CHAPTER II

Evolution of the Right to Information: The Indian Context

To err is human. But power corrupts and absolute power corrupts absolutely. A check on power is most imperative. This check not only ensures the proper use of power but also instills a fear in the mind of a person vested with power, which in turn prevents the misuse of power due to the fear of exposure. In our democratic nation, Government is ‘of the people, by the people and for the people’. The general public has every right to know about the important decisions taken, rationale and outcome of these decisions.¹ It will be a Government ‘for the people’ only when it becomes subject to questioning, requisitioning and is in subordination to the people who vote it to power. Information and knowledge are essential for realizing all the human aspirations.

The Information empowers the people and enables them to properly exercise their rights legal, political, social and economic. Keeping in view all these, almost every society has made endeavor by way of putting in place the mechanisms for free flow of information and ideas so that people can access them whenever it is required. There are a number of factors which emphasize the need and necessity of this right in a country like India, which unfortunately carries the dubious tag of being one of the most corrupt nations. The right to information is thus a potent tool for countering corruption and for exposing corrupt officials. This transparent approach to working helps poor communities to be visible on the political map so that their interests can be realized. The Right to information is therefore central to the achievement of the Millennium Development goals². For this purpose to discuss the evolution of this right in India, the present chapter of this thesis has been analysed under following relevant standpoints:

1. RTI Movement in India
2. The State Laws on The Right to Information
3. Shaping the National Legislation
4. Parameters and Pitfalls of Right to Information Act 2005
5. Other Legislative Provisions on the Right to Information
6. General Observations

¹ Danny Nicol, “Democracy, Supremacy And The "Intergovernmental" Pillars Of The European Union” Public Law April 2009 P 218
1. **RTI Movement in India**

In India, the right to information has been developed through diverse strands for almost the entire period of the country's independent history. Only now these strands have come together to form the ‘critical mass’ needed to crystallize the issue into positive action on the part of the people as well as the Government.

Until 2005, an ordinary citizen had no access to information held by a public authority. Even in matters affecting legal entitlements for such subsidized services as food for work, wage employment, basic education and health care, it was not easy to seek the details of decision making process that affected or harmed the person. Without access to relevant information, it is not possible for a common man to participate in a meaningful debate on political and economic options or choices available to him for realizing socio-economic aspirations.

Although the Constitution of India has guaranteed the freedom of speech and expression under Article 19(1), Even then a citizen had no legal right to know about the details of public policies and expenditures. Therefore, it was not possible for a common man to observe and scrutinize public actions with a view to providing feedback for rectifying the deficiencies in policy planning and the execution of programmes.

**Need for Legislation**

The battle for appropriate legislation for the right to information has been fought on two main fronts. The first is a demand for amendment of the draconian colonial Official Secrets Act, 1923 and the second is the campaign for an early and effective law on the right to information.

The official Secrets Act has been used time and again to suit the purposes of the Government. Two infamous instances are related to this, one was the imposition of the Official Secrets Act to prohibit entry of journalists into an area where massive displacement was taking place due to construction of a large dam, namely the ‘Sardar

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4. MM Ansari information Commissioner) Impact of Right to information on Development :A Perspective on India ’s Recent Experiences (An invited lecture delivered at UNESCO Headquarters, Paris, France, on May 15, 2008), Central information Commission New Delhi. p. 4.

5. Ibid.

Sarovar Project’ on the river ‘Narmada’ world’s largest dams displacing hundreds of people, A strong movement against the construction of the dam has raised many pertinent questions about the nature of development and of the survival rights of the marginalized as well as the cost to the environment of such large “developmental projects”. A huge public debate and dissent was sought to be suppressed by the use of this law. Another instance which has been in the eye of an international storm during the last few years is the ‘Bhopal Gas Tragedy’; the lack of information about this massive disaster continues to raise serious questions even today. The affected people are still asking about the Government’s responsibility.

A Working Group was formed by the Government of India in 1977 to look into the required amendments to the Official Secrets Act to enable greater dissemination of information to the public. The Working Group made some recommendations for changes in some statutes which protect secrecy such as the Official Secrets Act and also recommended a draft law on right to information. The development of public awareness and interest on the issue of right to information is evident from the fact that this Report was much more widely discussed by academia and the media than other such reports. However, this did not alter the fact that eventually this report too seems to have gone into cold storage. This group recommended that no change was required in the Act as it pertained only to protect national safety and not to prevent legitimate release of information to the public.

In 1989, yet another Committee was set up, which recommended restriction of the areas where Governmental information could be hidden, and opening up of all other spheres of information. No legislation followed these recommendations. In 1991 sections of the press reported the recommendations of a task force on the modification of the Official Secrets Act and the enactment of a Freedom of information Act, but again, it was of no use.

8. The Tragedy occurred in December 3,` 1984 , in which leakage of Methyl Isocynate gas from the Union Carbide factory in Bhopal, the capital of the largest state in India, claimed several thousand lives and maimed and handicapped at least the next three generations.
10. The Hindu, l3 December l99I,p.8
11. Ibid.
1.1. **Mazdoor Kisan Shakti Sangthan Campaign**

In India, the campaign on the Right to information (RTI) was triggered off at the grassroots level by an organization called, the Mazdoor Kisan Shakti Sangthan\(^{12}\), in the 1990s. The movement was initially started to bring in transparency in village accounts. It was an off shoot of the demand made for minimum wages in rural areas. In Rajasthan, a State level Jan Sunwai was being organized to highlight the gaps between the promises of the State Government, provisions of law and the real implementation.\(^{13}\) The Mazdoor Kisan Shakti Sangthan (MKSS) was engaged in a struggle for minimum wages on Government Work sites. In 1992, it took small interest free loans from its members and started several Mazdoor Kisan Kirana, grocery stores where high quality groceries were supplied on low profit. The Mazdoor Kisan Shakti Sangthan (MKSS) activists, then, started demanding for accountability from the officers and the elected representatives. They realized the need to access to all records of local Government work in order to make the Government accountable. In 1994, the Mazdoor Kisan Shakti Sangthan (MKSS) movement adopted the methodology of Jan Sunwais or public hearings. The public hearings organized by (MKSS) evoked great hope among the underprivileged people locally, as Well as among the Government.\(^{14}\)

On 5 April, 1995 the Chief Minister of Rajasthan announced that his Government would be the first in the country to confer to every citizen the right to obtain photocopies of all official documents related to local development Work on deposit of a specific fee for the same. Exactly one year after the assurance of the Chief Minister, the Mazdoor Kisan Shakti Sangthan launched a 52 day long Dharna\(^{15}\) in Beawar\(^{16}\). At the end of the Dharna, the Deputy Chief Minister made an astonishing announcement, those six months earlier, the State Government had already notified the right to receive photocopies of documents related to Panchayat or Village Local

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12. It is the powerful union of agricultural labourers.
16. The demand was to press for the issue of administrative orders to enforce the right to information of ordinary citizens regarding local development expenditure.
Government Institutions. The order of the State government was welcomed as a major milestone, because for the first time, it recognized the legal entitlement of ordinary citizens to obtain copies of Government held documents.\(^{17}\)

This campaign for the Right to information had a major impact not only in the villages of Rajasthan, but it spread all over India and culminated into a great movement followed by a broader and more comprehensive discourse on issues of governance in India. This campaign also initiated a debate on the feasibility of Right to information Law in India\(^{18}\). Although, Mazdoor Kisan Shakti Sangthan was in struggle of the rural poor, it caught the attention and got the support of a cross-section of the country's media, lawyers and jurists\(^{19}\), academicians\(^{21}\) and even bureaucrats\(^{22}\) and legislators,\(^{23}\) many of whom came together to form the National Campaign on the People's Right to Information (NCPRI). The advocacy therefore ranged from the village level to the media, and to policy-making at the State level and at the centre. Non-Governmental Organizations and activists all over the country have adopted this strategy with minor changes in methodology.

1.2. **The National Campaign on People's Right to Information**

The National Campaign on People's Right to Information (NCPRI) was formed with the twin purpose of being a support group for the MKSS and to carry out advocacy on the right to information at the national level. The presence of senior and respected media persons, serving and retired bureaucrats, and members of the bar and Judiciary in the National Campaign on People's Right to Information (NCPRI) make it an important nodal body. Members like Prabhash Joshi,\(^{24}\) have been keeping the issue alive through their writing and travelling around the country. The National Campaign also brought out a journal, ‘Transparency’ which proved to be very useful for campaigning and networking purposes.

19. Prabhash Joshi, Ajit Bhattacharjea and Bharat Dogra
21. Shekhar Singh and Asmita Kabra
22. Harsh Mander and Mathew Shankaran.
23. Kuldip Nayyar.
24. One of India's most senior journalists.
1.3. The Commonwealth Human Rights Initiative (CHRI) Campaign

It is an independent, non-partisan, international Non-Governmental organization working for the practical realization of human rights. Commonwealth Human Rights Initiative (CHRI) viewed the right to information as providing a basic link between various human rights and promoted that perspective in its advocacy work. In mid-1997, when important developments were taking place both at the grassroots level and on the legislative front, Commonwealth Human Rights Initiative (CHRI) sought to engender a country-wide debate around the issue through dissemination of information. It produced a series of publications targeted at different levels to help simplify the issues. It has also conducted a number of workshops and other smaller meetings, mostly at the regional level but also nationally and internationally. The participants have been a mix of Non-Governmental Organizations representatives, academicians, lawyers and jurists, youth groups and students, media workers, bureaucrats, and people from other walks of life. The workshops are designed to elicit feedback on the information needs of people, problems of access to information and people's expectations from the law. Certain practical issues, such as the methodology for a people's audit 'using the MKSS model, are also discussed.

It has also been involved in Governmental initiatives on the right to information in the States of Madhya Pradesh, Delhi, Karnataka and Rajasthan, as well as with the central Government. The Commonwealth Human Rights Initiative (CHRI) campaign has brought together people doing advocacy work at all levels and has forged links between actors working at different levels, both within civil society as well as with Government.

1.4. Consumer and other groups

Consumer groups have taken up the issue of the Right to information, as it is clearly of importance to consumer rights. For example in the early 1980s, the Consumer Education and Research Centre (CERC) in Ahmadabad conducted research on freedom of information laws in place in other parts of the world, in particular the drafted legislation in the USA and Canada, which was introduced into Parliament as a private member's bill. The Consumer Education and Research Centre also held a series of workshops on the issue. The strength of Consumer Education and Research

Centre lies in their painstaking research and their grasp of grassroots problems in the context of consumer rights.

Many smaller groups and movements which have been struggling for various causes have also invoked the Right to information in their advocacy. Panchayat Bachao Abhiyaan, an informal movement in Bihar and Jharkhand, has been pushing for local elections to be held\textsuperscript{26} making the connection between the importance of political representation and citizens' entitlements. As part of their voter education programs they have been demanding the Right to information legislation. Some Non-Governmental Organizations (NGOs) have reinforced the demand for the right to information by holding 'transparency fairs' of their organizations, throwing open their own records. This is an important process as the first reaction of Governments to demand for transparency is often to accuse Non-Governmental Organizations especially those receiving foreign funds, of a lack of integrity and openness\textsuperscript{27}. In the course of the Consumer Education and Research Centre campaign on the issue, State and local level media, including radio and television, have covered the issue frequently and related it to local concerns\textsuperscript{28}.

1.5. Some Initiatives of the Bureaucracy

In India, some of the most practical moves for enforcing the Right to information have come from members of the bureaucracy and the politicians. This has been possible despite the consistent hostility of the Executive in general to transparency, and the fact that the bureaucracy as a whole is deeply corroded by corruption and nepotism. Some experiments that bear mentioning are the ones using Information technology to revamp the system of recording information. As far back as 1985, the District Collector of Karwar District in Karnataka, one of the Southern states, diverted funds meant for a jeep in order to purchase a microcomputer which was successfully used as an analytical tool. In the first year after adopting this system, the district went up from being the 18th to the 3rd in the success rate for implementing development programme. The success of this programme was in its replication to other Districts as a formal Programme named CRISP (Computerised Rural Information Systems Project).\textsuperscript{29}

\begin{itemize}
\item \textsuperscript{26} Elections to urban local bodies (ULBS) and village panchayats had not 'taken place for 22 years before April 2001.
\item \textsuperscript{27} This happened, for example, to the SWRC in Tilonia, Rajasthan.
\item \textsuperscript{28} Aruna Roy & Shanker Dey, ‘A Fight for Right to Know’ Yojna, January 2006, p. 2.
\item \textsuperscript{29} Singhal and Rogers, ‘India’s Information Revolution’, Sage Publication, 1989, p.128.
\end{itemize}
Advocates of the right to information need to keep an eye on all these aspects and ensure that transparency is carried to its logical conclusion and the sources of the information and the generation of information is made equally transparent. In recent cases Anna Hazare’s ‘Maran Varat’\(^\text{30}\) is also a good example of Right to Information in India against corruption. He created a ‘Jan Andolan Organization’ to apply the Right to Information in Maharashtra. His fight created a new history and people got an equal right to create a law.\(^\text{31}\)

1.6. **Parivartan**

Parivartan was started by Arvind Kejriwal\(^\text{32}\), in December 1999, while still in service with the Income Tax Department, he helped found a movement named Parivartan (which means "change"), focused on assisting citizens in navigating income tax, electricity and food ration matters in parts of Delhi. To facilitate people’s access to Government offices\(^\text{33}\) for about eight months, Kejriwal focused on assisting people at the Income Tax Office where he was employed. Kejriwal believes "Change begins with small things". The Parivartan organisation exposed a fake ration card scam in 2008.

Kejriwal wanted to help the most deprived sections of the population, so, he shifted his energies to the Delhi Vidyut (Electricity) Board (DVB), a public utility that touched the lives of most citizens. When the Delhi State Government enacted the Right to Information Act in 2002, Parivartan decided to use it in its work in the lower middle-class localities of Lakshmi Nagar and Nand Nagri.

Parivartan activists had participated in a Jan Sunvai organized by the Mazdoor Kisan Shakti Sangthan in Beawar in April 2002. In December 2002, Parivartan organized its first Jan Sunvai on the issue of ration shops in Sundar Nagri, a lower middle-class locality in Delhi, where a comparison of Government records of supply with the records of the shops revealed massive fraud. Parivartan has since moved ahead of the confines of the participatory role prescribed by the Government for Non-Governmental Organizations.\(^\text{34}\)

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\(^{30}\) started on 5\(^{\text{th}}\) April 2011.

\(^{31}\) The Tribune, 13\(^{\text{th}}\) August p.7.2011.

\(^{32}\) Renowned Social activist, Anna Hazare’s associate.

\(^{33}\) Interview with Arvind Kejriwal, 23, January 2006. See also Parivaitan’s website http://www.parivaitan.com

\(^{34}\) www.parivartan.com.
Together with Manish Sisodia and Abhinandan Sekhri, Kejriwal established the Public Cause Research Foundation in December 2006, donating the prize money he had received from the Ramon Magsaysay Award as a seed fund. This new body paid the employees of Parivartan.

Kejriwal has used the Right to Information Act in corruption cases in many government departments including the Income Tax Department, the Municipal Corporation of Delhi, the Public Distribution System and the Delhi Electricity Board.

