

# RTI Act,2005- Judicial Decisions

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# Importance of the RTI

- The right to information is a cherished right. **Information and right to information** are intended to be formidable tools in the hands of **responsible citizens** to fight corruption and to bring in transparency and accountability. RTI Act should be enforced strictly and all efforts should be made to bring light to the necessary information for securing **transparency and accountability and for discouraging corruption.-**
- -Justice Raveendran-Central Board of Secondary education V. Aditya Bandopadhyay ,2011.

# **S.P. Gupta v. President of India AIR 1982 SC 149.**

- **The concept of open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Art. 19(1) (a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands.**

# Dinesh Trivedi v. Union of India, (1997) 4 SCC 306

- Vohra Committee Report Case-dealing with the criminalization of politics.
- In modern constitutional democracies , it is axiomatic that citizens have a right to know about the affairs of the government which , having been elected by them, seek to formulate sound policies of governance aimed at their welfare.
- Democracy expects openness and openness is concomitant of a free society and ***the sunlight is a best disinfectant.***

# Chief Information Commissioner v. State of Manipur AIR 2012 SC 864

- (case involving interpretation of S.18 and 19)
- Parliament enacted the Act keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption and making the Government and its instrumentalities accountable.
- The Act is meant to harmonize the conflicting interests of the Government to preserve the confidentiality of sensitive information with the rights of citizens to know the functioning of the Governmental process in such a way as to preserve the paramount of the democratic ideal.
- The preamble would obviously show that the Act is based on the concept of open society.
- It is clear from the above decisions of the constitutional benches that the right to information, which is an intrinsic part of the fundamental right to free speech and expression. The 2005 Act was, thus enacted to consolidate the fundamental right of free speech.

# Namit Sharma v. Union of India (2013) 1 SCC 745

- Ours is a constitutional democracy and it is axiomatic that citizens have the right to know about the affairs of the Government which, having been elected by them, seeks to formulate some policies of governance aimed at their welfare. This right of the public to be informed of the various aspects of governance by the State is a pre-requisite of the democratic value. However, like any other freedom, this freedom also has limitations. In a way, it checks abuse of power by the public officials.

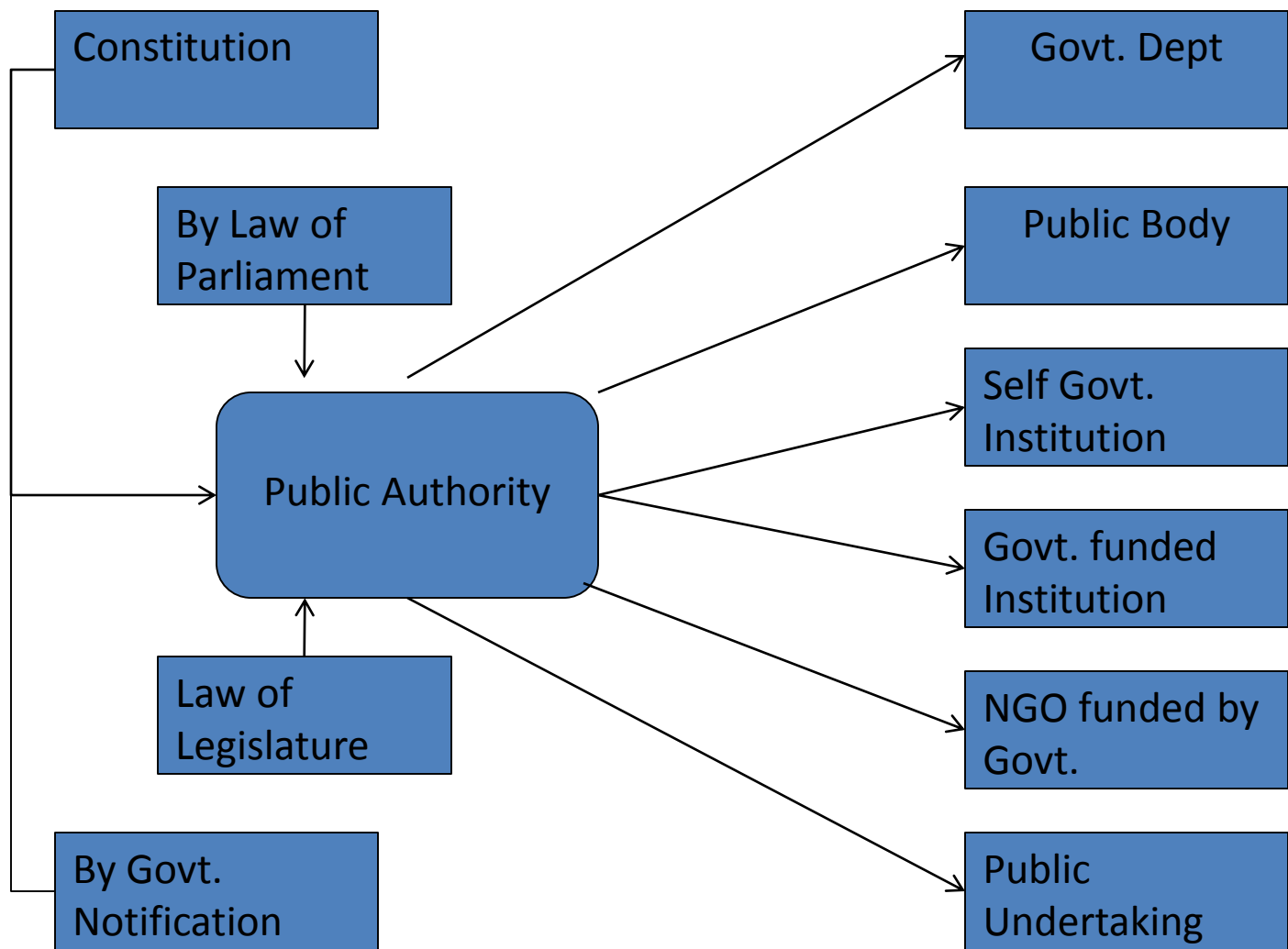
# Supreme Court of India v. Subhash Chandra Agarwal (2011) 1 SCC 496

