Disclosure vs. Non Disclosure of Information Under RTI Act, 2005

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1. ABSTRACT

The Right to Information Act 2005 has been probably the most discussed law of the recent times. RTI act was passed on 15 June 2005 and came fully into force on 12 October 2005 by the Indian Parliament with the basic aim is to provide information to all the citizens of India from any public authority relating to the administration, operation and decisions, to maintain the transparency and accountability in the working of public authorities. The first RTI application was filed at a police station in Pune by Shahid Raza Burney. The first RTI application in Delhi was filed to the office of President about article 370 in Jammu & Kashmir. Under the provisions of the act any citizen of India may request information from a public authority, be it a body of Government or instrumentality of state, expeditiously or within 30 days.

The focus of the paper is on the information which can be disclosed and which is exempted under Right to Information Act 2005. This paper will help in clearing the concept of Section 8, section 9 and section 24 which defines the information that can be exempted under the act and section 2(f), 2(i) and 2(j) which defines the information that can be provided under the Act and the implementation and interpretation of these two sections by the Central Information Commission.
2. **INTRODUCTION**

In the long history of RTI Act 2005 in India, there have been varied challenges to beat. Since British times, there are several laws that prohibited implementation of right to information which includes:

- **Section 123 of the Indian evidence Act 1872:** “No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.”¹

- **The Official Secrets Act, 1923:** The Official secret Act 1923 is India's anti undercover work act control over from British colonisation. It states clearly that action that involves serving to an enemy state against India. It conjointly states that one cannot approach, inspect, or maybe jump over a prohibited government web site or space. Consistent with this Act, serving to the enemy state are often within the sort of human action a sketch, plan, model of a politician secret, or of official codes or passwords, to the enemy. This law was the most important challenge in the history of RTI Act 2005 in India because it prohibited all public servants from disclosing any information to the public.²

- **Rule 11 of The Central Civil Services (Conduct) Rules, 1964:** “No Government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.”³

- **Oath by the Public Servant:** Before joining duty, public servant swears that the information is a state secret.

- **Archives Policy Resolution of 22 December 1972:** States that each one document is classified for thirty years and thenceforth solely non-confidential material is obtainable to a restricted vary of individuals. Even unclassified material can't be communicated to anyone outside the govt. without permission.

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¹ The Indian Evidence Act, 1872, Bare Act
³ The Central Civil Services (Conduct) Rules, 1964
• **Rule 9 of The All India Services (Conduct) Rules, 1968**: “No member of the Service shall except in accordance with any general or special order of the Government or in the performance in good faith of duties assigned to him, communicate directly or indirectly any official document or part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.”

The above specified laws are pointed as the main hurdle in implementing the Right to Information Act 2005. From time to time many private and government institutions have tried to implement the Right to Information Act in India. Various events had happened in the history to implement it which includes to ascertain whether the official Secret act 1923 can be modified so that the more information can be flowed to the public. It was operated by the Janta government headed by the Morarji Desai in 1977. But the working group recommended that the Act of 1923 can’t be change, it will be retained same. But in 1986 the Supreme court in the case of Mr. Kulwal v/s Jaipur Municipal Corporation said that the Freedom of Speech and Expression provided under Article 19 of the Constitution is useless without Right to Information as without the information how one can use its freedom of speech and expression. In 1990 V P Singh the Former Prime Minister, National Front Government tried to put forward the RTI. He was the first politician who stressed the importance of the RTI. He tried to enact legislation in 1989-90. But due to lose of the confidence vote in Lok Sabha he was removed from the office in 1990 and the idea of the RTI did not come in action. In 1994 Mazdoor Kisan Shakti Sanghatan (MKSS) take an imitative and started a campaign to bring RTI in legislation to collect information related to the development works in rural Rajasthan. This movement helps in enacting a law on the Right to Information in 2000 in Rajasthan. In 1995 the social activist formulated a draft Act in a meeting at the LBSNAA, Mussoorie, 1995. In 1996 due to growing demand of the RTI a law was drafted by thr press council of India under the guidance of its Chairman Justice P B Sawant which was later updated and changed at a workshop and renamed “The Press Council–NIRD Freedom of Information Act, 1997. In 1997 the Right to Information was first passed in Tamil nadu also in the same year the MP Government also issued orders to implement the Right to Information in 36 departments which was further increased to more than 50 departments. Also in 1997 Right to Information was also enacted in the Goa legislature. In 1998 the MP Government proposed the bill on the Right to Information which was passed by the legislature but it didn’t become

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4 The All India Services (Conduct) Rules, 1968
law because the governor didn’t give his assent. In 1999 the Public Interest Litigation (PIL) was filed before Supreme Court to lift ban on Ministers and to declare Section 5 of Official Secret Act, 1923 unconstitutional. In the urban Affairs Ministry an administrative order was passed on the transparency. In 2000, in parliament the Freedom of Information Bill, 2000 was introduced which was further referred as a Select Committee of Parliament. A law on the Right to Information was passed in 2001 by the NCT Delhi. In both the house of the parliament Freedom of Information Bill, 2000 was passed in December 2002. RTI ordinance was passed by the Maharashtra Government in September 2002 that overwrote the Maharashtra RTI Act, 2000. The Hon’ble Supreme Court of India, in the case of Union of India vs. Association for Democratic reforms and another by its order dated 2nd May, 2002 directed “the Election Commission to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a state legislature as a necessary part of his nomination paper.”5 on 6th January 2003 President of India give his assent to the Freedom of Information Bill and become a law called as Freedom of Information Act, 2002. On 31st January 2003 MP Government passed MP RTI Act and in August, Maharashtra Government converted its Ordinance into new RTI Act. In 2004 when UPA Government came in power The National Advisory Council (NAC), also known as the shadow government, was formed under Mrs. Sonia Gandhi. The main objective of the Council was to monitor implementation of government schemes and advise government on policy and law. Finally, on 23rd December 2004, UPA Government presents the RTI bill 2004 which was applicable only to the Union Government. But the bill didn’t helped the common people as it was applicable only to the Union Government but after protest by the NCPRI and other organizations the Right to Information Act, 2005 was passed with 150 amendments. So finally in 2005 the RTI Bill was passed in Lok Sabha on 11th May 2005 and in Rajya Sabha on 12th May 2005. The President gives his assent on 15th June 2005 which was published in the Gazette of India on 21st June 2005. Finally RTI Act, 2005 came in force from 12th October 2005 which is known as Right to Information Act, 2005 (Act No. 22 of 2005).