There is a wide consensus among supporters of the Right to Information campaign that it is of paramount importance that a comprehensive and early legislation is passed which guarantees the right to information. Such a law must secure for every citizen the enforceable right to question, examine, audit, review and assess Government acts and decisions, to ensure that these are consistent with the principles of public interest and justice. It must bring within its purview the Judiciary and Legislature, while making Government explicitly responsible to supply information to the citizen on demand related to the corporate sector and Non-Governmental Organizations. It must also contain powerful provisions for penalties and should have an autonomous appeal mechanism. Most importantly, the proposed legislation must make disclosure the rule and denial of information the exception, restricted only to genuine considerations of national security and individual privacy, with the highly significant proviso that no information can be denied to the citizen which cannot be denied to Parliament and the legislatures. It would then truly be the most significant reform in public administration, legally empowering the citizen for the first time to enforce transparent and accountable governance.35

2. The State Laws on the Right to Information

While the debate on the Right to Information was raging in the nation, a few States enforced their own Right to Information laws. Tamil Nadu and Goa were the pioneers to pass the law in 1997. Rajasthan, Maharashtra and Karnataka followed in 2000, Delhi in 2001 and Assam 2002. Uttar Pradesh adopted a Code of Practice on Access to Information (2000). Madhya Pradesh enacted its legislation on January 31, 2003, significantly, after the President had given his assent to the Central Legislation (Freedom of information Act 2002).36

2.1. Tamil Nadu

Tamil Nadu was the first State to set an example by introducing the Right to information Act in 1997. This act contains seven sections in all. Every person is “given the right to access to information”, provided if it is relating to defence, security of the nation or if it is harmful for the conduct of international relations or affairs etc. Every Governmental action should be transparent to the public. To achieve this object, every citizen should be able to get information from the Government. Any person who wants to have access to the information may make an application to the Competent Authority in the prescribed manner. It can be rejected, for reasons to be recorded in Writing. The aggrieved person, who has not received any order from competent authority within 30 days, may file an appeal. The decision of the Government or such other authority as may be prescribed shall be final. If any difficulty arises in giving effect to the provisions of this Act, the Government may, make such provisions which are necessary or expedient for removing the difficulty. The Government may make rules or issue notifications for carrying out the purposes of this Act, which has to be laid before both the houses. There is no penalty clause and requesters may appeal only to the State Government, or any such authority as may be notified by the Government. The law is vague in its description of certain key areas, such as ‘public interest’, ‘public order’ and ‘public harm’. It does not have any provision for proactive disclosure of information.

2.2. Goa

It was the second State to enact the Right to Information legislation. Goa’s Right to Information Act was passed on 31 July 1997. It is known as one of the progressive legislations. It has the fewest categories of exceptions, a provision for urgent processing of requests pertaining to life and liberty, and a penalty clause. It is also applied to private bodies executing Government works. Despite claims made by the State Government, the Goa Act contains several peculiar provisions, which allow the State to withhold information without sustaining reasons for it. There was an enormous variation in charges levied for information. The law was not at all pro-

37. Sec 3 of state of Tamil Nadu
38. Sec 3(2) of state of Tamil Nadu
39. Sec 3(a) of state of Tamil Nadu
40. Sec 3(b) of state of Tamil Nadu
41. Sec. 4 of state of Tamil Nadu
42. Sec 6. of state of Tamil Nadu
43. Sec. 7 of state of Tamil Nadu
active and it was not easy to understand formats which could be used by a layman for seeking information. According to the Goa’s Right to Information Act, every citizen shall have the right to obtain information from a competent authority. It also includes the procedure for supply of information and restrictions on Right to Information.

Any person aggrieved by an Order of the Competent Authority, or any person who has not received any Order from the Competent Authority within thirty working days may appeal to the Administrative Tribunal constituted under the Act. The decision of the Administrative Tribunal shall be final. No order adversely affecting any person shall be passed except after giving that person a reasonable opportunity of being heard. Every appeal shall be disposed of expeditiously as possible and an endeavor shall be made to dispose of the appeal within 30 days from the date on which it is presented. It contains provisions relating to obligation on Competent Authority and penalties. It includes information about State Council for Right to Information. The competent authority shall charge fees for supply of information which shall not exceed the cost of processing and making available of information.

2.3 Rajasthan

The struggle for the Right to Information in Rajasthan began by an initial demand for details of Panchayat level expenditure within four years it grew into a movement and a campaign for a comprehensive legislation at both the State and Central levels. The Rajasthan Right to Information law was finally passed in May 2000, but it came into force on 26 January 2001 after the rules were framed. The Rajasthan Act has 13 sections in all, 10 of which are established categories of exceptions. According to the Rajasthan Right to Information Right to Information Act every citizen shall have right to obtain information from the incharge of office and such an incharge shall be liable to provide information under and in accordance with the provisions of this act. Any person seeking information shall make an application to the incharge of the office giving particulars of the matter relating to which

45. Section 4 of Right to Information Act, Goa.
46. Section 5 of Right to Information Act, Goa.
47. Section 6 of Right to Information Act, Goa.
48. Section 7 of Right to Information Act, Goa.
49. Section 8 of Right to Information Act, Goa.
50. Section 14 of Right to Information Act, Goa.
51. Section 3 of the Rajasthan Right to Information Act.
information is sought. Upon receipt of an application the incharge of the office shall consider it and if the information is such which can be provided and does not fall within the categories of exemption the incharge office shall provide the information within thirty days of the receipt of application. The information sought may be made available in the form it is available by copying or photocopying the same. No legal proceedings shall be instituted for enforcing the right to information without first exhausting the remedies provided under this Act.

No suit, prosecution or legal proceedings shall lie against any person for anything done or intended to be done in good faith in pursuance to the provisions of this Act or rules made there under. The State Government and public bodies may suo moto exhibit or expose such information, from time to time, as may be considered appropriate in public interest, in the manner as may be prescribed.

The State Government may make rules for carrying out the purposes of this Act. All rules made under this Act shall be laid before both the houses of parliament.

Though the Right to information is a part of the Rajasthan Government’s agenda, there has been no matching evidence of a pro-active campaign or an effort to change the prevalent culture of opaqueness and arbitrariness. Important shortcomings in Rajasthan’s law include many exemption provisions that have only given authorities ample leverage scope to deny all kinds of information. The provisions for suo moto disclosures are also weak. Moreover, the final appellant authority, the Rajasthan Civil Services Tribunal, was not a truly “independent appeal mechanism”.

2.4. Delhi

In Delhi the legislature passed the Delhi Right to Information Act in 2001. This law is along the lines of the Goa Right to information Act, containing the standard exceptions and providing for an appeal to an independent body, as well as establishing an advisory body to the State Council for Right to information. In Delhi

52. Section 4 of the Rajasthan Right to Information Act
53. Section 5 of the Rajasthan Right to Information Act
54. Section 11 of the Rajasthan Right to Information Act
55. Section 12 of the Rajasthan Right to Information Act
56. Section 12A of the Rajasthan Right to Information Act
57. Section 13 of the Rajasthan Right to information Act
58. Dr Shalu Nigam, ‘About to your Right to information’, We the Peoples Trust, New Delhi 2008, p52
the law on the Right to Information was enacted following the initiatives taken by various civil society groups. The Delhi Right to Information Act came into force on October 2, 2001 and has been used to seek information on a variety of development works in construction of drains, sewers, roads, public toilets etc. Parivartan a civil society group conducted a first ever urban public hearing on 14th December 2002 in Sundarnagari resettlement colony in East Delhi and unearthed corrupt practices amounting to millions of rupees. A person desiring information shall make a request in writing through electronic form, to the competent authority giving the particulars of the matter relating to which he seeks information. This law empowers any citizen to inspect any Government work or to demand sample of material. One can inspect an old work which has already been completed or an ongoing work. The requested information has to be provided within a month, failing which the concerned official could be penalized and would be liable to pay Rs 50 per day for any delay beyond 30 days, subject to a maximum of Rs 500 per application. It was also clearly stated that wherever the information is found to be false or has been deliberately tampered with, the official would face a penalty of Rs. 1000 per commitment, problems like difficulty in submission of application, information denial on incorrect grounds, half complete information provided, delay in and fear psychosis amongst officers and staff; high cost of accessing information was a major bone of contention between the civil society and the authorities. Any person aggrieved by an order of the competent authority, or any person who has not received any order from the competent authority within thirty working days, may appeal to the Public Grievances Commission. The decision of the Public Grievances Commission shall be final. No suit, prosecution or other legal proceedings shall lie against any person for anything done in good faith or intended to be done in pursuance of this act. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general or special order published in the Official Gazette, make such provision not inconsistent with the provisions of this Act as appear to be necessary or expedient for the purposes of removing difficulty.

60. Section 5 of the Delhi Right to Information Act
61. Ibid.
62. Section 7 of Delhi Right to Information Act
63. Section 12. of Delhi Right to information Act
64. Section 16 of Delhi Right to information Act
2.5. Madhya Pradesh

Although the State of Madhya Pradesh passed a Right to Information Act in March 1998, Presidential assent was refused and it has not come into force till date. The apparent reason for this is that the legislative competence to pass such a law rests with the Parliament. Executive orders on the Right to Information are, however, operational in close to 50 departments. The Act puts an unusual and welcome obligation on public bodies to make information available proactively, especially the information relating to health and security, through electronic and print media or any other method deemed fit. An application requesting information must be accepted or refiled within 30 days of its receipt and reasons for any rejection must be given. The Act has 11 categories of exceptions, with procedures for appeals and revision. An official who breaches the law can be fined up to Rs. 2000. The Act sets up an Advisory Board with the Chief Minister as its Chairperson, including two members from non-governmental organizations, the press and the legal profession each. A series of executive orders made to about 50 Governmental departments to provide information on request as well as a mandatory direction to put up information boards outside various departments are operational in Madhya Pradesh and now also in the new State of Jharkhand. Monitored by the Department of Administrative Reforms, these orders have not been widely used by the public. However, they do have the potential to create a culture of information-sharing if enforced properly. The orders have a provision for charging a nominal fee for inspection of records as well as for obtaining copies of records. Time limits are specified and internal appeals are provided for. Disciplinary action can be taken under these orders against erring officials. This state introduced the Right to Information Bill in 1998. The Bill aimed at providing transparency in the administration. It was passed by the Madhya Pradesh Assembly on April 30, the same year. The publicity department of the State Government compiled and published Orders of all departments in the form of a book titled ‘Jan ne ka haq’ (the right to know). The Government orders gave a list of issues

65. Compiled as ‘Jaanane Ka Haq’ by the Department Of General Administration, State Secretariat, Government of Madhya Pradesh, Bhopal, India.
on which the departments would be obliged to share information with citizens. The State Government has taken several initiatives to operationalize people’s right to information in this Act.

In 2002 Madhya Pradesh Jankari Ki swatantrata Adhiniyam, 2002 Act no 3 of 2003 was passed. It contains a total of 14 sections. Public authorities are under an obligation to maintain proper records, to make it available to the citizens on their application given in writing to the designated officer and also on payment of the prescribed fees for the same. In case of refusal to provide information the designated officer is required to tell the specific grounds for that. Specific provisions for appeal and penalties are there in case of failure to receive the information. The Madhya Pradesh Right to Information Bill of 2003 also received the assent of the Governor on 24 January, 2003.

2.6. Karnataka

The Right to Information legislation received the assent of Governor on 10th December 2000. The Act contains standard exception clauses covering 12 categories of information. The essential features of the legislation were (i) immunity to a journalist from disclosure of the source of information (ii) right to access to public documents and (iii) penalty for causing hurt to a journalist on duty. It had limited provisions for pro-active disclosure, it contains a penalty clause and provides for and appeals to an independent tribunal. Further, there were no provisions to penalize officials who did not comply with the law. The provisions of the Act require public authorities to publish all facts regarding their decisions and policies, before initiation of any project or scheme, but this was not brought into force. In spite of lacunae in the law, reports of increasing usage of the Right to Information system emerged from many districts in Karnataka.

Initially the awareness about this Act in the state was low but it is slowly changing due to the initiatives taken by organizations like the Public Affairs Centre (PAC), the Consumer Research Education and Awareness Trust (CREAT) and the

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68. Section 5 of Madhya Pradesh Act of 2003.
70. Section 7 of Madhya Pradesh Act of 2003.
71. Section 8 of Madhya Pradesh Act of 2003.
72. Published in Gazette of Karnataka on 13th December 2000.
73. Section 3(c) and 3(d).
Commonwealth Human Rights Initiative (CHRI) It was the innovative intervention of Public Affairs Centre (PAC) and (CHRI) in conducting an implementation audit that brought out the disinterest in implementing this law.\textsuperscript{74} Under the Act every public authority is under an obligation to maintain all records published at such intervals as may be prescribed.\textsuperscript{75} Every citizen shall have the right to information\textsuperscript{76}, but information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the State, strategic scientific or economic interest of India or conduct of International relations, the disclosure of which would prejudicially affect public safety and order or which may lead to an incitement to commit an offence or prejudicially affect fair trial or adjudication of a pending case and information relating to Cabinet papers including records of the deliberations of the Council of Ministers, Secretaries and other Officers is exempted.\textsuperscript{77}

A person desirous to obtain information shall make an application to the competent authority in the prescribed manner, along with such fee, in such form and with such particulars, as may be prescribed, but the fee payable shall not exceed the actual cost of supplying information. On the receipt of an application requesting for information, the competent authority shall consider it and pass orders either granting or refusing it. Where the competent authority does not have the information, he shall within fifteen days from the date of receipt of application transfer the application to the officer or person with whom such information is available and inform the applicant accordingly.\textsuperscript{78} The Grounds for refusal to supply information in certain cases has to be provided to the applicant\textsuperscript{79} if any difficulty arises in giving effect to the provisions of this Act, the State Government may, by an order make such provisions not inconsistent with the provisions of this Act.\textsuperscript{80}

A Penalty may be imposed, where any competent authority, without any reasonable cause fails to supply information sought for within the period specified under the Act.\textsuperscript{81} No Court shall entertain any suit, application or any other proceeding

\textsuperscript{75} Section 3 of the Act of Karnataka.
\textsuperscript{76} Section 4 of the Act of Karnataka.
\textsuperscript{77} Section (1) of the Act of Karnataka.
\textsuperscript{78} Section 5 of the Act of Karnataka.
\textsuperscript{79} Section 6 of the Act of Karnataka.
\textsuperscript{80} Section 8 of the Act of Karnataka.
\textsuperscript{81} Section 9 of the Act of Karnataka.
in respect of any order made under this Act otherwise than by way of an appeal under this Act.\textsuperscript{82}

2.7. Maharashtra

The Government pressurized by a sustained advocacy campaign by social activist Anna Hazare passed the Maharashtra Right to Information Act, 2000. However, it was criticized for being a weak law. After sustained and persistent efforts, the President gave his assent to the Maharashtra Right to Information Act 2002 on 10th, August 2003 and it was notified the next day. This legislation was a class apart from most others. The Act brings not only Government and semi-Government bodies within its purview but also State public sector units, co-operatives, registered societies (including educational institutions) and public trusts\textsuperscript{83}. It provided that the (PIO) Public Information Officer must be appointed in all State government organizations\textsuperscript{84} and must give the citizen the information within 15 working days on application in writing \textsuperscript{85}. The Information covered under exemption clause relating to defence, security or other confidential matters shall not be provided.\textsuperscript{86} Where an information officer willfully provided incorrect and misleading information or information that is incomplete, he could be penalized with a fine of up to Rs. 2000 and 'may be subjected to internal disciplinary action'\textsuperscript{87}. The Act provides that the penalty imposed “shall be recoverable” from his salary, “or if no salary is drawn, as arrears of land revenue”. The Act also provides provisions relating to appeals\textsuperscript{88}, severerability of information, etc.\textsuperscript{89}

2.8. Assam

The Assam Right to information Act 2002 was brought in quietly and there was hardly, any discussion on its content. It did not follow a participatory approach in law-making. However, the Assam Right to information Act is the only law that provides for mandatory publicity which was not recognized by other State laws.

\begin{itemize}
\item \textsuperscript{82} Section 10 of Act of Karnataka.
\item \textsuperscript{83} Section 2 of Act of Maharashtra.
\item \textsuperscript{84} Section 5 of Act of Maharashtra.
\item \textsuperscript{85} Section 6 of Act of Maharashtra.
\item \textsuperscript{86} Section 7 of Act of Maharashtra.
\item \textsuperscript{87} Section 12 of Act of Maharashtra.
\item \textsuperscript{88} Section 11 of Act of Maharashtra.
\item \textsuperscript{89} Section 10 of Act of Maharashtra.
\end{itemize}
Every office of the State Government or Public Authority shall maintain the records in such manner as may be prescribed in this behalf by the State Government or the Public Authority, from time to time. The Right to Information is subject to the provisions of this Act, any person desirous of obtaining information shall make an application to the in charge of the office in prescribed manner, along with such fee, in such form and with such particulars as may be prescribed. On receipt of an application the incharge of the office shall consider it and if the information is such which can be provided and does not fall within the category specified the incharge of the office shall provide the information within thirty days of the receipt of the application. No legal proceedings can be brought against any member of the armed forces acting under the Armed Forces Special Power Act (AF SPA).

