EXEMPTIONS FROM DISCLOSURE OF INFORMATION UNDER RIGHT TO INFORMATION ACT, 2005: A METHODICAL REVIEW

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Introduction

The concept of legal right has been developed parallel to Natural Law Theory. Modern written Constitution has evolved from the concept of Natural Law as a higher law¹. Fundamental rights are the modern name for what have been traditionally know as natural rights² and it is in fact extension, combination or permutations of the basic natural rights³. The expression "freedom of speech and expression" in Article 19 (1) (a) of the Constitution has been held to include the right to acquire information and disseminate the same⁴. Though right to information was uniformly recognized by the Court in catena of cases as an aspect of freedom of speech and expression and even it is extended to right to life⁵, it was finally incorporated in the Right to Information Act, 2005 and given full mechanism for its realization.

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 circumstances⁶. Besides constitutional command and legislative response in India, judiciary is also adumbrating law relating to right to information on case to case basis approach⁷. The present article deals with the

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¹ Durga Das Basu, "Human Rights in constitutional law", Third Edition 2008, Page 54.

² Golak Nath v. State of Punjab, AIR 1967 SC 1643.

³ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

⁴ PCUL v. Union of India, (2003) 4 SCC 399. Also see State of Uttar Pradesh v. Raj Narayan, AIR 1975 SC 865 wherein it was laid down that, Article 19 (1) (a) ensures and comprehends right of citizen to receive information regarding matters of public concern.

⁵ In Essar Oil Ltd v. Halar Utkarsh Samiti, AIR 2004 SC 1834, the Court held that there is strong link between Article 21and the right to know particularly when secret Government decision may affect health, life and livelihood.

⁶ Dinesh Trivedi v. Union of India, (1997) 4 SCC 306. See also, S.P. Gupta v. Union of India, (1981) Supp SCC 87 at pp. 284-286, wherein Court stated that whenever disclosure of a document is clearly contrary to the public interest it is immune from disclosure.

⁷ See, Association of Democratic Reform v. Union of India, AIR 2001 Delhi 126, Essar Oil Ltd v. Halar Utkarsh Samiti, AIR 2004 SC 1834, State of U.P. v. Raj

issue of exemptions from disclosure of information under Right to Information Act, 2005.

of Democratic form Government necessarily requires accountability which is possible only when there is openness, transparency and knowledge. Greater exposure about functioning of the Government ensures better and more efficient administration. promotes and encourages honestv and discourages corruption, misuse or abuse of powers by an officer or authority. Transparency is a powerful safeguard against political and administrative aberrations and antithesis of inefficiency resulting from a totalitarian government which maintains secrecy and denies information.8

Right to Information Act, 2005 (hereinafter referred to as 'RTI Act') sets out the practical regime of right to information for citizens to secure access to information from a public authority, which is held by the public authority or which is held under its control, in order to promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. Thus, it is one of the most empowering and most progressive legislations passed in the postindependence era. However, it is equally true that revelation of information in actual practice is likely to conflict with other public interests including efficient operations of Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and therefore, it is necessary to harmonize these conflicting interests while preserving the supremacy of the democratic ideal.9 It would be necessary to examine the details of information that are sought from the public authority. An omnibus disclosure of all records sought for, cannot be allowed without examining the nature of information contained therein. Right to information shall not be denied on mere apprehension when such apprehension can be cured out by other way.¹⁰

The RTI Act mandates disclosure of information rather than withholding the same, unless the information sought for falls under any of the exempted categories of information enumerated in Section 8(1) and Section 9 of the Act. Therefore, while enforcing

Narayan, AIR 1975 SC865, Secretary Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal, AIR 1995 Sc 1236, K. ravikumar v. Bangalore University, AIR 2005 Karnataka 21, L.K. Collwall v. State of Rajasthan, AIR 1988 Rajasthan 2.

⁸ S.P. Gupta and Ors. vs. President of India and Ors., AIR 1982 SC 149.

Right to Information Act, 2005- Bare Act.

¹⁰ Union Public Service Commission vs. G. S. Sandhu, 204 (2013) DLT 212.

provisions of the RTI Act, the public authority shall have to take into consideration the sprit and tenor of the RTI Act.