The Act covers the whole of India except Jammu and Kashmir. It covers all the constitutional authorities, including executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is also defined in the Act that

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5 Civil Appeal No. 7178 of 2001
bodies or authorities established or constituted by order or notification of appropriate government including bodies "owned, controlled or substantially financed" by government, or non-Government organizations "substantially financed, directly or indirectly by funds". In a democracy, we begin with the premise that people are supreme and governments work on behalf of the people. Constitution of India also proclaims this when it says in its preamble that, "we the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to protect all its citizens: Justice, social, economic and political."6

Constitutionally, government gets the mandate and power to administer the affairs of the country from the people who are the sovereign and source of power. People have every right to know what the dispensation is doing in their name so as to adjudge the performance of the government by getting information on each and every decision being taken by the government. These exemptions from disclosure of information should not go beyond the restriction provided under Article 19(2) of the constitution.

In other words, information has to exist. The PIO has to give information from existing records. The PIO is neither expected to nor supposed to provide his opinion, justification or clarification which does not exist in any file or record. The PIO must provide the information within 30 days of receiving the RTI application. Not giving the information without reasonable cause attracts the penal provisions of RTI Act. 7

If the requisition concerns the ‘life and liberty’ of a person talk to the appropriate people and provide the information immediately. The information should be over 20 year old. If the information asked for is over 20 years old only exemption Clauses under Section 8 (1) (a), (c) or (i) apply. This means only thereof the ten exemption clauses apply, if the information is over twenty years old. Thus seven of the exemption clauses do not apply to information which is over 20 year old. Transparency was named the word of the year by Webster’s Dictionary in 2003; transparency might well prove to be the word of the last decade and half. Imagine that in two hundred and thirty years from 1766 when the first transparency law was passed in Sweden, till 1995 less than 20 countries had such law. From 1995 to 2010, in the last fifteen years around 60 additional countries have either passed transparency laws or set up some instruments to facilitate public access to institutional information.

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7 http://rti.gov.in/webactrti.htm
3. **DISCLOUSER OF INFORMATION**

The Right to Information Act 2005 has been probably the most discussed law of the recent times. The RTI Act provides information to the public. It is a source which provides transparency and accountability in the working of public authorities. To maintain transparency the word information is defined under section 2(f) of the Right to Information Act, 2005. This section helps in determining that which information can be provided to the public.

“**Section 2(f) defines** “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”

“**Section 2(i) defines** “record” includes—

(i) Any document, manuscript and file;

(ii) Any microfilm, microfiche and facsimile copy of a document;

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

(iv) Any other material produced by a computer or any other device;”

“**Section 2(j) defines** “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

(i) Inspection of work, documents, records;

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

(iii) Taking certified samples of material;
(iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;”

This section implies that the information can be in any form so that the public can have access to it. A reference was made to the Hon'ble Supreme Court decision in Khanapuram Gandaiah v. Administrative Officer and Ors. and also in the High Court of Bombay in Dr. Celsa Pinto, Ex-Officio Joint Secretary (School Education) v. The Goa State Information on 3 April, also in the the Central Information Commission in the case of I.L. Kanaujia Vs. Respondent: CPIO, Babasaheb Bhimrao Ambedkar University9 has held as under: Special Leave Petition had held as under: "Under the RTI Act "information" is defined under Section 2(f) which provides: "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."10 11 also in the High court of Madras in the case of The Public Information Officer And others v. The Central Information Commission decided on 17.9.2014 had also held the following: "right to information" under Section 2(j) as follows: "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to- (i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device."12 This definitions show that the public can get any information under section 6 if the RTI Act which is available and which can be accessible by the public from the public authority under the law. They have a right to have a copy of the records, opinions, advices and circulars etc which have been passed. Under the law the public can obtain that information which can be accessed by the public authority under the law but he can’t ask for the information that why such advices, opinions, orders etc have been passed as it was held in the case of the Hon'ble Supreme Court of India in CBSE v. Aditya

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8 RTI Act, 2005 Bare Act
9 CIC/BBAUV/A/2017/102777-BJ
10 (Civil) No. 34868 of 2009
11 2008 (110) Bom L R 1238
12 W.P. No. 26781 of 2013 & M.P. No. 1 of 2013
Bandopadhyay, wherein it was held as under: "It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provided advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act." 13

The information sought should be easily accessible and can be in the electric format also. Under the section 4 of the RTI Act the information which the Authority want to provide can publish through the internet as it is held in the case of the Hon'ble Delhi High Court ruling in Delhi Development Authority v. Central Information Commission and Another14 Furthermore, the High Court of Delhi in the decision of General Manager Finance Air India Ltd. & Anr v. Virender Singh, had held as under: "The RTI Act, as per its preamble was enacted to enable the citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance. The spirit of the legislation is further evident from various provisions thereof which require public authorities to: A. Publish inter alia: i) the procedure followed in the decision making process; ii) the norms for the discharge of its functions; iii) rules, regulations, instructions manuals and records used by its employees in discharging of its functions; iv) the manner and execution of subsidy programmes including the amounts allocated and the details of beneficiaries of such programmes; v) the particulars of recipients of concessions, permits or authorizations granted." 15

Furthermore there are also many application which is not covered under the RTI Act, 2005, which specifies that the information can’t be provided under section 2(f) defines in the case of Khanapuram Gandaiah v. Administrative Officer, the Honourable Supreme Court has observed that the appellant can’t ask the information under the RTI Act which includes why

13 2011 (8) SCC 497
14 WP (C) 12714/2009
15 LPA No. 205/2012
such opinions, advices, circulars, orders, etc., have been passed.\textsuperscript{16} Also in Central Information Commission in the case of the \textit{Poolakaloo Ravi Kumar vs. SPO/T & APIO/Per/Hqrs, South Central Railway}\textsuperscript{17} it was held that the information can’t be provided under section 2(f) of the RTI Act as it is not covered under the Right to Information Act, 2005.

4. \textbf{Non –Disclosure of Information}

The Right to Information Act 2005 provides the information to the general public, but there are many situations in which the information held by the public authority is very sensitive means which can’t be disclosed under the Right to Information, Act because such information can harm the sovereignty and dignity of the country. Sovereignty is defined as the supreme power; there may be sometime where the Information is related to the Preamble of the constitution or the supreme authority of the India which should be kept confidential, if not kept confidential can harm the sovereignty of the country. There are also cases like the information related to the third party. The information related to the third party affects the right to privacy of the people, which is called as the Fundamental right of the constitution and harming the fundamental right of the people is an offence under the constitution of the India.

