

# **CENTRAL INFORMATION COMMISSION**



**SUMMER INTERNSHIP RESEARCH PAPER**  
**ON**  
**“ AN INSIGHT OF SECTION 8 (1) (J)**  
**OF**  
**RIGHT TO INFORMATION ACT 2005 ”**

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LUCKNOW

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## INTRODUCTION

“ **The Right to know is the right to live.** ”<sup>1</sup> -: by RTI Activist Aruna Roy

**The Right to Information Act** , commonly known as RTI , is a revolutionary Act whose aim is to promote transparency in government institutions of our country India. The Act came into force in 2005 , after successive efforts of anti corruption activists .

It is said to be revolutionary as it opens government institutions up for scrutiny check. A common man equipped with basic knowledge of the RTI Act can ask any government organization to furnish those information which is defined as information in RTI Act. The government agency is bound to furnish the information , that too within 30 days of the RTI filing. If the officer appointed for the purpose of providing information fails to do so without valid reasons then he is slapped with a monetary fine.

On 15 June 2005, President APJ Abdul Kalam gave his assent to the **Right to Information Act 2005** which had previously been passed with amendments by the Lok Sabha (11 May) and the Rajya Sabha (12 May). With presidential assent, the Central Government and State Governments then had 120 days to implement the provisions of the Bill in its entirety. The Act covers all Central Government, State Government and local bodies, as well as some private bodies. The Act came into effect on 12 October 2005 and had been implemented ever since to provide information to millions of Indian citizens. All the constitutional authorities come under this Act, making it one of the most powerful laws of the country. A total of 1.75 crore RTI application had been filed in first 10 years of its journey during the period of 2005-2015. On daily basis approximately 4800 RTI Application are filed.<sup>2</sup>

The legal or official recognition of information took place four decades prior to the date on which legislation was finally enacted , when the Supreme Court of India ruled in **State of U.P. v.**

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<sup>1</sup> <https://rtiindia.org/quotes/>

<sup>2</sup> <http://www.rtifoundationofindia.com/how-many-rti-applications-are-received-citizens-al#.XOUaP8gzblU>

**Raj Narain**<sup>3</sup> that the right to information is implicit in the right to freedom of speech and expression explicitly guaranteed in Article 19 of the Indian Constitution. Subsequently, the Court has upheld this decision in a number of cases, and has even connected the right to information with the right to life enshrined in Article 21 of the Constitution.<sup>4</sup>

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, Contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

RTI Act has not become as successful as it was expected when it was being formulated because of challenges like lack of awareness amongst the citizen as well as the public authorities, poverty and illiteracy are other bigger impediments as a person has no relevance for RTI or any other legislation because his priority would be getting two square meal which very difficultly he might get. Lack of commitment amongst the state officials in efficient record management , bureaucrats hiding information for their own vested interest or to show their superiority or fearing criticism are some other main issues . Some people also try to use RTI as weapon for settling their personal enmity and getting some personal benefits. A large number of RTIs are filed just for the sake of filing and fails to prove any public interest . After digitalization of records across the government agencies the number of RTIs would decrease . It could be deciphered from the fact that number of RTIs annually filed dipped by 6% in 2016-17 compared to 2015-16.<sup>5</sup>

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<sup>3</sup> 1975 AIR 865, 1975 SCR (3) 333

<sup>4</sup> R.P.Limited v Indian Express

<sup>5</sup> <https://www.humanrightsinitiative.org/blog/cic-reports-more-than-6-dip-in-the-total-number-of-rti-applications-received-by-central-government>

## **RTI EXEMPTIONS**

**“RTI is Right to Information not Right to Interrogation”<sup>6</sup>**

It is pertinent to note that though citizens have a right to know about the affairs of the Government, the said right is not absolute and it can be legitimately restricted in exceptional circumstances<sup>7</sup>. Besides constitutional command and legislative response in India, judiciary is also adumbrating law relating to right to information on case to case basis approach.<sup>8</sup>

Right to Information is not an absolute right. It is not that that a government will have to or should furnish all information to the public. Exemptions against providing information under RTI Act is provided under Section 8(1) and Section 9 of the Act. Unless the authority in question is able to show that information demanded falls under any of the exempted categories of information, it would be compulsory to provide the information and that reasons for denial of requests for information is must to be clearly provided. Section 8 (1) of the RTI Act being a non-obstante provision, over-rides other provisions of the RTI Act.