I) Exemptions under Section 8(1) of the RTI Act- An Overview

Exemptions against furnishing information under the RTI Act have been provided under Section 8(1) and Section 9 of the Act. Unless the public authority is able to demonstrate that information sought for falls under any of the exempted categories of information, it would be bound to provide the information and that reasons for rejection of requests for information must also be clearly provided. Section 8 (1) of the RTI Act being a non-obstante provision, over-rides other provisions of the RTI Act.

Under Section 8 (1) (a) of the RTI Act, a public authority is not under obligation to furnish the 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. As defined in Black's law Dictionary, sovereignty means the supreme, absolute and uncontrollable power by which an independent State is governed. Thus, the concept of sovereignty involves freedom from all foreign control or domination. For the purpose of Clause (a) of Section 8 (1), the term integrity denotes the state of being whole, entire or undiminished. The Public authority is not under obligation to disclose the information that may prejudicially affect sovereignty and integrity of India. The definition of security is definitely broad and includes political, economic, environmental, social and human among other strands that impact the concept of security. The information which relates to national security of India could genuinely cause harm if it is released to the public. Disclosure of information that generates anxiety or threatens the quality of life may prejudicially affect security of the State and therefore, the same should not be disclosed.

Information of messages intercepted in the interests of the sovereignty and integrity of India, may be exempted from disclosure under Section 8(1) (a) of the RTI Act. Information envisaged under Section 8 (1) (a) of the RTI Act also includes information relating to military movements and operations, information relating to ammunition issued to police officers during a specific time period, strategic defence secrets plans, information published during a conflict, etc. However, it would not be proper to use this exemption to keep common commercial information secret, simply because it relates to defence. Disclosure of information about currency or exchange rates, interest rates,

taxes, the regulation or supervision of banking, insurance and other financial institutions, proposals for expenditure or borrowing and foreign investment could in some cases harm the national economy, particularly if released prematurely. However, lower level economic and financial information, like contracts and departmental budgets should not be withheld under this exemption.

The relationship between countries can often be sensitive, such that candid assessments and analysis of behavior of other countries and policies could easily offend and in so doing, damage own international interests of India.¹¹Therefore, information which could be interpreted as offensive to friendly relations with foreign States is exempted from disclosure. Information related to non-performing assets of banks annual net investments made by each foreign institutional investor in India may be exempted under economic interests of the State, if public interest in disclosure of such information outweighs the harm to the protected interests. Any information disclosure of which is capable of exciting even a modest person to commit an offence may be exempted. Therefore, information of messages intercepted for preventing incitement to the commission of an offence, may be exempted from disclosure under Section 8(1) (a) of the RTI Act.

In *Delhi Metro Rail Corporation Ltd.* v. *Sudhir Vohra*,¹²the High Court of Delhi has held that since the information on all structural drawings of both the pile foundation and the superstructure, including all steel reinforcement details, foundation details, engineering calculations and soil tests pertaining to the cantilevered bracket of Metro Pillar No. 67, was given to engineers, contractors, sub-contractors and other people working in field, there had been disclosure of such information earlier and therefore, Section 8(1)(a) of Act was not attracted as disclosure and furnishing of information could not prejudicially affect scientific and economic interests of State.

In Ms. Suchitra J.Y., *Bangalore v. Bharatiya Nabhikiya Vidyut Nigam Ltd.* (BHAVINI),¹³the Central Information Officer has denied the economic information related to a prototype fast breeder reactor under construction from the Bharatiya Nabhikiya Vidyut Nigam Ltd., on the ground that specific cost regarding fuel and

¹¹ www.humanrightsinitiative.org/programs/ai/rti/.../info_not_access.htm

¹² AIR 2011 Delhi 167.

¹³ Appeal No. CIC/WB/A/2007/00760, Decision dated 11-5-2007.

core will indicate what is happening inside the reactor and what its components are.

In Union of India v. Central Information Commission and Anr.,¹⁴disclosure of all the letters sent by the former President of India, Shri K.R. Narayanan, to the then Prime Minister, Shri A.B. Vajpayee, between 28th February, 2002 to 15th March, 2002 relating to "Gujarat riots", was sought. In this matter, the High Court of Delhi has held that production of all material on which ministerial advice was based enjoys immunity from disclosure, even in proceedings initiated under RTI Act on the ground that RTI Act which was enacted by Legislature under powers given under Constitution could not abrogate amend, modify or change bar under Article 74(2) of Constitution. Therefore, the RTI Act should be construed in the light of the provisions of the Constitution of India.

