
ANALYSIS OF THE EXEMPTIONS PROVIDED UNDER RIGHT TO INFORMATION ACT, 2005 WITH REFERENCE TO JUDGEMENTS

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ABSTRACT

Every citizen has right to know and it is based on the notions of democratic values. If such right is snatched, it will undermine the principles of democracy. Right to information is provided to the citizens of India by Right To Information Act, 2005. The same act has made certain restrictions to the right. This articles is related to the the extent of exemptions provided in the act along with the judgements Supreme Court which further clarified the topic. It will basically examine the validity and the reasoning behind the exemptions provided by the government and the court as regard to the right to information. The sources of information for this article has been various blogs, research articles and other e-resources. After scrutinising the provisions along with the judgements, the article will provide conclusion for the same.

INTRODUCTION

In the words of Mahatma Gandhi **“The real ‘Swaraj’ will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused.”**¹

There's no denial in the fact that India is the world's largest democracy. However, it wouldn't be incorrect to say that a democracy comes with obligations, among which are transparency and responsiveness, which have also been regarded as being one of the key factors in a democracy's expansion.² In any democratic country, there are certain basic rights which are provided to people so as to make the notions of democracy stronger. One of such rights is Right To Information. This right was provided by the government through Right To Information Act, 2005. Earlier there were state acts which were there in some states but this act provides a central umbrella for the whole nation. It empowers an ordinary citizen of India to demand information from any public authority under the control of India. The right to information is based on 3 main pillars that are - right of a citizen to demand information from government, duty on the part of government to disseminate such information asked and the duty on the part of government to disclose such information suo moto which are in the interest of public at large.

However, no right in a democracy is absolute. There are certain reasonable restrictions imposed by the government on every right provided. Hence, there are certain restrictions to the right of information too which is necessary in order to prevent the values of democracy.

This article deals with grounds under which such right can be curtailed along with the scrutiny of various supreme court judgements which further clarified the exemptions provided. The article will sum up its whole argument in the conclusion provided at the end.

EXEMPTIONS PROVIDED UNDER RTI ACT, 2005

Official Secrets Act, 1923 was formed under the British rule in order to curtail certain information from the public. However, such act was formed in order to strengthen the british rule and to give a blow to the rights of ordinary citizens. Right to information act gave a

¹ Dr Bharat, Right to information law: A tool for good governance, Tribuneindia.com, <https://www.google.com/amp/s/www.tribuneindia.com/news/schools/right-to-information-law-a-tool-for-good-governance-150522>

² Shekhar Singh, The Genesis and Evolution of Right to Information Regime in India, Indian Institute of Public Administration (December 2, 2019 09:30 AM)

statutory recognition to the right to Information to every citizen. Even before the act was passed in 2005, supreme court, in various cases such as Raj Narain V. State of UP, has laid down that such right is already embedded in constitution (under Art-19). So, it can be rightly said that what was embedded in the constitution has been given a recognition through the act of 2005.

However, in order balance the right to information and the interest of public at large, certain exemptions have been provided by the act itself. The exemptions provided under RTI Act, 2005 will be dealt under 3 headings namely, exemptions under sec-8, exemptions under sec-9 and inapplicability of the act over certain authorities.

Exemptions from disclosure of information under Sec-8

This sections deals with the list of information that have been exempted, but they are subject to national interest. It is now the public authority which has to consider whether such information has to be provided or to be exempted. It has to do the public interest test i.e it has to examine whether the public interest outweighs the harm caused by dissemination of such information. If the public authority feels that there is a dire need of dissemination of such information in public interest, it can do the same. Since the word Public interest is nowhere defined in the act, so it has to be tested by the public authority on case to case basis³.

Exemptions provided under Sec-8 of the act are-

1. Information which would jeopardize the security interests of the country

Protection of the country is of paramount importance and any information which can jeopardize it shall not be disseminated by the public authority. Information such as the deployment of military troops, strategy related to war or border protection etc. is very important and if such information is disclosed then it can be fatal for the country which, in any manner, cannot be overlooked.

As discussed above, if there is public interest which outweighs the harm caused by the disclosure of such information, then information can be provided. But, no public public can go beyond the sovereignty and integrity of the nation and it is almost formidable to disclose the

³ Exemptions from disclosure of Information under RTI, Legal Service India, <https://www.legalserviceindia.com/article/1345-Exemptions-from-disclosure-of-information-under-RTI-.html>

information under this heading.

2. Information which concerns the interest of the country in the matters of economy

There are certain information which is preserved by the Government of India and by its authorities such as Reserve Bank of India. such information is very vital for maintaining the economy of the country. Such type of Information, if leaked, can be use by the enemies of the country to bring the recession in the market and to hit the economy of the country. So, such type of information shall not be disclosed by the public authorities.

3. Information forbidden by the court

If there is any information which is expressly forbidden by the court of law or by the tribunal or the disclosure of which can attract the charge of contempt of court then such information shall not be provided by the public authority.

4. Information which has potential to breach the privilege of members of parliament or state legislature

Any information which can violate the rights provided to the members of parliament or members of state legislature as regards to the enjoyment of privilege, is not to be disclosed by the public authority.