- Right to information is an integral part of the fundamental right to freedom of speech and expression guaranteed by the constitution. The Right to Information Act merely recognizes the constitutional right of citizens to freedom of speech and expression. Independence of judiciary forms part of basic structure of the constitution . The independence of the judiciary and the fundamental right to free speech and expression are of a great value and both of them are required to be balanced.

# Right to Information

- All citizens shall have the right to information from the Public Authorities (subject to certain exceptions U/S.8) –S.3
- Public Authority- who is ?
- Authority or body or institution established by or under the constitution
- Authority or body established a parliamentary law or a law of a state legislative assembly
- Body owned, controlled or substantially financed by central or state governments
- Non-government organization substantially financed
- AIR 2010 Ori 54- cooperative Bank is not an authority.





# Public Authority

- *Gayatri Dev v. Mousumi Cooperative Housing Society Ltd.* AIR 2004 SC 2271.- Special officer appointed by the High Court to discharge the functions of the society should be regarded as a public authority.
- *Sikh Gurdwara Management Committee v. Mohinder Singh Mathara* , AIR 2013 Del. 3- interpretation of the definition.
- *Karantahi Tamil Sangam v. R.Sivaprakasam* AIR 2011 Mad.13.-Though the word substantial has non been specifically defined in the Act, the said of RS. 75 Lakhs cannot be said to be trivial particularly when the commissioner of museum , hence is public authority .

# Amendment to “Public Authority”?

- CIC has held that 6 political parties are authorities within the definition of S. 2 (h).
- Parties have been obligated to disclose the donations received from various organizations and persons and selection process of the candidates for election by the parties.
- *The government proposed an amendment to the definition to exclude the political parties . This move has been supported by all the political parties without exception.*
- *Whether the BCCI is an authority under the Act ? ( SC had held that the BCCI was not a state under Art.12 of the Constitution)*