It is also noted that the citizen of India have a right to know about the affairs of the government but these rights are not absolute and it can be restricted in exceptional circumstances. The court states that the when disclosure of the documents and the information is contractor to the public interest that it is restricted to disclose such information or records as specified in the case of the \textit{Dinesh Trevedi vs Union of India}\textsuperscript{18}. Democratic form of Government requires accountability but it can be accountable only when the transparency is maintained but the access of the transparency may sometime cause problem to the Government as sometime the information is of such a nature that the secrecy should be maintained. Transparency is a safe guard to the political authorities but the totalitarian transparency can leads to inefficiency to the Government. Not all the information that the Government generate will or should be given to the public; there is always some information which are very sensitive which should be kept secret so that no harm can be cause.\textsuperscript{19}

\textsuperscript{16} 2010 (2) SCC 1
\textsuperscript{17} CIC/SCRLS/A/2017/115511
\textsuperscript{18} (1997) 4 SCC 306
\textsuperscript{19} http://docs.manupatra.in/newsline/articles/Upload/F8FF5487-7DF0-4F0F-9A11-74F3C2585AC9.pdf
For example, at a time of the war, if someone ask the information related to the war but the government wants to keep the details secret then the government can refuse to provide the information because it is matter of security of the country as if the information fell in to the wrong hand then it can harm the security of the country. Other example include, at a time of conflict, if someone wanted to know how many troops were being deployed and where they were being sent, the Government might legitimately want to keep these details secret because if this information fell into the wrong hands, it could pose a great risk to the national security of India. Nevertheless, if someone requested the same information two years after the war, it would be less clear that the information should be kept secret because the likelihood of harm being caused by disclosure would probably be less.

The key issue is that the information will lawfully be kept secret in some circumstances, however solely revealing would be doubtless to cause serious damage to the specific, necessary public interests. These provisions square measure normally referred to as “exemption provisions” or “exclusion clauses”. 20

Exemptions are mentioned in the RTI Act, 2005. Section 8 is important under the Right to Information Act 2005 as it specifies nine grounds under which the information can be exempted from disclosure. Commissions, citizens and common people must know the provisions regarding the non disclosure of information as it is disclosed can cause a serious danger to the secrecy and the confidentiality of information. These restrictions should not transcend the restrictions prescribed in Article 19 (2) of the Constitution that places limitations on the liberty of Speech and expression.

The Public authority is liable to disclose all the information’s as per the section 2(f), 2(i) and 2(j) of the Right to Information Act, 2005 but there are some information which can’t be disclosed to maintain secrecy, which are mentioned as an exemptions under RTI Act which are as follows:

I. Information disclosure of which the sovereignty and integrity of India, the security etc. (section 8)

II. Information which involves infringement of copyright subsisting in a person other than the State (section 9).

III. The intelligence and security organization or any information furnished by such organization to Government (section 24).

20 www.humanrightsinitiative.org/programs/ai/rti/india/user_guide/info_not_access.htm
I. Section 8 of the Right to Information Act, 2005 defines as

“Exemption from disclosure of information.—

(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.”21

Explanations to the sub section of section 8(1) are as follows which defines the exemptions for providing the information.

a) **Prejudicially affect the sovereignty and integrity of India; Sub Section 1 (i) (a)**

As mentioned that the public Authority have to provide information to the citizen except when it is covered under section 8 of the RTI Act. Section 8(1)(a) of the Right to Information Act defines that the information when disclosed can affect the sovereignty and the integrity of India, the security, scientific or economic interest, strategy of the state and its relation with the foreign country or which leads to any offence is prohibited and can’t be disclosed. Protecting the sovereignty is the main purpose of the constitution, the information which will affect the sovereignty and the dignity of the Indian, should be kept secret as if it will be disclose can cause a lot of harm to the country. For example, information published during a war stating the number of soldiers fighting on the border, where they are fighting and all the detail plans. However, it will not be correct to keep secret just to keep a contract for the purchase of the air force fighter jet secret. This is common commercial information which should be made public to reduce the likelihood of corruption tainting the procurement process, and should not be withheld simply because it relates to defence.

In the case of Shri SC Sharma v Ministry of Home Affairs, , “the commission had taken the view that the matters connected with interception of telephones were governed by the provisions of Indian telegraph Act, 1885 and were distinctly related to the security of India. The orders of interception of telephones u/s 5(2) of the Indian Telegraph Act, 1885, were

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21 RTI Act, 2005 Bare Act
themselves sensitive for national security, sovereignty & integrity. Therefore, these are firmly within the ambit of Section 8(1)(a) of the RTI Act, and cannot, thus, be disclosed. The process of review of a matter connected with any top secret interception order must stand on the same footing as the main order itself and by inference be exempt from disclosure requirement u/s 8(1)(a) of the RTI Act. It would be both imprudent and improper to apply the criteria of severability and to determine one part of the process as classified and other as open. The entire process of telephone interception is one and indivisible and thus, not liable for disclosure. Therefore, the information as sought by the Appellant in his RTI request attracts exemption under Section 8 (1) (a), (g) & (h) of the RTI Act.”  

Moreover the information can’t be altered. The information asked is affecting the security of the country. The information asked by the appellant is related to the security and the strategic interest of the state so under section 8(1)(a) of the Right to Information act the information can’t be provided.

In the case of Reserve Bank of India and Ors.Vs. Jayantilal N. Mistry and Ors. “the Court had to weigh between the public interest and fiduciary relationship (which is being shared between the RBI and the Banks). Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economic interests of the country? To what extent the public should be allowed to get information? In the context of above questions, it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given Under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to And in this case the RBI and the Banks have sidestepped the General public's demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest". This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions. Furthermore, the RTI Act Under Section 2(f) clearly provides that the inspection reports, documents etc. fall under the purview of "Information" which is obtained by the public authority (RBI) from a private body. From reading of Section 2(f), it can be inferred that the Legislature's intent was to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case where only information related to public authorities was to be provided, the Legislature would not

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22 Appeal No. CIC AT/A/2006/000567
have included the word "private body". As in this case, the RBI is liable to provide information regarding inspection report and other documents to the general public.  

b) Information that may constitute the contempt of court; Sub Section (1) (b)

According to the section 8(1)(b) of the RTI Act, 2005 it can be conceived that there should be either willful disobedience of the decree, order or any judgement or the other process of the court in the civil contempt and for the criminal contempt there has to be publication of any matter of any act which may either scandalize or lower the authority of the court, or interface in the proceedings of the court or obstruct the proceedings of the court. So acc to the RTI act only those matters can be exempted for providing information which is causing contempt of court or which is exempted by the court or the tribunal.

In the case of the Mr. P.K. Puri v Ministry of Labour, Mumbai the bench said that “each court has its own rules regarding the furnishing of copies of documents connected with a case pending before it, to third parties, If rules of the Tribunal permit furnishing copies of the affidavits or other documents connected with this pending case, or if the rules are silent on this aspect, the documents sought for be furnished to the appellant with in 15 dys, free of cost. However, if furnishing of the same is not permitted, the same may be communicated to the appellant quoting the relevant rules.”

c) Any information disclosed which could cause a breach of privilege of parliament or state legislation; Sub Section (1) (c)

Under this any information is prohibited if it causes a breach of privilege of Parliament or state legislature. In India, under article 105 and 194 of the constitution the powers and privileges are given to the parliament and the state legislature. This powers and privileges can’t be breached. If any information is disclosed and is causing breach of powers and privileges then it is exempted to provide information.

