CHAPTER-V
PROTECTION OF PERSONAL AND OFFICIAL INFORMATION UNDER RIGHT TO INFORMATION ACT

1. Introduction:
   In the year 2005, RTI was enacted, keeping in view the past pronouncements by Hon’ble Apex Court and various High Courts\(^1\) any Information can be asked Subject to the provisions of RTI Act, 2005. No doubt, some restrictions are imposed, due to protection of personal information of a party, copyright protection and security etc.

   Section 3 of the Act dealing with Right to information specifies that subject to the provisions of this Act, all citizens shall have the right to information, meaning thereby that information’s which are exempted and excluded under Right to Information Act, 2005 cannot be asked.

2. Protection of Personal Information
   Examination of the said Sub-section shows that it consists of three parts. The first two parts stipulate that personal information which has no relationship with any public activity or interest need not be disclosed. The second part states that any information which should cause unwarranted invasion of a privacy of an individual should not be disclosed unless the third part is satisfied. The third part stipulates that information which

\(^{1.}\) Sec. Chapter on Role of Judiciary and RTI.
causes unwarranted invasion of privacy of an individual will not be disclosed unless public information officer or the appellate authority is satisfied that larger public interest justifies disclosure of such information. As observed by S. Ravindra Bhat, J. the third part of Section 8(1)(j) reconciles two legal interests protected by law i.e. right to access information in possession of the public authorities and the right to privacy. Both rights are not absolute or complete. In case of a clash, larger public interest is the determinative test. Public interest element sweeps through Section 8(1)(j). Unwarranted invasion of privacy of any individual is protected in public interest, but gives way when larger public interest warrants disclosure. This necessarily has to be done on case to case basis taking into consideration many factors having regard to the circumstances of each case.²

Section 8(1)(j) deals with exemptions from disclosure of Personal Information on the ground of unwarranted invasion of the privacy of individual but if CPIO, SPIO or Appellate Authority justified the disclosure of information only then the disclosure of personal information is permitted. The satisfaction of CPIO/SPIO is must, keeping in view the Right to Privacy in India. Infact, in many countries the concept of Right to Privacy has been fused with data protection, which interprets privacy in terms of management of personal information and involves the establishment of rules governing the collection and handling of personal data such as credit information and medical records. The security and privacy of E-mail,

---

² In Subash Chand Agarwal case decided on 2 September, 2009 – by Delhi High Court.
telephones, E-mail and other forms of communication are also covered.

It may be said that the protection of personal information depends upon the facts and circumstances of every case, as there is no precise/comprehensive legislation on the Right of Privacy except the few pronouncements of hon'ble Supreme Court in this regard.3


Disclosure of personal information is only permissible under Section 8(1)(j) of the Right to Information Act, 2005 if CPIO, SPIO and Appellate Authority is satisfied that large public interest justifies. In this regard, the satisfaction of Authority is not based upon the discretion but subject to the judgments pronounced by Hon'ble High Courts, Hon'ble Supreme Court of India, for the interpretation of invasion of privacy or not. Furthermore, if personal information of 3rd Party is to be protected CPIO/SPIO & Appellate Authority have to test their satisfaction and decide

3. See heading 3.16, protection of personal information : Judicial Innovations.
accordingly under the legislations read with (sec. 8(1)(j) of the Act then. On the other hand if personal information is to be disclosed in public interest even then CPIO, SPIO and Appellate Authority must test the information accordingly and comply the Section 11 of the Act by sending written notice to the 3rd party.

Section 8(1)(j) is a guiding provision for not to disclose the personal information only when satisfied that there is unwarranted invasion of Privacy of Individual.

3. **Test of Privacy under Section 8(1)(d), (e) and (g) of Right to Information Act, 2005**

Right to Privacy is very wide issue which covers other areas Like Protection of Intellectual Property Rights, Breach of confidence and Bodily Privacy. Under Sections 8(1)(d)(e) and (g). It is pertinent to mention here that under Cl(1)(j) of Section 8, the meaning of privacy is not precisely given or explained by way of any explanation to its widest meaning but includes other areas of privacy. Author is of the view that while protecting the personal information i.e. privacy. PIO's and Appellate Authorities have to test privacy right in the light of Cl(1)(d),(e) and (g) of Section 8.

In India, we are Lacking on the issue of privacy because there is no comprehensive legislation. To protect privacy as mentioned in Cl(1)(j) of Section 8. Some sources should be recognized, so that PIO's and Appellate Authority can decide the Right to Privacy. According to Right to Information Act, 2005, the purview of Privacy under section

---

4. Copy Right Act, Patent Laws, Trade Mark Act and Design Act,
5. State is bound to protect life and personal liberty of Individual under Art. 21 of Constitution of India
8(1)(j) includes Cl(1)(d),(e) and (g) also. It may be said that Right to Privacy (Intellectual Property Right, Bodily Privacy & Breach of Confidence) has been recognized by the parliament by incorporating Section 8 Cl(d)(e) and (g) of the Act.

4. Procedure for Protection of Personal Information

The issue of protection of personal/confidential information is very important than disclosure of information. The plenary interpretation of the Sections 11 and 8(1)(j)(d)(e)(g), is crystal clear that in case if PIO's intended to disclose any confidential information which may be personal on record shall with in five days (according to Sections 11 and 2(n) public authority is a 3rd party) from the receipt of request gives a written notice and invite the third party to make a submission (within 10 days) in writing or orally, regarding whether the information should be disclosed and on submission of objection by third party that shall be kept in view while taking a decision about the disclosure of Information. Against the decision of CPIO for disclosure of information if 3rd party is not satisfied then can file Appeal under Section 19Cl(3) to Appellate Authority. If again the 3rd party is not satisfied with the decision of CIC or SIC for disclosure of personal/confidential information then 3rd party can file a writ petition under Article 226 of Constitution of India in the High Court for the protection of personal/confidential information by citing international conventions on UDHR, 1948.
5. **Protection of third party information**

While Sec. 9 and Sec. 11 protect the copyright which subsists in a person other than the State and trade or commercial secrets are also protected under the Act from disclosure as third party information respectively. Author thinks that this is due to recognition of Right of Privacy by Hon'ble Apex Court in Catena of Judgments and also through International Conventions, regarding copyright of a person and there is a legislation for protection of copyright also. Keeping in view the other legislations, the Right to Information Act, 2005 was enacted and that’s why the object of Section 3 is confined and limited one.