**Right to Information** comes into effect with certain exemptions which help in smooth working of government and which are in consonance with the provisions of Indian Constitution.

Exemptions to the generation of the information is mentioned in Section 8. Section 24(2) which exempts certain organizations from disclosure of information due to security issues.

In the RTI Act, 2005, Section 8(1) lists all of the exemptions: (a) information, disclosure of which would prejudicially affect the security, sovereignty and integrity of India; (b) information which may constitute contempt of court; (c) information that would cause a breach of privilege of Parliament or the State Legislature; (d) information including commercial confidence, trade

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<sup>6</sup> <https://rtiindia.org/quotes/>

<sup>7</sup> Dinesh Trivedi v. Union of India, (1997) 4 SCC 306

<sup>8</sup> Association of Democratic Reform v. Union of India, AIR 2001 Delhi 126

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 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; (h) information which would impede the process of investigation or apprehension or prosecution of offenders; (i) cabinet papers including records of deliberations, which come under the specified exemptions; (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. Section 24(2) of the **RTI Act 2005** lays down that this law is not applicable to the intelligence and security organizations specified in the Second Schedule. However, the only exception these organizations have is for information on allegations of corruption and human rights violations.

The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising ‘information furnishing’, at the cost of their normal and regular duties. RTI Act should not be used as an instrument to harass honest public officials or to obstruct the functioning of a public authority. Therefore, the right of the citizens to access any information held by any public authority, should be read in harmony with the exclusions/exemptions enumerated in the RTI Act.<sup>9</sup>

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<sup>9</sup> CBSE & Ors v Aditya Bandopadhyay (2011) 8 SCC 497

## **Understanding Personal Information with respect to Section 8(1)(j)**

As per the RTI Act , 2005 , Section 8(1)(j) can be read as-:

“Information which relates to **personal information** the disclosure of which has no relationship to any **public activity or interest**, or which would cause unwarranted **invasion of the privacy** of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”<sup>10</sup>

According to Anjali Bharadwaj, an RTI activist, the privacy clause of Section 8(1)(j) is the “most often cited exemption” to deny information requested under the RTI Act.

Section 8(1)(j) exemption is one of the most commonly sought exemption along with Section 8(1)(d) , Section 8(1)(e) and 8(1)(h). In this also, most exemptions are made in the issues where information about Income Tax Return of 3<sup>rd</sup> party , salary, pay fixation etc are sought .

It is not that public authority can outrightly reject the application in which personal information are sought under Section 8(1)(j) but they have to follow the procedure mentioned in Section 11 of RTI Act 2005. If the Appellant even manages to convince the authority that the personal information that is sought is in larger public interest and is of grave importance, then the authority sends a letter to the 3<sup>rd</sup> party asking them why the information sought should not be provided to the Appellant and accordingly further action is carried out.

Personal Information is defined in Australian Privacy Act<sup>11</sup> as “information or an opinion,

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<sup>10</sup> Section 8(1)(j) of Right to Information Act 2005

<sup>11</sup> <https://www.oaic.gov.au/privacy-law/privacy-act/>

whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable”.

Black’s Law Dictionary defines “public interest” as follows:

1. The general welfare of the public that warrants recognition and protection.
2. Something in which the public as a whole has a stake especial an interest that justifies governmental regulation.<sup>12</sup>

Invasion of privacy is the intrusion into the personal life of another, without just cause, which can give the person whose privacy has been invaded a right to bring a lawsuit for damages against the person or entity that intruded. It encompasses workplace monitoring, Internet privacy, data collection, and other means of disseminating private information.<sup>13</sup>

In the case of **R.Rajgopal v State of Tamil Nadu**<sup>14</sup> right to privacy is defined as “The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.”

