Commission is of the opinion that the Central/State Public Information Officer-

i. has, without any reasonable cause, refused to receive an application for information; or

ii. has not furnished information within the time specified under sub-section (1) of section 7; or

iii. malafidely denied the request for information; or

iv. knowingly given incorrect, incomplete or misleading information; or

v. destroyed information which was the subject of the request; or

vi. obstructed in any manner in furnishing the information.

The Central/State Public Information Commission shall give a reasonable opportunity of being heard before imposing any penalty on the Central/State Public Information Officers. This section provides that the burden of proving that he acted reasonably and diligently shall be on the Central/State Public Information Officer.

It is pertinent to submit here that the penalties provided under the Act are not an end in itself. It is rather a means to achieve the impact of the Act set out at the time of passing
the enactment. It is also a way of enforcement of the Act so that it could not be reduced to a voluntary exercise. Thus, it is for the applicant as well as to the public authority to understand that the penal provisions are not to be invoked in normal circumstances and rather the same may be taken as a last way out.

**Penalty in terms of Disciplinary Proceedings**

Section 20(2) of the Act provides that the Central/State Information Commission, at the time of deciding any complaint or appeal, shall recommend for disciplinary action against the Central/State Public Information Officer under the service rules applicable to him.

If the Central/State Information Commission is of the opinion that the Central/State Public Information Officer has, without any reasonable cause and persistently,

i. failed to receive an application for information; or

ii. has not furnished information within the time specified under sub-section (1) of section 7; or

iii. malafidely denied the request for information; or

iv. knowingly given incorrect, incomplete or misleading information; or

v. destroyed information which was the subject of the request; or

vi. obstructed in any manner in furnishing the information.

Section 20(2) of the Act is almost a repetition of the sub-section (1) of the section 20 but having a different kind of penalty under harsher circumstances of persistent default. The Central/State Information Commission has also been empowered to recommend disciplinary proceeding or action against the concerned Central/State Public Information Officer under the relevant service rules applicable to him, if the concerned officer is found to have committed the default persistently. The CIC/SIC has only been given recommendatory powers for disciplinary action rather than deciding powers. It is important to mention that penalty under sub-section (2) of the 20 cannot be imposed in routine at the first instance. The persistency of default is the pre-condition before resorting to this provision, i.e. the default by the concerned officer has to be repeated at
more than one time. Thus, the penalty under section 20(2) of the Act may be more effective rather than section 20(1).

In *Dr. Anand Akhila v. Council of Scientific and Industrial Research (CSIR)*\(^\text{242}\) the applicant had asked for certain information from the PIO of CSIR. This information was refused by the PIO stating that it was exempt under the Right to Information Act and the applicant was informed about the appellate authority with which he could file the first appeal. The appellate authority, however, without filing a formal appeal by the appellant, sent a letter to the appellant that the information asked could not be supplied. The Central Information Commission recommended disciplinary action against the appellate officer by extending the meaning of section 20(2). The Information Commission held that though an appellate authority is not covered under the penal provisions of the RTI Act but in this case, it clearly failed to uphold the Act in the public interest. It was observed that this decision might be sent to the public authority to consider disciplinary action against the appellate authority under their service rules.

The Hon’ble Punjab and Haryana High Court in the case of *Ramesh Sharma and Another v. State Information Commission, Haryana and Others*\(^\text{243}\) held that the plea that penalty provisions of the Right to Information Act could be imposed only in cases where there is repeated failure to furnish information and that too without any reasonable cause, is untenable. Even in cases of simple delay, the Commission under section 20(2) is empowered to recommend disciplinary action against the Central/State Public Information Officer under the Service Rules. It was also held that the imposition of penalty on the Central/State Public Information Officer under section 20(1) is mandatory and the Central/State Public Information Officer cannot avoid the mandatory provisions or seek leniency on the excuse that training programme as envisaged by section 26 of the RTI Act has not been organized by the Government encouraging participation of PIO in development and organisation of programmes. The Court, in very clear terms, held the provisions as mandatory. This means that if the Central/State Public Information Officer has failed to supply the desired information on time then the

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\(^{242}\) Appeal No. CIC/WB/A/2006/00040 dated 24\(^{th}\) April, 2006.

Commissioners should at the outset impose penalty and then ask them why it should not be realized rather than asking them why the penalty should not be imposed. Just a minor change of language can bring drastic changes in the attitude of a non-supportive Central/State Public Information Officer.