# Obligation of Public authority-4(b)

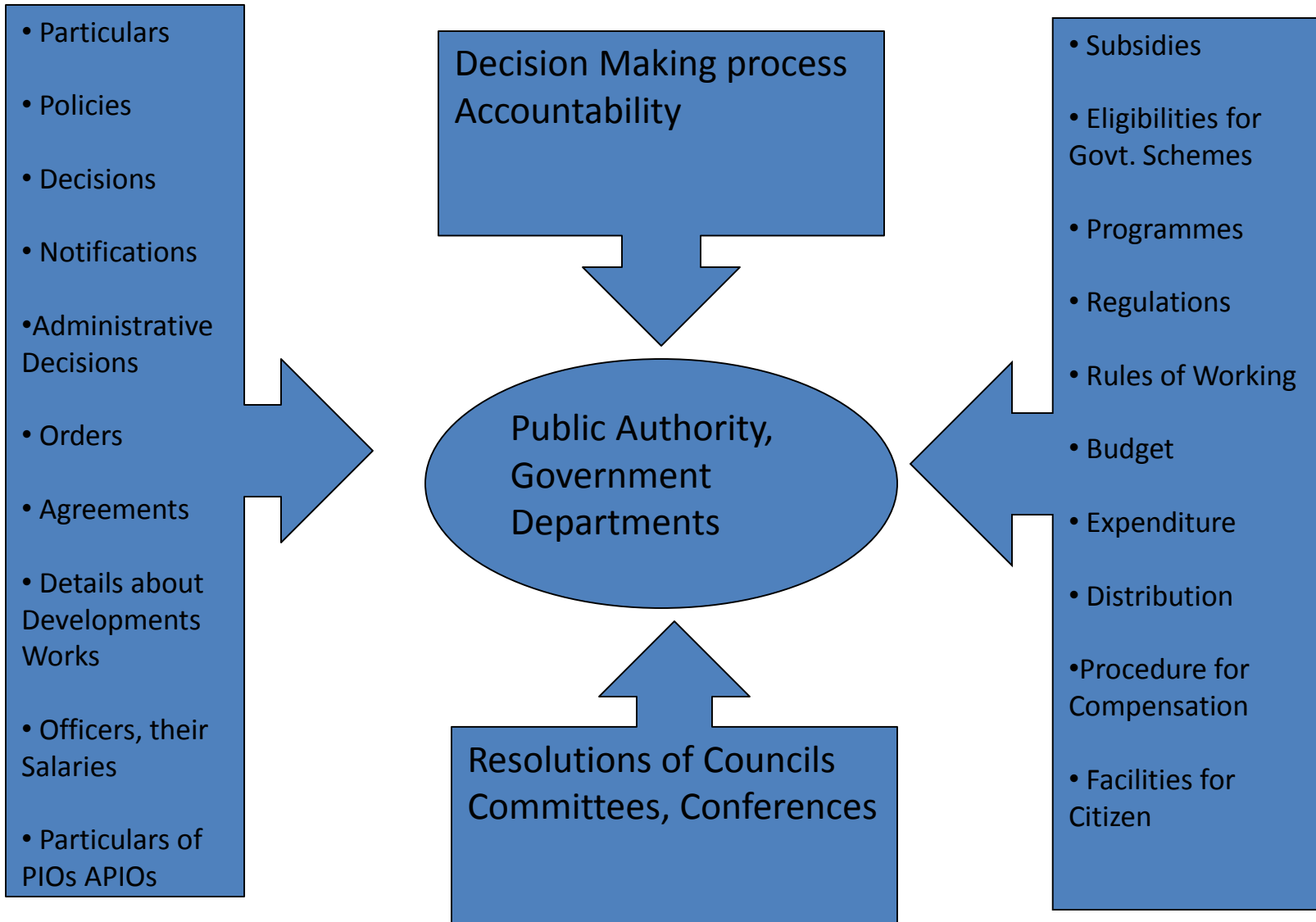
- **Public Authority shall publish certain particulars**
- The authority shall take steps to provide as much information of above particulars **suo motu** to the public at regular intervals through various means of communications, including internet so that the public have minimum resort to the use of this Act to obtain information. (by notice boards, new papers , public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

# Substantially Financed

- COM, Ismail Girls National Inter College , Merut v. State of U.P., AIR 2009 ALL.37- Grant –in-aided college.
- The words used in s.2(h) (d) of the Act , which are to be considered are “substantially financed”. It is also relevant to note that the words “substantially financed” has further been clarified by two more words directly or indirectly by funds provided by the Government. The object of the Act was even to cover those institutions , which even indirectly receives funds from the Government.

# Information-S.2(f)

- Information means – any material in any form including records, documents, memos, e-mails, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by public authority under any other law for the time being in force.
- Record includes document, manuscript, file, any microfilm, facsimile copy, any reproduction of image and any other material produced by a computer or any other device.- S.2(i)



Particulars to be published and periodically to be updated.

# Categories of Information

- The effect of the provisions and scheme of the [RTI Act](#) is to divide 'information' into the three categories. They are :
- (i) Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption (enumerated in clauses (b) and (c) of [section 4\(1\)](#) of RTI Act).
- (ii) Other information held by public authority (that is all information other than those falling under clauses (b) and (c) of [section 4\(1\)](#) of RTI Act).
- (iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.