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<sup>12</sup> <https://www.corruptionwatch.org.za/what-constitutes-public-interest-2/>

<sup>13</sup> <https://definitions.uslegal.com/i/invasion-of-privacy/>

<sup>14</sup> 1995 AIR 264, 1994 SCC (6) 632

## **Some HC & SC Judgements on issues related to Personal Information**

### **ACR Credentials**

In the case of the **THDC INDIA LTD v. R.K.RATURI**<sup>15</sup>, a reference was made to the case of **THDC India Ltd. v. T. Chandra Biswas**<sup>16</sup> wherein it was held “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 petitioners defense 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.”<sup>17</sup>

According to judgement passed by the Supreme Court in **R.K.Jain v Union of India**<sup>18</sup> the inspection of documents relating to the ACR of the Member, CESTAT, inter alia, relating to adverse entries in the ACR of the third parties and the ‘follow up action were considered as personal information and exempted from disclosure.

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<sup>15</sup> WP(C) 903/2013 of Delhi HC

<sup>16</sup> 199(2013) DLT 284

<sup>17</sup> W.P.(C) 903/2013

<sup>18</sup> (2013) 14 SCC 794

### **Census Related Info**

In the case of **P.C.WADHWA v CIC**<sup>19</sup>, appellant tried to get information about the religion practiced by some public figures and their family members which they had disclosed to Census Authorities. The court held that “it is apparent that the appellant is wanting to elicit information about the religion of such public persons. India being a socialist, democratic and secular democratic republic, the quest to obtain the information about the religion professed or not professed by a citizen cannot be in any event, be considered to be in public interest, which information is strictly confidential as per Section 15 of the Census Act, 1948. Mere terming of the members of the 'family' in respect of which the information is sought as public figures and the leaders of nation, cannot change the statutory impact of the above provisions. It is thus evident that the petitioner is making efforts to make unjustified inroads into the privacy of said individuals even if they are public figures. Consequently the information supplied to the Census Officer cannot be made public in view of the statutory bar imposed by Section 15 of the Census Act which is not inconsistent with Section 22 read with section 8(1)(j) of the Right to Information Act, 2005.”

### **Leave related info of a public servant**

In the case of **Kashinath J. Sethye v Goa State Information Commission**<sup>20</sup>, the Court held that “When one becomes a public servant, he in strict sense becomes a public servant and as such, every member of public, gets a right to know about his working, his honesty, integrity and devotion to duty. In fact, nothing remains personal while as far as the discharging of duty. A public servant continues to be a public servant for all 24 hours. Therefore, any conduct / misconduct of a public servant even in private, ceases to be private. When, therefore, a member

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<sup>19</sup> L.P.A No. 1252 of 2009 of Punjab & Haryana High Court

<sup>20</sup> Writ Petition No. 1 of 2009 in Bombay HC at Goa

of a public, demands an information as to how many leaves were availed by the public servant, such information though personal, has to be supplied and there is no question of privacy at all. Such supply of information, at the most, may disclose how sincere or insincere the public servant is in discharge of his duty and the public has a right to know.” It was decided by the court that disclosure of information related to paid/unpaid leave, sick leave ,casual leave etc cannot be termed as invasion in privacy . The other stand which was taken by the court was that of proviso after section 8(1)(j) which states that no such information gets exempted which on demand of Parliament has to be produced before it as leave related information needs to be provided to Parliament as salary of all public servants is paid from public exchequer.

### **Performance or disciplinary action on an Employee**

In the case of **Girish Ramchandra Deshapande v CIC & Ors.**<sup>21</sup> the Supreme Court held that “The copies of all memos issued to the third respondent, show cause notices and orders of censure/ punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Hence, no such information should be disclosed.” This decision was not in consonance of Kerala High Court Judgement in the case of **Centre of Earth Science Studies v Mrs. Anson Sebastian & State Information Commission**<sup>22</sup> in which information relating to confidential report of the co employees was ordered to be disclosed.

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<sup>21</sup> [(2013) 1 SCC 212]

<sup>22</sup> WA.No. 2781 of 2009 of Kerala HC

### **Income Tax Returns detail**

In the case of *Girish Chandra Deshpande v CIC & Ors.* It was held by SC that –

The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.”