A plain reading of the section makes it clear that the Information Commissioner hearing a case of delay or denial of information etc. has first to form an opinion that the PIO, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect information, incomplete or misleading information or destroyed it etc. According to section 20 of the RTI Act, the words ‘form an opinion’ means that Information Commissioner hearing an appeal or complaint has first to give a clear finding and draw a firm conclusion that the delay was without reasonable cause or malafide or knowingly etc, as the case may be, before penalty can be imposed. Such a conclusion or opinion must be sustained by reasons. Penalty may be imposed on any one or more of the alternate grounds mentioned in section 20 of the RTI Act. However, the words ‘without any reasonable cause’ or ‘malafidely’ or ‘knowingly’ circumscribe and limit the operation of the word ‘shall’. The Information Commissioner hearing a case, at the time of decision in any given case, has first to come to an opinion, on the basis of evidence on record that any delay or denial etc was without reasonable cause or was malafide or was intentional/knowingly, as the case may be. Such an opinion may be formed by an Information Commissioner suo-moto, on the basis of whatever evidence or proof comes on record during the course of hearing or on the basis of any pleadings of an information seeker.\(^{244}\)

It would be pertinent to mention here the observation of the Hon’ble Supreme Court of India in the case of \textit{Union of India v. Mohan Lal Capoor and Others}\(^{245}\) that:

\(^{244}\) Haridev Singh Arshi, Bathinda v. PIO O/O the District Welfare Officer, Mansa, Complaint Case No. 2663 of 2010, SIC Punjab, dated 13\(^{th}\) December, 2010.

\(^{245}\) AIR 1974 SC 87:1974 (1) SCR 797.
“Reasons are the links between the material on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.”

The Double Bench of Hon’ble Allahabad High Court in Dr. Kalp Nath Chaubey v. Information Commissioner and Another\(^{246}\) has observed that:

> “The Public Information Officer may have committed lapses bonafidely or malafidely, there may or may not be a reasonable cause but the authority has to advert to the cause shown by the officer before imposing penalty, without adverting to the relevant cause shown by the Public Information Officer, the penalty cannot be imposed.”

Therefore, forming of an ‘opinion’ is a judicious exercise and the grounds or the basis on which an ‘opinion’ has been arrived at must be disclosed in the order/judgment. Such grounds must have a clear and rational nexus with the legal imperatives of Section 20 of the RTI Act, 2005.

In the case of State of Punjab v. State Information Commissioner, Punjab\(^{247}\) the penalty imposed under section 20 of the RTI Act on the PIO by the State Information Commissioner, for reasons of delay in furnishing the information, was set aside by the Hon’ble Punjab & Haryana High Court.

In this case the Hon’ble Justice K. Kannan observed that:

> “The penalty provision under section 20 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. It is not every delay that should be visited with penalty. If there is delay and it is explained, the question will only revolve on whether the explanation is acceptable or not. If there had been delay of a year and if there was a Superintendent, who was prodding the PIO to act, that itself should be seen a circumstance where government authorities seemed reasonably aware of the compulsion of time and imperatives of providing information without delay. The 2\(^{nd}\) respondent (information seeker) has got what he wanted and if there was delay, the delay was for reasons explained above which I accept as justified.”


\(^{247}\) Writ Petition (Civil) No. 6504 of 2009 of Punjab & Haryana High Court, decided on 4\(^{th}\) March, 2010.
In *Devinder Singh v. State of Punjab*\(^{248}\) the Hon’ble Justice Surya Kant struck down imposition of penalty and also the recommendation for disciplinary action ordered by the State Information Commissioner on the grounds that there was no delay in furnishing information. The Hon’ble Judge observed that:

“While imposing penalty or recommending disciplinary action, the State Information Commission is not only obliged to scrutinize the nature of information sought by an applicant and the amount of time likely to be spent in collecting or up-dating such information, it is also its bounden duty to find out as to whether there has been a deliberate or willful attempt to suppress the information. In the absence of any such firm finding, the punitive action is wholly unwarranted.”

However, in cases where the delay was unreasonable, arbitrary or willful or incorrect information had been furnished, penalty imposed by Information Commissions was upheld by the Hon’ble Punjab & Haryana High Court. In *Shaheed Kanshi Ram Medical College and Another v. State Information Commissioner, Punjab*\(^{249}\) the writ petition was filed with a prayer to quash order imposing penalty of Rs. 10,000/- on the petitioner for causing unnecessary harassment to the respondent No.3, the information seeker, in supplying the information. Incorrect information had been supplied, forcing the information seeker to move State Information Commission, which gave a specific finding that there were anomalies in the information furnished, leading to suspicion that the information was being deliberately suppressed. The State Information Commissioner had held that (para 4 of the order dated 24-4-2009, as reproduced in the order of Hon’ble High Court):

“There are other anomalies as well. Even after the Commission directed the respondent to give the information to give the information in a clear and easily understandable form vide its orders dated 13-2-2009, sufficient care was not taken by the respondent and in the statement provided to the complainant, there are errors in column 4 of page 2 thereof, which were corrected and intimated by the respondent in the court.”