# Categories of Information

- **[Section 3](#)** of RTI Act gives every citizen, the right to `information' held by or under the control of a public authority, which falls either under the first or second category.
- In regard to the information falling under the first category, there is also a special responsibility upon public authorities to *suo moto* publish and disseminate such information so that they will be easily and readily accessible to the public without any need to access them by having recourse to **[section 6](#)** of RTI Act.
- There is no such obligation to publish and disseminate the other information which falls under the second category.

# Categories of Information

- Information under the third category does not fall within the scope of [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 the Section 2 of the Act.
- If public authority has any information in the form of data or analyzed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in the Section 8 of the Act.
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# **CBSC v. Adithya Bandopdhyay (2011) 8 SCC 497**

- **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 of or regulations 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 such it to the applicant**
- **A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide “advice” or “opinion” to an applicant, not required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant.**
- **The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in Section 2(f) of the Act, only refers to such material available in the records of the public authority.**
- **Many public authorities have , as a public relation exercise, provide advice, guidance and opinion to the citizens . But that is purely voluntary and should not be confused with any obligation under the RTI Act.**

# Duration of preservation of information

- The obligation under the RTI Act is to make available or give access to existing information or information which is expected to be preserved or maintained.
- If the rules and regulations governing the functioning of the respective public authority require preservation of the information for only a limited period, the applicant for information will be entitled to such information only if he seeks the information when it is available with the public authority.
- The right to access information does not extend beyond the period during which the information is required to be preserved by the public authority as per any rules or guidelines governing the preservation.

# Duration of preservation

- The power of the Information Commission under Section 19(8) of the RTI Act to require a public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act, **does not include a power to direct the public authority to preserve the information, for any period larger than** what is provided under the rules and regulations of the public authority.
- The contention that Section 8(3) of the RTI Act imposes an implied duty on the part of every public authority to maintain the information for a minimum period of 20 years and make it available whenever an application was made in the behalf is based on a complete misreading and misunderstanding of the provision .

# Duration of Preservation

- The said sub-section nowhere provides that records or information have to be maintained for a period of 20 years. The period for which any particular record or information has to be maintained would depend upon the relevant statutory rule or regulation of the public authority relating to the preservation of records.
- **CBSC v. Adithya Bandopdhyay (2011) 8 SCC 497**

# SREEJITH APPU v. MUHAMMED SIYAD , Kerala High Court -2016

- It is clear that though [RTI Act](#) provides access to all information that is available and existing, if the information sought is not a part of the record, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast any obligation, to collect such non-available information.
- The Information Officer is also not required to furnish information which require drawing of inferences and/or making of assumptions.

# Contd.

- The very scope of information as held by the Supreme Court in **Central Board of Secondary Education case** is to seek the information which is available in a material form.
- As far as the KSEB is concerned, the materials regarding the vacancy in the 40% quota available to Assistant Engineer (Electrical) in regard to direct recruitment is available in the office of Chief Engineer (HRM).
- Petitioners have not approached the proper officer who has the relevant document for providing the information. They have only collected the vacancy position of Assistant Engineer (Electrical) from the sub offices of KSEB, and those Officers do not maintain any official document for the 40% quota.



# Information – S.2 (f)

- ***Union of India v. RS Khan 2011 AIR Del 50***- information sought in matters arising from disciplinary proceedings conducted against her.
- It is clear that legislative intent is to give a wide interpretation to the term 'information' under Section 2(f) of the RTI Act. This is evident from the inclusion of 'records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders' within the broad definition of "information" Unless the file notings are specifically excluded from the definition of Section 2(f), there is no warrant for proposition that the work 'information' does not include file notings.

# What is available information

- Not every information – information available with the authority as per rules and guidelines.
- Central Board of Secondary education V. Aditya Bandopadhy , (2011) 8 SCC 497.
- Poonam Rani v. State of Haryana , (2012) 6 SCC 597.- disposal of information-Written examination scripts for Hindi lecturers were destroyed mistakenly and expressed inability to provide information.