2.9. Uttar Pradesh

Uttar Pradesh did not enact a comprehensive access to information law. However, on 3rd April 2000, the Uttar Pradesh Government issued Executive Orders establishing a Code of Practice on Access to Information which it has applied to three areas on priority basis, namely the Agricultural production commissioner, the Public Works Department and the Tax and Consolidations Department. These departments have been asked to supply information forthwith in accordance with the code and to report back to the department of administrative reforms annually. Its purpose was to provide some level of access to information to citizens. The Code was issued as an interim measure to ensure access to information. It was intended to apply to Government offices, Corporations, Councils, Public sector undertakings, Directorates, Board and local bodies within its scope, as well as contractors or agencies, which carried out functions on behalf of a public body. Every department of the Government of Uttar Pradesh, Organizations and Offices shall nominate an officer as 'Public Information Officer' for information relating to the department.

90. Section 3 of Right to Information Act of Assam.
91. Section 4 of Right to Information Act of Assam.
92. Section 5 of Right to Information Act of Assam.
93. Section 5 (1) of Right to Information Act of Assam.
94. Section 5 (2) of Right to Information Act of Assam.
95. Prepared by the Department of Administrative Reforms, State Secretariat (Sachivalaya Bhawan), Government of U.P. Lucknow, India.
96. Ibid.
97. Such as Public Sector Undertakings, Local Bodies, developmental Authorities, Corporations, Directorates, Boards, Offices of Divisional Commissioners, Trade Tax Commissioner, Entertainment Tax Commissioner etc.
organization/office and it will be the responsibility of the Public Information Officer, to deal with requests for access to information, and to render reasonable assistance to requesters seeking access to information.  

A request under this Code shall be made to the appropriate Public Information Officer in writing and will specify, as clearly as possible, the particulars of the information, document or records to which access is being sought. If the applicant remains dissatisfied, complaints may be made to the department's Secretary, whose decision will be final. All Departments, Public Sector Undertakings, Local Bodies, Developmental Authorities, Boards, Directorates, Corporations and other organizations under the Government of Uttar Pradesh will keep month wise account of the number, nature of the applications received, accepted and rejected and shall make available this information to the Department of Administrative Reforms within 5 days of the close of the financial year for publication in the form of an Annual report on the working of the Code of Practice.

In case of exemption to provide information it should be considered whether any harm or prejudice arising from disclosure is outweighed by the public interest in making information available. Otherwise the exempted information includes, information, opinions and assessments given in confidence, in relation to public employment and public appointments, information opinions and assessments given in relation to recommendations for honors, Voluminous or vexatious requests, Publication and prematurity in relation to publication, information relating to incomplete analyses, research or statistics. Third party's commercial confidence, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.

Overall, it may be said that there was a lack of uniformity in the state laws on the Right to information the quality and content of the law also varies drastically across States. Further, implementation of the law was one of the major lacunae that appeared as an obstacle even in the so called progressive states like Delhi, Mahathrastra or Karnataka.

98. Section 11 Code of Practice on Access to Information Uttar Pradesh.
100. Section 12 Code of Practice on Access to information Uttar Pradesh.
101. Section 13 Code of Practice on Access to information Uttar Pradesh.
102. Part-II Sec.4 Code of Practice on Access to Information Uttar Pradesh.
3. **Shaping the National Legislation**

The first major draft legislation on the right to information in the country, that was widely debated, and generally welcomed, was circulated by the Press Council of India in 1996. Interestingly, it is derived significantly from a draft prepared earlier by a meeting of social activists, civil servants and lawyers at the Lal Bahadur Shastri National Academy of Administration, Mussoorie in October, 1995\textsuperscript{103} in which some serving officials of the institute took the initiative to introduce freedom of information legislation.

3.1. **The Draft by the Shourie Committee**

The Government of India constituted a working group chaired by consumer activist H.D. Shourie to draft legislation for consideration of Government.\textsuperscript{104} The working Group appointed by the Government in 1997 was known as the “Shourie Committee” since it was headed by former bureaucrat and consumer rights activist H.D. Shourie. This committee, which submitted its report in May 1997, advanced on the Press Council Legislation Draft by explicitly bringing the Judiciary and Legislature under the purview of the proposed legislation.\textsuperscript{105} Many of the positive aspects of the Press Council legislation were excluded or diluted in the Shourie draft. Most importantly, it widened the scope of exclusions to enable public authorities\textsuperscript{106} to withhold information the disclosure of which would not sub serve any public interest’. This single clause broke the back of the entire legislation, because in effect public authorities would then be empowered to withhold disclosure of incriminating information in the name of public interest. The powerful clause referred to earlier, which provided that only such information that can be denied to parliament or the legislature can be withheld from the citizen, was not included. The Shourie draft also made no provisions for penalties in the event of default, rendering the right to information toothless. Appeals were allowed to consumer courts. The Act defined

\textsuperscript{103.} This is the institute for training all recruits to the elite higher civil services.

\textsuperscript{104.} Dogra Bharat ‘Right to Information: Hope and Despair’ Economic and Political Weekly, 1997, 19\textsuperscript{th} July, p.16

\textsuperscript{105.} Government of India’s Working Group on Right to Information and promotion of Open and Transparent Government, which gave its report in 1997.

\textsuperscript{106.} The term ‘public body’ included not only the state as defined in Article 12 of the Constitution of India for the purposes of enforcing Fundamental Rights. It also incorporated all undertakings and non-statutory authorities, and most significantly a Company, Corporation, Society, Trust, firm or a Co-operative society, owned or controlled by private individuals and institutions whose activities affect the public interest. In effect, both the corporate sector and NGOs were sought to be brought under the purview of this proposed legislation.
public authorities more narrowly to exclude the private sector and all Non Governmental Organizations (NGO) which are not substantially funded or controlled by Government. However, with the demise in quick succession of two left-leaning United Front governments, this draft also went into cold storage. The right-wing Bhartiya Janata party (BJP) led alliance also promised legislation for right to information in its national agenda, but there has been little open debate about the contents of the proposed legislation.\footnote{Madhav Godbole, ‘Unending Struggle for Right to Information’, www.humanrightinitiative.com}

The first indications of what is possibly contained in the draft legislation being considered by the union Government are reports in the media\footnote{According to these reports, the government is now contemplating only to amend a few sections of the Official Secrets Act, and to list a dozen items on which it would become mandatory for government to give information on demand. Items not covered by this list might continue to be covered by the Official Secrets Act.}, which is completely in contradiction to the basic principle of transparent and accountable governance, that the enforceable right of the citizen to Government held information must be the rule, with only a few exceptions for genuine considerations of national security and individual privacy. No legislation for the right to information should be allowed to make this principle stand on its head, making disclosure the exception rather than the rule.

### 3.2. The Freedom of Information Bill, 2000

The Shourie draft was revived with some changes, in July 2000, and it was introduced as the Freedom of Information Bill, 2000.\footnote{The Shourie draft was never introduced into Parliament.} Prior to the Bill being introduced in parliament, there was no official effort to publicize the draft or engage in a debate over its provisions. There was debate on the draft law in certain media, academic media, Non-Governmental Organizations and other interested circles, but it was based primarily on debates regarding the contents of the Bill. On the basis of a review of the objections raised by academics and activists, as well as several interactions with varied groups around the country, Commonwealth Human Rights Initiative (CHRI) produced two publications containing the chief objections to the Freedom of information Bill for, respectively, civil society and legislators. Overall, the Commonwealth Human Rights Initiative (CHRI) felt that the Bill fails in important ways to conform to international standards and the best comparative practices on access to information. It does not reflect a serious attempt to address
information issues in the Indian context. Overall, the weakness of the Bill reflects the lack of political will to implement a good information disclosure system. Indeed, the Bill is so weak that civil society has debated whether this Bill should be resisted outright, at the risk of losing the opportunity to have legislation on the right to know, until at least the non-negotiable standards are included.110

The most serious problem with the Bill is that it fails to provide for an independent review of refusals to disclose information, either by an independent administrative body or by the courts. This means that decisions on whether or not to release information rest entirely within the purview of the Government. A blanket exclusion of key intelligence and security organizations and an excessively broad regime of exemptions significantly undermine the potential for the Bill to promote the public’s right to know. However the freedom of Information law was passed in 2002111

3.3. The Right to Information Act, 2002

This Act provides freedom to every citizen to secure access to information which is under the control of the public authorities112. The Act deals with the protection of freedom of information. It provides protection of freedom of information to all citizens of the country subject only to the other provisions of the Act. Under this Act the ‘freedom of information’ has been defined as ‘the right to obtain information from any public authority by means of inspection, taking of extracts and notes, by certified copies of the records of the public authority’. It can be taken by way of floppies and diskettes in cases where this information is kept in computer and in any other electronic media113. The term ‘information’ has also been defined as any material in any form relating to the administration, operation and the decisions of the public authority114.

The obligations of the authorities in respect of the protection of this right are mentioned in Section 4 of the Act. The Act imposed an obligation on the public authorities to maintain the records which is consistent with the operational

110.Dr. Sheila Rai, (Assistant Professor, Department of Political Science University of Rajasthan, Jaipur) ‘Transparency and Accountability in Governance and Right to Information in India’ http1//www.napsipag.org/pdf/SHEILA_RAIPdm, p.7.


112.Authority or the Power in the hands of masses.


114.Ibid, section. 2(d).
requirements of such authorities. The public authorities were required to give reasons for any decisions taken by them, whether it is administrative or quasi judicial to those persons who were affected by such decisions.\textsuperscript{115} The public information officer is required to dispose of the application as expeditiously as possible.\textsuperscript{116} In any case this period shall not exceed more than 30 days. Within this period if he does not provide information or reject the application or request, he should specify reason for such rejection. The Act also provides for the protection of certain information, which the State can do under the heads of privileges\textsuperscript{117}. The public information officer can refuse access to information, if the information sought for is too general, if it involves the disproportionate diversions of the resources of a public authority or if it is interfering with the functions of such authority.\textsuperscript{118} If on a request made by a party, the authority intends to give information which is relating to or has been supplied by a third party, a public information officer is required to give notice to the party concerned. He should also invite representation from him against such disclosure. But in such cases if the information is not concerned with the trade or commercial secret protected by law the disclosure may be allowed. Here the public interest involved in such disclosure should over-weigh the possible harm or injury to the interest of the third party\textsuperscript{119}. The Act also bars the jurisdiction of courts. This is an express prohibition on the courts not to entertain any suit, applications or other proceedings in respect of any order made under this Act\textsuperscript{120}.

In order to carry out the provisions of this Act, power has been given to the Central Government, the State Government and also to the competent authority to make rules. This may be relating to: (a) the fee payable under the provisions of the Act for the purpose of obtaining information from the public authority, (b) the authority before whom the appeal shall be preferred by the persons aggrieved by the decisions of the authority, (c) any other matters which are required or prescribed by the authority to be necessary for carrying out the provisions of the Act\textsuperscript{121}.

At the same time every such rule made by the Central Government is required to be laid before each house of Parliament, while it is in session for a period of 30

\begin{thebibliography}{99}
\bibitem{115} Ibid.
\bibitem{116} Sec 7 Right to Information Act of 2002.
\bibitem{117} Sect 8 Right to Information Act of 2002.
\bibitem{118} Sec 9(a) Right to Information Act of 2002.
\bibitem{119} Sec.11 Right to Information Act of 2002.
\bibitem{120} Sec. 15 Right to Information Act of 2002.
\bibitem{121} Sections 17, 18 & 19 Right to Information Act of 2002.
\end{thebibliography}
days, and before the expiry of such period if both the houses agree that there should be some modifications to that rule or agree that there is no need to have such rules then such rules will have the effect of such modification or annulment. The validity of any act done previously under that rule will not be adversely affected by such modification or annulment.\(^{122}\)

The same is applicable to the rules made by the State Government which are required to be laid before the State Legislature and if there is any difficulty, it can be removed by an executive order which is considered to be necessary and expedient \(^{123}\). Any such order made by the Government is required to be laid before each house of Parliament.

### 3.3.1. Criticism of the Right to Information Act (2002)

Even though the Act is intended to promote openness, transparency and accountability in the administration and in the matters connected there with, it is inadequate to achieve this objective. A Wholesome protection has been given to the persons acting under the Act.\(^{124}\) No suit, prosecution or legal proceedings are possible against such person for anything done by him in good faith.

In most of these exempted categories, the final decision making authority is the executive. So it is at the discretion of the executive to include any matters as something relating to economic or commercial interest of the country or to decide as to whether it is affecting safety and order etc.\(^{125}\) Under Section 8(2) of this Act if the information is relating to any event or occurrence or matter which has taken place or occurred or happened 25 years before the date of request the information shall be provided by the authority. But in deciding the question as to from which date these 25 years shall be counted, the decision of the Central Government is final. If the Central Government wants, it can very well include or exclude any categories of information within this time period. Under Section 9, the public information officer can reject a request if he is satisfied that the request is ‘too general’ in nature. Any questions raised in respect of any order made under this Act are required to be called in question only by way of an appeal and it provides an express bar to the jurisdiction of the courts. There may be situations, where people’s right to know will be suppressed by

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\(^{122}\) Sec 20 (1). Right to Information Act of 2002.
\(^{123}\) Ibid, Sec 21 (1).
\(^{124}\) Section 13 Right to Information Act of 2002.
arbitrary actions of the government. The relief, in this context, can be given to the aggrieved persons only by an independent and impartial authority like courts which is not provided by the Act.  

The operation of the Act is limited only to the public authorities. So a citizen can seek access to information held only by the public authorities. But in the changing era of privatization one can see that most of the activities formerly undertaken by the Government are now being done by the private agencies.

In spite of various criticisms, the Act is found to be a welcome step towards ensuring transparency and openness. This is the only way in which the corruption and other illegalities prevailing in the current politics can be removed. If official secrecy is limited and transparency is assured there will be a strong bond between the ‘governors’ and the ‘governed’. That will also strengthen the democratic set up.  

3.4. The Passage of Right to Information Act, 2005

The Coalition Government at the Centre led by United Progressive Alliance formulated an agenda called, ‘Common Minimum Programme’ One of the agenda of the Common Minimum Programme (CMP) was the introduction of ‘Right to Information Act’. The Common Minimum Programme (CMP) stated clearly, “the Right to Information Act will be made more progressive, participatory and meaningful. In order to look after the implementation of the Common Minimum Programme the United Progressive Alliance (UPA) constituted National Advisory Council. In the National Advisory Council some of the activists like Aruna Roy, Jean Drez who are associated with the National Campaign for Peoples’ Right to Information Act consistently put pressure on the United Progressive Alliance (UPA) Government to pass the bill and to enact a law. In response to these efforts the Parliament passed the Bill and the President of India consented to the Act, on 15th June 2005. On 15 June 2005, the President gave his assent to the National Right to Information Act, 2005. The presidential office cautioned to ensure Presidential immunity and stipulated that documents emanating from the President’s Secretariat

127. The Indian Express ‘Plea to Enact Right to information Law’, October 22nd 2001, p.3.
128. Consensus programme of the constituents of the UPA government at the centre.
129. Resigned IAS officer, MKSS activist and winner of the Raman magsays award.
130. Prominent pro-working class economist.
should not be brought under the purview of the Act. The Central Law came into force since it has been published in the Gazettee on June 21, 2005 as the Right to Information Act 2005. The Right to Information Act, 2005 is a milestone in India’s progress as the biggest democracy in the world.

3.4.1. The Object of the Act of 2005

The Right to Information Act which came into effect in October 2005 cover Governments on all levels, Central, State or local along with all bodies owned, controlled or substantially financed, including Non-Governmental Organizations (NGO) directly or indirectly financed by Appropriate Governments. This revolutionary enactment aims to ensure transparency and accountability in the working of every public authority, the right of any citizen of India to request access to information and the corresponding duty of the Government to meet the request, the duty of the Government to pro-actively make available key information to all, citizens, Non-Governmental Organizations (NGO) and media. Though, there are certain items that would be exempt from disclosure, e.g. sensitive information, access to which could prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State relation with foreign States or lead to incitement of an offence.

