

CENTRAL INFORMATION COMMISSION



SUMMER INTERNSHIP

RESEARCH PAPER

ON

**“ AN ANALYSIS OF SECTION 8 (1) (D) (G) & (I)
Of RTI Act 2005 ”**

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INTRODUCTION

Right to Information (RTI) Act is a milestone enactment which was started in India in the year 2005 which has finished almost 14 years as of now. It has acquired radical changes in the nation's organization and society. With the assistance of RTI Act one can come to know about the working of the public authorities. Earlier citizen were not aware about the affairs of public authority, thus it resulted in widespread corruption in the system. RTI act carries many success stories in all over the country along with some terrible occasions in type of assaults on RTI activists and slaughtering of them. RTI has helped many people especially at the grass root level such as public distribution system, public works etc. There are two sorts of commissions in the nation one is Central Information Commission (CIC) and other one is State Information Commission (SIC). For central public authorities concerning issue one needs to approach CIC and for state level SIC in request and grievance process. For the most part RTI application/appeal is filled physically in office of public authorities and commissions workplaces separately however for most recent few years some open specialists and commissions have executed online RTI application/request system which spares parcel of time and cash eventually bringing about smooth organization of Act., Central Information Commission (CIC) and Department of Personnel and Training, New Delhi has actualized online application/claim framework successfully. Anyway online RTI application/claim framework in India is in the beginning stage. The motive of RTI Act is that ideas and operations of the public authority should be known to the public, for whom such authority has been established. Transparency and accountability are two main pillars on which Democracy rests. Free flow of information is essential for growth of a democratic society. Democratic form of Government necessarily requires accountability which is possible only when there is openness, transparency and knowledge. Greater exposure about functioning of the Government ensures better and more efficient administration, promotes and encourages honesty and discourages corruption, misuse or abuse of powers by an officer or authority. Transparency is a powerful safeguard against political and administrative aberrations and antithesis of inefficiency resulting from a totalitarian government which maintains secrecy and denies information¹

A Short history that led to enactment of RTI Act

Right to Information Act 2005 was passed by Parliament on 15 June 2005 and came fully into force on 12 October 2005. The first application was given to a Pune police station. Information disclosure in India was restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act relaxes.

The right to information gained power when UDHR was adopted in 1948 providing everyone the right to seek, receive, information and ideas through any media and regardless of frontiers.² Also

The International Covenant on Civil and Political rights 1966 says that Everyone shall have the right to freedom of expression, the freedom to seek and impart information and ideas of all kind, regardless of frontiers ³.

In India in 1977 Janta Government headed by Morarji Desai constituted a working group to ascertain if the Official Secrets Act, 1923 could be modified so as to facilitate greater flow of information to the public. In 1986 the famous case of Mr. Kulwal v/s Jaipur Municipal Corporation the Supreme Court gave clear cut directive that Freedom of Speech and Expression provided under Article 19 of the Constitution clearly implies Right to Information as without information the freedom of speech and expression cannot be fully used by the citizens. In 1990 Heading the National Front government, Prime Minister V.P Singh, first politician to lay emphasis on RTI, stressed on the importance of Right to Information as a legislated right. He tried to enact legislation in 1989-90. But, due to the political instability at the time, the idea did not materialize.

In *Reliance Petrochemicals Ltd vs. Proprietors of Indian Express* 1989 AIR 1990, the SC reads right to know in article 21. The SC held that right to know is a necessary ingredient of participatory democracy. The court further held that Article 21 confer on all person a right to know which include right to receive information. The ambit and scope of article 21 is much wider as compared to article 19(1) (a). In India, the development for the RTI has been as energetic in the hearts of marginalized individuals, scholastic writings and in the media. This isn't astounding since sustenance security, shelter, environment, business and other survival needs are inseparably connected to one side to information.