6. **Public Authority as a third party can claim exemption from disclosure**

In this context, it will be pertinent to refer to the definition of “third party” appearing in Section 2(n) and Section 11(1) of the Right to Information Act, 2005.

The inclusive definition provided under Section 2 (n) certainly covers a Public Authority and as such in cases where the CPIO intends to disclose an information or record or part thereof to an applicant which “relates to” a 3rd party (Public Authority in this case) and has been treated as confidential by that 3rd party, CPIO is duty bound to hear and consider the objections before deciding whether to allow disclosure which relates to a Public Authority and has been treated as confidential by such Public Authority the PIO before deciding to disclose such

---

6. See 3.16 of this chapter for details.
7. *Supra* n. 79.
8. **Section 2(n)** third party” means a person other than the citizen making a request for information and includes a public authority.
information must at least take the view of the HOD.9 (Under section 123 and 124 of Indian Evidence Act, 1872).

A Public Authority as a 3rd party is, therefore, entitled to protect from disclosure an information which relates to it and which it has considered confidential. The disclosure of such an information by the PIO is possible only after hearing the party and taking into account the objections, if any, raised by it to the intended disclosure. The PIO can order disclosure only if the public authority decides that public interest in disclosure outweighs any possible harm or injury to the interest of such Public Authority as third party.

A Public Authority being a 3rd party, therefore, cannot be denied its right to object to any intended disclosure by the PIO if it is of the view that the disclosure is likely to cause any harm or injury to its interest.

If the interpretation of the RTI law is to be accepted, it would mean that even when the Government is litigating vis-à-vis another person, that person will have the right to access all information about how the Government is seeking to defend its position in the legal proceeding without having any corresponding right to access similar information of the opposite party. On any scale of equity, this will appear to be biased against the public authority. Before the enactment of the Right to Information Act, 2005, such public authorities received protection to its position and the information held by it was exempt from disclosure in any suit or legal proceeding, under several provisions of

---

the Indian Evidence Act, 1872. Now, with the advent of the Right to Information Act, 2005 it is, arguably, no more possible for such public authority to hold its side of information and evidence from being directly accessed by the opposite party except for exemptions contained in Right to Information Act, 2005. In normal course, the Government as well as the opposite party would have produced their evidences and arguments before the court of law, who would have then decided how to allow the evidence to be shared between the parties and at what stage. Now, private litigants are choosing to invoke Right to Information Act, 2005 in order to equip themselves in advance about the position taken or likely to be taken by the public authority in an ongoing litigation in order to counter it. It will need to be examined whether such interpretation of the Right to Information Act, 2005 is possible i.e. to allow a party to a litigation to access the other party’s evidence and stated position in order to build his own case against that position.

The point for consideration is whether the public authority can hold confidentially its side of the information and the internal deliberations it may have had in order to put up its case before a court and whether it is obliged to disclose all this information to the very person whom it intends contesting in the court of law.

A public authority is duty-bound to defend its officers’ bona-fide interest as well as its own interest in any litigation with the opposite party, and if it is forced to submit to that opposite party’s demand for all information
about, what decision was taken to defend the government’s interest; what evidence was marshalled and how the evidence was collected and the decision made, would irretrievably damage the public authority’s interest as litigant and compromise its ability to carry out its mandate of defending the public authority though its actions. A public authority must not be obligated to explain its conduct by revealing the entire decision-making process to the very litigant with whom it may be engaged in a dispute legal or otherwise.

The CPIO is duty-bound under Section 11(1) to consider the grounds which a public authority urges to keep confidential information undisclosed and to decide on the validity of the grounds for its decision. The right of the Government not to share the evidence and the records it holds in that regard with the very person threatening to drag it to the law court; the larger implication of such right being conferred on litigants to access all information held by Government relating to litigation they themselves start; such disclosures would compromise the public authority’s ability to carry out its mandate and to attend with the best of its ability to the responsibilities it is entrusted to discharge, etc.  

7. **Protection of Personal Information : Judicial Innovations**

The *Right to Privacy* in the sense of being let alone by Governmental interference is a developing concept. *Article-
8 of the European Convention on *Human Rights* defines this right by protecting Personal Information:

In *Govind v. M.P. case*, it has been held in this context that police surveillance of a person, by domiciliary visits and other acts, to be valid must be supported by law and must be unobstructed and reasonable for the purpose of prevention of crime by potential offenders.\(^\text{11}\)

Justice Bhagwati in *Francis Coralie Mullin case* observed:

*The Fundamental Right to life is the most precious human right and forms the area of all other rights. The word life however does not mean mere animal existence.*\(^\text{12}\)

Regarding domiciliary visits at night, the majority was of the view that an unauthorized intrusion into a person’s home and the disturbance caused to him thereby is violative of common law right of a person which is an ultimate essential of ordered liberty which is the violation of Art 8 of European Convention On Human Rights, 1950. Sometimes causes disclosure of Personal Information.

There are provisions of punishment to offenders, who infringe the *Right to Privacy* i.e. Defamation, Trespass to land, Obscenity and outraging the modesty of a woman in criminal law by publishing Personal Information. These rights are protected by the State. Trial in a camera of a rape case, is also a procedure enshrined in Section 327(2) of Criminal Procedure Code, 1973. It has been held by Hon’ble Supreme Court in *Madhulkar v. State of*

\(^{11}\) 1975 SCC 148-157.  
\(^{12}\) AIR 1981 SC 746.
Maharashtra case\textsuperscript{13} that the woman of easy virtue have also a Right to Privacy for Protection of her reputation and Personal Information. Right to Privacy is availed to a victim against the offender in offences like tress pass to land, obscenity and outraging the modesty of a woman. It is not mentioned as a crime, but to protect the weaker section by the State.

In \textit{Raj Gopal v. Tamil Nadu case},\textsuperscript{14} the Supreme Court affirmed that the \textit{Right to Privacy} is implicit in the right to life and liberty guaranteed to the citizens of this country under Article 21. It is a \textit{Right to be Let Alone} so as to enjoy life without any interruption and interference by other person. The court further observed:

\begin{quote}
A citizen has a right to save the Privacy of his own, his family, marriage, procreation, motherhood, child bearing and education.
\end{quote}

None can publish anything concerned with the above matters without his consent, whether truthful or otherwise whether laudatory or critical. If he does so he would be violating the \textit{Right to Privacy} i.e. disclosing the Personal Information of the person concerned and would be liable in action for damages.