3.4.2. The Meaning of ‘Information’ under the Right to information Act of 2005

The Act defines the term ‘information’ as any material in any form, including records, documents, memos, e-mails, opinions, advices, press release, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body that can be accessed by a public authority under any other law for time being in force.

3.4.3. Who can obtain information under the Right to information Act of 2005 Act?

All citizens have the Right to Information subject to the provision of this Act. This provision has been interpreted by the central Information Commission to

133. Section 2 of the Act.
134. Section 3 of the Act.
include organizations within the meaning of the citizen for seeking information. In Mr. Keval Prasad vs Allahabad Bank\textsuperscript{135} the Central Information Commission, held that the technical interpretation of the provision should not be adopted by the Public information officers and the Public Authorities While dealing with applications filed by either the President or the members of any organization under the Right to information Act. The Commission has taken the stand of accepting all applications received from bodies like Unions, Associations, Welfare Bodies, companies etc. because the Commission felt that these bodies should also be entitled to benefit from the provisions of the Right to Information Act which should not be lost sight of in the narrow interpretation of the Act. The Commission had therefore directed the Central Public information Officers, in all such cases, to entertain and process all such applications as per the provisions of the Act. In ST -CMS Electric Company Pvt. Ltd vs Railway Board New Delhi\textsuperscript{136} the Commission observed that Right to Information application had been made on behalf of a company and therefore was not covered under Section 3 of the Right to Information Act. What Kind of information one can ask for? A person can ask for any information related to the Government functioning like copies of contracts of various Government works, copies of bills and vouchers, status of any application filed with the Government, status of various grievances or corruption cases pending, attendance registers of gardeners or sweepers in an area, log book of vehicles used by various Government functionaries, list of works carried out by Members of legislative assembly and Members of Parliament, obtain sample of material of any Government work, documents related to various policies and budgets of the Governments etc.

3.4.4. Important decisions on RTI Act

3.4.4.1. Records under a Parliamentary Panel

The central Chief Information Commissioner on 1\textsuperscript{st} January, 2010 in Patanjali Sharma vs. Central Public Information Officer of the Rajya Sabha Secretariat,\textsuperscript{137} has ruled that the records with a parliamentary committee can be provided under the Right to Information Act, once the report has been tabled on the floor of the House.

\textsuperscript{135}Appeal no.2907 / ICPB /2008
\textsuperscript{136}CIC/OK/A/2007/00173 205
\textsuperscript{137}CIC/WB/A/2008/0 1294 dated 25.7.2008.
3.4.4.2. Cut-Off Marks for Optional Subjects

In Union Public Service Commission vs. Central Information Commission, it was plea of the Union Public Service Commission (UPSC) that if cut-off marks are revealed, then the scaling methodology would become known to public at large and that would undermine the entire examination system. The court held that as per the sealed cover containing the scheme for examination and scaling methodology, the scaling methodology indicated this is already “known to public” because of the disclosure of the UPSC itself in the counter affidavit filed before the Supreme Court. It was further held that there is nothing new that is mentioned in the contents of the sealed cover with regard to the methodology which is not mentioned in the said counter affidavit filed before the Supreme Court. The information that is sought by respondents does not fall within the expression of ‘Intellectual Property’ and is not exempted. The data collected by the Union Public Service Commission (UPSC) is of an event which has already taken place and its disclosure would have no bearing whatsoever on the next year’s examination. Therefore, even if it is assumed that it is information within the meaning of Section 8(1)(d) of the Right to Information Act, its disclosure would not harm the competitive position of any third party.

In any event the Union Public Service Commission (UPSC) being a public body is required to act and conduct itself in a fair and transparent manner in any event. It would also be in public interest that this fairness and transparency is displayed by the revealing of the information sought. The disclosure of information as directed by the Central Information Commission does not, in any way, in court view, harm the protected interests of UPSC or any third party.

3.4.4.3. Disciplinary probe can be Disclose

In A.K. Gupta vs Chief Public Information Officer, the Central Information Commission held that the details of disciplinary proceedings against an employee cannot be withheld from disclosure by invoking section 8(1)(h), Which bars the disclosure of information which could impede the process of information. The decision of the Central Information Commission panel was on the plea of an applicant, who demanded records relating to an inquiry into the alleged misconduct by an officer of State Bank of Mysore. The bank refused to disclose any information.

138. 2007 (139) DLT 608 _ 2008 (1) RTI 164 (Del) 2007 (5) AD (Del) 745.
139. Under Section 8 (1) (d)
140. 2007 (139) DLT 608 _ 2008 (1) RTI 164 (Del) 2007 (5) AD (Del) 745.
141. CIC/AA/A/2011/241 dared 25/05/2011
by invoking section 8(1) (h) saying the Central Bureau of Investigation (CBI) had been investigating this matter.

All Disciplinary proceedings regarding the public conduct or misconduct of an employee of public authority, all the records and files in this regard are public records and have to be disclosed subject to other exemptions of the Act. There is nothing in the Act which exempts the disclosure of any information merely because of a related matter is pending in a court of law.

3.4.4.4. Information on Phone Tapping can't be withheld

The Himachal Pradesh State Information Commission on March 25, 2010 ruled that the record pertaining to tapping of phones by Government agencies cannot be withheld.

The State Information Commission rejected the plea of the Public Information Officer that such information was exempted under Section 8 (1) (h). The commission observed that the Public Information officer (PIO) had miserably failed to provide even an iota of justification or reasons to substantiate his findings that it would "impede the investigation of criminal case lodged against the complainant." The procedure under Section 5 (2) of the Indian Telegraph Act was a result of the directions of the Apex Court in the interest of transparency and accountability, and as such denial of information by the Public Information officer (PIO) may tantamount to flouting of the mandatory directions of the court. Disclosure under the Right to Information Act is the rule and denial the exception.  

3.4.4.5. Bio-data Documents

When a candidate submits his application for appointment to a post under a public authority the same becomes a public document and he cannot object to the disclosure on the ground of invasion of privacy.

3.4.4.6. Information Pertaining to Transfer of Employee

In Canara Bank Vs. The Central Information Commission, Delhi & Anr the Kerala High Court held that the disclosure of employees of bank would not cause unwarranted invasion of privacy of other employees in any manner in so far as that information is not one which those employees can keep to themselves. Without the information as requested by the employee, he would not be in a position to effectively pursue his claim for transfer in preference to others. If the employee

142. Ibid.
143. AIR 2007 Bom. 121
seeking information feels that the transfer made is in violation of his rights for preferential transfer, he necessarily should have the information which cannot be withheld from him by resort to section 8(l)(j). The Court further held that 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. By no stretch of imagination can it be held that the information requested for by relating to transfer of employees of bank is information which can be denied to the Parliament and a State Legislature. In fact that proviso effectively nullifies the impact of the main provision to a great extent.

3.4.4.7. Evaluated Answer Scripts

The Evaluated answer script (sheet) is information within the meaning of the Right to Information Act and its disclosure is not prohibited under the transparency law. In State of Jharkhand Vs. Navin Kumar Sinha144 the Jharkhand High Court held that access to answer scripts cannot be denied to examine. The examiner discharging public function must be accountable to people.

In University of Calcutta Vs. Pritam Raj145 the Calcutta High Court ruled that a look at the evaluated answer script could serve the noble purpose of being acquainted with the mistake committed or getting a clarification of the doubts one have on getting to know that he has not been awarded marks true to his expectation. However, the public authorities are not obliged to retain answer scripts for any day in excess of period mentioned in relevant regulation for preservation thereof.

3.4.4.8. Commercial Confidentiality can be withheld

In Sabhash Chandra Agrawal vs M/s Petroleum & Natural Gas, HPCL and BPCL146 The oil companies are commercial and service organizations. They are therefore; free to conduct businesses in a manner that assure their competitiveness in the free market economy. The oil companies are free to determine the extent of incentives/concessions that may be given to the consumers in the interest of promotion of business and profit motives. There is, therefore, no justification for disclosing the details of basis for providing incentives to the consumers that are critical for promotion of business. The respondents should, however, provide the

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144.AIR 2008 Jharkhand. 19.
145.AIR 2009 Cai. 97.
146.CIC/MA/C/2008/00068 dt. 09-04-2008
information relating to the identified banks with which they have arrangements for selling petrol through the credit cards.

3.4.5. Who is liable to give information?

It is the obligation of Public Authorities to provide information. All Public Authorities are required to maintain a properly catalogued and indexed record of its activities and to publish and update, at least once every year, certain basic information about the functioning and duties of the Public Authorities. It is mandatory for all Public Authorities to publish relevant facts, while formulating important policies or announcing decisions which affect the public. Each Public Authority must ensure that there is a healthy participation of people in the decision-making process. The obligations also require all public Authorities to be more accountable to those whom their decisions affect and therefore to provide them with the reasons for which certain decisions were taken—be they administrative or quasi-judicial in nature. This provision ensures that the principles of natural justice are guaranteed to each person affected by the decision of a Public Authority.

3.4.5.1. Exclusion of certain organizations

Under the Act Central Intelligence agencies and security agencies like the IB, RAW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Enforcement Directorate, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, CID Special Branch of Andaman and Nicobar Island, CID Crime Branch of Dadra Nagar Haveli and Special Branch, Lakshadweep Police. Similar agencies established by the State Governments will also be excluded. The information relating to corruption and human rights must be given but only with the approval of the Central or State Information Commission as the case may be.

In **Pratap J Shah vs Directorate of Enforcement**, the central Information Commission held that, information relating to show cause notices issued by Directorate to a particular company, order issued against such notices, details of levy of penalty and name of Special Director who adjudicated the matter is exempted.

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147. Section 4 (I) (b) of Right to Information Act, 2005.
148. Section 4 (I) (C) of Right to Information Act, 2005.
149. Section 24 of Right to Information Act 2005.
150. Appeal no. 16/ic(a)/2006 dt. 28-03-2006.
under section 24 of the Right to Information Act and the complaint does not relate to allegation of corruption or human rights violation, hence appeal is not maintainable.

In the case of **Sanjiv Kumar Jain** Vs **S.K. Bansal, Dy. Director, IB, Ministry of Home Affairs, New Delhi and. others**\(^{151}\), the Public Information Officer and Appellate Authority turned down appellant’s request for information on the ground that the information sought pertained to the Intelligence Bureau (IB), which is an organization listed in the Second Schedule of the Right to Information Act. The Appellate Authority had further stated that the information sought did not pertain to any allegation relating to charges of corruption or human right violation and, therefore, did not qualify for the exception under proviso to Section 24(1). The Commission held that the exemption provided to the organizations listed in Second Schedule of the Right to Information Act is absolute in nature.

**3.4.5.2. Exemption is not absolute**

However, these agencies do not enjoy absolute immunity. These agencies have to provide information regarding any allegation of corruption or act of human right violation sought by citizens. It states that the information pertaining to the allegations of corruption and human rights violation shall however not be excluded. The information sought for in respect of allegations of violation of human rights the information shall only be provided after the approval of the Central or the State Information Commission. In such cases information shall be provided within forty-five days from the date of the receipt of request. Allegation of corruption and human rights violation in the context of this section should be construed to mean 'Verifiable allegations.

In **S.P. Goyal** vs. **Directorate of Revenue Intelligence (DRI), I.P. Estate, New Delhi**\(^{152}\), it is observed that in the context of section 24, the term "allegations" should mean charges of corruption, which on the basis of available evidence, tend towards presence of corrupt motives and action by given public officials, a complaint to the Central Vigilance Commission is indeed an allegation of corruption. Thus the information pertaining to corruption in such exempted organizations and the human rights violations by these intelligence and security organizations shall not be withheld.

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\(^{151}\) **ClC/AT/C/2OO6! OO030. az. April 27, 2006.**

\(^{152}\) **22.10.2007, CIC Digest (vol. n) 1871 (803).**
3.4.5.3. Public Information Officers

The Public Information Officers are the link between the information seeker and the Public Authority. He is responsible for receiving applications and then give an appropriate reply to the applicants as per the provisions of the Right to information Act. Within one hundred days from the enactment of the Act, every public Authority shall have to designate “as many officers’ as the Central Public Information Officers or State Public Information Officers (as well as Central/ State Assistant Public Information Officers), in all administrative units or offices under it, as may be necessary for the purpose of providing information to those seeking it.\(^{153}\)

3.4.5.4. Duty of Public Information Officer

The Public Information Officer has to provide all assistance to the information seeker while filing the application. In Suresh Chand Gupta vs Deputy Commissioner of Police\(^ {154}\), the Delhi High Court ruled that it was the duty of the Public Information Officer to provide all manner of assistance to an applicant who is unable to file an application under the Act. “If a person requesting information under the provisions of Right to Information Act felt inhibited due to his not being fluent in English, denial of appropriate assistance to that person would in fact amount to withholding access to information.”

3.4.5.5. Procedure for Obtaining Information

A person desiring to obtain information shall either Write or put into electronic format his request to the Central or State Public Information Officer. The application can be worded in English, or Hindi or the regional language of the state the person comes from. An oral request can also be made to the Central or State or Assistant Public Information Officer, who will then produce it in writing. With the application the appellant must provide the nominal application fee, as prescribed by the appropriate authority. Further, the applicant does not have to provide any reason for requesting the information or personal details of any kind. The person is required to provide only those contact details without which it would not be possible to reach that person.\(^ {155}\)

On the issue of the motive of the information seeker in obtaining information, the Madras High Court, for the first time in IIT V Minerals vs Department of

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153. Section 5 of the RTI Act 2005.
154. [MANU/ DE 3213/ 2007].
155. Section 6 of Right to information Act, 2005.
Mining and Geology and others\textsuperscript{156}, has held that the motive of the information seeker cannot be questioned, unless the information sought comes under the exemption clauses of the Right to Information Act, it simply has to be provided to an applicant. Any allegation of an “ulterior motive” holds no ground whatsoever.

3.4.5.6. Time limit & Fees

The Central or State Public Information Officer has to process the application within a maximum period of thirty days or reject the request. The thirty-day time limit is the maximum time permitted by the Act. If the information concerns the life or liberty of a person the Public Information Officer shall provide the information requested within forty-eight hours of receiving the request\textsuperscript{157}. The various conditions for time limit and fees are as under:

- If the request has been made to the Public Information Officer, the reply is to be given within 30 days of receipt.
- If the request has been made to an Assistant Public Information Officer, the reply is to be given within 35 days of receipt.
- If the Public Information Officer transfers the request to another public authority, the time allowed to reply is 30 days but computed from the day after it is received by the Public Information Officer of the transferee authority.
- Information concerning Corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within 45 days but with the prior approval of the Central Information Commission.
- However, if life or liberty of any person is involved, the Public Information Officer is expected to reply within 48 hours\textsuperscript{158}.

Since the information is to be paid for, the reply of the Public Information Officer is necessarily limited to either denying the request (in whole or part) and/or providing’ a computation of further fees. The time between the reply of the Public Information Officer (PIO) and the time taken to deposit the further fees for information is excluded from the time allowed. If information is not provided within this period, it is deemed as refusal. Refusal with or without reasons may be a ground

for appeal or complaint. Further any information not provided in the time prescribed is to be provided free of charge. From the year 2006, in case of Central Departments there is a fee of Rs. 10 for filing the request, Rs. 2 per page of information and Rs. 5 for each hour of inspection after the first hour. If the applicant is a Below Poverty Card holder, then there is no fee. Such Below Poverty Line (BPL) Card holders have to provide a copy of their Below Poverty Line (BPL) card along with their application to the Public Authority.

In Dr. Reeta Jayasankar vs Deputy Secretary (P) & PIO, Indian Council of Agricultural Research, Krishi Bhawan, Delhi\textsuperscript{159}, Central Information Commission held that, the Public Information Officer was not right in concluding that the appellant’s application for information could be returned at the admission stage itself for her failure to enclose the exact fee.