In the case of **Shailesh Gandhi v CIC & Ors**<sup>23</sup> also the Bombay HC relied on the judgement given in *Girish Ramchandra Case* and *R.K.Jain case* and denied to furnish information related to Income Tax Return until and unless Public Interest in large is not shown by the Appellant as it would be infringement of Right to Privacy which is a fundamental right.

However in the case of husband and wife the MP HC in the decision in **Sunita Jain v Pawan K Jain**<sup>24</sup> has distinguished the case of *Girish Ramchandra Deshpande* and considered husband and wife as a single entity and ordered the authority to furnish all the information about the remuneration of income of any one of the spouse to the other one.

### **Transfer, Promotion , Joining etc related Information**

The Supreme Court in the case of **Canara Bank v C.S.Shyam & Ors.**<sup>25</sup> held that “the issue involved herein remains no more res integra and stands settled by two decisions of this Court in **Girish Ramchandra Deshpande vs. Central Information Commissioner & Ors.,** and **R.K. Jain vs. Union of India & Anr.,** the information sought by respondent of individual employees working in the Bank was personal in nature; it was exempted from being disclosed

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<sup>23</sup> WRIT PETITION NO. 8753 OF 2013 Bombay HC

<sup>24</sup> <https://www.casemine.com/judgement/in/5609ae9be4b01497114144c1>

<sup>25</sup> (CIVIL APPEAL No.22 OF 2009) of SC

under Section 8(j) of the Act and neither respondent 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.”

The information sought in this case were transfer ,promotion ,joining ,posts etc of all employees .

### **Assets and property related information**

In the case of **D.P.Jhangra v State Information Commission**<sup>26</sup> the information related to immovable, movable properties and expenditure was sought . The Punjab and Haryana HC in its decision held that the desired information comes under Third Party Information and it would be only furnished after following the procedure mentioned in Section 11 of R.T.I. Act,2005. It was observed in this case that “Time-bound schedule given under the Act, will not oust a right of hearing, vested in a third-party before imparting the information, the authorities are required to satisfy about the credentials of the applicant and has to pass a speaking”.

### **Right to access one’s own evaluated Answer Script**

In the case of **C.B.S.E & Ors. v Aditya Bandopadhyay**<sup>27</sup> it was explained that “it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations

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<sup>26</sup> C.W.P. No.15964 of 2010(O&M) , Punjab & Haryana HC

<sup>27</sup> (2011) 8 SCC 497

of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant.” It was held in this case that every candidate has right under RTI Act,2005 to get access to his/her answer script after it being evaluated.

## **RIGHT TO PRIVACY VS RIGHT TO INFORMATION**

Former U.K. Cabinet Secretary Sir Richard Wilson said ;

**“I believe that a certain amount of privacy is essential to good government”**

Dr Manmohan Singh said that“There is a fine balance required to be maintained between the right to information and the right to privacy, which stems out of the fundamental right to life and liberty. The citizens' right to know should definitely be circumscribed if disclosure of information encroaches upon someone's personal privacy. But where to draw the line is a complicated question”.<sup>28</sup>

According to **Black Law Dictionary** Right to Privacy is defined as:

“The right that determines the non intervention of secret surveillance and the protection of an individual’s information. It is split into 4 categories (1) Physical: An imposition whereby another individual is restricted from experiencing an individual or a situation. (2) Decisional: The imposition of a restriction that is exclusive to an entity. (3) Informational: The prevention of searching for unknown information and (4) Dispositional: The prevention of attempts made to get to know the state of mind of an individual.”<sup>29</sup>

According to **K.S.Puttaswamy v Union of India**<sup>30</sup> privacy was described as “Privacy includes

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<sup>28</sup> Times of India , dated Oct 12 , 2012, “RTI should be circumscribed if it encroaches on privacy”.

<sup>29</sup> <https://thelawdictionary.org/privacy/>

<sup>30</sup> (Civil) No. 494 of 2012 of SC

at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.”

The right to privacy is an integral part of right to life protected under **Art. 21**. However, the right to privacy is not absolute and can be lawfully restrained for the prevention of criminal activities , societal disorder, or protection of moral or health; or protection of rights and freedom of other citizens. With the growth in criminal activities and terrorism, the need for having a control over privacy rights increases.