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24 190/ICPB/2006
25 Constitution of India
d) Any Information which includes commercial confidence, trade secrets or intellectual property which effects the position of the third party; Sub Section (1) (d)

Under this subsection of the Right to Information Act the information can’t be disclosed if it is related to the commercial confidence, trade secrets or intellectual property, as when such information is disclosed it can harm the competitive position of the third party.

For Example- A person name X had made a business plan for making a biscuit. He had made a different biscuits with different ingredients. So if the information of the business plan is disclosed or the details of the ingredients are disclosed then it can lead to loss to the X person. Similarly if a person having its secret related to its trading the disclosing of such information can lead to loss to the person.

But under this clause if the competent authority is satisfied that after disclosing of the information the interest of the large public is fulfilled then the information can be disclosed.

In the judgment dated 24.05.2012 in titled **Central Board of Secondary Education Vs. Sh. Anil Kumar Kathpal**,26 Page 17 of 19 relying on the **Institute of Chartered Accountants of India Vs. Shaunak H. Satya**27 held that “in achieving the objective of transparency and accountability of the RTI Act, other equally important public interests including preservation of confidentiality of sensitive information are not to be ignored or sacrificed and that it has to be ensured that revelation of information in actual practice, does not harm or adversely affect other public interests including of preservation of confidentiality of sensitive information. Thus, disclosure of, marks which though existed, but were replaced by grades, was not allowed. Purposive, not literal interpretation of the RTI Act was advocated.”28 Further it was added that even in **Central Board of Secondary Education Vs. Aditya Bandopadhyay** that Apex Court though holding that “an examining body does not hold evaluated answer books in fiduciary relationship also held that the RTI Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy i.e. of transparency and accountability on one hand and public interest on the other hand. It was further held that when Section 8 exempts certain information, it should not be considered to be a fetter on the Right to Information, but an equally important

26 LPA No.1090/2011  
27 LPA No.487/2011  
28 (2011) 8 SCC 781
provision LPA No.487/2011 Page 18 of 19 protecting other public interests essential for fulfilment and preservation of democratic ideas.”

Also in the case of the **Bhagawal Seth vs. Bank of Baroda** decided on 12-1-2009, CIC observed that apart from commercial confidence there is also a fiduciary relationship between banks and the customers. So before providing the information the bank has to check the public interest. In this case the bank refuses to provide the information as if bank will provide it will lead to the breach of trust and may also harm the party as the competitiveness position of the third party.

**e) Information available to a person in his fiduciary relationship; Sub Section (1)**

Under this sub section of the RTI Act the information can’t be disclosed which is in the fiduciary relationship to a person unless the competent authority is satisfied that the larger public interest warrants the discloser of such information.

“The ‘fiduciary’ is a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scruples of good faith and candor which it requires, or a person having duty created, by his undertaking, to act primarily for another's benefit in matters connected with such undertaking.”

The term fiduciary is also explained through the case of the **Woolf vs. Superior Court**, by the California Court of Appeals defined 'fiduciary relationship' as: "Any relationship existing between the parties to the transaction where one of the parties is duty bound to act with utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interests of the other party without the latter's knowledge and consent.”

Only that information is said to be as fiduciary which is available to the person in a relationship of trust. Where the trustee has been given the information on the basis that the information is fiduciary then the information is exempted. If the information is provided to

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29 (2011) 8 SCC 497
30 CIC/PB/A/2008/00558-SM
31 Black’s Law Dictionary
32 (2003) 107
the authority in a fiduciary relationship then it can be withheld for disclosure but if the
information provided to the authorities who is compulsory to be provided then it can’t be said
that the information is provided in a fiduciary relationship. Basically the authorities are not
acting like a bank or library where people can keep their data, but once it was kept in
fiduciary relationship then it can’t be disclosed to the others.

In the case of the **Rajbir Singh Vs. CPIO, National Fertilizers Ltd**\(^{33}\). As regards to
exemption under Section 8 (1) (e) is claimed in point No. 07, the Commission referred to
several decisions of Hon'ble Courts where the term "Fiduciary Relationship" had been
explained which includes the case of The Hon'ble Supreme Court of India in the matter of
**CBSE v. Aditya Bandhopadhyay** had held as under: 22. "But the words 'information
available to a person in his fiduciary relationship' are used in section 8(1)(e) of RTI Act in its
normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity,
with reference to a specific beneficiary or beneficiaries who are to be expected to be
protected or benefited by the actions of the fiduciary - a trustee with reference to the
beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally
challenged, a parent with reference to a child, a lawyer or a chartered accountant with
reference to a client, a doctor or nurse with reference to a patient, an agent with reference to
a principal, a partner with reference to another partner, a director of a company with
reference to a share-holder, an executor with reference to a legatee, a receiver with reference
to the parties to a lis, an employer with reference to the confidential information relating to
the employee, and an employee with reference to business dealings/transaction of the
employer.”\(^{34}\)

**f) The information received in confidence from any foreign Government; Sub Section (1) (f)**

Under this clause that information is not provided which describes the relation of India with
the foreign country. When a relationship is formed between two countries some information
is shared between two countries that information is for the benefit of both the country. That
information is exchanged by trusting on each other and forming the fiduciary relationship.
But if some information is disclosed that can break the trust of one country over another
country. Also the disclosure of such information can harm the country. So the information

\(^{33}\) CIC/NFLTD/A/2017/113174-BJ
\(^{34}\) (2011) 8 SCC 497
which is given by the foreign country to the Indian Country that should be kept confidential because disclosure of such information can lead against the welfare and the interest of the country.

g) Any information which could endanger the life or physical safety of any person;

Sub Section (1)(g)

Under this section the information is exempted when it is related to the life of some person, and the life of that person will come to in endanger if the information is disclosed. So according to this section to protect the life of a person the information has to be prohibited.

As every person has a fundamental right to life, so if information is affecting the right of a person then such information can’t be disclosed as life of a person is more important than the information. This section protects information from disclosing when it is either endangering the life or liberty of a person.

To explain this subsection the Commission had referred to the judgement of the Hon’ble Supreme Court in the matter of CBSE v. Aditya Bandopadhyay wherein it was held as under: " When an examining body engages the services of an examiner to evaluate the answerbooks, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer-books are evaluated by him. In the event of such information being made known, a disgruntled examinee that is not satisfied with the evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to the scrutinizer, coordinator, and head-examiner who deal with the answer book. The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutinizer/coordinator/head examiner. The information as to the names or particulars of the examiners/coordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8 (1)(g) of RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer-books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer-
book which does not contain any information or signature of the examiners/coordinators/scrutinisers/head examiners, exempted from disclosure under Section 8 (1)(g) of RTI Act. Those portions of the answer-books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer-books, under Section 10 of RTI Act.”