Exemptions from Disclosure of Information Section 8 of the Act, provides for the following ten types of exemptions from disclosure:

3.4.5.7. Information affecting National Security

The public authorities can withhold information, the disclosure of which may prejudicially affect sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, and relations with a foreign state or lead to incitement of an offence. In such cases the public Information Officers enjoys no discretion\textsuperscript{160}. Thus a reasonable restriction on the exercise of the right is permissible in the interest of the security of the State. In Vibha Jain vs. Dir. National Board of Exanimation\textsuperscript{161}, it is held that Authorities are by virtue of Section 8, exempted from disclosing such information where sovereignty and integrity of India may be prejudicially affected by such disclosure or where public safety and order would be affected by said disclosure. It is certainly within the domain of the concerned Public Authority to decide and determine as to whether disclosure would adversely affect the economic interest or not.

In Ritesh Parmar vs. Commissioner of Customs\textsuperscript{162}, it is held that, the cases under the conservation of Foreign Exchange and Prevention of Smuggling Activities Act are exempted from disclosure under Section 8 (1) (a) of the Act. The Reserve Bank of India is also entitled to claim exemption under this section.

\textsuperscript{159} CIC/AT/C/2006/00052.
\textsuperscript{160} Section 8(1) (a)
\textsuperscript{161} 2007 (7) AD (Del) 210.
\textsuperscript{162} CIC (Digest) Vol. 1, 341, dr. 21 092006,
In Kamal Anand Vs Central Board of Direct Taxes (CBDT)\(^{163}\) It has been held that Supply of instructions, directions, clarifications relating to Scrutiny Policy for non-corporate sector could be prejudicial to economic interest of the State and hence could be denied under 8(l)(a) of the Right to Information Act, particularly when broad parameters of the scrutiny guidelines have already been provided to the appellant.

### 3.4.5.8. Information Forbidden by a Courts Order

The information can be, withheld by the public authorities, the publication of which has been expressly forbidden by any court of law or tribunal or the disclosure of which may constitute contempt of court\(^{164}\). Nobody can exercise his right to know, where the court of law or tribunal prohibits the publication of the same. The information of the matter in which, the court proceeds in camera, the public authorities are exempted from obligation to disclose the same. Section 237 (2) of the Code of Criminal Procedure, 1973 provides that every trial under this section shall be held in camera if either party thereto so desires or if the court thinks fit so to do. In the trial of offences\(^{165}\), the court can also proceed in camera and prohibit the publication of the same.

In **NBS. Manian, Tiruvallur** vs **Department of Post**\(^{166}\), it is held that Sec 8(1) b applies to cases wherein there is a specific order from a court that the information should not be disclosed. A matter being subjudice cannot be a ground for denying the information. It further provides that there shall be no obligation to give any citizen any information, the disclosure of which may constitute contempt of court. The right to know does not entitle a person to commit contempt of court. The law relating to the contempt of court imposes reasonable restriction on the right to access information.

### 3.4.5.9. Trade Secrets, Intellectual Property Rights etc.

There is no obligation on public authority to provide access to information relating to commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party\(^{167}\).

However, if the competent authority is satisfied that larger public interest requires the disclosure of such information, then the same can be provided to the

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\(^{163}\) cic/Ar/A/2007/00617,dt. 11.2.2008

\(^{164}\) sec 8(1) b

\(^{165}\) Under Section 376 of Indian Penal Code.

\(^{166}\) CIC Digest (Vol. 1) 788, dr. 10.01.2007.

\(^{167}\) section 8(1) (d)
applicant. Intellectual property includes patent, design, trade mark, copy rights and geographical indications of goods as defined under the respective laws. Quotations, bid, tender, prior to conclusion of a contract can be categorized as trade secret, but once concluded, the confidentiality of such transactions cannot be claimed. Any public authority claiming exemption must be put to strictest proof that exemption is justifiably claimed.\textsuperscript{168} In \textbf{State of Jharkhand vs. Navin Kumar Sinha}\textsuperscript{169}, it is observed by the Supreme Court that “People have a right to know the basis on which the decision has been taken. If tenders are invited by the public authority and on the basis of tender documents, the ability of a tenderer or a bidder is decided, then those tender documents cannot be kept secret, that too, after the tender is decided and the work order is issued on the ground that it will amount to disclosure of trade secret or commercial confidence. If the authorities of Government refuse to disclose the document, the very purpose of the Act will be frustrated. Moreover, the disclosure of information sought for by the petitioner, cannot and shall not be a trade secret or commercial confidence rather disclosure of such information shall be in public interest, in as much as it will show the transparency in the activities of the Government.

\textbf{3.4.5.10. Information obtained under Fiduciary Relationship}

There is no obligation to give any citizen, information available to a person in his fiduciary relationship. However, if the competent authority is satisfied that the larger public interest warrants the disclosure of such information, then same can be provided to the applicant\textsuperscript{170}. Fiduciary relationship is one of trust and confidence, for example, the relationship of solicitor and client, spiritual adviser and his devotee, doctor and patient, creditor and debtor, etc. Under such relationship, the person in fiduciary relation is in a position to exploit the confidence deposed in him by the other person.

In \textbf{Canara Bank Vs The Central Information Commission & Anr}\textsuperscript{171}, it is held that the information requested for by the employee of Nationalised Bank relates to transfer and promotion of employees of the bank. Such information does not

\textsuperscript{168} CIC/WB/C/2006/00176, dr. \textsuperscript{\textsuperscript{s.4.2006}.}
\textsuperscript{169} AIR 2008 Jhar. 19, 2007 (3) JCR 668 Jhr.
\textsuperscript{170} Section 8(l) (e) of RTI Act, 2005.
\textsuperscript{171} AIR 2007 Ker. 225, 2008 (1) RTI 564 (Ker).
pertain to any fiduciary relationship of the petitioner bank with anybody coming within purview of Section 8 (1) (e).

3.4.5.11. Evaluated Answer Sheets in Exams

In, **Mukesh Chaturvedi** vs **N W Railway, Jaipur**[^172], the Information/documents regarding the question-wise and sub-question-wise marks secured by the candidate for the examination held for the post of Assistant Personnel Officers in 2007 along with answer-sheets of the other candidates who had qualified in the examination was sought for. The Commission directed the Respondents to provide the question-wise and sub-question wise marks to the Appellant of his answer sheet for the examination of the Assistant Personnel Officers held in 2007; (ii) the Appellant may be shown the answer-sheets of the candidates he wants but without providing him with a copy of the same. In case he wants a copy of his own answer-sheets, this may be provided to him. In 2008, the Central board of secondary education (CBSE) rejected an application filed by a candidate under the Right to Information Act for the inspection and re-evaluation of his secondary school examination answer books. The reason cited was that the Central board of secondary education (CBSE) shared a fiduciary relationship with its evaluators and maintained confidentiality of the manner and method of evaluation.[^173] Section 8 (1) (e) of the Right to Information Act exempts a public authority from disclosing information if it is held in a fiduciary relationship unless the authority is satisfied that the larger public interest warrants such disclosure. Further the Central Board of Secondary Examination (CBSE) claimed that its examination bye-laws barred re-evaluation, disclosure or inspection of answer books, and what was permissible was only a verification of marks. The Central board of secondary education (CBSE) submitted that the procedure evolved and adopted by it in the evaluation of answer books ensured fairness and accuracy and made the entire process as foolproof as possible. If candidates were to be permitted to seek the re-evaluation of answer books, it would create confusion and chaos, subjecting its elaborate system of examinations to delay and disarray apart from necessitating huge additional staff and infrastructure.

[^172]: No. CIC/OK/A/2007/01484 dt.11-04-2008
3.4.5.12. Information related to Judges Assets not Information in a Fiduciary Capacity

In *Secretary General, Supreme Court* vs *Subhash Chandra Agarwal*, the Delhi High Court's single judge bench on September 2, 2009 held that the Chief Justice is a public authority under the Right to information Act and he holds information pertaining to asset declarations in his official capacity as the Chief Justice. That office is a public authority under the Act and is covered by its provisions. Such information given to the Chief Justice of India is information and subject to the provisions of the Right to information Act, and the same does not hold by the Chief Justice of India in a fiduciary capacity as per section 8 (I) (e) of the Act. The view taken by single bench was upheld by the division bench of the Delhi High Court on January 12, 2010.

Details & File Noting related to Supreme Court's Collegium’s Recommendation the details and the notings related to Supreme Court's Collegiums’ recommendation for elevation of a judge is information in a fiduciary capacity. The Supreme Court on March 2, 2010 rejected a plea, made under the Right to information Act, for details and file noting relating to its collegiums’ recommendations for elevation of Karnataka High Court Chief Justice P. D. Dinakaran to the Apex Court. The Supreme Court held that the information sought by the applicant is confidential and is exempted under section 8(1)(e) of the Right to information Act, being a information held in fiduciary capacity, and the applicant have no right to access the said information under section 2(f) of the Act.

3.4.5.13. The Chief Justice of India's advice on transfer of a Judge is Confidential.

The Law Ministry, on March 28, 2010 observed that it cannot make public the advice tendered by the Chief Justice of India (CJI) over the transfer of Punjab & Haryana High Court Judge Nirmal Yadav to The Uttarakhand High Court. The ministry said that the recommendation of Chief Justice of India K.G. Balakrishnan to the Law Minister on the issue is in the nature of advice tendered by the Cabinet which is exempted from disclosure under Section 8(l)(i) of the Right to Information Act.
However, as per Section 8(3) 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.

3.4.5.14. Confidential Information from a Foreign Government

The Information received in confidence from foreign Government is exempted from disclosure under the Act178.

In Nasli Wadia v. Ministry of External Affairs179, it is held that, it is for the concerned Public Authority to determine as to which part is sensitive and cannot be disclosed and which part even though sensitive can still be disclosed without prejudicially affecting relations with a foreign State. Information regarding the issue of voting for membership of Human Rights Council is likely to effect the Country's relationship with foreign countries.

3.4.5.15. Information Endangering the Life or Safety of a Person

In Anil Kumar Sharma vs. Commission of Income Tax IL Jabalpur, Madhya Pradesh Information180, it is held that the disclosure of information which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for the enforcement or security purposes, is exempted from disclosure by virtue of Section 8 (l) (g) of the Act. The commission has steadfastly declined to disclose information of depositions, sources of information received by the public authority, statement by witnesses, etc. mainly on the ground that disclosure of this information offends section 8 (1) (g) of the Act. In the case of Prem Peyara vs. Delhi Police181, it is held that The Daily Diary which contains names and addresses of informants, Witnesses and other contacts of the police authorities could not be disclosed.

3.4.5.16. Information affecting any Investigation or Prosecution Proceedings

The disclosure of the information which would impede the process of investigation or apprehension or prosecution of offenders is exempted under Right to Information Act182. The public authority can withhold such information. In Ravirzder

178. Section 8 (1) (f).
179. CIC Digest, Vol. 11, 1993 (968) 16.10.200s.
181. CIC (Digest, vol. 1), 758 dr. Ol .1 l.2006.
182. Section 8 (1) (h).
Kumar vs. B.S. Bassi, Joint Commissioner of Police\textsuperscript{183} the applicant had sought details regarding the progress of investigation of a case by the police. The Central Information Commission dismissed the appeal relating to the disclosure of information.

3.4.5.17. Cabinet Papers

There is no obligation to give any citizen, information of cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers and it can be withheld, but the decisions of council of Ministers, the reasons thereof, and 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.\textsuperscript{184}

Cabinet papers have not been defined per-se in the Right to Information Act. A description about the cabinet papers is available in Doypack Systems Pvt Ltd Vs. Union of India & others\textsuperscript{185} according to which cabinet papers include papers brought into existence for the purpose of preparing submissions to the Cabinet. It has been observed by the Supreme Court in this case that Cabinet papers are protected from disclosure not by reason of their contents but because of the class to which they belong. Every decision of the council of ministers is a decision of the cabinet and, as such, all records concerning such decision or related thereto shall fall within the category of "cabinet papers". However, under the Right to Information Act, all cabinet decisions must be made public along with reasons and the materials that formed their basis, after the matter is complete or over. But there is latest move of the Union Government to amend the Right to Information Act to make cabinet papers more inaccessible. The provision deal only with the decisions of the Council of Ministers, Cabinet papers and all official deliberations connected with the decisions of the Council of Ministers. Therefore, this sub-section cannot be invoked for exemption of official deliberations unconnected with Cabinet papers or the decisions of the Council of Ministers. i. Information invading the Privacy of an Individual There shall be no obligation to disclose the information which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual\textsuperscript{186}. However, if the Public Information Officer or the Appellate Authority is satisfied that the larger public

\textsuperscript{183}. CIC/AT/A/2006/00004, dt 30.06.2006.
\textsuperscript{184}. Section 8(1).
\textsuperscript{185}. AIR1988 SC 782.
\textsuperscript{186}. Section 8(i)j of Right to information Act, 2005.
interest justifies the disclosure of such information, then the same can be provided to
the applicant and the information, which cannot be denied to the Parliament or a State
Legislature, shall not be denied to any person under the Act. The information
mentioned in Section 8(l)(J) is personal information which is so intimately private in
nature that the disclosure of the same would not benefit any other person, but would
result in the invasion of the privacy of that person. A citizen or a person, a legal
person, or any institution has several interfaces with the State Government such as
tax-payer, licensee, consumer, and so on. In each such role, he parts with a certain
measure of personal information to an authorized public body, which it, he would
never have parted but for the compulsion of law. But this fact alone is not sufficient to
alter the character of the information parted, i.e. not sufficient to transform an
acknowledged personal information to public. It simply means that the individual,
bowing to the Sovereign State, complies with its law, by allowing it limited ingress
into the individual's private domain. The State Government, on the other hand,
impliesly promises to the individual the confidentiality of the information to keep it
away from the reach of third parties.\textsuperscript{187} Personal or private information must be saved
from being made public by the public authority which happens to receive such
information. That personal information does not cease to be personal just because it is
delivered into the care of the public authority by the individual who owns such
information has to be remembered.\textsuperscript{188}

\textbf{3.4.5.18. Prime Minister Health Information is personal}

The Central Information Commission on September 25, 2009 has ruled that
the information about ailments of the Prime Minister cannot be given under the Right
to Information Act as it is personal in nature and disclosure will be an invasion of
privacy and disclosure would indeed be in violation of sub-section (J) of section 8(l).
\textsuperscript{189} However, it ruled, the expenses incurred on the treatment should be disclosed since
these were made from the exchequer.

\textbf{3.4.5.19. Annual Confidential Reports}

In Anil Misra \textit{v. Centrale Board of Excise and Customs}\textsuperscript{190}, it is held that
Annual Confidential Reports cannot be disclosed since it is a confidential document.

\textsuperscript{187}V.K.Puri, ‘Right to Information ’, Practical Handbook, JBA Publication, New Delhi, 2010,
p.165.
\textsuperscript{188}Ibid.
\textsuperscript{189}The Tribune, dr. 25.09.2009
\textsuperscript{190} CIC Digest (ver. 11), 2348 (1469). dr. 23.7.2008.
These reports should not be disclosed principally because this would result in breaching the implied contract of confidentiality between the officers writing the Annual Confidential Reports.

3.4.5.20. Leave Records

Leave record is purely a personal matter with no public interest involved and confidential. Under Section 8 (1) Q). Hence, the information (leave record) need not be disclosed. d. Medical Records, As far as medical reports are concerned, they are purely personal to the individuals and furnishing of the copies of medical reports would amount to invasion of privacy of the individuals and need not be furnished. However in larger public interest the medical record can be disclosed. In Sarup Singh v Hrya Naik vs. State of Maharashtra’s case, the issue was related to the medical record of a person convicted for contempt of court. The contention of private citizen seeking information is that the larger public interest requires that this information be disclosed, as person in high office or high positions or the like, in order to avoid serving their term in jail/prison or remand to police custody with the connivance of officials get themselves admitted into hospitals. It is submitted that, therefore, the public has a right to know, as to whether such a person was genuinely admitted or admitted to avoid punishment and thus defeat the judicial order.

The court held that the public’s right in such a case must prevail over the private interest of such person. The Court must bear in mind the object of Right to Information Act, which is to make the public authorities accountable and their action open. A regulation framed under the Medical Council of India Act, which provides for the non-disclosure of secrets of the patient that has been learnt in the exercise of his profession, is subordinate legislation. The 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, if there be a conflict between the two. Moreover, the public interest outweighs the protected personal interest, in this case, hence the medical record demanded should be provided to the applicant.