In the mid-1990s, in Rajasthan, the Mazdoor Kisaan Shakti Sangathan “(MKSS) hit upon a novel method to show the significance of information in a person's life - through formal reviews or Jan Sunwais. The MKSS's battle requested the transparency and accountability of authority records, a social review of government spending and a redressal Apparatus for individuals who had not been given their due. The battle got the creative energy of an extensive cross-segment of individuals, including activists, government employees and lawyers.⁴ The National Campaign for People's Right to Information (NCPRI) framed in the late-1990s turned into a widespread movement. As the movement assembled energy, it progressed toward becoming clear that the right to information is legally enforceable. Because of this battle, in addition to the fact that Rajasthan passed a law on the RTI but in a number of panchayats, graft was exposed and officials punished. Finally in 2005 govt. made Right to Information a legal right. The RTI Act at the outset clarified that the CPIO, under the RTI Act, is required to furnish information/documents as available on record; however, PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or provide clarification or furnish replies to hypothetical questions, eliciting answers to queries, redressal of grievance, reasons for non-compliance of rules/contesting the actions of the

respondent public authority are outside the purview of the Act. The Petitioners right extends only to seek information as defined in Section 2(f) of the RTI Act either by pinpointing the file, document, paper or record etc. or by mentioning the type of information as may be available with the specified public authority.⁴

Exempted information under section 8

There are circumstances when the information requested can't be provided by the public authority because of sensitiveness and secrecy of information which if disclosed/revealed would not only hamper the sovereignty and dignity but also power and pride of the nation. Sometimes the information sought is related with third party, which affects the right to privacy which is also a fundamental right. No public authority can claim that any information held by it is “personal”. There is nothing “personal” about any information, or thing held by a public authority in relation to itself. The expression “personal information” used in Section 8(1) (j) means information personal to any other “person”, that the public authority may hold. That other “person” may or may not be a juristic person, and may or may not be an individual. For instance, a public authority may, in connection with its functioning require any other person – whether a juristic person or an individual, to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if it satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity or interest vis-à-vis the public authority, or which would cause unwarranted invasion of the privacy of the individual, under clause (j) of Section 8(1) of the Act. The use of the words “invasion of the privacy of the individual” instead of “an individual” shows that the legislative intent was to connect the expression “personal information” with “individual”. In the scheme of things as they exist, in my view, the expression “individual” has to be and understood as “person”, i.e., the juristic person as well as an individual. ⁵

So a few exclusions are fused in the RTI Act under Section 8 which incorporates ten exceptions. Section (8) of the RTI Act enrolls some exceptional examples when the public authorities are exempted from unveiling information looked for. This incorporates information that would be prejudicial to national integrity, security or economic interests; would constitute to contempt of court of law; would hamper police investigations; would affect commercial interests like trade secrets; would hamper police examinations; would influence business premiums like prized

formulas; would block the procedure of examination; would influence guardian connections and would hurt the individual physically.⁶

Section- 8-“Exemption from disclosure of information” defined.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially 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;

(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;

(c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(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 larger public interest warrants the disclosure of such information;

(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;

(f) Information received in confidence from foreign government;

(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;

(h) Information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed

(j) Information which relates to personal information the disclosure of which has not 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.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

Class based exemptions 8 (1) (b) (e) (f) (j): This class of information is exempted from disclosure even when there is no harm.

Prejudice based exemptions 8 (1) (a) (c) (d) (g) (h) (j): Less the prejudice higher the chances of disclosure. Whether prejudice exist have to be determined in each case.

Time limited exemptions 8 (1) (b) (d) (e) (f) (g) (h) (j): These exemptions are valid only for a period of 20 years from date on which information is created.⁷

It is to be noted that even within the RTI Act the right to privacy and personal information have been placed on a separate footing. Section 8 exempts certain information, it should not be considered as a fetter on the Right to Information, but an equally important provision protecting other public interest including privacy of individuals.

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 Section 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 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 a balance has to be struck between the principle of promoting honest and open government by ensuring public access to information created by the government on the one hand and the principle of confidentiality breach whereof is likely to cause substantial harm to competitive position of the person from whom information is obtained and the disclosure impairing the government's ability to obtain necessary information in future on the other hand.⁸

The Supreme Court in *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*⁹ (2012) 13 SCC 61 held that the statutory exemption provided under Section 8 of the Act is the rule and only in exceptional circumstances of larger public interest the information would be disclosed. It was also held that 'public purpose' needs to be interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information. The relevant extract from the said judgment is quoted below:

"21. Another very significant provision of the Act is Section 8(1) (j). In terms of this provision, 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 would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. Such exemption would be available to such authority or department.