\(^{248}\) Writ Petition (Civil) No. 2732 of 2010 of Punjab & Haryana High Court, decided on 23\(^{rd}\) August, 2010.

\(^{249}\) Writ Petition (Civil) No. 14161 of 2009 of Punjab & Haryana High Court, decided on 10\(^{th}\) September, 2009.
The Hon’ble Justice Jasbir Singh dismissed the writ petition challenging the imposition of penalty and observed that:

"It is an admitted fact that the order passed on 24-4-2009 was never challenged by the petitioner. It has become final. If that is so, imposition of penalty is perfectly justified. As per provisions of the Act, Public Information Officer is supposed to supply correct information that too, in a time bound manner. Once a finding has come that he has not acted in the manner prescribed under the Act, imposition of penalty is perfectly justified. No case is made out for interference."

In view of the foregoing discussion, the researcher feels that the RTI Act ushers in a new paradigm of transparency and openness, conferring an inviolable right to information on citizens, with adverse consequences for non-adherence to firm time-caps. The law, however, does not lay down a regime of automatic imposition of penalty on expiry of 30 days. The right to information is infrangible, but penalty is a contingent consequence, conditional to a conclusive finding of unreasonable of the delay. Therefore, to blindly impose penalty would only blind the law. A penalty is a punishment and it should be awarded only after first establishing the reasons of delay and correlating these reasons to the grounds of penalty enumerated in section 20 of the Act. Penalty must be imposed in all cases where facts and circumstances so justify within the ambit of law. It shall not be levied otherwise.

4.4.4.15 Miscellaneous

Chapter VI of the Right to Information Act, 2005, lays down various miscellaneous provisions, these are as under:

1. Protection of Action taken in Good Faith

According to Section 21 of the RTI Act, neither prosecution nor other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder. The term good faith has not been

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250 Ibid.
251 According to section 3(22) of the General Clauses Act, 1897 defines the term good faith which means ‘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’. And section 52 of the Indian Penal Code, 1860 also defines ‘good faith’ which means ‘nothing is said to be done or believed in good faith which is done or believed without due care and attention’.
defined in the Act. The scope of this section is very wider and it gives protection to ‘every person’ within the meaning of this Act but that act must be in good faith. It means only the malafide, deliberate or conscious mistake with wilful intention alone that makes a person liable to penal action u/s 20 of the RTI Act and not otherwise. Thus, the specific principle which underlines section 20 has been reiterated in section 21 also to provide protection against unintentional lapses.

2. Act to have Overriding Effect

The Right to Information Act, 2005, has been given an overriding effect on the other Acts for the time being in force including the Official Secrets Act, 1923. Section 22 of the RTI Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. These Acts have not been revoked but the same have been superseded to the extent that these Acts come into conflict with the provisions of this Act. In other words, these Acts shall remain in force in statute books but shall cease to operate to the extent to which they are inconsistent with the provisions of RTI Act. The RTI Act is a very useful tool in the hands of the citizens and this Act has been creating supremacy over the other legislations with the motive that the scheme is not subverted through the operation of other minor Acts. For instance, any provision of the Official Secrets Act, 1923 prohibits the disclosure of certain information and if the same is allowed under the RTI Act, 2005, the information shall be disclosed notwithstanding the provisions otherwise provided under the Official Secrets Act, 1923. In Rakesh Kumar Gupta, Delhi v. Income Tax Appellate Tribunal (ITAT), New Delhi the Central Information Commission held that the non-obstante clause in section 22 of the Right to Information Act does not, repeal or substitute any pre-existing law including the provisions of the Income Tax Act concerning dissemination of information. The appellant cannot take recourse to the RTI Act to challenge a judicial decision regarding disclosure of a given set of information, which properly belonged to the jurisdiction of that judicial authority. If the appellant is aggrieved with the decision of the ITAT, the

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remedy lies elsewhere. It is reiterated and made clear that the RTI Act is not intended to come into conflict with a judicial decision regarding disclosure of information. Section 8(1)(b) of the Right to Information Act, 2005, makes it very clear that the information which has been expressly forbidden to be published by any court of law or tribunal cannot be disclosed as any such disclosure is also within the exemption clause. Thus, section 22 of the RTI Act when read together with the provisions of section 8(1) of the Act would mean that it may overrule the conflicting provisions of Official Secrets Act, 1923, but the orders passed by Courts and Tribunals regarding the disclosure of information will have to be honoured.