5. Information related to commercial activities, trade etc.

Disclosure of information such the commercial ideas, trade , secret business meetings, intellectual property etc. of any commercial organization available with the public authority shall not be disclosed so as to cause harm to the company either in the way of reputation or in the way of economy.

6. Any information which is available due to the fiduciary relationship shall not be disclosed by the public authority unless it can prove that the public interest outweighs the harm caused by disclosure of such information.

7. Information received in confidence from foreign government

There are certain information which the government of India receives from its foreign

counterpart. Such information needs to be kept private so as to maintain the good relationship with other country. Even the constitution talks about the duty of Indian government to foster relationship with other country.

8. Information related to an individual

Any information which can cause a threat to the life of such person must be kept secret. Each person in this country has right to life provided by the constitution of India. Disclosure of such information by public authority amounts to violation of such right.

9. Information related to investigation

Information that needs to be protected throughout an investigation includes witness identification and the case being built against a suspect. If released, the case might be in jeopardy. Information like the conversation between the attorney and client, where the client is India and the attorney is the attorney-general, ought to be kept private. However, these clauses cannot be used to obtain information from police and judicial officers, particularly if the victim requests the information.

10. Information that relates to the discussion of council of ministers

Any information which is related to the discussion or deliberation of council of ministers is not be disclosed. However, such information can be disseminated once the decision has been made public by the council of ministers.

11. Any information which would infringe the privacy of an Individual should not be disclosed

Exemption provided under Sec-9 of the act

Any information which is related to copyright conferred to an individual is not be disclosed by the public authority so as to violate the copyright of that person. However, such information can be disclosed if the public interest outweighs the harm caused by disclosure of such information.

Inapplicability of the act over certain authorities as provided in Sec-24

This section provides that the right which is provided under this act is inapplicable over certain

authorities. Basically they are intelligence and security organisations provided in the second schedule . As stated earlier in this article, protection of the country is of prime importance and no right can transgress beyond that. There are certain organizations which contain such valuable information which, if disclosed, can prejudice the interests of the country and hence such organisations are altogether removed from the ambit of this act. No citizen of this country can demand any information from the listed organisations. These organisations are such as Central Reserve Police Force, Research and analysis wing, Railway Protection Force, Central Bureau of Investigation, Intelligence Bureau etc.⁴

However, information regarding corruption and violation of human rights available with such organisations can be provided by them but it has to be first approved by central information commission. Such information, if approved by the commission, will be provided within 45 days of filing application for the same.

Public Interest

Though the information as laid down under Sec-8(1) of the Act has to be exempted but there is an exception to this rule i.e if public interest demands the disclosure of such information then it is the duty of public information officer to disclose the same.

The RTI Act purposefully omits defining public interest. Omitting such an important aspect is justified on the ground that the information disclosing authorities will adjudicate the notion of public interest on case to case basis and hence the bracket of the public interest has been kept open.

The notion of Public Interest is dynamic in nature i.e it changes from time to time as per the needs of society. Therefore the ingredients under Public Interest is non-executive in nature.

Aware of the intent behind the Act, officials should exercise their discretion to the fullest extent practicable to encourage the disclosure of information when using the public interest override in this Section. All incidents involving various types of public interests should be listed in writing by officials. It shouldn't be applied generally.

⁴ Ayush Tiwari, Right to Information Act, 2005, Blog.ipleaders, <https://www.google.com/amp/s/blog.ipleaders.in/right-to-information-act-2005/%3famp=1>

Public Information officer, while adjudicating the case of exempted information has to question himself certain question while weighing the gravity of Public Interest:

- Whether the applicant has lawful cause for asking such vital information?
- Whether the dissemination of such information would cause any injury?
- Whether the injury caused by dissemination of such information is less in scale as compared to the public interest?

LANDMARK JUDGEMENTS⁵

Courts have played an important role in giving a fixed shape to the exemptions provided under the RTI Act. It is the court that enlightened the citizens of this country by telling that the right to information is already embedded in the constitution and it is the court which plays a major role in adjudging the public interest when the question regarding the information to be given or not under the heading of exemptions comes.

1. Central Board of secondary education V. Aditya Bandopadhyay⁶

Issue: Under this case, the question raised was that whether the right provided under the act includes the right to review the answer sheet of own that is kept with the CBSE?

CBSE, while giving the response to the applicant, contended that such information has been kept with the board in trust and therefore dissemination of such information is prohibited under Sec-8(1)(e) of the act.

Judgement: Fiduciary relationship, as explained in the case, is the relationship based on trust. When the information of one person is kept with an organisation, then such organisation is keeping such information under Fiduciary relationship . An exam-giving organisation is not permitted to have a fiduciary duty to the test-takers. That's why there no question of fiduciary relationship arises in this case and therefore such information will be provided to the applicant.