Section 8 (1) (d)

Section 8(1)(d) of the RTI Act exempts from disclosure- 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 larger public interest warrants the disclosure of such information; . In order to claim the exemption under Section 8(1) (d) of the RTI Act, the PIO must establish that disclosure of the information sought (which may include commercial or trade secrets, intellectual property or similar information) would result in harming the competitive position of a third party. As per Section 19(5) of the RTI Act, the burden of establishing the applicability of the exemption lies on the PIO.¹⁰

Information relating to the affairs of a private entity treated as confidential the disclosure of which can possibly have an adverse effect on the competitive position of the entity, is exempt under Section 8(1)(d) of the RTI Act. Section 8(1) (j) exempts personal information relating individuals and unincorporated entities. The basic protection from disclosure afforded by virtue of these statutory exemptions cannot be lifted or disturbed unless the petitioner is able to justify how such disclosure would be in 'public interest'. Thus Section 8(1) (d) is relevant when case provides that the authority may refuse to give information relating to commercial confidence, trade secret or intellectual property, disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. The question, therefore, that falls for consideration is as to whether disclosure of various documents submitted by the third party (such as bidders) is a trade secret or commercial confidence or intellectual property. Prima facie, once a decision is taken in the matter, there is no justification to keep it secret. People have a right to know the basis on which the decision has been taken. Let us presume that tenders are invited by the public authority and on the basis of tender documents, the eligibility of a tender or a bidder is decided, then those tender documents cannot be kept secret, that too, after the tender is decided and 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, 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, inasmuch as it will show the transparency in the activities of the Government.¹¹ The Hon'ble HIGH COURT of Delhi in its decision 2014 [W.P. (C) 85/2010 Naresh Trehan vs Rakesh Kumar Gupta]¹² has held as under:

If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1) (d) of the Act it is necessary to first and foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to

consider whether its disclosure can possibly have an adverse effect on third parties.

TEST OF LARGER PUBLIC INTEREST

In cases which involves section 8 (1) (i), the public authority may declare information requested but only after taking into account larger public interest into account. For this purpose we first have to understand what really public interest is as per the RTI Act. The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (*State of Bihar v. Kameshwar Singh* [AIR 1952 SC 252]). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake [Black's Law Dictionary (8th Edn.)]. A public authority should declare the information "falling under section 8 (1) (d) if he thinks that public interest outweigh the interest of other party. While determining public interest he is not supposed to follow very high standards but he should act like a reasonable man while deciding whether to disclose information under this sub section or not. The decision has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India.¹³

Commercial public authorities

The commercial public authorities such as the L.I.C. are competing on the one-hand with other similar State entities and on the other hand with private entities engaged in the insurance business. Any information having a commercial bearing, which would necessarily include hiring of premises for business operations, if disclosed would have the potentiality to compromise the commercial interest of the public authority. For example, the public authority's competitors may encourage the landlord to part-with the tenancy of the public authority by luring him with higher rentals given the strategic locations of such premises. It will impose avoidable burden on the public authority. There could be other similar pressures of a commercial nature which can be brought on the public authority if such contracts, viz. the rental agreements are to be disclosed. In an era where the market place is now brimming with highly competitive entities engaged in insurance business, any disclosure of any such information having a commercial bearing must be treated with utmost caution.¹⁴ Thus, commercial public authorities may refuse to disclose information which can hurt their commercial interests but the commercial authorities can't be allowed to take this plea whenever information is requested from them therefore a system of check and balance should be put on commercial public authorities so that they don't violate the legal right of information of every citizen of this country and they can also do corruption if allowed to take the plea of commercial interests at their discretion. Therefore whenever any information is refused quoting an exemption the authority withholding the information must show satisfactory reasons and the reasons should be based on some material facts to avoid arbitrariness, unreasonableness and to build a culture of transparency in commercial public authorities.