3.4.5.21. Larger Public Interest has overriding effect

A public authority may allow access to information if public interest in disclosure outweighs the harm to protected interest. The information the disclosure...
of which is barred by Official Secrets Act, 1923 or exempted under any of the clause of section 8(1) can be disclosed if the Central or State Public Information Officer or Appellate Authority is satisfied that the public interest requires the disclosure. In such case harm to the protected interests is immaterial. If larger public interest justifies the disclosure then the information cannot be withheld under the pretext of Official Secrets Act, 1923 or exemptions under Sub-Section (1) of Section 8. In Subhodh Jain vs. Transport Departments Government of National Capital Territory (NCT) Delhi, it is held that the question of determination of public interest warranting the disclosure of information is to be decided by the competent authority. It is for the competent authority to satisfy itself as to what the larger public interest warrants. Public authorities are allowed to exercise their discretionary powers shielded by secrecy and outside the pale of public scrutiny.

3.4.5.22. Disclosure of Deposits

In H V Jayaram vs. Department of Posts is held that the denial of information under Section 8(l)(i) of the Act is justified as no public interest would be served by disclosure of information asked for by the appellant. The appellant is neither a legal heir nor a nominee of the deposits made by his deceased brother. He is seemingly asking for the information for promotion of his personal interest, rather than public interest.

3.4.5.23. Financial details mainly provident fund Contributions by a person’s ex-wife

In Ashish Kumar Tiwari vs. Employees Provident Fund Organization, it is held that the disclosure of financial details, mainly Provident Fund contributions by a person’s ex-wife would surely help the affected parties in arriving at the reasonable amount of maintenance to be paid to his divorced wife. The disclosure of information sought is, therefore, in larger public interest.

3.4.5.24. Disclosure of Information of cut-off marks for optional subject

In Union Public Service Commission vs Central Information Commission, there was plea of the UPSC that if the cut off marks are revealed, then the scaling methodology would become known to public at large and that would undermine the entire examination system.
The Delhi High Court held that the information that is sought by the respondents does not fall within the expression of "intellectual property" and the disclosure of information, as directed by the Central Information Commission, does not, in any way, in court view, harm the protected interests of UPSC or any third party. In any event, the public interest in disclosure is overwhelming and court is of the view that the Central Information Commission has approached the matter in the correct prospective and has issued the directions for disclosure of information. Thus if the public interest justifies the disclosure of any private information, then the harm to the protected interests is immaterial and the required information can be supplied in spite of the provisions of the Official Secrets Act, 1923 and exemptions permissible under Sub-Section (1) of the Section 8 of the Act.

3.4.5.25. Infringement of Copyright

A Public Information Officer 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. Without prejudice to the provisions of Section 8, a Central Public Information Officer or 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. 199

Section 9 of the Act provides another ground on which the information can be withheld by a public authority. This ground of rejection to access information is in addition to the grounds covered under Section 8 of the Act.

The copyright Act, 1957 defines a 'copyright' as a negative right which prevents the appropriation of the fruits of a man's work, labour or skill by another person. This protection is given by making any infringement of copyright as unlawful; thus, copyright prohibits any person from reproducing or copying any "literary, dramatic, musical or artistic work", without the consent of the owner of the copyright in that work. 200

3.4.5.26. Partial Disclosure

In some cases, requested information can well be divided into two parts. The first can easily be disclosed without inviting any exemption; and the second concerns

the applicability of any of the exemptions laid down in the Right to Information Act. The Public information officer is required to disclose the first part of information and may claim exemption on the other part. In such a situation, the Public information officer cannot claim exemption from disclosure of the entire information on the ground that one part of the information is exempted. Such severance of the information is to be done considering that such severance should not destroy the information of record

3.4.5.27. Third Party Information

In case the information sought pertains to a third party and the public Information Officer intends to disclose such information or part thereof under this Act, he is required to give a notice to such third party within five days of the receipt of the request. By way of such notice, comments and possible objections from the concerned third party is invited. Concerned third party gets 10 days’ time to file objections or comments to the concerned Public Information Officer. But in no case concerned third party can veto the disclosure. It is the Public Information Officer, who, after considering the submission of the third party, has to take an independent decision on disclosure of information. The decision of the Public Information Officer is also affected by the public interest involved in the information. After considering the deliberation of the third party, if the public Information Officer decides to disclose information, with respect to a third party, he is required to give a notice of his decision and the details of the Appellate Authority under the Act prior to the actual disclosure of information. This is to enable the third party, to file an appeal against his decision. The Right to Information Act also provides that the third party has a right to appeal against the decision. Under section 19(3) of the Right to Information Act, with the appropriate Appellate Authority within 30 days of receipt of the decision of the Public Information Officer.

The decision of the public Information Officer, about whether or not to divulge information related to a third party to the information seeker, is to be communicated to all concerned parties within a period of maximum of 40 days from the date of making of the request for information.

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201. Section 10 of the Act.
202. Section 11, of the Act.
In the case of A.P. Singh vs. Punjab National Bank 203 the appellant had sought information regarding the bank account of another person with whom the applicant had no professional or business relationship. This information was refused to the applicant by the public authority. The Central Information Commission held that a bank is under duty to maintain the secrecy of accounts of its customers, who are also third party. The Central Information Commission (CIC) further held in this case that since the applicant had not established any bona fide public interest in having access to the information sought nor did he have any association or business relationship with the company (bank), his appeal cannot be accepted in terms of the law as provided in Section 8 (l)(j) of the Right to Information Act.

In Reliance Industries Limited Vs. Gujarat State Information Commission & Anr204, the court held that Section 11 (l) of the Act 2005, gives mandate to Public Information Officer to give written notice to third party if he intends to disclose information relating to third party. There is no express exclusion of hearing process. Submission can be made even orally by the third party. Public Information Officer has to consider these submission or representation. The court further opined that the Public Information Officer should be given an opportunity of personal hearing to third party before imparting information. In the facts of the present case, no such hearing was ever afforded before imparting the information relating to the petitioner and, therefore, the orders passed by the respondents deserve to be quashed and set aside. Therefore, whenever anybody apply for getting information about third party, such information shall be given by Public Information Officer (PIO) under section 7, only after following the procedure prescribed under section 11(l) of the Act.

4. Parameters and Pitfalls of Right to Information Act 2005

Right to information as provided in RTI Act, 2005, draws its genesis from universal declaration of human rights 1986; international covenant on civil and political rights 1966 and part III rd. of the constitution of India enumerate fundamental rights. However, reasonable restrictions on right to information have been carved out in each of these cases. Accordingly, for appreciating exemption provided in section 8 and 9 of the RTI Act 2005, it is necessary to briefly discuss the provision of the said legal testaments.

204. AIR 2007, Guj 203-2008 (1) RTI 461 (Guj).
4.1. **Universal declaration of human rights, 1948**

Right to information is a human right under article 19 of universal declaration of human rights, which states: “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” However article 12 of universal declaration of human rights imposes reasonable restrictions stipulating that: “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

4.2. **International covenant on civil and political rights, 1966**

Article 14 of international covenant on civil and political rights also permits restrictions: the press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security or when the interest of the private lives of the parties so requires or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concerns matrimonial disputes or the guardianship of children.

4.3. **Parameters under Indian constitution:**

Fundamental right under the constitution of India article 19 (1) (a) of the constitution stipulates that all citizens shall have the right to freedom of speech and expression. Article 19(2) carves out exception as under: nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of (the sovereignty and integrity of India) the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The freedom to speech and expression enumerated in article 19(1) is one of those great and basic rights which are recognised as the natural rights inherent in the status of a citizen. But this freedom is not absolute or uncontrolled, for same is liable to be curtailed by laws made or to be made by the state to the extent mentioned in clauses (2) to (6) of article 19. Clause (2) of article 19 recognize the
right of the state to make laws putting reasonable restrictions in the interests of the
general public, security of the state, public order, decency or morality and for other
reasons set out in the sub-clause. The principle on which the power of the state to
impose restriction is based is that all individual rights of a person are held subject to
such reasonable limitations and regulations as may be necessary or expedient for the
protection of the general welfare.”

In A.K. Gopalan vs State of Madras,205 case, in words of das, j.,
“Social interest in individual liberty may well have to be subordinated to other
greater social interest. Indeed, there has to be a balance between individual
rights guaranteed under article 19(1) and the exigencies of the state which is
the custodian of the interests of the general public, public order, decency or
morality and of other public interests which may compendiously be described
as social welfare.

The right to know, receive and impart information has been recognised within
the right to freedom of speech and expression in S.P. Gupta v. Union of India206. It
was admitted that whenever disclosure of a document is clearly contrary to the public
interest it is immune from disclosure. But the decision on such immunity will rest
with the court and not with the head of government or department. Rejecting the plea
for disclosure of the supporting documents and evidence in Vohra Committee Report,
the court held that transactions which have serious repercussions on public security
can legitimately be claimed to be secret in the public interest. In Prabha Dutt v.
Union of India,207 the Supreme Court directed the superintendent of the Tihar Jail to
allow the representatives of a few newspapers to interview two death sentence
convicts under article 19(1) (a) though with the observation that the right under article
19(1) (a) “is not an absolute right, nor indeed does it confer any right on the press to
have an unrestricted access to means of information.” This position has been
reiterated in subsequent cases.

4.3.1. Reasonable restrictions under article 19(2)

Clause (2) of article 19 specifies the limits up to which the freedom of speech
and expression (inter-alia right to information) may be restricted. It enables the
legislature to impose reasonable restrictions on the right to free speech under the

205.AIR 1950 SC 27
206.AIR 1982 SC 149
207.AIR 1982 SC 6
following heads: (1) security of the state (2) friendly relations with foreign states (3) public order (4) decency or morality (5) contempt of court (6) defamation (7) incitement to an offence (8) sovereignty and integrity of India reasonable restrictions under these heads can be imposed only by a duly enacted law and not by executive action. Now we shall consider each head of restriction in the aforesaid order.

4.3.1.1. Security of the state –

Under clause (2) of article 19, reasonable restrictions on the freedom of speech and expression can be imposed in the interests of the security of the state. The security of the state may well be endangered by crimes of violence intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, etc. All utterances intended or calculated to have the above effects may properly be restrained in the interests of the security of the state. Serious and aggravated forms of public disorder are within the expression 'security of the state'. Every public disorder cannot be regarded as threatening the security of the state.

In Romesh Thappar vs. State of Madras\(^\text{208}\) case the Supreme Court definitely pointed out that the expression does not refer to ordinary breaches of public order which do not involve any danger to the state itself. Incitement to commit violent crimes like murder would endanger the security of the state. Thus, in State of Bihar V. Shailabala Devi\(^\text{209}\), the law which made penal words or signs or visible representations which incited to or encouraged, or tended to incite to or encourage any offence of murder or any cognizable offence involving violence was held by the Supreme Court to fall within article 19(2). After the amendment of the constitution in 1951 'public order' has been added as a ground for restrictive laws, and there would hardly be any occasion to draw fine distinctions between the two expressions.

4.3.1.2. Friendly relations with foreign states

This ground was added by the constitution (first amendment) act of 1951. The state can impose reasonable restrictions on the freedom of speech in the interest of friendly relations with foreign states. The justification is obvious: unrestrained malicious propaganda against a foreign friendly state may jeopardize the maintenance of good relations between India and that state.

\(^{208}\)AIR 1950 SC 124
\(^{209}\)AIR 1952 SC 329
4.3.1.3. Public order

The preservation of public order is one of the grounds for imposing restrictions on the freedom of speech and expression. The expression ‘public order’ is synonymous with public peace, safety and tranquility. It signifies absence of disorder involves breaches of local significance in contradistinction to national upheavals such as revolution, civil strife or war, affecting the security of the state.

4.3.1.4. Decency or morality

Decency or morality is another ground on which freedom of speech and expression may be reasonably restricted. Decency connotes the same as lack of obscenity. Obscenity becomes a subject of constitutional interest since it illustrates well the clash between the right of the individual to freely express his opinions and the duty of the state to safeguard the morals. It is obvious that the right to freedom of speech cannot be permitted to deprave and corrupt the community, and therefore, writings or other objects, if obscene, may be suppressed and punished because such action would be to promote public decency and morality.

4.3.1.5. Contempt of court

The constitutional right to freedom of speech would not prevent the courts to punish, as contempt of them, spoken or printed words calculated to have that effect. The expression ‘contempt of court’ is now defined by section 2 of the Contempt of Courts Act, 1971 as under: 88 (a) 'contempt of court' means civil contempt or criminal contempt; (b) 'civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court; (c) 'criminal contempt' means the publication (whether by words spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. Articles 129 and 215 of the constitution empower the Supreme Court and high courts respectively to punish people for their respective contempt. The contempt of courts act, 1971, defines the power of the high court to punish contempt's of its subordinate courts.
In E.M.S. Namboodripad V. T.N. Nambiar, the Supreme Court observed that freedom of speech shall always prevail except where contempt of court is manifested, mischievous or substantial.

4.3.1.6. Defamation

Defamatory matter is matter which exposes a person about whom it is published, to hatred, ridicule or contempt. The law of defamation is divided into libel and slander. Defamatory matter, if in writing, printing or some other permanent medium, is a libel; if in spoken words or gestures, a slander.

4.3.1.7. Incitement to an offence

This is also a new ground added in 1951. Obviously, the freedom of speech cannot confer a license to incite people to commit offence. During the debate on this clause in parliament, it was suggested that the phrase should be 'incitement to violence' as the word 'offence' is a very wide expression and could include any act which is punishable under the Indian penal code or any other law. The suggestion was rejected. In State of Bihar V. Shailabala Devi, the Supreme Court held that incitement to murder or other violent crimes would generally endanger the security of the state; hence a restriction against such incitement would be a valid law under clause (2) of article 19.

4.3.1.8. Integrity and sovereignty of India

This ground has been added by the constitution (sixteenth amendment) act, 1963. The amendment is made to guard from the freedom of speech and expression being used to assail the territorial integrity and sovereignty of the union. Thus, it will be legitimate for parliaments under this clause to restrict the right of free speech if it preaches secession of any part of India from the union. It will be noted here that the restriction is with respect to the territorial integrity of India and not on the preservation of the territorial integrity of the constituent states. The constitution itself contemplates changes of the territorial limits of the constituent states.

4.3.2. Exemptions under RTI Act 2005 sec (8 & 9)

As may be seen from the provisions of section 8 and 9 of the RTI Act 2005, almost all reasonable restrictions and exclusions discussed under universal declaration

210.AIR 1970 SC 2015
211.AIR 1950 SC 329
of human rights, international covenant on civil and political rights and article 19(2) of the constitution of India have been imported as exemptions in the act with additions of few more grounds. Let us discuss section 8 and 9 of the RTI Act, 2005.

Exemptions from disclosure of information under RTI Act, 2005

The information to which RTI Act applies falls into two categories, namely, (i) information which promotes transparency and accountability in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in clauses (b) and (c) of section 4(1) of RTI Act; and (ii) other information held by public authorities not falling under section 4(1)(b) and (c) of RTI Act. In regard to information falling under the first category, the public authorities owe a duty to disseminate the information widely suo moto to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated under section 4(1) (b) and (c) of RTI Act, necessarily and naturally, the competent authorities under the RTI Act, will have to act in a pro-active manner so as to ensure accountability and ensure that the fight against corruption goes on relentlessly. But in regard to other information which does not fall under section 4(1) (b) and (c) of the Act, there is a need to proceed with circumspection as it is necessary to find out whether they are exempted from disclosure.

One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. Are to be ignored or sacrificed. The object of RTI Act is to harmonize the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While sections 3 and 4 seek to achieve the first objective, sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore when section 8 exempts certain information

212. Supra 27.
from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals. Therefore in dealing with information not falling under section 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.

The right to information act does not provide access to citizens to all kinds of information held by the public authorities. Some exemptions from the disclosure of information have been provided in section 8(1) of the RTI Act; categories of information listed in this section can be denied to the citizens by the PIOs. Citizens must also know the provisions of section 8 and the related judgments already listed in this section, so that they do not waste their and the PIOs’ time. It is mandatory for the PIOs to know this provision and develop a clear understanding of it, so that any denial of requested information by him clearly falls within the scope of section 8(1). The PIOs must also know that mere quoting of a clause of section 8(1) is not sufficient; it should be backed by reasonable justification.