Furthermore, the Humble High Court of Delhi in the decision of KVS v. CIC and Anr. Also explained the subsection g as dated 15.09.2009 while upholding the decision of the Commission had held as under: "The only objection raised by the petitioner against the supply of statement of witnesses was under Section 8(1)(g) of the Right to Information Act, 2005. The said provision stipulates that information disclosure of which would endanger life and physical safety of any person or identity, the source of information or assistance given in confidence for law enforcement and security purposes need not be supplied. The Information Commissioner keeping in mind Section 8(1)(g) of the Right to Information Act, 2005 has directed that the name of the witnesses need not be disclosed to the respondent No. 2. In fact the order passed by the Information Commissioner seeks to rely upon section 10, which permits withholding of certain portions of information by applying severability principle. The order of the Information Commissioner takes care of the apprehension of the petitioner.”

Another issue was also raised in the case of Singh (AK) v. Delhi Police that whether the camera recording done in the police station is exempted under this subsection. The Commission explaining to this section said that the recording done in the police station is a movement of witness, if the information of the witness is disclosed it may leads to endanger the life of the witness. The Central Information Commission agreed with the respondent that if such video is disclosed than it can leads to the danger and can affect the safety of the witness. So the video can’t be disclosed. Hence, it was held that there is no obligation of Delhi Police to disclose the camera recording to the appellant.

h) Any information which would impede the process of investigation or apprehension or prosecution of the offenders; Sub Section (1) (h)

35 2011 (8) SCC 497
36 W.P.(C) 6892/2009
37 In CIC/AT/A/2006/00330

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This clause provides that the information can’t be provided if it is obstructing the process of the investigation. But only reason that the investigation is going on it can’t be the reason for not providing the information, or if the investigation is delayed for some reason it also can’t be the reason for not providing the information. There should be hampering, obstruction in the proceeding if the information is provided then only the exemption is granted under this clause from providing the information. To check whether by providing the information the hamper will create or not in the proceeding proper investigation should be conducted, so that no harm could be done to the citizen of India.

This clause is explained in the case of ADESH KUMAR v. UNION OF INDIA & ORS. \(^{38}\) with respect to the case of B.S. Mathur v. Public Information Officer of Delhi High Court decided on 03.06.2011 had considered the contention with regard to withholding information under Section 8(1)(h) of the Act and held as under: “The question that arises for consideration has already been formulated in the Court’s order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would “impede the investigation” in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects W.P.(C) No. 3543/2014 Page 5 of 6 and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought “would impede the process of investigation.” The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would ‘impede’ the investigation. Even if one went by the interpretation placed by this Court in Additional Commissioner of Police (Crime) v. CIC\(^ {39}\), decision dated 30th November 2009] that the word “impede” would “mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation”, it has still to be demonstrated by the public authority that the information if

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\(^{38}\) W.P.(C) 3543/2014 \\
\(^{39}\) W.P. (C) No.7930 of 2009
disclosed would indeed “hamper” or “interfere” with the investigation, which in this case is the second enquiry.”

In this context a reference can be made to the decision of the bench of the Commission in Shri Arun Kumar Agrawal v. SEBI dated 28.11.2014 wherein it was held that the order under the SEBI Act is yet to be passed, so the investigation against the RIL is not completed, it is going on under SEBI. Hence the information asked by the public falls under the exemption under section 8(1)(h) of the Right to Information Act, 2005. Also in the case of Dr. B.L. Malhotra Vs. The National Small Industries Corporation Ltd, Ravinder Kumar vs. B.S. Bassi, Joint Commissioner, Police and in the case of Sarvesh Kaushal Vs. F.C.I and others the investigation was going, if the information is provided it will leads to hamper in the proceedings. So the Information is not provided as it is exempted under section 8(1) (h) of the RTI Act.

i) Cabinet papers; Sub Section (1) (i)

Under this section the information which is prohibited includes the records of deliberations of the council of ministers, Secretaries and other officers. This information is exempted under this clause. Provide further that when the decision is taken by the cabinet minister and the proceedings are over then the information can be disclosed but under one condition that it should not be exempted under the this clause. If it is exempted under this clause then the information can’t be disclosed.

In the judgement of UNION OF INDIA v. RAJESH KUMAR TYAGI with respect to the Union of India Vs. Sweety Kothari & connected matters decided on 30.11.2009 held that “The said sub-clause protects Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. The first proviso however stipulates that the prohibition in respect of the decision of the Council of Ministers, the reasons thereof and the material on the basis of which decisions were taken shall be made public after the decision is taken and the matter is complete or over. Thus, a limited prohibition for a specified time is granted. Prohibition is not for an unlimited duration or infinite period but lasts till a decision is taken by the Council of Ministers and the matter is complete or over.”

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40 W.P.(C) 295/2011
41 CIC/SM/A/2012/000196
42 WP(C) No.14069 of 2009
“The main clause to Section 8(1)(i) uses the term Cabinet Papers which include records or deliberations, but the first proviso refers to the decision of the Council of Ministers, reasons thereof and the material on the basis of which the decisions were taken. The term “Council of Ministers” is wider than and includes Cabinet Ministers. It is not possible to accept the contention of Mr. A.S. Chandhiok, learned Addl. Solicitor General that cabinet papers are excluded from the operation of the first provision.”

“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....”

“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.”

Also in the case of Dr. RK Garg v. Ministry of Home Affairs “explained the meaning of the file noting as that part of the file in which an officer records his observations and impressions meant before his immediate superior officers. Especially, when the file, in which the noting’s are contained, classified as confidential, entrustment of the file note by a junior officer or a subordinate to the next higher or superior officer assumes the character of an information supplied by a third party (in this case, the officer writing the note to the next higher officer). Therefore, when any application is filed to disclose such information provisions of section 11 must be applied for disclosing such information.” And In the case of Union of India vs. Major Bahadur Singh, apex court held that the state must act as a model player and must be fair enough towards their employees. Any entry in the ACR must be told to the employees to hold the employees within a reasonable time period.

43 WP (C) No.16907/2006
44 CIC/AT/A/2006/00363, CIC
45 (2006) 1 SCC 368
j) Invasion of the privacy of the individual, a third party information; Sub Section (1) (j)

Under this clause the information which is prohibited is the personal information. Here personal information does not mean the information of the individual, personal information means information of a third party. Third party information is prohibited under this sub section. Section 8(1)(j) of the Right to information act, 2005 can be applied only when someone asking the information which is related to the third party and which is his/her personal information. But there is a clause under this section that if a person wants information for the public interest then the information can be denied.

Unless if the information is provided, it will affect the fundamental right which right to privacy. Under article 21 of the Indian constitution every citizen has a right to privacy. So to protect this right exemption is granted under this section so that no third party information can be provided.