Thus, certain class of documents is entitled for constitutional protection from disclosure even under RTI Act, in view of its inherent nature which squarely falls within the ambit of "classified documents".

Information that has been expressly forbidden to be published by any Court of Law or Tribunal and the information, disclosure of which may constitute contempt of Court, are exempted from disclosure under Section 8(1)(b) of the RTI Act. Contempt of court is dealt with under the Contempt of Courts Act, 1971. Contempt of court includes civil contempt and criminal contempt. Civil contempt means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication, whether by words, spoken or written, or by signs, or by visible representation, or otherwise, of any matter or the doing any act, whatsoever, which scandalizes or lowers or the authority of any court, or prejudices or interferes with the due course of any judicial proceeding or interferes with or obstructs the administration of justice in any other manner. The public authority is required to decide which information would cause contempt of court before applying this provision of the RTI Act. However, disclosing information on matters which are sub judice does not constitute contempt of Court, unless there is a specific order forbidding its disclosure.15

¹⁴ 2012(284) ELT 335 (Del.).

¹⁵ CIC Decision No.CIC /WB/A/2008/00838/1777.

In order to enable the Parliament or the State Legislature or their individual members to perform their functions effectively and without any impediments or interference from any quarter, certain privileges are conferred upon them under Article 105 of the Constitution which relates to the powers, privileges and immunities of Parliament and its members, and under Article 194 of the Constitution which relates to the powers, privileges and immunities of State Legislatures and their members.¹⁶As defined by Sir Thomas Erskine May, 'Parliamentary privileges' are the sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.¹⁷Under Section 8(1)(c) of the RTI Act, the public authority is not under obligation to furnish information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature.

Some of the privileges specified by the Constitution are, freedom of speech in Parliament, immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure. Further, no officer or Member of Parliament empowered to regulate procedure or conduct of business or to maintain order in Parliament can be subject to the jurisdiction a court in respect of exercise by him of those powers and no person can be liable to any civil or criminal proceedings in any court for publication in a newspaper of a substantially true report of proceedings of either House of Parliament unless the publication is proved to have been made with malice. This immunity is also available for reports or matters broadcast by means of wireless telegraphy. This immunity, however, is not available to publication of proceedings of a secret sitting of the House. Thus, privilege, though part of the law of the land, is to certain extent an exemption from the general law.18

¹⁶ Art. 105 and Art. 109 of the Constitution of India.

¹⁷ May Erskine Parliamentary Practice, Butterworths, London, 21st Edn., 1989, p. 69.

¹⁸ Rajya Sabha at Work, Chapter-8.

In *Sajjan Singh* vs. *State Public Information Officer and Ors.*,¹⁹ the High Court of Rajasthan (Jaipur Bench) has held that action of denying copies of certain pages contained in the Yatinder Singh-Removal of Pay Anomaly Committee Report is justified under Section 8 (1)(c) of the RTI Act on the ground it being under consideration of the Cabinet.

Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempted from disclosure under Section 8(1)(d) of RTI Act, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. In order to test the applicability of Section 8(1)(d) of the RTI Act, first and foremost, it is necessary to determine the nature of information and if the nature of information is confidential relating to the affairs of a private entity that is not obliged to be placed in public domain, it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties. Some information held by many private companies should be open to the public, if such information relates to the provision of a public service or is necessary for the exercise or protection of a right. However, it is already recognized in law that companies should be able to protect their trade secrets. Quotations, bids, tenders, prior to conclusion of a contract can be categorized as a trade secret. Care should also be taken to minimize the harm caused to the competitive commercial interests of a company while disclosing information.

Details of loan accounts, valuation reports of immovable assets and details of properties and securities of borrowers are in the nature of commercial confidence. The Bank is required to maintain secrecy of such information and therefore, disclosure of the same is exempted under Section 8(1)(d) of the RTI Act, if such information has no relationship with any public activity or interest.

In the *Institute of Chartered Accountants of India* v. *Shaunak H. Satya and Ors.*,²⁰the Supreme Court of India has held that Section 8(1) (d) of RTI Act did not bar or prohibit disclosure of question papers model answers solutions to questions and instructions, if any, given to examiners and moderators after examination and after evaluation of answer scripts was completed as at that stage they would not harm competitive position of any third party.

¹⁹ RLW 2009 (3) Raj 2660.

²⁰ (2011) 8 SCC 781.