Exempted information under section 8 (1) (d)

Details of loan accounts, valuation reports of immovable assets and details of properties and securities of borrowers are in the nature of commercial confidence. The Bank is required to maintain secrecy of such information and therefore, if such information has no relationship with any public activity or interest disclosure of the same is exempted under Section 8(1) (d) of the RTI Act. In the *Institute of Chartered Accountants of India v. Shaunak H. Satya and Ors.*¹⁵ the Supreme Court of India has held that Section 8(1) (d) of RTI Act did not bar or prohibit disclosure of question papers, instructions and solutions to questions communicated by the examining body to the examiners, head-examiners and moderators, are information available to such persons in their fiduciary relationship and therefore exempted from disclosure. Income tax returns including information provided to the income tax authorities during the course of assessment and proceedings thereafter, are exempted under the provision Section 8(1) (d) of the RTI Act. Information relating to intellectual property, the disclosure of which would harm the competitive position of a third party, is also exempted from disclosure under Section 8(1) (d) of RTI Act. Furthermore public authorities can only take the plea of section 8 (1) (d) of RTI Act if

information requested is related to third party except commercial public authorities which can also take plea of this sub-section if furnishing of information harm their trade interests, trade secrets and commercial confidence.

Section 8 (1) (g)

Section 8(1) (g) of the RTI Act exempts, 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; .

The plain reading of the above provision shows that Sec 8(1) (g) of the RTI Act speaks of three different criteria which, if present, would attract Sec 8(1) (g) exemption:

- i) Information, the disclosure of which would endanger the life or physical safety of any person or
- ii) Identify the source of information or
- iii) Assistance given in confidence for law enforcement or security purposes.¹⁶

The Hon'ble Supreme Court in the case of Bihar Public Service Commission vs. Sayyed Hussain Abbas Rizvi & Anr¹⁷ [Civil appeal No. 9052 of 2012] has held that clause 8(1) (g) can come into play with any kind of relationship. It requires that where the disclosure of such information 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 purpose, the information need not be provided. In other words if in the opinion of the concerned authority there is danger to life or possibility of danger to physical safety, the CPIO would be entitled to bring such case within the exemption of Section 8(1) (g) of the RTI Act. This section concerns with the cases where no obligation is cast upon the public authority to furnish information, the disclosure of which would endanger (a) the life (b) physical safety of any person. The legislature, in its wisdom, has used two distinct expressions. They cannot be read or construed as being synonymous. Every expression used by the Legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression 'life' has to be construed liberally. 'Physical safety' is a restricted term while life is a term of wide connotation. 'Life' includes reputation of an individual as well as the right to live with freedom. The expression ' life' also appears in Article 21 of the Constitution and has been provided a wide meaning so as to inter alia include

within its ambit the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. The expression life under section 8(1)(g) the Act, thus, has to be understood in somewhat similar dimensions. The term 'endanger' or 'endangerment' means the act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt the concept of life as understood in its wider sense [refer Black's Law Dictionary (Eighth Edition)]. Of course, physical safety would mean the likelihood of assault to physical existence of a person. If in the opinion of the concerned authority there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1) (g) of the Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression 'for law enforcement or security purposes' is to be read ejusdem generis only to the expression 'assistance given in confidence' and not to any other clause of the section. On the plain reading of Section 8(1) (g), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression 'assistance given in confidence for law enforcement or security purposes'. Neither the language of the Section nor the object of the Section requires such interpretation. It would not further the cause of this section. Section 8 attempts to provide exemptions and information should not be denied where some part of information can be disclosable under section 10. Section 8 (1) (g) cannot be used to deny information when it should be disclosed for larger public interest. This subsection protects persons who are doing their duty with reasonable care and due diligence such as examiners whose identity cannot be disclosed to prevent possible threat of life or injury from students and so on but this should not be used to protect arbitrarily those persons who are not doing their duty with reasonableness, accountability, care and diligence. Out of many objectives of RTI Act one objective is to expose the culprits in the government who are doing corruption or are doing their duty without following the administrative ethics of public offices. The exemption under this section should not be used to protect persons who are causing loss of livelihood, justice, opportunity and rights of ordinary citizens of this country.¹⁸

Right to life and Corruption and RTI Act

Corruption is not only destructive but capable of ruining or the spoiling of society or a nation. The corrupt society hates integrity, moral and virtuous principles. No doubt, such a society change for the worst and travels on the path of self-destruction. Corruption is not a new phenomena so are the selfishness and greed which are two main reason of this evil presence in the society. A corrupt society is known for their immorality, lack of fear, lack of empathy compassion and respect for the law.