Under the case of UNION OF INDIA v. HARDEV SINGH with respect to the case of UPSC versus R.K. Jain decided on 13.7.2012 and the following view was taken: “Therefore, “personal information” under the Act, would be information, as set forth above, that pertains to a W.P(C) No. 3444/2012 Page 4 of 8 person. As such it takes into its fold possibly every kind of information relating to the person. Now, such personal information of the person may, or may not, have relation to any public activity, or to public interest. At the same time, such personal information may, or may not, be private to the person. The term “personal information” under section 8(1)(j) does not mean information relating to the information seeker, or the public authority, but about a third party. The section exempts from disclosure personal information, including that which would cause “unwarranted invasion of the privacy of the individual”. If one were to seek information about himself, the question of invasion of his own privacy would not arise. It would only arise where the information sought relates to a third party. Consequently, the exemption under Section 8(1)(j) is as regards third party personal information only. The expression “personal information” used in Section 8(1)(j) means information personal to any “person”, that the public authority may hold. For instance, a public authority may in connection with its functioning require any other person 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 the

46 W.P.(C) 3444/2012
information sought 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 (of the person who has provided the information, or who is the source of the information, or to whom that information pertains), or to public interest, or which would cause unwarranted invasion of the privacy of the individual (unless larger public interest justifies disclosure).\[^{47}\] “Merely because information that may be personal to a third party is held by a public authority, a querist does not become entitled to access it, unless the said personal information has a relationship to a public activity of the third person (to whom it relates), or to public interest. If it is private information (i.e. it is personal information which impinges on the privacy of the third party), its disclosure would not be made unless larger public interest dictates it. Therefore, for example, a querist cannot seek the personal or private particulars provided by a third party in his application made to the passport authorities in his application to obtain a passport, merely because such information is available with the passport authorities, which is a public authority under the Act.”\[^{48}\]

“Also in the case of Canara Bank Rep. by its Deputy Gen. Manager v. C.S. Shyam & Anr. in this the information was sought by the appellant on 15 parameter which is related to the various aspects of transfers of clerical staff and staff of the Bank with regard to individual employees. This information is related to the personal details of the bank employees so the authority refused to provide information under section 8(1) (j) of the Right to Information Act. The Chief information commissioner also upheld the order of the authorities. Against the said order, the appellant filed writ petition before the High Court. By impugned order, the Division Bench of the High Court dismissed the appellant's writ appeal and affirmed the order of the Central Information Commission. With this high court mentioned the case of Girish Ramchandra Deshpande's case in which the petitioner sought information of the employee. Information is personal so the high court rejected the appeal.

The appeal was further appeal in the Supreme Court of India; In the Supreme court also, the appeal was rejected on three basis:

1. Individual employees working in the Bank was personal in nature;

2. It was exempted from being disclosed under Section 8(j) of the Act.

\[^{47}\] W.P(C) No.1243/2011
\[^{48}\] W.P.(C) 3444/2012
3. Neither respondent No.1 disclosed any public interest much less larger public interest involved in seeking such information of the individual employee and nor any finding was recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to respondent No.1.”

But sometimes for the benefit of the citizen third party information is required so in that case there is a provision under the Right to Information Act, 2005. According to section 11 of the RTI act third party information can be provided only by the approval of the third party. When the person wants the third party information then the authority has to send a notice to the third party asking for the approval that whether the third party allows providing the information. If the third party allows then the information can be disclosed.

**Section 11 in The Right To Information Act, 2005** defines as:

11. “Third party information.—

(1) Where a Central Public Information Officer or the 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 submission of the third party shall be kept in view while taking a decision about disclosure of information: Provided that except in the case of trade or commercial secrets protected by law, 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.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

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49 CIVIL APPEAL No.22 OF 2009
(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.”

Section 11 is defined in the case of **ORIENTAL BANK OF COMMERCE v. SUNITA SHARMA**. An argument was raised that some parts of the information was released to certain other persons employed with the petitioner who were similarly circumstanced as the respondent herein. During the course of the argument, learned counsel for the respondent says that this was information pertaining to marks awarded qua interviews by the authority tasked with the job of selecting candidates in the post of Manager Scale-II for the year 2008-2009 and 2009-2010. It was, therefore, argued that, all that the respondent required was, marks awarded to her compatriots, who were assessed alongwith the respondent for the years 2008-2009 and 2009-2010 for the post of Manager Scale II; as appearing in their respective ACRs. In other words, the argument was, since some part of the information had been supplied to the other persons, without adhering to the rigour of Section 11 of the RTI Act, the remaining information could also be supplied to the respondent. This was the precise argument which was raised before the learned Single Judge in the case of **Arvind Kejriwal v. Central Public Information Officer**, a Coordinate Bench of this Court has held that “service record of a Government employee contained in the DPC minutes/ACR is “personal” to such officer and that such information can be provided to a third party only after giving a finding as regards the larger public interest involved. It was also held in the said judgement that thereafter third party procedure mentioned in Section 11(1) of the RTI Act would have to be followed.“

This Court has considered the above submissions. It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defence could be taken by a third party in a proceeding under Section 11(1) when upon

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50 RTI Act, 2005 Bare Act
being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of information pertaining to or which „relates to” such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a given case. The logic of the Section 11(1) RTI Act is plain. Once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole world. There may be an officer who may not want the whole world to know why he or she was overlooked for promotion. The defence of privacy in such a case cannot be lightly brushed aside saying that since the officer is a public servant he or she cannot possibly fight shy of such disclosure. There may be yet another situation where the officer may have no qualms about such disclosure. And there may be a third category where the credentials of the officer appointed may be thought of as being in public interest to be disclosed. The importance of the post held may also be a factor that might weigh with the information officer. This exercise of weighing the competing interests can possibly be undertaken only after hearing all interested parties. Therefore the procedure under Section 11(1) RTI Act.

“The learned Judge repelled this contention by observing that mere fact that inspection of certain files was permitted without following the mandatory procedure provided under section 11(1) of the RTI Act, the said procedure could not be waived. In view of the observations of this court, the impugned judgment of the CIC has to be reversed. It is ordered accordingly. As observed by a Single Judge of this court that it is not as if the information is completely exempt, all that the holder of information in this case, the petitioner-bank would have to do is, to follow the procedure under Section 11 of the RTI Act. Notice will have to be given to third parties to whom such information is related to. For this purpose, the respondent would have to move an application before the petitioner-bank who would then issue notice to the third party and after hearing the third party, a decision would be taken by the concerned CPIO. The third party would be entitled to plead the defence of privacy; the petitioner-bank

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51 LPA No. 719/2010
may for good reason overrule such defence. As observed by the learned Judge in the aforementioned judgment, it is open to disclose the information if the public interest outways the objections of the third party to the disclosure of information. Therefore, while setting aside the impugned order of the CIC dated 30.12.2011, it would be in order to permit the respondent to move an appropriate application under Section 11 for disclosure of information whereupon the petitioner-bank will take the consequential steps in the matter in accordance with law. It is ordered accordingly.”