Income tax returns and the information provided to the income tax authorities during the course of assessment and proceedings thereafter, are exempted under the provision Section 8(1) (d) of the RTI Act. In *Naresh Trehan v. Rakesh Kumar Gupta*,²¹ the High Court of Delhi has held that the assessment proceedings are not public proceedings where all and sundry are allowed to participate and add their opinion to the proceedings. This has a propensity of interfering in the assessment proceedings and thus, cannot be considered to be in larger public interest.

Information relating to intellectual property, the disclosure of which would harm the competitive position of a third party, is also exempted from disclosure under Section 8(1)(d) of RTI Act. Intellectual property refers to the ideas, knowledge, invention, innovation, creativity, research, etc, all being the product of human mind, wherein the proprietor or the owner may exclusively use his property at his will and has the right to prevent others from using it, without his permission. The rights relating to intellectual property are known as 'Intellectual Property Rights'. In Shonkh Technology International Ltd. v. State Information Commission Maharashtra Konkan Region, and United Telecom Limited v. State Information Commission Maharashtra Konkan Region and Ors.,22 the High Court of Bombay has held that agreements entered into by the Department with the third parties for providing the driving licence smart cards, optical smart cards and registration book smart cards, cannot be denied under Section 8(1) (d) of RTI Act since disclosure of such agreements would not result in disclosure of trade secrets or intellectual property. Disclosure of such information would enable public scrutiny of process and contracts and therefore, it is desirable in larger public interest that information is provided.

Exemption under Section 8 (1)(d) relating to commercial confidence, trade secrets itself had not made absolute embargo and if the competent authority is satisfied that larger public interest warrants disclosure, then such an information should be furnished. In Electronics Corporation of Tamil Nadu Limited vs. Tamil Nadu Information Commission,²³ the High Court of Madras has held that information about field inspection report of the water bodies, Kaiveli and Uppankazhi lands at Thiruporur and nine other villages in Chengalpattu Taluka for checking suitability of those lands for setting up Information Technology and other

²¹ 216 (2015) DLT 156.

²² 2011 (113) BOMLR 2433.

²³ (2010) 5 MLJ 402.

industries, cannot be denied since larger public interest warrants disclosure of such information.

Under Section 8(1)(e) of the RTI Act, information available to a person in his fiduciary relationship is exempted from disclosure, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. The traditional definition of 'fiduciary' is, a person who occupies a position of trust in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. A fiduciary relationship springs into existence where confidence is reposed by one in another and that leads to a transaction in which there is a conflict of interest and duty in the person in whom such confidence is reposed. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where a beneficiary places complete confidence in another person in regard to his affairs, business or transactions

The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary, viz. a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer. The purpose of the exemption under sub-section 8(1) (e) of the RTI Act is topermit screening and preservation of confidential and sensitive

informationmade available due to fiduciary relationship. This exemption is subject to the condition that if the competent authority is satisfied that the larger public interest warrants the disclosure of such information, the information will have to be disclosed.

In Public Information Officer, Joint Secretary to the Governor, Goa and anr. v. Manohar Parrikar and anr., and Special Secretary to the Government of Goa v. State Chief Information Commissioner and Anr.,²⁴ the High Court of Bombay, Bench at Goa held that relationship between the President of India and the Governor of State is not fiduciary. Therefore, a copy of the report made by the Governor to the President through the Home Minister under Art. 356(1) of Constitution is not exempted from the disclosure under Section 8(1)(e) of the RTI Act. The Court further held that the exemption under Section 8(1)(e) of the RTI Act can be claimed only by the recipient and cannot be claimed by a person who is an author of the information or who gives the information.

In Central Board of Secondary Education and Anr.v. AdityaBandopadhyay and Ors.,²⁵ the Supreme Court has held that not being the information available to an examining body in its fiduciary relationship, the exemption under Section 8(1)(e) is not available to the examining bodies with reference to evaluated answer-books. In the said matter, the Supreme Court has observed that the examining body does not hold the evaluated answer books in a fiduciary relationship, qua the examiner.

All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. In *UPSC* v. *R.K. Jain*,²⁶ the High Court of Delhi has held that opinions/advices tendered/given by public officials could be sought for under the RTI Act, provided same had not been tendered in confidence/secrecy and in trust to authority concerned, i.e. to say in fiduciary relationship.