The PIO of a public authority can deny the following categories of information under the act:

- Information whose disclosure will affect the security and integrity of India.
- Information barred from disclosure by a court.
- Information, whose disclosure would be a breach of privileges of the parliament/assembly,
- Information relating to commercial secrets.
- Information, which is available to a person due to a special relationship of trust (fiduciary relationship).
- Confidential information obtained from foreign governments.
- Information, the disclosure of which would endanger the life and physical safety of a person.
- Information, which would affect the process of investigation.
- Records of meetings of cabinet (council of ministers).
• Personal information, the disclosure of which has no relationship to any public interest.

However, a PIO may allow access to information to the applicants in spite of the above exemptions provided in section 8(1), if public interest in providing the information is greater than the harm done in private interest. Thus, the PIOS, while dealing with requests for information must always remember that public interest shall outweigh private interest in the disclosure of information, and that disclosure of information is the rule and denial of information is an exception.

4.3.3. Interpretation of exemptions provisions of RTI Act, 2005 by CIC

4.3.3.1. Information on ongoing investigation [secs. 8(1) (g) & 8(1) (h) of the RTI Act]

In the case of Ravinder Kumar vs. B.S. Bassi, Jt. Commissioner, Police the applicant had sought details regarding the progress of an investigation of a case by the police. The CIC dismissed the appeal relating to the disclosure of information. It ruled that the disclosure of information, in cases under investigation by the police was exempted, according to the provisions of sections 8(1)(g) and 8(1)(h), of the RTI Act. It is justified not to disclose information in cases of ongoing police investigations (which have not yet been completed), because such a disclosure could hamper the investigation process, the commission held.

4.3.3.2. Disclosure of answer scripts and marks secured [Sec. 8(1) (e) and 8(1)(j) of the RTI Act]

In the case of Teresa Irish Vs. CPIO, Postal Circle, Trivandrum the applicant was a candidate in a departmental examination conducted by the public authority for promotion purposes. She filed an application with the public authority seeking information in the nature of a copy of her evaluated answer sheet in respect of the departmental examination she had appeared for promotion.

213. (F.No.CIC/AT/A/2006/00004, dated 30/6/2006),
214. Section 8 (1) - Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen
   a. (g) Information, 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;
   b. (h) Information which would impede the process of investigation or apprehension or prosecution of offenders.
The commission held that access to answer scripts could not be provided to the candidates, as per section 8(1) (e) of the RTI Act, which relates to a fiduciary relationship. The commission held that there is a fiduciary relationship, which exists between the examiner and the authority conducting the examination, and information regarding persons in a fiduciary relationship cannot be disclosed.

It must be submitted that the central information commission has not made a proper interpretation of the law relating to fiduciary relationships in this case. Persons are said to be in a fiduciary relationship when there is a special relationship of trust between them, as for instance, the relationship between a doctor and his patients, or a lawyer and his clients. There is no fiduciary relationship which exists, between an examiner and the examinees; therefore, there is no valid justification for not disclosing the answer scripts of candidates of an examination by referring to section 8(1) (e) of the RTI Act.²¹⁶

In the case of George Paul vs. B.S.N.L.,²¹⁷ the applicant had appeared for a competitive-cum-qualifying examination, conducted by a public authority and wanted information in nature of a copy of his answer scripts, as well as the marks obtained by him and marks of other successful candidates.

The CIC held that the information in nature of disclosure of the evaluated answer sheets/scripts of examinees cannot be provided to the candidates, as there is a fiduciary relationship which exists between the examiner and examinee. The commission held that this information falls under the exemptions from disclosure provided in sections 8(1) (e) and 8(1)(j) of the RTI Act, 2005. However, the commission ordered the public authority to disclose the list and marks secured of the other candidates to the applicant.²¹⁸

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²¹⁶ Section 8(1)(e) - Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, 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.
²¹⁸ Section 8(1) - Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,
   a. (e) 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;
   b. (j) Information which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public
In *Neeraj Kumar Singhal* vs. *North West Railway, Jaipur*\(^\text{219}\) the applicant had asked for copies of mark sheets and answer sheets of the candidates who were declared successful in the examination conducted by the railways (a public authority).

The public authority, however, did not provide him with information saying it could not be provided, to the candidates.

The CIC held that in case of competitive examinations, conducted by public authorities, the answer sheets could not be provided to the candidates as per sections 8(1)(e) and (8)(1)(j) of the RTI Act. The commission, however, held that the marks secured by the candidates are not to be kept secret, and should be furnished to the candidate. It was further held that the disclosure of marks is not against the provisions for exemption of disclosure of information under sections 8(1) (e) of the act, and therefore such information should be disclosed to an applicant.

4.3.3.3. Information no longer available in records cannot be given [sec. 8(1)(j) of the RTI Act]

In the case of *T.V. Varghese* vs. *B.S.N.L.*\(^\text{220}\) the appellant in the application addressed to the PIO of the public authority, B.S.N.L, asked for certain information relating to the list of candidates who qualified for the positions of junior telecom officers (JTO’S), during the years 1992 to 1998, and the marks obtained by each of the successful candidates.

The appellate authority of the public authority, informed the appellant that the information asked for all the years can be given to the applicant, except for the year 1992, as it was not available with the concerned public authority, due to departmental rules relating to the expiry of the period of preservation.

the CIC held that when the records are not available due to the expiry of the period of preservation according to the departmental rules for destruction of old records, there is no question of providing such information even if the disclosure of such information is not prohibited under section 8 (1)(j) of the RTI Act.


\(^{220}\) (Appeal No.251/ICPB/2006, dated 2/1/2007)
4.3.3.4. No disclosure in case of pending trial [sec. 8(1)(h) of the RTI Act]

In the case of Ashok Agarwal, Jt. Commissioner Of Income Tax vs. Department of Revenue the applicant asked for certified copies of files relating to the prosecution proceedings against him, under section 6 of the RTI Act, 2005.

The commission said that since the matter is sub-judice (in trial before a court of law), there is a due process of law under which the appellant may obtain the documents to defend himself in his case before the trial court. The commission rejected his appeal to obtain the documents from the public authority, and held that since the matter is under investigation, the exemption under section 8(1) (h)  would apply.

4.3.3.5. Information on an ongoing investigation can be given in special circumstances [sec. 8(1)(h) of the RTI Act]

In the case of Mangto Ram vs. Addl. Commissioner & PIO, Delhi Police the appellant had filed an application with the police authorities. The applicant wanted information on the ongoing investigation into the death of his daughter under mysterious circumstances.

The CIC examining the case held that this case was an exception to the general rule laid down in section 8(1) (h) of the act, which prohibits the disclosure of information, as the supply of information to the victim’s family would not put any obstacles or impede the process of investigation.

The commission further noted that, “far from impeding the investigation, taking the appellant into confidence will give a positive direction to the investigation and enable the authorities to swiftly reach the truth .the commission ordered the police to provide the status of the investigation to the appellant within three weeks.

4.3.3.6. Vigilance report findings can be disclosed [sec. 8(1) (h) of the RTI Act]

In the case of P.P.K. Rana vs. Cpio, Delhi Police and Aa, Delhi Police the applicant had asked for a report of the vigilance enquiry, which was instituted against her, as an employee of a public authority. The public authority informed her that the

221. (Appeal No.01/IC (A)/2006, dated 16/02/2006),
222. Section 8(1) (h) Information which would impede the process of investigation or apprehension or prosecution of offenders.
223. (Appeal No.CIC/AT/A/2006/00355, dated 26/12/2006),
224. (Appeal No.CIC/AT/A/2006/00322, dated 11/12/2006),
information asked could not be provided as per the provision of section 8(1) (h) of the RTI Act, according to which information which would impede the process of investigation cannot be provided.

The commission held that section 8(1) (h) of the act does not prohibit the sharing of information in the form of the concluding part of the vigilance report, and only the “gist” (the confidential part) could be kept confidential. The CIC ordered that the concluding part of the vigilance report be disclosed to the appellant.

4.3.3.7. No disclosure in case of pending departmental enquiry [sec. 8(1)(h) of the RTI Act]

In the case of Sarvesh Kaushal vs. F.C.I. And Others, the appellant had applied for documents relating to the departmental enquiry launched against him in a corruption case.

The CIC, rejecting the appeal, held that the departmental enquiry, which was in progress against him, was a pending investigation under law, and the same attracted the provisions of section 8(1)(h). Therefore, there is no question of disclosing any information relating to his prosecution, the CIC noted.

4.3.3.8. Public authority to disclose information if public interest outweighs the harm to the protected interests [sec. 8(1)(h) of the RTI Act]

In the case of S.R. Goyal vs. Pio, Services Department, Delhi the appellant had sought a copy of the letter received by the public authority regarding his suspension, from the CBI, which was investigating the case. The public authority replied that the information requested by the applicant was exempted from disclosure by virtue of sections 8(1) (g) and 8(1)(h) of the RTI Act.

The commission, rejecting the appeal of the applicant, held that the exemptions from disclosing information, under section 8(1) (h) of the RTI Act as well as under the relevant provisions of the official secrets act, would apply. The commission further said that if the public authority, decides that public interest in the disclosure would outweigh the harm to the protected interests, it can disclose the information, which was not the position in this case.

226. (Appeal No.CIC/WB/A/20060523, dated 26/3/2007),
The principle that the information from a non-public authority can be obtained indirectly from the concerned public authority which has the power to access such information under any other law for the time being in force was subsequently reaffirmed in the case of *Surendra vs. Directorate of Education, Delhi Government*.  

4.3.3.9. Contents of a departmental enquiry can be disclosed, if no bar from the court [sec. 8(1)(b) and sec. 8(1)(h) of the RTI Act]  

In the case of *N.B.S. Manian Vs. Deprt. of Post* the appellant, a retired employee sought some information from the public authority about the denial of promotion to him while he was in service. The matter was pending in a judicial body (central administrative commission). The public authority refused to provide him the information asked by him on the ground that since the matter is pending in a judicial forum, the information cannot be provided to the applicant.

The commission held that if a matter is sub-judice the same is not prohibited from disclosure as per the law in section 8(1) (b), which prohibits the disclosure of any information which has been banned from disclosure by a court of law. As it is applicable only in cases where there is an express order from the court that information sought should not be disclosed, which was not the position in the present case, therefore such information should be supplied to the appellant. However, the commission upheld the decision of the public authority, for not disclosing the confidential report (CR) of the appellant and held that section 8(1) (h) permits such a prohibition.

4.3.3.10. No disclosure of third-party confidential information [sec. 8(1) (j) of the RTI Act]  

In the case of *A.P. Singh Vs. Punjab National Ban* the appellant had sought information regarding the bank account of another person with whom the applicant had no professional or business relationship. This information was refused to the applicant by the public authority.

228. (Appeal No.267/ICPB/2006, dated 10/1/2007),  
229. Section 8(1) -(b) Information 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.  
The CIC held that a bank is under duty to maintain the secrecy of accounts of its customers, who are also third party. The CIC further held in this case that since the applicant had not established any bona fide public interest in having access to the information sought nor did he have any association or business relationship with the company (bank), his appeal cannot be accepted in terms of the law as provided in section 8(1)(j) of the act. 231

4.3.3.11. Frivolous applications not to be entertained [sec. 8 of the RTI Act]

In the case of S.K. Lal Vs. Ministry of Railways232 the appellant had filed five applications to the railway authorities asking for "all the records" regarding the various services and categories of staff in the railways. The public authority, however, did not provide him with the information requested.

The central information commission observed that though the RTI Act allows citizens to seek any information other than the categories exempted under section 8, it does not mean that the public authorities are required to entertain to all sorts of frivolous applications. The CIC held that asking for "all the records" regarding various services and categories of staff in the railways, "only amounts to making a mockery of the act." while dismissing the appeal, the CIC recorded its appreciation of the efforts made by the railways to provide the applicant with the information sought.

Comments: it must be submitted that a PIO cannot refuse to accept an RTI application or provide information in most of the cases, and the RTI Act makes it compulsory that every public authority is duty bound to accept all RTI applications. The public authorities are also not supposed to question the applicant under the RTI Act about the reasons for filing an application and asking for particular information. Only in the rarest of rare circumstances, where it is clearly established that an applicant has filed an RTI application just to harass the public authority, an application can be termed frivolous.

231. Section 8(1)(j) Information which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information :Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

232. (Appeal No.CIC/OK/A/2006/00268-272, dated 29/12/2006),
4.3.3.12. Report of departmental enquiry can be disclosed with conditions [secs. 8(1) and 2(j) of the RTI Act]

In the case of **Nahar Singh Vs. Deputy Commissioner Of Police & Pio, Delhi Police**

...the applicant had asked for a report of the departmental enquiry, which was instituted against him. The public authority refused to provide him the information requested saying it was barred from disclosure as per the provisions of **section 8(1) & (2)** of the RTI Act.

The CIC held that the report of lower public officers to their seniors can be shared with an employee, and is not barred for disclosure under any of the exemptions provided in **section 8(1)** of the RTI Act. The CIC further ruled that the information held in the nature of a report is clearly “information” in terms of **section 2(j)** of the **act**. The commission further held that the public authority can protect the interests of witnesses or other persons whose names appear in the report by not providing them to the appellant, and ordered the concerned public authority to provide the applicant with the relevant information.

4.3.3.13. Information in respect of a period, prior to twenty years [secs. 8(1) and 8(3) of the RTI Act]

In the case of **S.R. Pershad vs. Directorate General of Supplies & Disposals**

...the appellant had sought some information, which is exempted under the act but which was more than 20 years old. The public authority did not provide him with the requested information.

The CIC ruled that **section 8(3)** is part of **section 8**, which deals with exemption from disclosure of information. **Section 8(1)** specifies classes of...
information which are exempted from disclosure and section 8(3) stipulates that the exemption under section 8(1) cannot be applied if the information sought is older than 20 years in other words, even if the information sought is exempted in terms of sub-section (1) of section 8, but the same relates to a period 20 years prior to the date of application, then the same shall be provided to an applicant, if the same is available with the concerned public authority.\footnote{237}

4.3.3.14. Consultation between the president and the Supreme Court cannot be disclosed [Sec. 8(1) (e) and 11(1) of the RTI Act.]

In the case of \textit{Mukesh Kumar vs. Addl. Registrar of the Supreme Court} \footnote{238} the applicant filed an RTI application with the Supreme Court of India. He wanted information regarding the exchange of communication between the chief Justice of India and the president of India regarding the appointment of Supreme Court and high court judges. The information sought by the applicant was refused by the Supreme Court.

The CIC held in the appeal that the entire process of consultation between the president of India and the Supreme Court of India cannot be disclosed the CIC held that such a process of consultation is exempted under sections 8(1) (e) and 11(1) of the RTI Act, 2005\footnote{239}. Moreover, under article 124(2) of the constitution of India, this is barred from disclosure.

\footnote{237. Section 8(1) mentions exemption items (a-j)Section 8(1):Information, disclosure of which would prejudicial affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;(c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:}

\footnote{238. (Decision No.CIC/AT/A/2006/00113, dated 10/7/2006),}

\footnote{239. Section 8(1) (e) 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; Section 11(1) - Where a Central Public Information Officer or a State Public Information Officer ,as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall within five days from the receipt of the request, give a written notice to such third party of the request, and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such a submission of the third party shall be kept in view while taking a decision about the disclosure of information:Provided that except in the case of trade or commercial secrets protected by law, the disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.}
4.3.3.15. Reasons for rejection of requests for information must be clearly provided [sec. 8(1) of the RTI Act]

In the case of **Dhananjay Tripathi vs. Banaras Hindu University** \(^{240}\) the applicant had applied for information relating to the treatment and subsequent death of a student in the university hospital due to alleged negligence of the doctors attending him. The appellant was, however, denied the information by the PIO of the university saying that the information sought could not be provided under section 8(1) (g) of the RTI Act, without providing any further reasons as to how the information sought could not be provided under the RTI Act.