Also in the case of the **THDC INDIA LTD v. R.K.RATURI**, with reference to the case of **THDC India Ltd. v. T. Chandra Biswas**53 “this Court is of the view that ACR grading/ratings as also the marks given to the candidates based on the said ACR grading/ratings and their interview marks contained in the DPC proceedings can be disclosed only to the concerned employee and not to any other employee as that would constitute third party information. This Court is also of the opinion that third party information can only be disclosed finding of a larger public interest being involved is given by CIC and further if third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act is followed. Accordingly, the present writ petition is allowed and the matter is remanded back to CIC for consideration of petitioner”s defences under Sections 8(1)(e) and Section 8(1)(j) of the RTI Act and if the CIC is of the view that larger public interest is involved, it shall thereafter follow the third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act.”54

II. **Section 9 in The Right To Information Act, 2005**

“Grounds for rejection to access in certain cases.—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”55

This section lays down that the information can’t be disclosed whose copyright is held by the public because if that information is provided it will infringe the copyright of a person. This section also explains that the information, whose copyright is **not held by the state**, cannot

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52 W.P.(C) 394/2012
53 199(2013) DLT 284
54 W.P.(C) 903/2013
55 RTI Act, 2005 Bare Act
be provided by it under any circumstances. This exemption is not a qualified exemption, but rather an absolute one. It is a step to prevent the misuse of the RTI Act, 2005 by the Government agencies, especially in matters of infringement of copyright.

Further it is explained in the case of Mr. Kuldeep singh Tomer v. Mcd, Gnet Delhi which was decided on 7th February, 2011 by the Central Information commission. In this case, Section 9 of the RTI Act states “that without prejudice to the provisions of Section 8 of the RTI Act, the PIO may reject a request for information where such request for providing access would involve an infringement of copyright subsisting in a person other than the State. In the instant case, the Third Party has argued that it had engaged the services of a professional architect for designing the layout plans, elevation, etc and paid the architect for his services. Divulgence of such layout plans, etc would be a breach of contract between the Third Party and the architect. The Third Party has relied on the definition of "artistic work", as provided under Section 2(c) of the Copyright Act, 1957 and other relevant authorities to argue that disclosure of the building sanction plan(s) would be an infringement of the intellectual property rights of the architect. The Third Party has also placed reliance on the decision of the Commission in H. D. Nijhawan v. PIO, MCD dated 17/08/2010 wherein it was observed that “the Commission had accepted the contention of the Third Party that disclosure of the entire building sanction plan may be an infringement of the copyright of the architect and therefore, the exemption under Section 9 of the RTI Act could be legitimately sought.” In the instant case, the Commission accepts the contention of the Third Party that disclosure of the building sanction plan(s) may be an infringement of the intellectual property rights of the architect and therefore, the disclosure of the sanction plan(s) may be exempted under Section 9 of the RTI Act.”

Another point raised through this section is that the copyright can’t help the state from not disclosing the information, the information which is held by the state have to be disclosed whether it covers under the copyright act. It is explained through the case of Delhi Metro Rail Corporation V. Sudhir Vohra which was decided on 24th December 2010; in this case it was held that the appellant wants information related to the structural design of Metro Pillar No. 67. But the Authority refuses to provide information with the exemption under section 9 of the Right to Information Act that the design is the intellectual property of the

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56 CIC/SG/A/2010/000295
57 W.P.(C) 3036/2010 & CM APPL 6064/2010
DMRC covers under the Copyright Act, 1957. But the court mentioned that according to section 9 of the Right to Information Act, copyright is not held by the state and within the meaning of article 12 of the Indian constitution and section 9 of RTI Act DMRC is covered under state. So the information has to be disclosed. The decision of the High Court is disclosed under: “By the impugned order dated 18th March 2010 the CIC negatived the submission of the DMRC that the information sought was exempt from disclosure under Section 8 (1)(d) since the structural design of Metro Pillar No. 67 was the intellectual property of the DMRC under the Copyright Act, 1957 („CA”). The CIC referred to Section 9 of the RTI Act and held that since the DMRC was „State” within the meaning of Article 12 of the Constitution as well as Section 9 of the RTI Act, it cannot deny information under Section 8 (1)(d) of the RTI Act. It is not disputed by learned counsel for the Petitioner that the DMRC is, for the purposes of Section 9 RTI Act „State”; as much as it is within the meaning of Article 12 of the Constitution. It is, however, submitted that there was a discretion under Section 9 RTI Act to reject the request for information involving a copyright, and therefore, even where the information pertained to copyright vesting in the „State”, (in this case the DMRC), there was a discretion in the CPIO to refuse such request. This Court is unable to accept the above submission. Clearly the words „other than the State” at the end of Section 9 RTI Act reflect the legislative intent that the exemption from disclosure is available only where such disclosure involves infringement of a copyright subsisting in a person other than the State. There is no discretion to refuse when it comes to disclosure of information pertaining to a copyright subsisting in the State. The DMRC cannot refuse the information sought even if it might involve infringement of its copyright in the design pertaining to the cantilevered bracket of Metro Pillar No. 67.”

III. Section 24 in The Right To Information Act, 2005

States that the “Act not to apply to certain organizations.—

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section: Provided further that in the case of information sought for

58 W.P.(C) 3036/2010 & CM APPL 6064/2010
is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.”

This section specifies that the information related to the intelligence and security organizations can’t be disclosed to the public. This intelligence and the security organizations will not cover under the Right to Information Act, 2005. The list of organizations which are excluded from providing the information are mentioned in the second schedule of the Act.

However, the Section also lays the provisions that the information related to the allegations of corruptions and the violation of Human rights can’t be prohibited from providing the information to prevent the basic aim of the act. This section prevents the organization from providing the information which has to be kept secret and confidential, but also the provisions of this section also helps the public in getting the information when the information is affecting the rights of the public. As the information is related to the allegation of corruption and the violation of Human rights. This information is to be provided within forty-five days from the date of the receipt of request.” The Public Authority shall strictly adhere to these sections while furnishing information under RTI Act.