3. Bar of Jurisdiction of Courts

The Right to Information Act, 2005, is a self-contained code. It is a special Act. It can prevail over the other provisions of laws. As per the provisions of section 23, the purpose of the Act is to:

i. provide right to information to the citizens from the domain of public authority without the cost of litigation or with the minor cost of processing.

ii. the statute deals with a particular subject and the statutory machinery provided for this purpose is supposed to have expertise in the subject.

iii. avoid delay and relief available under the Act is available in a better and handy manner without resorting to the complicated procedure of civil courts.

iv. flow of legal procedure under a particular statute is not unnecessarily interrupted by the order of the civil courts.

According to section 23 of the Right to Information Act, 2005, no court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act. In other terms, it means all civil courts are excluded from entertaining any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called in question except by way of an appeal under this Act. The mere reading of this section reflects that jurisdiction of all court has been barred which
also includes the jurisdiction of Supreme Court and High Courts. However, the same contention cannot be sustained, as per the law laid down by the Hon’ble Supreme Court in *L. Chandra Kumar v. Union of India.*\(^{253}\) In this case the Seven Judges Bench of Supreme Court held that the jurisdiction of the Supreme Court under Article 32 and that of the High Courts under Article 226 of the Constitution cannot be taken away by any statute or law enacted by the legislature. Even though, these powers of judicial review are part of the basic structure of Constitution as per law laid down in *Kesavananda Bharati and Others v. State of Kerala and Another.*\(^{254}\) In this case the Hon’ble Supreme Court held that the powers of judicial review cannot be taken away by any Act of the Legislature from the Supreme Court and High Courts. Therefore, writ jurisdiction of the Supreme Court and High Court under Articles 32 and 226 of the Constitution of India cannot be excluded respectively. In other words, any decision taken under this Act can be challenged in the Supreme Court as well in the High Courts.

**4. Exempted Certain Organizations from the Ambit of RTI Act, 2005**

Section 24 of the RTI Act may be called an expanded form of sections 8 and 9 of the Act. Under section 8 & 9 of the Act specific subjects have been granted exemption and whereas section 24 provides exemptions with respect to certain organizations working under Central Government. Only the specific nature of functions of these organizations keeps them out of the ambit of RTI Act, 2005 and once any organization included in Second Schedule shall be *ipso facto* exempted from the ambit of RTI Act. In other words it means these organizations shall not be absolutely exempted as such under the Act.

As per section 24 of the Right to Infomation Act, 2005, this Act shall not apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government. It provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section. It further provided that in the case of information sought for is in respect of

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\(^{253}\) AIR 1997 SC 1125.  
\(^{254}\) AIR 1973 SC 1461.
allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within 45 days from the date of the receipt of request.

As the researcher has already mentioned that these organizations are not absolutely exempted as such under the Act. This section also provides limitations on these exemptions with these words: the information pertaining to allegations of corruption and human rights violation shall not be excluded from the ambit of the Act. But the information pertaining to allegations of violation of human rights shall only be provided after the approval of the Central/State Government, as the case may be, within 45 days from the date of receipt of request, irrespective of the time limit mentioned under section 7 of the Act.

In the case of Maninder Jit Singh Bitta v. Ministry of Home Affairs (MHA)\textsuperscript{255} the appellant in his application wanted to know the manner in which decision had taken been for the withdrawal of security provided to him in 1993 and also sought the copies of report and material brought on record for making out the case for withdrawal of security. The said information was denied on the ground that information furnished by the Intelligence and Security Organization included in the Second Schedule of the RTI Act, is exempted from disclosure. The Commission observed that the appellant had been under life threat for several years and had been subject to terrorist attack. Under these circumstances, an order of withdrawal of security could be a straight forward comporomise of his right to life. Therefore, the Commission held as well as directed that the Joint Secretary of the Ministry of Home Affairs will arrange personal inspection of the file held by the Ministry of Home Affairs with regard to the security cover for appellant. The Commission further held that this case pertains to be a case falling within the proviso on human rights violation under section 24(1) of the RTI Act.

The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established

\textsuperscript{255} Appeal No. CIC/WB/A/2007/00578 dated 15\textsuperscript{th} February, 2008.
by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule. Every notification issued under subsection (2) of section 24 shall be laid before each House of Parliament.