In \textit{People's Union for Civil Liberties vs. U.O.I. case}\textsuperscript{15} the petitioner had challenged the constitutional validity of section 5 of the Indian Telegraph Act, 1885 which authorises the central government or State government to

\begin{flushleft}
\textsuperscript{13} AIR 1991 SC 208. \\
\textsuperscript{14} AIR 1994 SCC 514. \\
\textsuperscript{15} AIR 1997 SC 568.
\end{flushleft}
resort to phone tapping. The Hon'ble Supreme Court has held and observed:\textsuperscript{16}

\textit{Telephone tapping is a serious invasion of an individual's Right to Privacy, which is a part of the Right to Life and Personal Liberty, enshrined under Article 21 of the constitution of India and it should not be resorted to by the State unless there is a public emergency or interest of public safety requires.}

Tapping of Personal Information on telephone is only permitted by Government under exceptional circumstances which amounts to invasion of very valuable right. Tapping may be in public interest. Tapping of information by another person without the permission of government amount to disclosure of personal information and also violation of Right to Privacy which is not permitted under any other law of land.

\textbf{8. Disclosure of Personal Information in public interest :}

In a landmark judgment of Mr X Vs. Hospital Z case\textsuperscript{17} where the controversy mainly related to the basic issue whether a person suffering from AIDS has a right to marry or not?. It was observed by the Apex Court that his right to marry remain suspended till he recovers from the AIDS. The facts in brief were that the appellant was employed as a surgeon in the Nagaland State Health Services who was directed by the State Government to accompany a patient

\textsuperscript{16} Section 5– Only the Union Home Secretary or his counterparts in the States can issue an order for a tape.

\textsuperscript{17} AIR 2000 SC 495.
to Madras for treatment. The patient required surgery, and there was a shortage of blood. The appellant agreed to donate blood. His blood sample taken by the respondent hospital, showed him HIV positive, this was in June 1995. In August the same year, the appellant proposed to his fiancée Ms Y. for marriage, she accepted the proposal and the marriage was scheduled for a date in December. The marriage however, was called off because the hospital where the blood test was performed disclosed the results. Why, when, how and to whom the disclosure was made, has been not clear. Cancellation of the marriage and the disclosure of his HIV positive condition obviously caused a lot of embarrassment and agony to the appellant. He was ostracised by the community and had to leave his home State. He approached the Consumer Disputes Redressal Commission, claiming damages against the hospital for the violation of Right to Privacy. The case was dismissed, he then approached to the Hon’ble Supreme Court.

It was argued by the appellant that “duty of care” in the medical profession includes confidentiality and since this was violated by the hospital so it was liable to pay damages. After going into the ethics of confidentiality based on the Hippocratic oath and the National and International codes of medical ethics, the court ruled that The duty to maintain secrecy is not absolute duty which could be imposed on any party in any manner.

The argument that the respondents were under a duty to maintain confidentiality formulated by the Indian Medical Council cannot be accepted as the proposed
marriage carried with it the health risk to an identifiable person who had to be protected from being infected with the communicable disease from which the appellant suffered. The right to confidentiality, if any, vested in the appellant was not enforceable in the present situation.

The argument as regarding to the Right to Privacy was also not accepted. The Court observed:

*Having regard to the fact that the appellant was found to be HIV positive, its disclosure would not be violative of either the rule of confidentiality or the appellant’s Right to Privacy as Ms Y, with whom the appellant was likely to be married, by disclosing such disease she too would have been infected with the dreadful disease if marriage had taken place and been consummated.*

The court emphasised that mental and physical health of the spouses is very important in a marriage and that is the reason why a spouse is entitled to obtain divorce if the other party is suffering from any communicable diseases. The right to marry, according to the court, is not absolute and remains suspended until the afflicted person is cured.

It might however, be pointed out that the mental and physical diseases are mentioned in the matrimonial laws, on the basis of which divorce could be claimed by the one spouse from the other spouse. It would not be out of context to mention that in this case a new aspect of Right

to Privacy has emerged on the scene in the sense that the Right to Privacy is indirectly in conflict with the right of a spouse to enjoy Protection of health in respect of being protected from the infectious disease like HIV positive from which the other spouse might have suffered.

The Protection of health becomes more necessary when both the parties are not married to each other rather they are going to be married. The Hon’ble Supreme Court could rightly hold that the Protection of good health enjoy parity in comparison to right of enjoyment of the Privacy. It is due to the fact that in case he had not disclosed this matter to his fiancée even after knowing that he was suffering from HIV positive, then in such a situation it would have certainly amounted to protecting his Right to Privacy at the cost of causing injury to the health and life of the other party. If we have adopted this approach then the decision of the Apex court appears to be fully justified. The other side of the picture is that by vindicating his Right to Privacy and reposing confidence in him in the sense that he would have acted in a decent manner as per the demand of the situation.

Though the court has said that the AIDS victims deserve sympathy its own observations leave much to be desired. According to the court, “AIDS is the product of undisciplined sexual impulse.” Such observations are neither the whole truth, nor fair. They seem to convey that promiscuity is the only factor responsible for AIDS. The fact however is that sexual intercourse is just one of the several factors responsible for AIDS and in our country,
with commercial and professional blood donors, improper mode of taking blood from donors absent of the blood testing facilities, reuse of infected syringes and innumerable other unhygienic and callous conditions, a large number of AIDS cases are reported which in-fact are not due to "undisciplined sexual impulse."

The judgment, on the whole, is not justiciable due to the fact that the persons suffering from communicable diseases would avoid blood testing altogether. The appellant may not have even known about his health status at the time of proposing marriage. Had he known, he might neither have given his blood, nor probably proposed marriage. It is not unlikely way, it is very likely, that after having discovered the fact, he would have either discussed the problem with his fiancée or cancelled the marriage under some other pretext, in which case there would have been no publicity. But danger to the life of spouse enjoys top priority in comparison to above said reasons.

As regards breach of confidentiality, it is not known as to what were the circumstances that lead to disclosure of this information by the hospital to others. The hospital could have, in a strict Privacy, shared the information with the appellant, who, being a doctor himself, would have taken all precautions, including reconsidering his decision to marry. By making the appellant’s HIV positive status public, irreparable harm has been done to his self esteem.