Right to life is the most important human right and If Human rights violations are occurring

because of illicit practicing of corruption, it will surely somehow be linked directly or indirectly with the public's welfare measures. Corruption affects the diverse economical, social, cultural, political ethics as well as equality of the citizens who are getting affected by such corrupt practices therefore it becomes important that what all measures could be taken by which the corruption gets deteriorated as well as the human rights of the citizens also gets secured.

Corruption could be found anywhere wherever, there is giving and taking of something from someone by which the person who is acting under its duty, abuses his responsibility just for the sake of the fulfillment of fraud means and act according to one who gives any economic benefit or other benefit for lifting up of his wrongful intention. It may include practices which has been defined or mentioned in legislations in India which includes- bribery, extortion, money laundering, fraud and embezzlement of public funds among many others such as cronyism, nepotism, patronage on which there is no legislation. There are many causes of corruption for example low wages and salaries and wealth inequality are the economic causes of corruption beside economic causes there are political, social, legal, cultural, educational and ethical causes of corruption.

A reading of the above paragraph, will make you think that expression pertaining to allegation of corruption cannot be exhaustively defined and this thing is in fact true. The RTI Act is to step-in-aid to establish the society governed by law in which immoral acts like corruption has no place. The Act envisages a transparent public office. Therefore even in organizations which are exempt from the provisions of the Act, in terms of the notification issued under section 24 (4) of the Act, stills information which relates to corruption or the information which excludes the allegation of corruption would be relevant information and cannot be denied for the reasons that the organization is exempted under the Act. While interpreting section 8 courts should always take into consideration the provisos which are attached to section 8 and 24 of the RTI Act and make sure that does they are providing information on the same level to the poorest citizen of this country and a MP or MLA. There should not be two parameters for citizens of this country for exercising their normal right. The dream of a just and welfare state cannot be fulfilled unless we creates same parameters for same things for every citizen irrespective of their background, caste, creed, religion, power and education. We should not create two separate classes in the country. The public authorities cannot take plea of right to life and safety according to moral principles if they are violating the same rights of other persons but the law of our country is greatly designed by Britishers therefore we cannot raise questions and doubts on this but we should try to find positives out of this legal philosophy but their laws were based on distrust of the natives and a firm belief in our inability to govern ourselves. Courts should disclose information related to safety of those officials who had violated the basic rights of other citizens as a principle of equality and justice provided that equality doesn't mean sameness. The court should try to minimise the use of exemptions of RTI Act in order to fulfil the objectives of transparency, accountability, justice, equity and reasonableness which will be devoid of unjustness,

arbitrariness and authoritarianism.¹⁹

SECTION 8 (1) (i)

As per Section 8(i) of the Right to Information Act, 2005, a "Public Authority" is not obliged to disclose Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers. Section 8(1) sub-section (i) subjects this general exemption in regard to Cabinet papers to two provisos, which are as under: -

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed."

From a plain reading of the above provisos, the following may be inferred: -

- i) "Cabinet papers, which include the records of deliberations of the Council of Ministers, Secretaries and other officers shall be disclosed after the decision has been taken and the matter is complete or over.

- ii) The matters which are otherwise exempted under Section 8 shall not be disclosed even after the decision has been taken and the matter is complete or over.

- iii) Every decision of the Council of Ministers is a decision of the Cabinet as all Cabinet Ministers are also a part of the Council of Ministers. The Ministers of State are also a part of the Council of Ministers, but they are not Cabinet Ministers.