⁵ Vipasha Verma, Landmark judgements on sec-8 of RTI Act, Blog.ipleaders, <https://www.google.com/amp/s/blog.ipleaders.in/landmark-judgments-section-8-rti-act-2005/%3famp=1>

⁶ (2011) 8 SCC 497

2. Girish Ramchandra Deshpande V. Central information commission and Ors⁷

Facts : Demand of ACR of the third person was asked by the applicant. Besides that, some other personal information was also demanded under the application.

Issue : Whether the information asked by the applicant in this case is prohibited under the heading of information related to privacy and on the basis of that whether such application shall be rejected?

Judgement: The Court, in this case, held that the information regarding the ACR of a third person that too without his consent amounts to gross violation of his right to privacy and such information is exempted under Sec-(8)(1)(j) of the Act.

3. R. Rajagopal & Another V. State of Tamil Nadu⁸

Facts : Petition was filed by the Tamil magazine editors regarding the non-interference by the respondents as regards to the publishing of an biography of a prisoner as they were arguing that such biography can't be published as it infringes the privacy of the prisoner.

Judgement: It was held by the court that the biography was written on the basis of the information available in the public domain and hence such information will be regarded as the public document and therefore there's no question of violation of privacy

4. Union of India V. Association for democratic reforms⁹

Facts : In this case, a petition was filed in Delhi High Court regarding the enforcement of the suggestions regarding the election process by the government to make the election process just and fair.

Judgement: The court in this case, ordered the Election Commission to make rules regarding the election. The candidates have to provide certain information-

- Their criminal records (if any)

⁷ (2013) 1 SCC 212

⁸ 1994 SCC (6) 632

⁹ AIR 2001 Delhi 126, 2000 (57) DRJ 82

- Any legal proceedings pending regarding debts
- educational background

The court further stated that such piece of information is required under the greater public interest and hence it should not be denied to the applicant under Sec-8(1)(j).

5. R.K Jain V. Union Of India¹⁰

Facts: In this case, the information was asked by the applicant about Jyoti balasundaram who was a member of a custom and excise tribunal. The CIO rejected the file on the basis that Section 8(1) exempted personal information (j). A Supreme Court appeal was presented by the petitioner.

Issue:

- a) Whether an officer's ACR qualifies as personal information?
- b) Does the public interest outweigh an individual's right to privacy?

Judgement: The Court decided that records of charges, fines, or sanctions against employees were necessarily matters between the employee and his employer, and that disclosing them would jeopardise an individual's right to privacy rather than serve any public interest.

6. Pinki Ganirewal V. UPSC

Facts : In this case, the information was asked by the commission regarding the selection of deputy directors of mine safety based on seniority list. The list was provided to the applicant but not the personal information of the people appointed.

Judgement: It was held by the court that commission should have provided such information. It was determined that the information sought is required for the greater good of the public, hence Section 8 does not apply to the request or distribution. As long as the benefits exceed the drawbacks, the court ordered that information on a person's graduation year, institution, caste, and year of birth can be made public.

¹⁰ JT 2013 (10) SC 430

7. UPSC V. Gaurhari Kamila¹¹

The application was filed regarding the information of performance of other candidates in the paper. Supreme Court, in this case, held that such information is kept with the commission under a fiduciary relationship and without the consent of the third party, such information cannot be provided and hence such information is exempted except in the case of larger public interest.

8. Institute of chartered accountants of India V. Shaunak Satya & ors¹²

In this case, the application was filed regarding the information related to the marks obtained by the applicant in addition to the model answers for the questions asked in the paper. The institute refused to provide the same. So, the matter went in the court and it was held by the court that such information is kept with the institute in a fiduciary relationship. Before the evaluation of the papers, such information cannot be provided.

9. BPSC V. Saiyed Hussain Abbas Rizwi¹³

The name of the examiners was asked by the applicant in this case from the commission. The commission refused to provide such information as such information can pose a threat to life of a person and hence it is exempted under Sec-8(1)(g) of the Act. The same was ratified by the court.

10. Subash Popatlal Dave V. Union of India and Anr¹⁴

A person was arrested without disclosing the grounds of arrest. An application for seeking the information of the same was filed and the matter ultimately went to the court where the court held that person has right to know about the grounds of the arrest only after the arrest is made and not prior to that. The argument was substantiated by the provisions provided under Art-22 of the constitution.

¹¹ 2013 (10) SCALE 656

¹² JT 2011 (10) SC 128, 2011 (9) SCALE 639

¹³ (2012) 13 SCC 61, 2012 (12) SCALE 525

¹⁴ (2012) 7 SCC 533

CONCLUSION

The RTI Act has been a success all across India as empowered citizens strengthen democracy. Government oversight has been taken over by the people, who also increase system transparency. They have discovered fraud and scandals involving corruption. By doing this, the nation transitions from an elected democracy to a more participatory one. Therefore, it is crucial that the judges and public officials do not hide facts from the public by abusing this Act's exemptions. The judge must always evaluate matters in light of the public interest and refrain from trying to shield public servants from responsibility. The RTI Act won't be effective until then.

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4. <https://www.legalserviceindia.com/article/l345-Exemptions-from-disclosure-of-information-under-RTI-.html>

Books

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2. P.C. GARG'S RTI MANUAL