The above said case law on the subject of Privacy assumes significance in varied manner depending upon the subject in which the Right to Privacy enjoys relevance. At
the same time the Right to Privacy was recognized in India particularly in the context of recognition of Easementary Right and enjoyment of the property. At least two centuries back many times it was also observed that customary right directly or indirectly dealt with the Right to Privacy. It was so particularly in the case of women who used to live under Purdah System and remain confined within their houses due to which their Privacy was considered to be the most important aspect. Subsequently, with the advancement of the society the Right to Privacy was recognized under some other subject like criminal law. Where in courts could impart punishment to the wrong doer, in case of invasion of Privacy by the other party. After the enactment and enforcement of Constitution of India in the year 1950, the Fundamental Rights guaranteed to citizens could also take into account Right to Privacy, if not directly at least in an incidental manner. Accordingly, Right to Life and Personal Liberty recognized under Article 21 of Constitution of India was provided. By presuming that the personal liberty would also mean and include the rights of the citizen to enjoy the life in any manner as desired by the concerned party or any sort of interference in the form of invasion of Privacy would also be interpreted. So it could be convincingly said that Right to Privacy is well recognized in India since ancient times. In 1993, The Human Rights Commission was formed in our country on the guidelines of various conventions. Human Right Commission also helped a lot to develop the concept

19 Section 18 of Indian Easement Act, 1882, Customary Easement - An Easement may be acquired in virtue of a local custom. Such Easements are Called Customary easements.
but cases of Protection of Personal Information are very rare in commission for adjudication.

9. **Protection of Pleadings**

   Documents which are submitted to the court as a plaint, written statement, Rejoinders, Complaint, written arguments, petitions and evidence recorded by the Court are protected from disclosure under (Punjab and Haryana High Court Rules, Vol. IV, Chapter 17, Rule 3) from 3rd parties (Strangers). In exceptional, circumstances before the final order, with the permission of court, documents may be disclosed, but the copies of exhibit shall not be granted put in as evidence except with the consent of the person by whom they were produced or under the orders of Court.

   Under Cl(3) of Rule 3 official letters shall be treated as privileged documents and copies there of shall not be ordinarily granted but reference shall in every case be made to the superior officer for permission to grant copy.

   Only party to a Civil and Criminal case is entitled at any stage of suit or complaint for the copies of the record. The purpose of incorporation of this rule by Punjab and Haryana High Court is to protect confidential information, Trade Secrets, Privileged Communication etc. from strangers. This inroad is made just to protect pleadings.²⁰

10. **Protection of Official Information**

   Section 8 (1) of the Right to Information Act, 2005 begins with a non-obstante clause and stipulates that

---
²⁰ Parties and third parties can get the certified copies after the decision under section 76 of Indian Evidence Act, 1872.
notwithstanding any other provisions under the Right to Information Act, 2005 information need not be furnished when any of the clauses (a) to (j) apply. Right to Information is subject to exceptions or exclusions stated in section 8(1) (a) to (j) of the Right to Information Act, 2005. Sub-clauses (a) to (j) are in the nature of alternative or independent sub clauses but the operation of these sub-sections are different. Author analyzed sub-clauses of section 8(1) (a) to (j), and the latest law in this regard, pronounced by Hon’ble Supreme Court and Central Information Commission.

11. **Section 8 (1) (a) and (f)**

   Section 8 deals with exemptions from disclosure of informations. Sections 8 (1) (a) and (f) may be relevant for the present context. Section 8 (1) (a) of the Act says notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - information, disclosure of which prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign State or lead to incitement of an offence. Section 8 (1)(f) of the Act specified not withstanding any thing contained in this Act , there shall be no obligation to give any citizen, - information received in confidence from foreign Government. The principle of granting exemption by sub-clause (1) (a) and (f) appears to maintain the confidentiality for security, economic interest and relation with certain foreign affairs of a country and the communications between such
countries for the purpose of maintaining healthy diplomatic relations between the countries. PIO's are empowered to decide whether the information falls under clause (a) and (f), if they asserted in favour then information is exempted from disclosure.

12. **Section 8(1)(b) and (c)**

Exemptions under Cl(1)(b) and (c) are based upon existing law and the disclosure for publication is forbidden plenary. The basic issue is who has to decide that the information falls under Cl(1)(b) and exempted, the Cl(1)(b) is silent in this regard. PIO's and Appellate authorities are empowered to decide whether the information is forbidden under Contempt of Court, Court of law and Tribunal. So, if publication is forbidden under existing law given in Cl(b) that can not be disclosed. It is pertinent to mention here that if disclosure of information is in public interest then that should be disclosed. Similarly under cl(c) there is a Constitutional embargo on disclosure of information which causes breach of privilege of parliament. So, it can be gathered and said that where mandatory provisions and court of law forbids publication and disclosure of information that cannot be disclosed.

By applying doctrine of public interest in publication/disclosure of information under cl(2), inspite of exemptions, matter can be disclosed only when public authority thinks that there is a public interest in disclosure. It is equally important that public authorities can not override the Constitutional provisions in this
regard (even Sec.-22, of Right Information Act, 2005 is silent on Constitutional embargos).

13. **Section 8(1)(d)**

Cl(d) is enacted with the object to protect the Intellectual Property Rights of individual (which Covers Copyright, Patent Rights, Trademarks and Design Act). The disclosing of information which violates the Intellectual Property Rights of any person and harm the competitive position of 3rd party is also protected under this clause from disclosure. This Cl(1)(d) is to be read along with Sec.-11, and 9 of the RTI Act for interpretation.

The doctrine of public interest and the wish of competent authority to disclose the information is very important to understand the operation and applicability of clause(d). Cl(2) is not applicable when itself there is a provision for how information is to be disclosed by competent authority by complying the doctrine of Public Interest.

14. **Section 8 (1) (e)**

Sub-section 8(1)(e) of the Right to Information Act, 2005 permits protection of confidential information available to a person (including public authority) under fiduciary relationship. Fiduciary can be described as an arrangement in which one party trusts, relies and depends upon another’s judgment or counsel. Fiduciary relationships may be formal, informal, voluntary or involuntary. It is necessary to first discern and acquainted with the meaning of fiduciary relationship, as it is not defined by the Right to Information Act, 2005.
In Needle Industries (India) Ltd v. Needle Industries (Newey) India Holding Ltd case, the court held that Directors of a company owe fiduciary duties to its shareholders. In P. V. Sankara Kurup v. Leelavathy Nambiar case, the Supreme Court held that an agent and power of attorney holder can be said to owe a fiduciary relationship to the principal.