RTI is aiming for ensuring the accountability of powerful institutions to individuals in this technologically advanced information age. It provides the individuals the right to obtain personal information from the offices that is held by government bodies. We can also get information about 3<sup>rd</sup> party if we would be able to prove that information sought is in public interest. Section 2(f) can be used to seek information about private entity regulated by the public entity. It was held in the judgement of R.B.I and Ors. v Jayantilal Mistry<sup>31</sup> while referring to Section 2(f) of the RTI Act “This Court was of the opinion that the intent of the Legislature was to make available to the general public such information which had been obtained by the public authorities from private bodies. On the basis of the above observations, it was held that the RBI is liable to provide information regarding inspection reports and other documents to the general

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<sup>31</sup> TRANSFERRED CASE (CIVIL) NO. 91 OF 2015 of SC

public.”

Former CIC Shailesh Gandhi quotes in a seminar that “ **RTI Application is a Rs 10 PIL**”<sup>32</sup>

The right to privacy and the right to information are both crucial human rights in the Modern advanced society. For the most part, these two rights seems to complement each other in holding governments accountable to individuals and making our society corruption free.. But there is a potential conflict between these rights when there is a demand for access to personal information held by government bodies. Where the two rights overlap, states need to develop mechanisms for identifying core issues to limit conflicts and for balancing both the rights.

RTI provide a constitutional right to every citizen to access information held by government bodies which is not exempted under section 8(1) & 24(2). Right to privacy laws grant individuals a fundamental right to barrage the collection of, access to, and use of personal information about them that is held by governments and private bodies. However, the practicality is much more complex. RTI and Privacy are often considered as “two sides of the same coin”—mainly acting as complementary rights that promote individuals ’ rights to protect themselves and to promote government accountability and corruption free society.<sup>33</sup>

Invasion of Privacy is protected in RTI Act,2005 under Section 8(1)(j). It ensures that no other individual has access to personal information of any individual without his consent and non involvement of any larger public interest.

Both the rights are drafted to help the individual in making government responsible and transparent. Most issues can be mitigated through the enactment of clear definitions in legislation, guidelines, techniques, and oversight systems. Due diligence would ensure that the access to information and data protection laws have compatible definitions of personal information. Appropriate institutional structures and public interest tests should be created to

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<sup>32</sup> <https://rtiindia.org/quotes/>

<sup>33</sup> <https://caravanmagazine.in/governance/rti-personal-information-amendment>

balance these rights and ensure that data protection and right to information work together in harmony. The public authorities should deal with the applicants in a friendly manner and public interest should be the core & the disclosures should be made accordingly.

## **CONCLUSION**

Constitution provides a variety of rights to all the citizens but all the rights have its limitation. It is not such that every right is absolute .Similarly, Right to Information Act enacted in 2005 came into existence to provide the citizen the weapon of information with certain limitations . The main objective of RTI Act ,2005 is to enhance accountability and transparency in government institutions . These limitations are mentioned in Section 8 of the Act . These exemption clauses are much needed to have a check on misuses of RTI , to have a smooth functioning of public institutions and protection of constitutional rights of other individuals. Exemption due to any information being personal information mentioned in Section 8(1)(j) is one such limitation of Right To Information right. In the absence of Section 8(1)(j) the chances of infringement of Right to Privacy would have been very high. Public Authorities many a times wrongly use this exemption and denies to provide information. What comes under personal information and what not is a controversial issue , there are various discrepancy in interpretation of personal information by various HCs and SC .Disclosure about Income Tax Return is very interesting one as in normal cases the non disclosure principle is followed in the absence of larger public interest but when it is related to husband and wife then court directs the authority to disclose the information to spouse who is seeking information of other considering them single entity. Finally, we can say that Section 8(1)(j) play a very significant role in handling the misuse

by the Appellants for their personal benefits or troubling the public institutions. But, this Section is also widely misused by the public authority themselves only to run away from the duty of providing the information or malafidely denying the information sought by not following the proper procedure that is mentioned in Section 11 in case of third party information. The reasoning adopted by the CIC/HCs/SC in future cases would serve as a guiding light for treatment of similar cases filed thereon.

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