From the above points we may conclude that 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” and, as such, disclosable under Section 8(1) sub-section (i) after the decision is taken and the matter is complete, and over.²⁰

Seven Judges of the Supreme Court in *S.P. Gupta and others versus President of India and others*²¹ AIR 1982 SC 149 have examined and interpreted Article 74(2) of the Constitution of India. They further observed that the reasons which prevailed with the Council of Ministers, would form part of the advice tendered to the President and therefore they would be beyond the scope/ambit of judicial inquiry. However, if the Government chooses to disclose these reasons or it may be possible to gather the reasons from other circumstances, the Court would be entitled to examine whether the reasons bear reasonable nexus [See, para 58 at p.228, *S.P. Gupta (supra)*]. Views expressed by authorities/persons which precede the formation of advice tendered or merely because these views are referred to in the advice which is ultimately tendered by the Council of Ministers, do not necessarily become part of the advice protected against disclosure under Article 74(2) of the Constitution of India. Accordingly, the material on which the reasons of the Council of Ministers are based and the advice is given do not form part of the advice. In another case it was held that report of Public Service Commission which formed material on the basis of which the Council of Ministers had taken a decision, did not form part of the advice tendered by the Council of Ministers. When Article 74(2) of the Constitution applies and bars disclosure, information cannot be furnished. RTI Act cannot and does not have the ability and mandate to negate the constitutional protection under Article 74(2). The said Article refers to inquiry by courts but will equally apply to CIC.

Justice Bhagwati then examined and interpreted Section 123 of the Evidence Act, 1872 and the protection on the basis of State privilege or public interest immunity. Section 22 of the RTI Act is a non-obstante provision and therefore overrides Section 123 of the Evidence Act, 1872. Protection under Section 123 of the Evidence Act, 1872 cannot be a ground to deny information under the RTI Act. However, the question of public interest immunity has been examined in detail and the same is of relevance while interpreting Section 8(1) (j) of the RTI Act.

The second proviso to Section 8(1) (i) of the RTI Act explains and clarifies the first proviso. As held above, the first proviso removes the ban on disclosure of the material on the basis of which decisions were taken by the Council of Ministers, after the decision has been taken and the matter is complete or over. The second proviso clarifies that even when the first proviso applies, information which is protected under Clauses (a) to (h) and (j) of Section 8(1) of the RTI Act, is not required to be furnished. The second proviso is added as a matter of abundant caution

exabudent catulia. Sub-clauses (a) to (j) of Section 8(1) of the RTI Act are independent and information can be denied under Clauses 8(1) (a) to (h) and (j), even when the first proviso is applicable.

Cabinet secrecy is an essential part of the structure of the government

Confidentiality and collective responsibility in that scenario are twins to effectuate the object of frank and open debate to augment efficiency of public service or affectivity of collective decision to elongate public interest. To hamper and impair them without any compelling or at least strong reasons, would be detrimental to the efficacy of public administration. It would tantamount to wanton rejection of the fruits of democratic governance, and abdication of an office of responsibility and dependability. Maintaining of top secrecy of new taxation policies is a must but leaking budget proposals a day before presentation of the budget may be an exceptional occurrence as an instance.²² Freedom of speech and expression as provided under Article 19(1) (a) of the Constitution of India, which includes the right to information, is subject to Article 19(2) of the Constitution of India wherein restrictions can be imposed on the fundamental rights of freedom of speech and expression. The right to information cannot have an overriding effect over and above the provisions of Article 19(2) of the Constitution of India and since the Right to Information, Act originates from the Constitution of India the same is secondary and is subject to the provisions of the Constitution.²³

Section 8(1) (i) and Transparency

30. In *S.P. Gupta (supra)*,²⁴ the Supreme Court held that democratic form of Government necessarily requires accountability which is possible only when there is openness, transparency and knowledge. Greater exposure about functioning of the Government ensures better and more efficient administration, promotes and encourages honesty and discourages corruption, misuse or abuse of authority, Transparency is a powerful safeguard against political and administrative aberrations and antithesis of inefficiency resulting from a totalitarian government which maintains secrecy and denies information. Therefore it is necessary that government declare all information on which its decisions and policies are based and only in rare cases government should maintain secrecy like where information in public domain can put serious threat to nation's security and integrity. Information on which government decisions and policies are based when available in public domain enable citizens to not only evaluate the working of

government but also put a system of check and balance on government so that government didn't function and use its powers arbitrarily and unresponsively at the cost of citizens interest.