It would be pertinent to submit here that when the legislation was enacted, only 18 organisations put into Second Schedule from claiming exemption from the ambit of the Act.

**First amendment to the Second Schedule of the Right to Information Act**


**Second amendment to the Second Schedule of the RTI Act**


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256 Section 24(2) of the Right to Information Act, 2005.
257 Section 24(3) of the Right to Information Act, 2005.
259 Brief Record of the Proceedings of the Meeting of the Rajya Sabha held on the 30th April, 2008, RAJYA SABHA Parliamentary Bulletin PART - I (Two hundred and thirteenth Session).
Third amendment to the Second Schedule of the RTI Act

The Second Schedule of the RTI Act was further amended vide No.G.S.R.726(E) dated 8th October, 2008, issued by the Ministry Of Personnel, Public Grievances and Pensions (Department Of Personnel and Training), published in the Gazette of India on 8th October, 2008, the exempted organizations became 22. These 22 organizations mentioned under Second Schedule are immune from the purview of the Act except the information pertaining to the allegations of corruption and human rights violations.

This Act shall also not apply to such specify intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette except the information pertaining to the allegations of corruption and human rights violations. It provided that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within 45 days from the date of the receipt of request. Even every notification issued under sub-section (4) of section 24 shall be laid before the State Legislature.

These 22 organizations mentioned under Second Schedule which are exempted from the ambit of RTI Act are as follows:

1. Intelligence Bureau
2. Research and Analysis Wing of the Cabinet Secretariat
3. Directorate of Revenue Intelligence
4. Central Economic Intelligence Bureau
5. Directorate of Enforcement
6. Narcotics Control Bureau


Section 24(4) of the Right to Information Act, 2005.
Section 24(5) of the Right to Information Act, 2005.
In *V.R. Chandran v. Directorate of Enforcement*\(^{263}\) the issues before the Commission was serious and have understandably raised public concern. The Enforcement Directorate the principal agency of the Government to check and undo illegal stashing away of money from the country, has taken a rather technical position about disclosure of the information relating to it. Their position, briefly stated, is that they cannot either confirm or deny the media reports about the likely volume of blackmoney stashed away in foreign banks illegally by Indian nationals. While this position is, doubtless,

defensible, it leaves unanswered the perennial question as to what resources the country has lost to the evil of money laundering. The CIC observed that this matter to be taken beyond technicalities and to address the larger issue related to transparency in this vital field, about which the citizens of our country are keen for answers.

The detailed information pertaining to secret accounts of Indian citizens in Swiss Banks running into nine questions were asked by the appellant. The said information was declined by the Public Information Officer (PIO) and the First Appellate Authority (FAA) under the protection of section 24 of the RTI Act claiming that the respondent Directorate of Enforcement was exempted under section 24 of the Act. The Commission considered the matter in detail and ordered to provide information on two points out of nine points holding that even exemption provided in the proviso to this section pertaining to human rights violation and allegations of corruption would come into play. By way of operation of this exception the Commission directed to the department of Directorate of Enforcement to apply the rule of severability a provided u/s 10 of the RTI Act and imparts information on these two points.

5. Monitoring and Reporting

The important function of Information Commissions is also to monitor and promote implementation of the Act, as well as to raise public awareness about using the law. Monitoring is imposed to evaluate how efficiently public bodies are discharging their obligations and to collect information which can be used to support calls for improvements to the law and implementation activities. Ongoing monitoring and evaluation will enable implementation efforts to be continuously assessed, reviewed and strengthened, so that the weaker areas be identified and addressed.

Section 25 of the Right to Information Act, 2005, contains a monitoring and reporting system for the proper implementation and enforcement of the Act. The Central/State Information Commission are required to prepare a report at the end of each year on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government. Sub-section 2 of the section 25 of the Act mandates that each Ministry or Department in relation to the public authorities within their jurisdiction
shall collect and provide such information to the Central/State Information Commission as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section. The annual report shall include the following:

a) the number of requests made to each public authority.

b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked.

c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals.

d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act.

e) the amount of charges collected by each public authority under this Act.

f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act.

g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.  

Section 25(4) of the Act provides that as soon as practicable after the end of each year, the Central/State Government may cause a copy of his report to be laid before each House of Parliament or each House of the State Legislature. The main purpose of laying down the report before the Parliament and State Legislature is to involve the Legislature, who is the creator of the Act has a right to be informed of the implementation and enforcement of the Act. This report predicts the factual statement of the action taken under the Act by public authorities and its impact assessment would enable the Legislature to have an overall look of the actual status of the Act.