In Rakesh Kumar Singh and others versus Harish Chander, Assistant Director and others case, five members of Central Information Commission observed:

The word “fiduciary is derived from the Latin fiducia meaning “trust, a person (including a juristic person such as Government, University or bank) who has the power and obligation to act for another under circumstances which require total trust, good faith and honesty. The most common example of such a relationship is the trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators, directors of a company, public servants in relation to a Government and senior managers of a firm/company etc. The fiduciary relationship can also be one of moral or personal responsibility due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. In short, it is a relationship wherein one person places complete confidence in another in regard to a particular transaction or one’s general affairs of business. The Black’s Law Dictionary also describes a fiduciary relationship as “one founded on trust or confidence reposed by one person in the integrity and fidelity of another. The

22. (1994) 6 SCC 68.
meaning of the fiduciary relationship may, therefore, include the relationship between the authority conducting the examination and the examiner who are acting as its appointees for the purpose of evaluating the answer sheets.

According to the Advanced Law Lexicon Dictionary, fiduciary relationship means “a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the relationship. Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who is a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer”

After going through the decisions and the meaning of fiduciary relationship, justice Sanjeev Khana of Delhi High Court in Union of India v. Ministry of Personnel case gave findings on the subject of fiduciary relationship which must be appreciated. Justice Sanjeev Khanna further made a observation that all acts are not responsible for fiduciary relationship. Author took into consideration and also opined that the concept of fiduciary relationship is not defined under the Right to Information Act, 2005 and has very wider meanings.

Statutory relationships as between a Director and a company which is regulated by the Companies Act, 1956, can be
fiduciary. All features of a fiduciary relationship may be present even when there is a statute, which endorses and ensures compliance with the fiduciary responsibilities and obligations.

A contractual or a statutory relationship can cover a very broad field but fiduciary relationship may be confined to a limited area or act, e.g. Directors of a company have several statutory obligations to perform. A relationship may have several facets, it may be partly fiduciary and partly non fiduciary. It is not necessary that all statutory, contractual or other obligations must relate to and satisfy the criteria of fiduciary obligations. Fiduciary relationships may be confined to a particular act or action and need not manifest itself in entirety in the interaction or relationship between the two parties.26

The relationship of a public servant with the Government can be fiduciary in respect of a particular transaction or an act when the law requires that the public servant must act with utmost good faith for the benefit of the Government and confidence is reposed in the integrity of the public servant, who should act in a manner that he shall not profit or take advantage from the said act. However, there should be a clear and specific finding by classifying the information in this regard. Normal, routine or rather many acts, transactions and duties of a public servant cannot be categorized as fiduciary for the purpose of Section 8(1)(e) of the Right to Information Act.

The object behind Section 8(1) (e) is to protect the information because it is furnished in confidence and trust reposed. It serves public purpose and ensures that the

confidence, trust and the confidentiality attached is not betrayed. This is the public interest, which the exemption under Section 8(1)(e) is designed to protect. It should not be expanded beyond what is desired to be protected. Keeping in view the object and purpose behind Section 8(1)(e) of the Right to Information Act, where it is possible to protect the identity and confidentiality of the fiduciary, information can be furnished to the information seeker. This has to be examined in case to case basis, individually.

Thus, where information can be furnished without compromising or affecting the confidentiality and identity of the fiduciary, information should be supplied and the bar under Section 8(1)(e) of the Act cannot be invoked. In some cases principle of severability can be applied and thereafter information can be furnished. In cases where it is not possible to protect the identity and confidentiality of the fiduciary, the privileged information is protected under Section 8(1)(e) of the Right to Information Act, 2005. In other cases, there is no jeopardy and the fiduciary relationship is not affected or can be protected by applying doctrine of severability.

Under Section 8(1)(e) of the Right to Information Act, the competent authority [Section 2 (h)] is entitled to examine the question whether in view of the larger public interest information protected under the Sub-clause should be disclosed. The jurisdiction of PIO is restricted and confined to deciding the question whether information was made available to the public authority in fiduciary relationship. The competent authority can direct disclosure of information, if it comes to the conclusion
that larger public interest warrants disclosure. A decision of the PIO on the question whether information was furnished/available to a public authority in fiduciary relationship or not, can be made subject matter of Appeal before the Appellate Authorities including the CIC/SIC.

15. **Section 8(1)(g) and (h)**

Exemption Cl(1)(g) and (h) of Section 8 are enacted with the object to protect bodily privacy and for better governance respectively. It is crystal clear that to some extent Cl(g) is consistent with Art 21 (Right to Life and Personal Liberty) of Constitution of India for the protection of information which cause any harm to individual. It is further revealed by Cl(g) that even source of information is also protected from disclosure.

For better governance Cl(h) is to protect the interest of government. Investigation of crime is very important and by disclosing any information, investigation would impede the process in toto. So, for better governance Cl(g) and (h) are enacted. PIO's are authorized to decide whether matter falls under the exemptions, if yes then disclosure is not permissible. After the investigation is over requester can ask information but subject to Section 11 of Right to Information Act, 2005 so that the interest of 3rd party may be protected under Cl(j) of Section-8.

16. **Section 8(1)(i)**

In *S.P. Gupta and others v. President of India and others case*27, judges examined and interpreted Article 74(2) of the

---

27. AIR 1982 SC 149.
Constitution of India. The majority view of six Judges in para 55 observed:

The Court cannot embark upon an inquiry as to whether any and if so what advice was tendered by the Council of Ministers to the President. It was further observed that the reasons which prevailed with the Council of Ministers, would form part of the advice tendered to the President and therefore they would be beyond the scope/ambit of judicial inquiry. However, if the Government chooses to disclose these reasons or it may be possible to gather the reasons from other circumstances, the Court would be entitled to examine whether the reasons bear reasonable nexus. Views expressed by authorities/persons which precede the formation of advice tendered or merely because these views are referred to in the advice which is ultimately tendered by the Council of Ministers, do not necessarily become part of the advice protected against disclosure under Article 74(2) of the Constitution of India.

When Article 74(2) of the Constitution applies and bars disclosure, information cannot be furnished. Right to Information Act, 2005 cannot and does not have the ability and mandate to negate the constitutional protection under Article 74(2). The said Article refers to inquiry by courts but will equally apply to CIC/SIC.

The legal position has been clarified in the order of Central Information Commission in the year 2008.\textsuperscript{28} As per Section 8 of the Right to Information Act, 2005 a “Public Authority” is not obliged to disclose Cabinet papers including records of deliberations of the Council of Ministers, secretaries and other

\textsuperscript{28} No.CIC/WAI/2008/00081, order dated 23.10.2008.
officers. Section 8(1) subjects this general exemption in regard to Cabinet papers to two provisos, which are as under:

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 public after the decision has been taken, and the matter is complete, or over.