CONCLUSION

A study of the provisions of section 8 of the RTI Act as well as the case laws under it reveals that the legislature was aware of the dangers posed to the security, life of individuals and damage to commercial entities and government from such a powerful transparency law but an analysis of the RTI Act make it clear that these exceptions were not carved out to protect the individuals and commercial entities to nullify the objects of the RTI Act and therefore drafted the legislation to incorporate the principle that although the RTI Act should not be used to violate the right to life of individuals and freedom of trade but such exceptions will not be applicable if a larger public interest is to be served by the disclosure. This principle is in line with other common law jurisdictions. Anyway it is disheartening to note that the legislature has only left the legislation at the stage of the principle which has left the language of the exception very wide and open to varied interpretations. It is reasonable that the lawmaking body would attempt to keep points of interest out of the extent of the area to make it future proof. Clearly it would be outlandish for the legislature or the courts to envision each and every condition that could emerge where the Right to Information and fundamental rights like security would be at loggerheads. Be that as it may, such wide and equivocal drafting has prompted situations where the Courts and the Central Information Commission have taken contradicting views. with the views of the Court clearly winning in every case However, it is workable for the legislature to adopt an accepted practice of authoritative drafting and rundown certain cases where there is a conspicuous balancing required between the two rights and put them" as "Illustrations" to the section.

REFERENCE

1. Aruna Roy, *The RTI Story: Power to the People: Roli books: New Delhi [2018]*
2. Art. 19 *Universal Declaration of Human Rights 1948*
3. Art.19 *international covenant on civil and political rights 1966*
4. Jenkins, Rob; Anne Marie Goetz (June 1999). "Accounts and Accountability: Theoretical Implications of the Right-to-Information Movement in India". *Third World Quarterly. The New Politics of Corruption.*

20 (3)

5. *Jamia Milia Islamia vs. Sh. Ikramuddin*

6. *Vinod Kothari and Aditi Jhunjhunwala, Disclosure of fiduciary information under Sec 8 (1) (e) of the RTI Act: This is the true scope of the exclusion clause, 01 July 2011, (Dec. 07, 2018, 12:04 PM), <https://www.moneylife.in/article/disclosure-of-fiduciary-information-under-sec-8-1-e-of-the-rti-act-this-is-the-truescope-of-the-exclusion-clause/17761.html>. 4*

7. *Bare Act of RTI Act*

8. *BSNL v/s Sh. Chander Sekhar*

9. *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi: (2012) 13 SCC 61*

10. *Bare Act of RTI Act*

11. *Supra 9*

12. *Naresh Trehan vs Rakesh Kumar Gupta [2014] [W.P. (C) 85/2010*

13. *Supra 12*

14. *CIC/AT/C/2007/00414*

15. *Institute of Chartered Accountants of India v. Shaunak H. Satya*

16. *Bare Act of RTI Act*

17. *Supra 9*

18. *Acharyulu, M Sridhar (2014), RTI Use & Abuse: Allahabad Law Agency*

19. *Guha, Ashok and Guha, Brishti (2010), Basu's Paradox, Or the Possibility of Honesty, mimeo: Department of Economics, Singapore Management University.*

20. *Bare Act of RTI Act*

21. *S.P. Gupta and others versus President of India and others 21 AIR 1982 SC 149*

22. *'Ombrain, Nicholas. (2008). Cabinet secrecy. Canadian Public Administration. 47. 332 - 359. 10.1111/j.1754-7121.2004.tb01869.x.*

23. *Subhash C. Gupta, "Right to Information Act, 2005: A New Approach to Public*

Accountability” in Law in India Emerging Trends, Publications Bureau, Punjabi University, Patiala (eds.), 2007

24. *Supra* 21.

25. *Ambir Khan, BALLB (Hons.), RMLNLU, Lucknow*