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264 Section 25(3) of the Right to Information Act, 2005.
Section 25(5) of the Act also enables the appropriate Government to take remedial measures on the problems faced and to deal with the recommendations for amendments or reforms, if at all required in the Act. Therefore, the public authorities must be made vigilant with the spirit of the Act. The Legislature should be acquainted with the progress under the Act in order to ensure functioning of public authority in conformity with the Act.

6. Appropriate Government to Prepare Programmes

Section 26 of the RTI Act, 2005, assigns a particular role to the appropriate Government. In reference to this the appropriate Government means Central or State Governments. This is a pioneer attempt to impart a right to the people which was not available earlier. To establish and actualize a new statutory right affecting the people at large and generating a corresponding responsibility in almost the entire Government machinery, systematic and conscious effects are required at the level of the executing agencies. This section indicates a long list of activities to be undertaken by the Government to make the Act really functional and to enable the right to information to grow and flourish.\footnote{Abhe Singh Yadav, “Right to Information Act, 2005: An Analysis” Central Law Publications, Allahabad, 2012, pp. 160-161.} This section is also going to put great pressure on public authorities in providing information to people and putting information in public domain. It requires wide publicity amongst the masses through mass media campaigns on constant basis. The people have to be educated by way of various programmes to be conducted by the Government. Those people who are living in remote corners, especially of the illiterate class, need to be enlightened about its utility. They need to be encouraged to come forward and get their personal problems mitigated through its use. For this purpose both public and the Government have to be acquainted with new procedure and proceedings to educate the people and to impart training to the Government officials to meet with the new challenges. The Government officials have to be trained to play a pro-active role in this matter. They have to be more open and participative to ensure dissemination of timely information in an effective manner.
Section 26(1) of the RTI Act, 2005, provides that the education and training programs are to be carried out by the appropriate Government to the extent of availability of financial and other resources:

a) to develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act.

b) to encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves.

c) to promote timely and effective dissemination of accurate information by public authorities about their activities.

d) to train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves. The necessary training should be provided to the Nodal Officers concerned with the implementation of the Act. Manuals and guides should also be prepared for their guidance. Moreover, orders or judgments passed by the Central/State Information Commission on various issues should be complied and circulated for future guidance.

Section 26(2) of the Act says that the appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act. This sub-section envisages that appropriate Government should compile guides within 18 months which should contain useful information for the public as well as officials concerned.

As per section 26(3) of the RTI Act, 2005, the appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include:
a) the objects of this Act.

b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (1) of section 5.

c) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be.

d) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act.

e) the assistance available from the Central Information Commission or State Information Commission, as the case may be.

f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission.

g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4.

h) the notices regarding fees to be paid in relation to requests for access to an information.

i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

According to section 26(4) of the Act the appropriate Government must, if necessary, update and publish the guidelines at regular intervals. In other words, the appropriate Government must update and publish the guidelines for the information to the general public includes objective of the Act, name and designation of Public Information Officer (PIO)/Assistant Public Information Officer (APIO), name and designation of First Appellate Authority (FAA), the procedure for getting the information, fee
structure, procedure for filing an appeal and assistance available to the public and matters regarding implementation of the Act.

In brief, section 26 of the Act, which deals with promotion of the right to information, places the primary duties for awareness raising and bureaucratic training on governments, nonetheless, Information Commissions as champions of openness have the power to undertake activities that will ensure compliance and improve implementation. Whether alone or collaboratively, Information Commissions could be proactive in carving out a role for themselves to ensure that promotional and training activities are undertaken in the proper spirit of open government and maximum disclosure.

7. Power to Make Rules by Appropriate Government

Section 27(1) of the Right to Information Act empowers the appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. The appropriate Government in the case of Union Territory Administration shall be the Central Government.

According to section 27(2) of the Act, in particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4.

b) the fee payable under sub-section (1) of section 6.

c) the fee payable under sub-sections (1) and (5) of section 7.

d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16.

e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19.
f) any other matter which is required to be, or may be, prescribed.

The Parliament while enacting the Act left certain matters to be decided by the appropriate Governments. In this section wide powers have been given to the appropriate Government to make rules including procedure to be adopted for deciding request application for seeking information or appeals by First Appelate Authority or by Central/State Information Commission, fee structure for various purposes and any other issue which may be necessary for smooth implementation of the Act.

8. Power to Make Rules by Competent Authority

According to section 28(1) of the RTI Act the competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. This is in respect of other institutions not covered by section 27 of the Act i.e. Central or State Governments.