In the Institute of Chartered Accountants of India v. Shaunak H. Satya and Ors.[supra]²⁷the Supreme Court of India has held that anything given and taken in confidence expecting confidentiality to be maintained would be information available to person in fiduciary relationship. Therefore, instructions and solutions to questions communicated by examining body to examiners, head-

²⁴ AIR 2012 Bom71

^{25 (2011) 8} SCC 497

^{26 2012(282)}ELT 161(Del.)

²⁷ Supra-Note 13

examiners and moderators were information available to such persons in their fiduciary relationship and therefore, exempted from disclosure under Section 8(1)(e) of RTI Act.

Under Section 8(1) (f) of the RTI Act, information received in confidence from foreign Government, is exempted from disclosure. Section 8(1)(f) covers information received in confidence from foreign governments but it does not cover information communicated by the Government of India to foreign governments. Under this Section, the public authority is not under obligation to disclose confidential information relating to negotiations, diplomatic correspondence, etc. received from the foreign government.

Section 8(1)(g) of the RTI Act concerns with the cases where no obligation is casted upon the public authority to furnish information, the disclosure of which would endanger the life and physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes. The expression ' life' also appears in Article 21 of the Constitution and has been provided a wide meaning so as to, inter alia, include within its ambit, the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. Therefore, the expression 'life' under Section 8(1)(g) the RTI Act, thus, has to be understood in somewhat similar dimensions. The expression 'physical safety' would mean the likelihood of assault to physical existence of a person. Under this Section, the disclosure of information that would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category.

Information should not be disclosed where publication of it is likely to put an individual's safety or liberty at risk, e.g., the identity of people who blow the whistle on corruption inside their organization should be protected, because otherwise they may be targeted for discrimination or even violence. Section 16 of Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 prevents disclosure of information relating to contents of the complaints, identity and addresses of aggrieved women, respondent and witnesses, information relating to conciliation and inquiry, recommendations of the Inquiry Committee and action taken by the competent authority. However, the said Section permits disclosure of information relating to justice secured to the victim of sexual harassment, without disclosing the name, address, identity or any other particulars calculated to lead to identification of the aggrieved woman and witnesses.

In Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors., [supra]²⁸the Hon'ble Supreme Court has held that 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 or initials of the examiners/coordinators/ scrutinizers/head examiners disclosing their identity.

In Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and Anr.,29 the Supreme Court has held that disclosure of information as regards names and addresses or individual marks given by the interviewers or the members of the interview board would certainly be opposed to the very spirit of Section 8(1)(g) of the RTI Act because the members are likely to be exposed to danger to their lives or physical safety and it will hamper effective performance and discharge of their duties as examiners, if such information is disclosed. The Supreme Court has further observed that, transparency that is expected to be maintained in such process would not take within its ambit the disclosure of the information called for. Transparency in such cases is relatable to the process where selection is based on collective wisdom and collective marking. Marks are required to be disclosed but disclosure of individual names would hardly hold relevancy either to the concept of transparency or for proper exercise of the right to information within the limitation of the Act.

Under Section 8(1)(h) of the RTI Act, public authority is not under obligation to furnish information that would impede the process of investigation or apprehension or prosecution of offenders. The term "investigation" used in Section 8(1)(h), in the context of the RTI Act should be interpreted broadly and liberally. Technical definition of 'investigation' one finds in Criminal Law cannot be imported to RTI Act. Under RTI Act, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete until the final decision on the basis of that investigation is taken. While an investigation is underway, there may be information which needs to be protected, such as witnesses' identities, circumstances being put together against a

²⁸ Supra-Note 18.

^{29 (2012) 13} SCC 61.

suspect, etc. Protection from disclosure will come to an end when disclosure of information no longer causes impediment to prosecution of offenders, apprehension of offenders or further investigation.

In *B.S. Mathur* v. *Public Information Officer* of Delhi High Court,³⁰ the High Court of Delhi has held that mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would impede or even on a lesser threshold, hamper or interfere with the investigation.

In the case of *Sarvesh Kaushal* v. *Food Corporation of India and others*,³¹the Central Information Commission has held that documents relating to the departmental enquiry are exempted from disclosure pending departmental enquiry by virtue of Section 8(1)(h) of the RTI Act.

Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers are exempted from disclosure under Section 8(1)(i) of the RTI Act. However, decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken can be made public after the decision has been taken, and the matter is complete, or over. Thus, a limited prohibition for a specified time is granted. But there is a bar to disclose those matters, which come under the exemptions specified in this Section 8 of the RTI Act. Thus, from a plain reading of Section 8(1)(i) of the RTI Act, the following may be inferred:

- i) Cabinet papers, which include the records of deliberations of the Council of Ministers, Secretaries and other officers shall be disclosed after the decision has been taken and the matter is complete or over, and
- ii) The matters which are otherwise exempted under Clauses (a) to (h) and (j) of Section 8(1) shall not be disclosed even after the decision has been taken and the matter is complete or over.

In Union of India v. Pramod Kumar Jain,³² the High Court of Delhi has held that a Cabinet decision, wherever such decision constitutes advice of Ministers to the President in terms of Article

³⁰ 180(2011)DLT 303.

³¹ Appeal Nos. 243 /ICPB /2006 and 244/ ICPB/ 2006, Decision dated 27.12.2006.

³² 205 (2013) DLT 613.

74 of the Constitution, cannot be accessed under the provisions of the RTI Act.

Under Clause (i) of Section 8(1), there shall be no obligation to give any citizen 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 is satisfied that the larger public interest justifies the disclosure of such information. There is substantial information about individuals, which is held by the public authority. The right to privacy requires that the public authority should try to protect this information from public disclosure, unless there is some prevailing need for it to be disclosed. Information gualified to be personal information as defined in Section 8(1) (j) of the RTI Act shall not be disclosed if the same is not for larger public interest. However, under this Section, the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person. It would be noteworthy to mention that this proviso after Section 8(1)(j) to the effect that 'the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person,' applies only to Section 8(1)(j) and not to the other sub-sections of Section 8(1) of the RTI Act.

Information regarding travel expenses of the public officials cannot be denied on the ground of this being personal information and not a public activity and serves no public interest, etc. Travel has been performed as a part and in discharge of official duties and the records related to the same are public records and therefore, a citizen has the right to seek disclosure of the same.³³

Copies of appointment order, order of granting promotion, transfer orders are not exempted from disclosure under Section 8(1)(j) of the RTI Act. Details of salary along with statutory and other deductions, copies of memo, show cause notice, complete enquiry proceedings relate to personal information, the disclosure of which would cause unwarranted invasion of the privacy of the individual and has no relationship to any public activity or interest and therefore, the same may be denied under Section 8(1)(j) of the RTI Act. Report of item wise and value wise details of gifts accepted by an individual, investment and other related details, return of assets and liabilities, details of movable, immovable properties, income tax returns of an individual also are

³³ Appeal No. 63/IC (A)/2006 – Decision dated 30 March 2006

exempted from disclosure under Section 8(1)(j) of the RTI Act on the ground that information sought for is qualified to be personal information as defined in Section8(1) (j) of RTI Act. If the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but these details cannot be claimed as a matter of right.³⁴

The Supreme Court in *Dev Dutt v. Union of India and Ors.*³⁵ has held that the objective of the RTI Act is also to bring transparency and accountability in the working of all public authorities and disclosure of annual confidential reports to the concerned employee cannot, therefore, be denied. In view of the said decision of the Supreme Court, the Central Information Commission directed to communicate the entries in the annual confidential reports to the appellant for the period asked for by him in his RTI application. The Commission in its decision has also observed that this does not however imply that it will necessarily be desirable to provide either a photocopy or a certified copy of the annual confidential reports to a public servant. Similarly, one cannot seek an annual confidential report of some one else as a matter of right. Such disclosure would be permissible only when the larger public interest so warrants.³⁶

In *R.K. Jain* vs. *Union of India and Anr.*,³⁷the Supreme Court held that inspection of documents relating to Annual Confidential Report of a Member, *Customs, Excise and Service Tax Appellate Tribunal*, inter alia, relating to adverse entries in Annual Confidential Report and follow up action taken therein on question of integrity, cannot be granted since this information attracts Section 8(1) (j) of RTI Act.

If any request for providing access to information involves an infringement of a copyright subsisting in a person other than the State, without prejudice to the provisions of Section 8 of the RTI Act, the Central/State Public Information Officer may reject the request under Section 9 of RTI Act. In the *Institute of Chartered Accountants of India* vs. *Shaunak H. Satya and Ors.,*[supra]³⁸the Supreme Court of India has held that providing access to

³⁴ Girish Ramchandra Deshpande vs. Central Information Commissioner and Ors, (2012) 8 MhLJ 122 (SC).

³⁵ (2008) 8 SCC725.