From a plain reading of the above provisos, the following may be inferred: i) Cabinet papers, which include the records of deliberations of the Council of Ministers, Secretaries and other officers shall be disclosed after the decision has been taken and the matter is complete or over. ii) The matters which are otherwise exempted under Section 8 shall not be disclosed even after the decision has been taken and the matter is complete or over.

In Union of India v. Ministry of Personnel case,29 Justice Sanjeev Khanna of Delhi High Court, an eminent judge further made some contributions, observations, findings and critically examined about sub-clause 1(i). Sub-clause of Section 8 (1)(i) protects Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. The first proviso however stipulates that the prohibition in respect of the decision of the Council of Ministers, the reasons thereof and the material on the basis of which decisions were taken shall be made public after the decision is taken and the matter is complete or over. Thus, a limited prohibition for a specified time is granted. Prohibition is not for an unlimited duration or infinite period but lasts till a decision is taken by the Council of

Ministers and the matter is complete or over. The main clause to Section 8(1)(i) uses the term Cabinet Papers which include records or deliberations, but the first proviso refers to the decision of the Council of Ministers, reasons thereof and the material on the basis of which the decisions were taken. The term “Council of Ministers” is wider than and includes Cabinet Ministers. The second proviso to Section 8(1)(i) of the RTI Act explains and clarifies the first proviso. As held above, the first proviso removes the ban on disclosure of the material on the basis of which decisions were taken by the Council of Ministers, after the decision has been taken and the matter is complete or over. The second proviso clarifies that even when the first proviso applies, information which is protected under Clauses (a) to (h) and (j) of Section 8(1) of the RTI Act, is not required to be furnished. The second proviso is added as a matter of abundant caution *exabudent catulía*. Sub-clauses (a) to (j) of Section 8(1) of the RTI Act are independent and information can be denied under Clauses 8(1)(a) to (h) and (j), even when the first proviso is applicable.

The reasons given for protection of the secrecy of government at the level of policy making are two. The first is the need for candour in the advice offered to Minister; the second is that disclosure ‘would create or fan ill-informed or captious public or political criticism.’ *Lord Reid in Conway v. Rimmer* case thought the second ‘the most important reason’. Indeed, he was inclined to discount the candour argument.
17. **Section 8(2)**

Section 8(2) of the Right to Information Act, 2005 empowers a public authority to allow access to information even when the Official Secrets Act, 1923 or any of the exemption clauses in Sub-section (1) are applicable. The requirement is that public interest in disclosure should outweigh the harm to protected interest. The question of public interest and when the right to disclosure of information would outweigh rights to secrecy and confidentiality or privacy as has been referred to and considered above. Section 8(2) of the Right to Information Act, 2005 empowers the public authority to decide the question whether right to disclosure over-weighs the harm to protected interests. PIO cannot decide this question and cannot pass an order under Section 8(2) of the Right to Information Act, 2005 holding, inter alia, that information is covered by the exemption clauses under Section 8(1) of the Right to Information Act, 2005 but public interest in disclosure overweighs and justifies disclosure. Once PIO comes to the conclusion that any of the exemption clauses is applicable, he cannot decide and hold that Section 8(2) of the Right to Information Act, 2005 should be invoked and lager public interest requires disclosure of information. Unlike Section 8(1)(j) of the Right to Information Act, 2005, under section 8(2) this power to decide whether larger public interest warrants disclosure of information is not conferred on the PIO.

18. **Applicability of Non obstante Clause (Section 22)**

Whether provisions of Sections 123, 124 and 129 of the Indian Evidence Act, 1872 stand overridden by
nonobstante clause appearing in Section 22\textsuperscript{30} of the Right to Information Act, 2005? The Central Information Commission observed some provisions of Indian Evidence Act, 1872 and Right to Information Act, 2005 for protection of official information in the light of nonobstante clause i.e. Section 22 of Right to Information Act, 2005.

The question of applicability of Section 123 and 124 of the Indian Evidence Act, 1872 came up before Andhra Pardesh High Court in which it was clearly stated that even a document claimed to be privileged under Article 74 of the Constitution of India read with Section 123 of the Evidence Act will have to be disclosed under Right to Information Act, 2005, i.e. if it was not exempted u/s 8(1) of the Right to Information Act, 2005. The court has further held that it is not permissible to read “implied prohibitions” or “invisible mandates” in Right to Information Act, 2005. This being so, the question of any inconsistency between the law of evidence and the obligations to disclose under the Right to Information Act, 2005 need to be contextualized, i.e. such determination is to be made in the context of each case given its circumstances and facts. It is important to note that Section 123 of the Indian Evidence Act, 1872 \textit{per se} does not bar disclosure of an unpublished official record relating to an affair of the State. It only provides that evidence in regard to a record shall not be

\textsuperscript{30} Section 22-Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 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.
permitted except with the permission of the officer at the head of the department concerned. It thus only provides a mechanism about disclosure of information concerning unpublished official records relating to affairs of the State.

The decision to disclose documents that relate to affairs of State, which are a part of unpublished official records as per the Indian Evidence Act, 1872 lies with the Head of Department who becomes the holder of the information within the meaning of Section 2(j) of the Right to Information Act, 2005. It follows from it that the CPIO before disclosing any such information shall have to refer the matter to the HOD for disclosing the information to the requester. This will give an opportunity to the HOD to consider whether disclosure is covered by any of the exemptions provided for in the Right to Information Act, 2005 and/or whether the requested information came within the scope of Section 11(1) read with Section 2(n) of the Right to Information Act, 2005. The responsibility for not disclosing the information and to defending its decision will, therefore, lie with the HOD in terms of the provisions of the Right to Information Act, 2005 as the holder of the information.

Similar is the relationship between Section 124 of the Indian Evidence Act, 1872 and the Right to Information Act, 2005. A public officer cannot be compelled to disclose communication made to him in official confidence when he considers that it would jeopardize public interest. The disclosure of any such information, which is a part of
official confidence, is therefore, permissible only when larger public interest commands it. Read in this context, there is no inconsistency between the Right to Information Act, 2005 and Section 124 of Evidence Act. The only is that whether it would be in larger public interest if the information requested by the appellant is disclosed.

Although it is admitted that the expression ‘public interest’ is not capable of precise definition and it has no rigid meaning, it takes color from the statute in which the expression has been used. It varies from case to case and as observed by Hon’ble Supreme Court in State of Bihar v. Kameshwar Singh\textsuperscript{31} what is ‘public interest’ today may not remain so a decade later. Public interest therefore, can be taken to be what is the opposite of a private interest of a person. Public interest must concern either the public in general or at least a section of the public. It cannot be the solitary interest of one single individual.