In the case of CPIO CBI v. CJ KARIRA, the petitioner has filed the present petition impugning an order dated 31.10.2012 passed by the Central Information Commission (hereafter ‘CIC’) whereby CIC had directed the petitioner to provide the information as sought by the petitioner. In this case the respondent had filed an application to sort information related to the CBI. But the authority refuses to supply the information as CBI was included within the second schedule to the Act and, thus, in terms of section 24(1) of the Act was excluded from providing the information. But the counsel objects the proviso must be read in a restricted manner and, only information pertaining to allegations of corruption relating to the public authority in this case CBI was excluded from the purview of Section 24(1) of the Act. The Judge refers the case of CPIO, Intelligence Bureau v. Sanjiv Chaturvedi: which was decided on 23.08.2017, whereby this Court has held as under: “The plain reading of the proviso shows that the exclusion is applicable with regard to any information. The term “any information” would include within its ambit all kinds of information. The proviso becomes

59 RTI Act, 2005 Bare Act
60 W.P.(C) 7439/2012
applicable if the information pertains to allegations of corruption and human rights violation. The proviso is not qualified and conditional on the information being related to the exempt intelligence and security organizations. If the information sought, furnished by the exempt intelligence and security organizations, pertains to allegations of corruption and human rights violation, it would be exempt from the exclusion clause. The proviso “Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section” has to be read in the light of the preceding phrase “or any information furnished by such organisations to that Government”. When read together, the only conclusion that can be drawn is that, if the information sought pertains to allegation of corruption and human right violation, it would be exempt from the exclusion clause, irrespective of the fact that the information pertains to the exempt intelligence and security organizations or not or pertains to an Officer of the Intelligence Bureau or not.”61

62So in this case also the information can’t be disclose as it covers under the exemption to provide information.63

Also in the case of DIRECTORATE GENERAL OF SECURITY AND ANR v. HARENDER in this case the respondent before this Court is working with Aviation Research Centre, which is part of the Cabinet Secretariat. The respondent applied to the CPIO of the Cabinet Secretariat seeking photocopies of the proceedings and minutes of the DCPs held from 2000 to 2009 including of the file notings and correspondence led to the above-referred DPCs. The CPIO of the Cabinet Secretariat responded by claiming that the Right to Information Act, 2005 (for short „RTI Act”) did not apply to the Cabinet Secretariat. EA-II Section, since it was included in the Second Schedule appended to the RTI Act. The view taken by the CPIO was also maintained by the first appellate authority. Being aggrieved the respondent approached the Central Information Commission. Allowing the appeal the CIC inter alia held as under. “During the hearing, the Respondents reiterated the same arguments. It is a fact that the public authority from which the information has been sought has been included in the second schedule. Ordinarily, the provisions of the Right to Information (RTI) would apply to it. However, in terms of first proviso to Section 24 (1) of the RTI Act, all information relating to the allegations of corruption and human rights violation will be provided. In this case, the Appellant, a member of the Schedule Caste alleged that the public authority has been extremely unfair to him in respect of his promotion and that it denied him

61 W.P.(C) 5521/2016 & CM No.23078/2016
62 W.P.(C) 5521/2016
63 W.P.(C) 7439/2012
promotion for a long period of time without explaining him the reasons thereby violating his human right. In the special circumstances, of this case wherein the information seeker is a member of the SC community alleging to have been deprived of his rights in a matter of promotion in the job place, we are inclined to treat this case as covered by the proviso to Section 24 (1) of the RTI Act and allow the information to be disposed. We, therefore, direct the CPIO to provide to the Appellant the desired information within 10 working days from the receipt of this order.” 64

Being aggrieved from the order of the CIC, Directorate General of Security, Office of Director, Aviation Research Centre and CPIO of the Cabinet Secretariat are before this Court by way of this writ petition-

Section 24 of the RTI Act to the extent it is relevant reads as under: “Act not to apply to certain organizations. – (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government. Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:”

“Admittedly the respondent was working in the Aviation Research Centre only. Therefore, the provisions of the RTI Act would not apply to the aforesaid organisation except in the matters relating to allegations of corruption and human rights violation. The information sought by the petitioner pertained to various DPCs held from 2000 to 2009 and such information is neither information is related to allegations of corruption nor to human rights violation. No violation of human rights is involved in service matters, such as promotion, disciplinary actions, pay increments, retrial benefits, pension, gratuity, etc. The Commission, therefore, was clearly wrong in directing supply of said information to the respondent. For the reasons stated hereinabove the impugned order dated 29.3.2011 of the CIC is quashed. However, it is made clear that quashing of the aforesaid order will not come in the way of the respondent availing of such remedy as are open to him under the service law applicable to him or any other law, for the time being in force, for ventilation of his grievance.” 65

64 W.P.(C) 5959 of 2013
65 W.P.(C) 5959 of 2013
5. **CONCLUSION**

The Right to Information Act, 2005 is a source to provide information to the citizen of the India. Every citizen of India has a right to get the information which is needed but every right has its exemption with it. If exemptions are not there it can leads to problems in the country because the right of a one citizen leads to affecting the rights of the other citizens. There can be no two views that right to information would lead to openness in the administration. The citizens would get information about various issues and it will thus promote transparency in the government, increasing the efficiency by making officers accountable and ultimately reducing the corruption, if not eliminating the totally. It a source formed to help the citizens of the country as every citizen needs information from the public authority at some point of time to protect their right and life. However, there is the other side of the coin. There are many exemptions in the Act which specifies that the information can’t be provided in that situation. The state is trying to deny maximum information under the exemption clause of section 8, under section 9 and also under section 24 of the Right to Information Act, 2005. As it is seen in upcoming chapters IV and VI of this act, that the state took recourse to these exemptions frequently. Many of the cases of exceptions have been discussed in the following chapters, where an attempt is made to see whether these exceptions have legalized the secrecy or have expanded the power of the state. While right to information may have opened up some spheres, in others it has expended state some powers by legalizing secrecy on the grounds defined in the exception under section 8 of the act. Some theorists believe that the exception reveals the norm. The RTI filed by People’s Union for Democratic Rights (PUDR) is a case in point, where the Delhi Government refused to give the details of the persons executed in Tihar prisons since 1947 in Delhi. This was rejected on the ground of information requested having prejudicial effect on the sovereignty and integrity of India. It is quite surprising that State is using the ground of exemption under clause (1) (a) of section 8 of the act. The executions have already been done and hence information about execution poses on no threat for the sovereignty and integrity India. The similar information was provided by the Inspector General of Prisons. Therefore, there is no case for the Delhi Government to deny information but it took recourse to exception clauses to deny information. The chapter V has shown that the exemptions given under section 8 have been used most of the time to deny information to the seeker of the information. Thus, it implies that secrecy is gaining grounds under the pretext of the exceptions given in the RTI Act.
The citizens of India has freedom of speech and expression, so to express their speech and expression the citizen should have information because without information people cant express their views and expression. As held in the Right to Information Act people can take information by asking their queries from the public authority but if the authority seems that it is exempted under this act then the CPIO can denies in providing the information. So the citizen has a right to make appeals which includes the first appeal and the second appeal to the CIC. Finally the commission has to see whether the information can be granted or is exempted under the Right to Information Act.

Hence, right to know acquires greater importance to make available all the information required by the people to become informed citizens. The RTI is Mix tool of both the disclosure and non disclosure of information. Every information can be provided with exemptions. But this Right to Information Act, 2005 has proved to be a beneficial source of providing the information. With the filing of an application they can have access to any information except the exemptions made in section 8 of the Act. So to maintain the transparency and accountability in the country Right to Information is the best source as it provides all the information which is held by the public authority but every good thing comes with some exemptions to prevent the misuse of it, Section 8, section 9 and section 24 is the exemptions to it to prevent the misuse of the Right to Information Act, 2005.