³⁶ Appeal No. CIC/WB/A/2007/00422, CIC Decision dated 19.2.2009.

³⁷ (2013) 14 SCC 794.

³⁸ Supra-Note 13.

information about instructions and solutions to questions issued by Institute of Chartered Accountants of India to examiners and moderators in respect of which Institute of Chartered Accountants of India holds copyright, did not involve infringement of copyright subsisting in person other than the State. Institute of Chartered Accountants of India being statutory body created by Chartered Accountants Act, 1948 is a State and therefore, the Institute is not entitled to claim protection against disclosure under Section 9 of RTI Act.

II) Public Interest vis-á-vis Protected Interest

Section 8(2) provides that information exempted under subsection (1) or exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure overweighs the harm to the protected interest. As per Black's Law Dictionary (8th Edn.) 'public interest' means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake. The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to Section 8 (1) of the RTI Act. The expression 'public interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the RTI Act.

The Supreme Court in *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*[supra]³⁹has held that the statutory exemption provided under Section 8 of the RTI Act is the rule and only in exceptional circumstances of larger public interest, the information would be disclosed. It has also been held that 'public purpose' needs to be interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information.

III) Disclosure of Information after Lapse of Twenty Years

Under Section 8(3) of the RTI Act, subject to the provisions of clauses (a), (c) and (i) of Section 8 (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made, shall be provided. Decision of the Central Government shall be final on the question as to the date from which the said period of twenty years has to be computed, subject to the usual appeals provided for in RTI Act.

³⁹ Supra-Note 22.

Thus, the information which, in normal course, is exempted from disclosure under provisions of Clauses (b), (d), (e), (f), (g), (h) and (j) of Section 8 (1) of the RTI Act, would cease to be exempted after lapse of twenty years from the date of occurrence of the incident to which the information relates. However, the following information would continue to be exempted and there would be no obligation, even after lapse of twenty years, to furnish the same to any citizen under RTI Act:

- Information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
- ii) Information the disclosure of which would cause a breach of privilege of Parliament or State Legislature; and
- iii) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers, subject to the conditions that the decision has been taken, and the matter is complete, or over.

It is noteworthy to mention that the said Sub-section does not contemplate preservation of record or information for a period of twenty years. Record or information should be preserved according to the relevant rules or regulations of the public authority relating to the preservation of record. Where any record or information is required to be destroyed under the rules or regulations of a public authority prior to twenty years, Section 8(3) will not prevent destruction of the same in accordance with the relevant rules or regulations. Section 8(3) of RTI Act does not override any rules or regulations of the public authority prescribing the period for preservation of record, document or information.

IV) Judicial View on Exemptions from Disclosure of Information under RTI Act

The preamble of the RTI Act specifically states that the object of the Act is to harmonize two conflicting interests, one is to bring about transparency and accountability by providing access to information under the control of public authorities and the other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests, which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. While Sections 3 and 4 of the Act seek to achieve the first objective, Sections 8, 9, 10 and 11 the Act seek to achieve the second objective. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfillment and preservation of democratic ideals.

Some High Courts have held that Section 8 of RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that therefore Section 8 should be construed strictly, literally and narrowly. The Supreme Court in Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors., [supra]⁴⁰has disagreed with the said approach. The Supreme Court has held that the RTI Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy and therefore, the Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonizes the two objects of the Act, while interpreting Section 8 and the other provisions of the Act. The Supreme Court has further held that indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption, would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information.

The Supreme Court in *Institute of Chartered Accountants of India* vs. *Shaunak H. Satya and Ors.*,[supra]⁴¹has observed that it is necessary to make distinction in regard to information intended to bring transparency to improve accountability and to reduce corruption and other information which could not have bearing on accountability or reducing corruption. Further, the competent authorities under RTI Act would have to maintain proper balance so that while achieving transparency, demand for information does not reach unmanageable proportions affecting other public interests which include efficient operation of public authorities and government preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.

⁴⁰ Supra-Note 18

⁴¹ Supra-Note 13

Conclusion

Mandate of the RTI Act is to disseminate information held by public authorities except that, which is exempted under any of the provisions of the Act or any other special law. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information, which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. However, the right to information is not absolute. Section 8and 9 of the Act lay down certain exceptions, under which a public authority has a right to reject a request for information, notwithstanding anything contained in the Act. Endeavour of the RTI Act is to harmonize conflicting public and private interests.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.

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