Sub-section (2) of section 28 provides that, in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4.

b) the fee payable under sub-section (1) of section 6.

c) the fee payable under sub-section (1) of section 7.

d) any other matter which is required to be, or may be, prescribed.

9. Laying of Rules

Section 29(1) of the Right to Information Act, 2005 mandates that every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both
Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

The process of laying of rules before the Parliament is a meaningful provision of the Act. As we know that this Act is the creation of the Parliament and it is the Parliament which has to ensure that the Act is enforced as per the spirit of its enactment. All the powers assigned, under this Act to the appropriate Government, have to be exercised under the monitoring of the Parliament. The Parliament is empowered to resolve necessary modifications in such rules and it has also powers to undo these rules. Once the Parliament resolved such modifications or nullifications of such rules, the Government is bound to act accordingly. The powers assigned to the Parliament to approve the rules framed by the Government are absolute.

Sub-section (2) of section 29 says that every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature. The rules framed by the State Government will have to be placed before the State Legislature on the same pattern and the validity of these rules would also be subject to the approval of State Legislature, as it is given in case of Parliament under sub-section (1) of section 29.

10. Powers to Remove Difficulties

Section 30(1) of the Act emphasises that if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty. It provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act. Sub-section (2) of section 30 mandates that every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.
11. Repeal

According to section 31 the Freedom of Information Act, 2002, has been repealed. Although it is a formal provision yet it has to be read with the contents of section 22. It is different from the provisions of section 22 in the sense that it repeals the Freedom of Information Act, 2002 entirely, whereas the provisions of section 22 provide an overriding effect would undo only those provisions as such would not be affected.

4.5 WRIT JURISDICTION UNDER ARTICLES 32 AND 226 OF THE CONSTITUTION

Article 32 of the Constitution of the India confers one of the ‘highly cherished rights’. This right has been held to be an important and integral part of the basic structure of the Constitution.\textsuperscript{266} It is the right to move the Supreme Court for the enforcement of the fundamental right. This Article has been called the heart and soul of the Constitution of India by Dr. B.R. Ambedkar. Unlike other rights, it is remedial and not substantive in nature. But it is in no way less important than the other rights. Article 32 has also been described as the corner-stone of the democratic edifice raised by the Constitution.\textsuperscript{267} Because of this Article, the Supreme Court should be declared as the ‘protector and guarantor of fundamental rights’.\textsuperscript{268} Article 32(1) of the Constitution says that the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. It means that the right to move the Supreme Court guaranteed in clause (1) of Article 32 can be exercised only through ‘appropriate proceedings’ and not all sorts of proceedings. Article 32(2) provides that the Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. Clause (3) of Article 32 empowers Parliament to confer by law, all or any of the powers, exercisable by the Supreme Court under clause (2) on any other court to exercise, within the local limits of its jurisdiction. It is enacted in clause (4) of Article 32 that the right to move the Supreme Court for the enforcement of fundamental rights shall not be suspended except as otherwise provided for by this Constitution.

\textsuperscript{266} Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344.
\textsuperscript{267} Prem Chand Garg v. Excise Commissioner, AIR 1963 SC 996.
Under Article 226 of the Constitution, High Court is empowered to deal with the writs for the enforcement of any of the rights conferred by Part III and for any other purpose. The powers under Article 226 confer discretion of a most extensive nature on the High Courts. But the very vastness of the powers conferred on the High Court imposes on it the responsibility to use them with circumspection. The High Court will necessarily exercise the jurisdiction in accordance with judicial considerations and well-established principles. The discretionary remedies under Article 226 are for doing justice and correcting injustice and not the other way round.

**Existence of Alternative Remedy**

The Hon’ble Punjab and Haryana High Court in *Naresh Kumar v. Union of India*\(^{269}\) has held that if the petitioner has an alternative remedy under section 19(6) of the RTI Act, 2005 which could be exhausted by him. No opportunity is provided to entertain the writ petition on the face of the afore-mentioned alternative remedy.

The Hon’ble Kerala High Court in *Sheela Gopinathan, Ullattil House v. The Project Manager and Others*\(^{270}\) held that no Mandamus Writ can be filed on non-supply of information by the Public Information Officer (PIO) and First Appellate Authority (FAA). In this case, the petitioner sought certain information from PIO i.e. Respondent No. 1 and FAA i.e Respondent No. 2 under the RTI Act, which was not supplied. Therefore, the petitioner has approached the High Court seeking the direction for writ of Mandamus to direct the authority to supply all the information requested by the petitioner immediately. Justice S. Siri Jagan has held that:

> “The Right to Information Act itself provides effective and adequate alternate remedies. The Act specially stipulates that if within the time prescribed under the Act, information requested for has not been supplied. It would be deemed that the petitioner’s request has been rejected. In such circumstances, the petitioner files an appeal under section 19 of the RTI Act. Moreover, the petitioner has still another remedy by way of approaching the Central/State Information Commission directly in exercise of the powers of the Commission under section 18(1)(c) of the RTI Act.”\(^{271}\)

\(^{269}\) (2006) INPHHC 2332.