As is obvious under the scheme of the Indian Evidence Act, 1872, contained in its Sections 123 and 124, the Government and the public authorities are allowed to hold confidential certain categories of documents in public interest. As has been held by the High Court of Andhra Pradesh, a decision to hold confidential information under the Indian Evidence Act, 1872 will be no bar to examine the disclosability of the same information in terms of the Right to Information Act, 2005. In other words, if an information which was held confidential under the Indian

\textsuperscript{31} AIR 1952 SC 252.
Evidence Act, 1872 is found to be disclosable under the Right to Information Act, 2005, such disclosure shall be authorized, the decision of the public authority under Indian Evidence Act, 1872 notwithstanding.

This context, however, changes when an information held confidential in terms of Sections 123 and 124 of the Indian Evidence Act, 1872 is also found to be either exempt under Section 8(1) of the Right to Information Act, 2005 or on the basis of it being a third party information whose disclosability is to be tested in terms of Section 11(1) of the Right to Information Act, 2005. In case, a certain set of information, which has been held confidential under the Indian Evidence Act, 1872, is also found to be exempt under the provisions of the Right to Information Act, 2005, then there should be no inconsistency between the provisions of the both Acts and the information shall not be liable for disclosure.

It has been noted that the concept of public interest appears both in the Indian Evidence Act, 1872 (Sections 123 and 124 as well as in various sub-sections of Section 8(1),(2) as well as in Section 11(1) of the Right to Information Act, 2005). It is to be noted that ‘public interest’ is the reason which allows the Head of the Department to ‘withhold’ a given information under the Sections 123 and 124 of the Indian Evidence Act, 1872. In case of the Right to Information Act, 2005, the concept of public interest has been used as ‘override’ in Sections 8(2) principally, as well as in sub-sections 8(1)(d)(e); only in
Section 8(1)(j) of the Right to Information Act, 2005 ‘public interest’ is a precondition for disclosure of a personal information, which is otherwise to be held undisclosed.

Therefore, if a public authority takes a position that a certain information should be held to be non-disclosable under Section 123 and 124 of the Indian Evidence Act, 1872, it will hold good only so long as the relevant Section of the Right to Information Act, 2005 also allows the public authority to withhold such information in public interest. In other words, if within the meaning of the Right to Information Act, 2005, an information is to be disclosed in public interest and if the same information is held confidential in public interest within the meaning of the Indian Evidence Act, 1872, then the provisions of the Indian Evidence Act, 1872 shall be inconsistent with the Right to Information Act, 2005. There may be circumstances, however, where, as in Section 8(1)(j) of the Right to Information Act, 2005, a personal information can be held to be non-disclosable unless warranted by public interest. If such personal information is also held confidential under any Section of the Indian Evidence Act, 1872 on grounds of public interest, there shall be perfect compatibility / harmony between that withholding of the information or any order to withhold the information under Section 8(1)(j) of the Right to Information Act, 2005.

It was categorically observed by the commission that the question of consistency or inconsistency between the provisions of the Right to Information Act, 2005 and the
Indian Evidence Act, 1872 will have to be decided on the facts of each case and the applicability of the specific provisions of the Right to Information Act, 2005.

19. **Doctrine of Public Interest**

Hon’ble Supreme Court in **S.P Gupta’s case**\(^{32}\) considered the question whether there may be classes of documents which the public interest requires not to be disclosed or which should in absolute terms be regarded as immune from disclosure. In other words, we may examine the contention whether there can be class of documents which can be granted immunity from disclosure not because of their contents but because of their class to which they belong. Learned Additional Solicitor General in this regard made pointed reference to the following observations in **S.P.Gupta case**.

The claim put forward by the learned Solicitor General on behalf of the Union of India is that these documents are entitled to immunity from disclosure because they belong to a class of documents which it would be against national interest or the interest of the judiciary to disclose. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and dispatches from ambassadors abroad (vide : Conway v. Rimmer, 1968 AC 910 at pp. 952, 973, 979, 987 and 993 and Reg v. Lewes J.K. Ex parte Home Secy., 1973 AC 388 at p.4.12). Papers brought into existence for the purpose of preparing a submission to cabinet (vide Commonwealth Lanyon property Ltd v. Commonwealth, 129 LR 650) and indeed any documents which relate to the framing of

---

32. AIR 1982 SC 149.
government policy at a high level (vide: Re Grosvenor Hotel, London). It would seem that according to the decision in Sodhi Sukhdev Singh’s case (AIR 1961 SC 493) (supra) this class may also extend to “notes and minutes made by the respective officers on the relevant files, information expressed or reports made and gist of official decisions reached” in the course of determination of questions of policy. Lord Reid in Conway v. Rimmer (supra) at page 952 proceeded also to include in this class “all documents concerned with policymaking within departments including, it may be minutes and the like by quite junior officials and correspondence with outside bodies”. It is this case to consider what documents legitimately belong to this class so as to be entitled to immunity from disclosure, irrespective of what they contain. But it does appear that cabinet papers, minutes of discussions of heads of departments and high level documents relating to the inner working of the government machine or concerned with the framing of government policies belong to this class which in the public interest must be regarded as protected against disclosure.

It was observed that the object of granting immunity to documents of this kind is to ensure proper working of the Government and not to protect Ministers or other government servants from criticism, however intemperate and unfairly biased they may be. It was further observed that this reasoning can have little validity in democratic society which believes in open government.
In *Sundaram Pillal v. Patte Birman case*, the scope and purpose of a proviso and an explanation has been examined in detail. Normally, a proviso is meant to be an exception to something in the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. A proviso cannot be torn apart from the main enactment nor can it be used to qualify and set at naught, the object of the main enactment. Sarthi on “Interpretation of Statutes”, referred to in the said judgment, states that a proviso is subordinate to the main section and one of the principles which can be applied in a given case is that a proviso would not enlarge an enactment except for compelling reasons. It is unusual to import legislation from a proviso into the body of the statute. But in exceptional cases a proviso in itself may amount to a substantive provision. The proviso in the present cases is a guiding factor and not a substantive provision which overrides Section 8(1)(j) of the RTI Act. It does not undo or rewrite Section 8(1)(j) of the RTI Act and does not itself create any new right. The purpose is only to clarify that while deciding the question of larger public interest i.e., the question of balance between ‘public interest in form of right to privacy’ and ‘public interest in access to information’ is to be balanced.