The commission held that quoting the provisions\(^{241}\) of section 8(1) of the RTI Act to deny the information without giving any justification or grounds as to how these provisions are applicable is simply not acceptable, and clearly amount to malafide denial of legitimate information. The public authority must provide reasons for rejecting the particular application. The commission further held that not providing the reasons of how the application for information was rejected according to a particular provision of the act would attract penalties under section 20(1) of the act.

4.3.3.16. Results of field trials of genetically modified crops to be disclosed [sec. 8(1)(d) of the RTI Act]

In the case of **Divya Raghunendan vs. Deptt. Of Biotechnology** (13/4/2007), the applicant had asked for information about the field trials of

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\(^{240}\) (Decision No.CIC/OK/A/00163, dated 7/7/2006),

\(^{241}\) Section 8(1) (g) Information, 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 .Section 20(1) - Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal, is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, 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, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till the application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees: Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him: Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.
genetically modified (gm) crops, conducted by the department of biotechnology, to look into the feasibility of growing these crops and to assess their harmful impact if any, i.e., their toxicity or allergen city the seeds of these crops were developed by a multinational company. The DBT (public authority) refused to provide the appellant with the required information.

The DBT argued that the findings of the trials could not be disclosed, as it would amount to impinging the commercial secrets of the companies according to section 8(1) (d) of the RTI Act.

The commission, in its order, held that the information sought concerned the interests of a large number of farmers and other communities, therefore such information has to be disclosed in public interest.

The commission further held that the information sought does not concern commercial secrets as per the terms of section 8(1) (d) 242 of the RTI Act, and is therefore not exempted from disclosure.

4.3.3.17. Partial disclosure of information (section 10 of RTI Act)

Citizen can have partial access to that information which is covered under exemptions from disclosure [section 8(1) of RTI Act]. If the request for information has been rejected by a PIO on the ground that it relates to information, which is exempt from disclosure [under section 8(1) of the RTI Act], then some part of the information, which is not covered in the exemption list, can be disclosed. Such information should be reasonably severed from the information, which falls in the exemption list.

This means if a document or record contains information, part of which is exempted from disclosure under the RTI Act while the other part is not exempted from disclosure, then the PIO of a public authority can severe (separate) the parts and provide information which is not exempted to the applicant.

Where partial access to information is provided to an applicant, the pio must inform the applicant:

242. Section 8 (1) (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.
A. Only part of the information after separating it from the record, which falls under the exemption list [section 8(1)].

B. The reasons for providing only part of the requested information.

C. The name and designation of the person (PIO) giving this decision.

D. The details of additional fees, which the applicant has to pay to obtain the partial information.

E. The details of the appellate authority and the time limits for filing such an appeal in case the applicant is not satisfied with the partial information and he wants full information.

Section 10(1) of the act emphasises the fact that an applicant can have access to partial access to even those records and information on documents under exemption list [section 8(1)]. It is the responsibility of the PIO to reasonably separate that part of information from the main part, which falls in the exemption list.

4.3.3.18. Information can be severed and supplied (section 10(1) of the RTI Act)

In the case of Paramveer Singh vs. Punjab University, the applicant had applied for information regarding the merit list for selection of candidates to a particular post in the university. However, the information regarding this was contained in some document, which also contained some information, which was exempted from disclosure, as per the RTI Act. But no proper information was supplied to the applicant, due to negligence of the university’s PIO in identifying and collecting the proper information.

In the above case, the commission held that the university should streamline its university record management system in such a manner that information, which is to be disclosed, could be easily provided after separating those that is exempted as per sec.10 (1) of the RTI Act.

The commission held that every public authority, particularly after the implementation of the right to information act must take all measures in pursuance of pro-active disclosure requirements, to implement efficient record management

243. (Appeal No. CIC/OK/A/2006/00016 dated 15.6.06)
244. Section 10(1) - 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.
systems in their offices so that the requests for information can be dealt with promptly and efficiently.

4.3.3.19. Third party information (section 11 of RTI Act, 2005)

The right to information act also covers individuals/firms/organisations which directly do not fall within the scope of the act but they have submitted some of their information related to contracts, business deals or financial details to government agencies (public authorities). Such information can be accessed under the right to information act by the citizens. These individuals/firms/organisations are covered under the definition of third-party under the RTI Act.

The definition of a third-party under section 11 of the RTI Act covers anyone other than the public authority dealing with the application and the requester (applicant) for information as shown below:

First-party (the person submitting an application or appeal)

Second-party (the public authority responsible for processing the application)

Third-party (any other person or body including another public authority)

The records supplied by a third party but held by a public authority are included within the definition of “information” under the RTI Act, and can be the subject matter of request for information. Section 11 of the RTI Act requires that if the information asked by a citizen relates to a record that has been supplied by a third party, and is not treated as confidential by that party, the PIO of a public authority is at liberty to provide such information to an applicant. if the information is treated as ‘confidential’ by a third party, then the following steps will have to be taken by the PIOs:

- The PIO has to give a written notice to the third party within five days of the receipt of an application for information seeking his opinion, whether the information should be disclosed to the applicant or not.
- The third party has to make a submission to the PIO within 10 days, whether to disclose the information or not.
Within 40 days of the receipt of the application, the PIO has to make a decision. Should the information related to the third party be provided to the applicant or not, and then convey his decision to the third party.

The third party can appeal against the decision of the PIO to disclose information relating to him/her to an RTI applicant to appellate authorities.

A PIO should use his discretion in dealing with the application seeking information related to a third party. While using his discretion, he should keep in mind trade and commercial secrets protected by law, protection of the violation of privacy of individuals and public interest outweighing the harm to the interests of the third party.

Under section 11 (third party) of the act, all the private industries, banks or any other firms, which has some kind of business dealings/contractual relationships with the public authorities, are covered. Citizens can ask for information about these firms from the public authorities, which maintain their records.

4.3.3.20. Third party has no absolute right to refuse information disclosure about it [sec. 11(1) of the RTI Act]

In the case of K.K. Mahajan Vs. Cantonment Executive Office the appellant, an employee of a public authority, had applied for some information relating to the prosecution of another employee (third party), because under similar circumstances the appellant was convicted while the other employee was exonerated. The public authority refused to provide him the information he had asked for on the ground that the third party had refused the disclosure of information about it to the applicant.

The CIC held that the RTI Act does not give a third party an automatic right to order the public information officer (PIO) of a public authority, not to disclose information pertaining to it. The CIC further held that the public authority is required to evaluate the third party’s case in terms of the provisions of section 8(1)(j) and section 11(1) of the RTI Act, 2005, and find out that the information asked is not

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245. (CIC/AT/A/2006/00014, dated 22/5/2006), 246. Section 8(1) (j) information which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.
barred from disclosure. Even if the information is barred from disclosure then the public authority is to examine if it would be in the public interest to disclose the information sought and its disclosure will outweigh harm if any to the individual third party.

The public authority has to arrive at the findings by properly assessing the facts and circumstances of the case. A speaking order should thereafter be passed accordingly.

**4.3.4. The exclusion of certain organizations**

Under the act central intelligence agencies and security agencies like the intelligence bureau(ib), research analysis wing (raw), directorate of revenue intelligence (dri), central economic intelligence bureau (ceib), directorate of enforcement (DE), narcotics control bureau (NCB), Aviation Research Centre(arc), Special Frontier Force (SFF), border security force (BSP), Central Reserve Police Force (CRPF), Indo Tibetan Border Force (ITBP), central industrial security force (CISF), national security guard (NSG), Assam Rifles, Special Service Bureau (ARSSB), Criminal Investigation Department (CID) Special Branch Of Andaman And Nicobar Island (SBAN), CID Crime Branch of Dadra Nagar Haveli and special branch, lakshadweep police are exempted from the purview of right to information act. Similar agencies established by the state governments will also be excluded. Information relating to corruption and human rights 'must be given but only with the approval of the central or state information commission as the case may be.

Section 24 of the right to information act, 2005, dictates that the intelligence and security organisations cannot fall under the purview of this act. It also makes a statement to the effect that any information given by such agencies to the government to would be outside the scope of the applicability of this act. These organizations are sought to be mentioned in second schedule of the right to information act, 2005, which has a comprehensive list of 18 different organizations. However, the section also lays down a proviso to prevent the basic aim of the act from being violated by declaring that allegations of corruptions and violations of human rights cannot be excluded under this act. Therefore, this section can be said to be the quintessence of the spirit of democracy as it provides for information to the public, but at the same time, puts a reasonable limit in place over the same.  

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247. Ibid.
Under powers conferred by section 24 (4) of the right to information act 2005, the only notification till date has come from the office of governor of state of Tamil Nadu, dated 14.10.2005, and it reads to exclude many of the correcting agencies of the state like cybercrime cell, idol wing, police radio branch, coastal security group, finger prints bureau, etc. from the Act. There are a number of intelligence and security organizations established by the central government which are not there under the purview of the act.248

**The Government Securities Act, 2006**

According to this act, no person shall be entitled to inspect or to receive information derived from any government security in the possession or custody of the government or from any book, register or other document kept or maintained by or on behalf of the government in relation to government securities or any government security, save in such circumstances and manner subject to such conditions as may be prescribed.249

5. **Other Legislative provisions on the right to Information**

5.1. **The Water (Prevention and control of Pollution) Act, 1974**

Water (Prevention and control of Pollution) Act, 1974 provides that State Boards have to maintain a register of information on water pollution, and the information relating to any outlet or any effluent from any land or premises shall be open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises.250 Information disclosure provisions are also made about air pollution.251 The Act obliges Pollution Control Board to disclose relevant interval reports to a citizen prosecuting the polluter. However, information may be

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249. The Government Security Act, 2006, Section 24 Dr. Ambrish Saxena, ‘Right to Information and Freedom of Press’, Kanishka Publishers Distributors, New Delhi, p. 30. (these have been already discussed in detail in chapter 3 of the thesis from page 26 to 56)

250. Water (Prevention and Control of Pollution) Act, 1974 Sec. 25(6)

withheld in the public interest.\textsuperscript{252} This qualification to the right of information seems unnecessary. It is difficult to envision a situation where the reports on pollution could harm public.

\textbf{5.2. The Environment Protection Act, 1986}

The Environment (Protection), Rules, 1986 and the Environment Impact Assessment (EIA) provides for public consultations and disclosures under various circumstances. Procedure prescribed for public hearings and requirement for the publication of the executive summary of proposal for any project affecting environment are required by law.\textsuperscript{253} Participation from planning process to successful execution of large projects requires that people should be able to appreciate and judge whether certain plans and schemes are useful for them or not. It is only possible when they have sufficient information about nature of the projects and programmes. Informed public debates on the pros and cons of a project to bring required changes and modifications cuts on the time-lag and thus reduces project’s costs.\textsuperscript{254}

\textbf{5.3. The Consumer Protection Act, 1986}

The Consumer Protection Act, 1986 guarantees the Consumer the right to information. In fact, General Assembly guidelines’ dated 9\textsuperscript{th} April, 1985 specifically provided that consumers have a right to about the goods purchased by them and the services Walled’ Consumer Charters, and Packaging Order Rules obligate the manufacturer to provide important information to the consumer in respect of Weight’, quality’, date of manufacture, date of expiry etc.\textsuperscript{255} 1986 amendments to the Consumer Protection Act, specifically provided that if scheme was notified by any seller by advertising it in a newspaper/media, the result of the scheme also must be notified in the similar manner.\textsuperscript{256} Consumer Education Research Center, Ahmadabad has led many movements in this field.

\textbf{5.4. The Evidence Act and the Right to Information:}

Indian Evidence Act, 1872 provides for the right to access to information in specific context. The Act requires public officials to provide copies of public documents who

\textsuperscript{252} Dr. Jai Jai Ram Upadhyay, Environmental Law, Water Act, S 49 and A’ Act’ Sec Central law Agency, 2005, p.i67.
\textsuperscript{254} Ibid.
\textsuperscript{255} Consumer Protection Act, 1986, Section 2(1)(r).
\textsuperscript{256} Section 2(l)(r),(2) and (3).
have a right to inspect them.\textsuperscript{257} It means that he has a right to look into the order of which the copy is sought, so if a person has right to inspect the document, he will be entitled to get a copy and if he has no right, he will not get it.\textsuperscript{258} Public documents have been given a wide definition.\textsuperscript{259} Public document is prepared by public servants in discharge of public duties they are available for inspection in public office during appointed time on payment of fixed fee. The second copy of public document is to be admitted in judicial proceedings as general rule it is proved by secondary evidence. The court is bound to prove the genuineness of public document from their duly certified secondary copy.\textsuperscript{260}

\textbf{5.5. The Factories Act, 1948}

The Factories Act provides for compulsory disclosure of information to factory workers regarding dangers to life including health hazards and the measures to overcome such hazards, arising from their exposure to dangerous materials.\textsuperscript{261}

\textbf{5.6. Right to information in cases of venereal or infectious diseases}

The welfare of society is primary duty of every civilized State. Sections 269 to 271 of the Indian penal code, an act, which is likely to spread infection, is punishable. These sections are framed in order to prevent people from doing acts, which are likely to spread infectious diseases. Thus a person suffering from an infectious disease is under an obligation to disclose to the other person and if he fails to do so he will be liable to be prosecuted under these sections. As a corollary, the other person has a right to know about such infectious diseases. In \textit{Mr X V Hospital Z} \textsuperscript{262} the Supreme Court held that it was open to the hospital authorities or the doctor concerned to reveal such information to the person related to the girl whom he intended to marry and she has a right to know about the HIV positive status of the appellant.

\textbf{5.7. The Information Technology Act, 2000}

Digital technology and new communication systems have made dramatic changes in our lives. Business transactions are being made with the help of

\textsuperscript{257} The Evidence Act, 1872, s. 76
\textsuperscript{258} Banarsi Devi vs. Janki Devi, AIR 1955 Patna 172
\textsuperscript{259} The Evidence Act, S. 75
\textsuperscript{262} AIR 1998, SC 296. 249
computers. Information stored in electronic is amendment in the existing laws to facilitate electronic commerce and electronic governance, the Information Technology Act, 2000 was enacted by the Parliament. The aim of the e-governance is to make the interaction of the citizens with the Government offices hassle free and to share information in a free and transparent manner. It further themselves and they cannot govern themselves properly unless they are aware of social, political, economic and other issues confronting’ them. To enable them to make a proper judgment on those issues, they must have the benefit of a range of opinions on those issues. This plurality of opinions, views and ideas is indispensable for enabling them to make an informed judgment on those issues, to know what is their true interest, to make them responsible citizens, to safeguard their rights as well as the interests of society and State. All the constitutional courts of leading democracies have recognized and reiterated this aspect. In U.O.I vs Association for Democratic Reform the Supreme Court observed that the citizens of India have a right to know every public act, everything that is done in the public way by the public functionaries. Public education is essential for functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision making process. The right to get information in a democracy is recognized all throughout and it is a natural right flowing from the concept of democracy. Thus e-governance and right to information are interrelated and ‘are two sides of the same coin. With the enactment of the information technology Act, 2000 more and more transparency is expected in the governmental functioning by the keeping people aware of the state’s plan, policies objective and achievements. Section 7 of the Act is an enabling section, which provides that if any law mandates that documents, records or information are required to be retained for any specific period, then, that requirement shall be deemed to have been, satisfied if the same is retained in e form. This section can effectively be utilized for the benefit of both government offices and citizen of India.

In Conclusion it can be said that Right to Information Act is 3 concrete steps in right direction but much more would need to be done to make the Act meaningful and to curb corruption. The Journey is not Over’ It has enormous task to bring success to

flanking people, which will usher in a new era in the progress of governance, performance and efficiency.

6. General Observations

The culture of secrecy beginning from the colonial rule has insidiously encouraged rampant corruption. As a result huge amounts of public money were continually diverted from development projects and welfare schemes to private use through misuse of power by the authorities. Lack of openness and transparency in the functioning of the Government, provided a fertile ground for breeding inefficiency and lack of accountability in the working of the public authorities, which, in turn, has perpetuated all forms of poverty, nutritional, health and educational problems. In order to rectify the deficiencies in the mechanisms for ensuring distribution of entitlements, particularly pertaining to the basic human needs, the people in general and Non-Governmental Organizations, in particular, demanded for a greater access to the information held by the public bodies, which was acceded to by the Government in 2005. 

265. Ibid p.5.