\(^{271}\) Ibid.
The Kerala High Court has refused to admit writ petition. Thus, the writ petition was dismissed without prejudice to the remedies available to the petitioner under the Right to Information Act, 2005.\(^{272}\)

The Madras High Court in *V. V. Mineral (Registered Firm through its Managing Partner) v. the Director of Geology & Mining, Chennai and Others*\(^{273}\) has also observed that if one has to go by the object on which the said Act has been enacted, the objection raised by the petitioner pales into insignificance and does not warrant the Court to interfere with the impugned order passed by the First Appellate Authority i.e. Respondent No. 1. Hence, the Writ Petition was dismissed. Consequently, the connected Miscellaneous Petitions which are pending on the same subject matter are also dismissed. Justice K. Chandru said that:

“If, however, the petitioner chooses to file a Second Appeal to the State Information Commission as provided under section 19(3), the dismissal of the Writ Petition will not be a bar and as and when such appeal is filed, the Commission may deal with it on merits and in accordance with law.”\(^{274}\)

In the case of *M.J. Roy v. The Public Information Officer and Others*\(^{275}\) the petitioner filed an application under the Right to Information Act seeking information from the first respondent which has been denied. The petitioner challenged this denial before the High Court under Writ Petition. The Kerala High Court has held that Court was not inclined to entertain the challenge, since the petitioner has an effective alternative remedy by way of appeal as provided under section 19 of the Right to Information Act, 2005. Without prejudice to the right of the petitioner to file an appeal as above, the writ petition is dismissed.

The Right to Information Act, 2005 does not bar the remedies of Article 226 and 32 of the Constitution of India but provides only after exhausting all the channels available under the Act. In case, the applicant does not receive the reply of RTI Application from the Public Information Officer (PIO) then he has no other option to file an appeal to the

\(^{272}\) Ibid.

\(^{273}\) 2007 (4) MLJ 394 (Writ Petition (MD) No. 5427 of 2007 and M.P (MD) No. 1, 2 and 3 of 2007, decided on 25th June, 2007).

\(^{274}\) Ibid.

First Appellate Authority (FAA). Neither the Supreme Court nor the High Court treated this non-supply of information by the PIO at the first stage as violation of fundamental freedom of information guaranteed under Article 19(1)(a) of the Constitution. In other way, if the applicant is aggrieved by the order of the Central/State Information Commission, then the applicant should be entitled to seek remedy of judicial review under Articles 32 and 226 of the Constitution of India against the order of the Central/State Information Commission exercising the constitutional right to information which he or she derives from Article 19 of the Constitution of India. The Supreme Court in Namit Sharma v. Union of India\textsuperscript{276} has observed that:

“Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then before the Supreme Court of India.”

\textbf{4.6 PROBLEMS IN ACCESSING INFORMATION}

No doubt, Parliament has passed the Right to Information Act with the objective to bring transparency, openness and accountability in the working of the public authorities, but general public is still facing the number of problems in accessing the information. These are from both sides i.e. administrative and public. The problems are as follows:

1. Untrained or no proper training to the Public Information Officers (PIOs).
2. Poorly maintained official record.
3. Culture of secrecy prevalent in the Government offices.
4. Rude attitude of the officers.
5. Poor quality of information provided.
8. Less deterrent penalties to the concerned officials who failed to provide the information requested.
9. No provision under the Act which provides penalties to Appellate Authorities.

\textsuperscript{276} Writ Petition (Civil) of 210 of 2012 decided on 13\textsuperscript{th} September, 2012.
10. Lack of awareness among the public about their rights.

11. Lack of awareness/knowledge about the process of information

12. Illiteracy

4.7 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 main aim is to bring people close to governance by informed citizenry, transparency in administration as well as public accountability and minimizing corruption. 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. Right to information is basic to and indivisible from a democratic polity. This right includes right to acquire information and to disseminate it. Right to information is necessary for self-expression, which is an important means of free conscience and self-fulfillment. It enables people to contribute on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can be circulated. Therefore, the Right to Information Act, if used and implemented prudently, has the potential to set good governance and to make the governmental system more responsive towards citizens of the country.