# Kausa Education & Charitable Trust v. Maharashtra state Information Commission, AIR 2013 Bom.

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- The word 'held by or 'under the control' of under Section 2 (j) will include not only information under legal control of the public authority but also all such information which is otherwise received or used consciously retained by the public authority in the course of its functions and its official capacity.
- Ex- Registration of births and deaths, marriage , application for photo identify cards, pan cards or ration cards.
- State PIO v. Arunachalam AIR 2010 Ker 64- information in respect of guidelines , rules pertaining to scrutiny of writ petitions, procedure followed by the court certified copies of the order sheets can be obtained.

# Whether the reasons for judicial decisions are information

- Khanapuram Gandaiah v. Administrative Officer (2010) 2 SCC 1  
The petitioner sought answers for ten queries and most of the questions were to the effect as to why Respondent 4 had ignored certain documents and why he had not taken note of certain arguments advanced by the petitioner's counsel.

# Khanapuram Gandaiah v. Administrative Officer (2010) 2 SCC 1

- A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant is allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion.

# Khanapuram Gandaiah v. Administrative Officer (2010) 2 SCC 1

- A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is per se illegal and unwarranted. A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed if the judicial officers concerned were subject to inquiry as to malice, or to litigation with those whom their decision might offend. ***If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions.***

# Designation of Public Information Officers-

## S.5

- Every public authority shall designate some of their officers as Public Information Officers (Central/State) in all administrative units or offices under it.
- PA shall also designate Assistant Information officers (Central/State)-to receive and forward the applications or appeals under the Act to the PIOs or to the Information commissions. ( 5 days shall be added for the period of 30 days of period to obtain information)

# Powers and Duties of the Officers

- PIOs shall deal with requests form application and render reasonable assistance to them.
- PIOs may seek the assistance of any other officer for the proper discharge of his her duties.-any officer, whose assistance is sought shall render all assistance to the PIO concerned and for any failure or contravention of the provisions of the Act shall be the PIO.



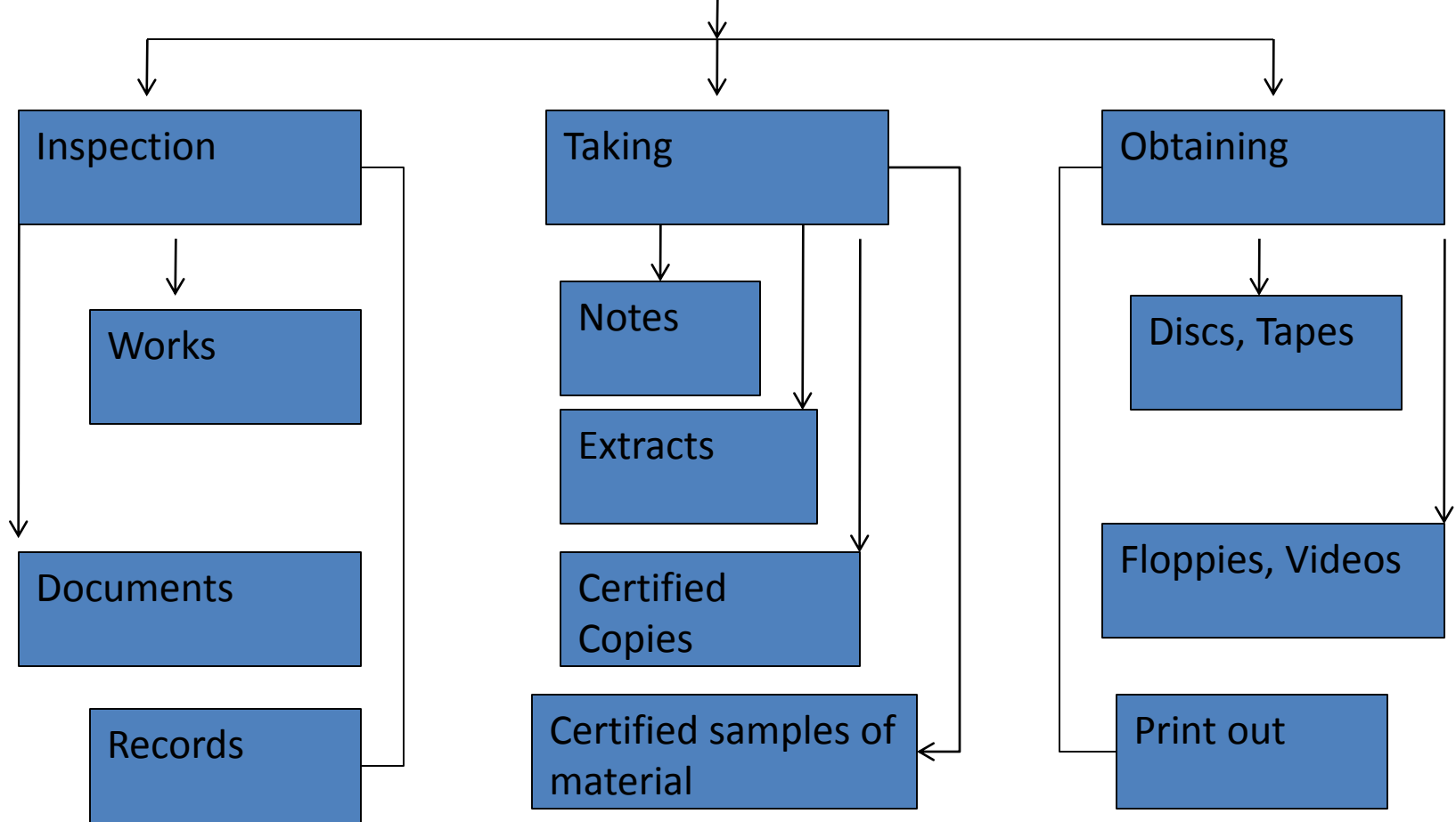
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# **Alka Matoria vs M.G.S. University Bikaner & Ors –Rajasthan HC- 2012**