In determining the larger public interest, Hon'ble Supreme Court in *R.K. Jain v. Union of India case*, observed:

**The factors to decide the public interest immunity would include (a) where the contents of the documents are relied upon, the interests affected by their disclosure; (b)**

33. *(1985) 1 SCC 591.*
34. *(1993) 4 SCC 120.*
where the class of documents is invoked, whether the public interest immunity for the class is said to protect; (c) the extent to which the interests referred to have become attenuated by the passage of time or the occurrence of intervening events since the matters contained in the documents themselves came into existence; (d) the seriousness of the issues in relation to which production is sought; (e) the likelihood that production of the documents will affect the outcome of the case; (f) the likelihood of injustice if the documents are not produced. When public interest immunity against disclosure of the State documents in the transaction of business by the Council of Ministers of the affairs of State is made, in the clash of those interests, it is the right and duty of the court to weigh the balance in the scales that harm shall not be done to the nation or the public service and equally to the administration of justice. Each case must be considered on its backdrop. The President has no implied authority under the Constitution to withhold the documents. On the other hand it is his solemn constitutional duty to act in aid of the court to effectuate judicial review. The Cabinet as a narrow centre of the national affairs must be in possession of all relevant information which is secret or confidential. At the cost of repetition it is reiterated that information relating to national security, diplomatic relations, internal security of sensitive diplomatic correspondence per se are class documents and that public interest demands total immunity from disclosure. Even the slightest divulgence would endanger the lives of the personnel engaged in the services etc. The maxim salus populi est suprema lex which means that regard to
public welfare is the highest law, is the basic postulate for this immunity. Political decisions like declaration of emergency under Article 356 are not open to judicial review but it is for the electorate at the polls to decide the executive wisdom. In other areas every communication which preceded from one officer of the State to another or the officers inter se does not necessarily per se relate to the affairs of the State. Whether they so relate has got to be determined by reference to the nature of the consideration the level at which it was considered, the contents of the document of class to which it relates to and their indelible impact on public administration or public service and administration of justice itself. Article 74(2) is not a total bar for production of the records. Only the actual advice tendered by the Minister or Council of Ministers to the President and the question whether any, and if so, what advice was tendered by the Minister or Council of Ministers to the President, shall not be enquired into by the court. In other words the bar of judicial review is confined to the factum of advice, its extent, ambit and scope but not the record i.e. the material on which the advice is founded. In S.P.Gupta case this Court held that only the actual advice tendered to the President is immune from enquiry and the immunity does not extend to other documents or records which form part of the advice tendered to the President.

In R.K. Jain case, it was further observed:\textsuperscript{35}:

In a clash of public interest that harm shall be done to the nation or the public service by disclosure of certain documents and the administration of justice shall not be frustrated by withholding the document which must be produced if justice is to be done, it is the courts duty to balance the competing interests by weighing in scales, the effect of disclosure on the public interest or injury to administration of justice, which would do greater harm. Some of the important considerations in the balancing act are thus: “in the interest of national security some information which is so secret that it cannot be disclosed except to a very few for instance the State or its own spies or agents just as other countries have. Their very lives may be endangered if there is the slightest hint of what they are doing.” In R. v. Secretary of State for Home Affairs, ex p Hosenball in the interest of national security Lord Denning, M.R. did not permit disclosure of the information furnished by the security service to the Home Secretary holding it highly confidential. The public interest in the security of the realm was held so great that the sources of the information must not be disclosed nor should the nature of information itself be disclosed.

The doctrine of public interest in favour of disclosure of Information as well as in favour of protection of information has been examined in depth by Ravindra Bhat, J. in Subash Chand Agarwal case.36

Sections 123 and 162 of the Evidence Act, 1872 balances public interest in fair administration of justice, when it comes

---

36. Decided by Delhi High Court on dated 2 September, 2009.
into conflict with public interest sought to be protected by non-disclosure and in such situations the court balances these two aspects of public interest and decides which aspect predominates. It was held that the State or the Government can object to disclosure of a document on the ground of greater public interest as it relates to affairs of the State but the courts are competent and indeed bound to hold a preliminary enquiry and determine the validity of the objection to its production and this necessarily involves an enquiry into the question whether the evidence relates to affairs of the State.

A statement or defence to non-disclosure is not binding on the courts and the courts retain the power to have a prima facie enquiry and balance the two public interest and affairs of the State. The same is equally true and applies to CIC, who can examine the documents/information to decide the question of larger public interest. Section 18(4) of the RTI Act empowers CIC to examine any record under the control of a public authority, while inquiring into a complaint. The said power and right cannot be denied to CIC when they decide an appeal. Section 18 is wider and broader, yet jurisdiction under section 18 and 19 of the Right to Information Act, 2005 is not water-tight and in some areas overlap.

The only class of documents which are granted immunity from disclosure is those mentioned under Article 74(2) of the Constitution. These are documents or information which are granted immunity from disclosure not because of their contents but because of the class to which they belong. Protection from disclosure is decided by balancing the two competing aspects of
public interest i.e. when disclosure would cause injury or unwarranted invasion of privacy and on the other hand if non-disclosure would throttle the administration of justice or in this case, the public interest in disclosure of information. In such cases, the Court/CIC has to decide, which of the two public interests pre-dominates.

After going through the relevant law on utility of Doctrine on public interest in-depth, author opined that doctrine should be used with circumspection by the PIO's, Appellate authority, public authority and competent authorities. Somewhere, the issue of non disclosure of Information is very akin to privacy issues, depends upon society to society and governance to governance. The law laid down by Hon'ble Supreme Court may be landmark today but with the advent of time that may be changeable on public interest and utility.

20. **Protected Organization's**

Some organizations are protected to disclose information to any citizen by virtue of Section 24 of RIGHT TO INFORMATION Act, 2005, read with second schedule. They are Intelligence Bureau, Research and Analysis Wing of the Cabinet Secretariat, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police, Central Industrial Security Force, National Security Guards, Assam Rifles, Sashtra Seema Bal, Special Branch (CID), Andaman and Nicobar, The Crime Branch-
C.I.D.- CB Dadra and Nagar Haveli, Special Branch, Lakshadweep Police, Special Protection Group, Defence Research and Development Organisation, Border Road Development Board, Financial Intelligence Unit, India.

The Information pertaining to the allegations of corruption and Human Rights Violation by protected organizations under schedule 2 of Right to Information Act, 2005 shall not excluded and can be asked under Right to Information Act, 2005.\(^{37}\)

\(^{37}\) For detail study sec. Dr. Amit Ludri, Law on Protection of Personal & Office Information in India, 2010, Chapter IV and V.