- Charging Rs. 1000/- per answer book is exorbitant fee no standing in conformity with the object and purpose of the Act and stood in conflict with the rules governing fees.

What is Right to Information  
(To receive information under custody of public Authority)  
Sections 2(f), (i), (j), 3



# Request for obtaining information-S.6

- Applicant shall make a request in writing or through electronic means in English, or Hindi or in the official language of the concerned area.
- Application must be accompanied by a fee of Rs. 10-
- Mode of payment- Cash, Demand Draft, Banker's Cheque, Postal Order.
- Particulars of the information sought have to be specified.
- PIO shall assist the applicant in reducing the oral request to writing.
- If the information sought is held by another public authority, the application shall be transferred to that other PA within 5 days from the receipt of the application and the applicant shall should be informed of the said transfer.

**Applicant shall not be asked to give any reasons for query or any other personal details.**

- Saiyed Hussain Abbas Rizwi v. State information commission, Patna AIR 2011 Pat 103- We have found the applicant is not required to give reasons for seeking information.
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# Disposal of Request –S.7

- Every application shall be disposed of by PIO within 30 days either by providing the information or rejecting the request on the grounds specified in Sections 8 and 9-(35 days in the case of transferred applications or the applications received through the Asst.IPOs)
- If the information sought for concerns the life or liberty of a person, the period of limitation is 48 hours.
- Failure to give decision on the request within the period amounts to deemed refusal of the request.

# Disposal of Request contd.

- **Decision of giving information on payment of further fee for the cost of providing the information has to be intimated to the applicant-**
- **Giving the details of further fees for the cost representing the cost of providing the information together with the calculations made to arrive at the amount.( intervening period intimation and payment period have to be excluded from the 30 days period)**
- **With a request to deposit that fees**
- **Informing the applicant about his right of review of this and giving all the details of the reviewing authority.**
- **The fee shall be reasonable and no fee shall be charged from the persons who are of below poverty line.**
- **If the PIO fails to furnish the information within the time limit of 30 days, he has to furnish the information free of charge.**

# Exempted Information

- Information available with intelligence security organizations specified in the Second Schedule (except the information pertaining to the allegations of corruption and human rights violations).
- Categories of Information which are exempted from disclosure under the provisions of the RTI Act- sections 8 and 9.



# Nature of exceptions

- 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. This may not be the correct approach.
- [The Act](#) seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities.

# Interpretation of the exceptions

- 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. The preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests.
- While [sections 3](#) and [4](#) seek to achieve the first objective, [sections 8, 9, 10](#) and [11](#) seek to achieve the second objective. Therefore when [section 8](#) exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfillment and preservation of democratic ideals.

# Purposive Interpretation

- When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), ***it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest.*** The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act that is [section 8](#) of Freedom to [Information Act](#), 2002.
- The Courts and Information Commissions enforcing the provisions of [RTI Act](#) have to adopt a ***purposive construction***, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting [section 8](#) and the other provisions of the Act.

# Section 8

- **(1)- Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—**
- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

# Commercial Confidence etc.

- (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, **unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;**
- State of Jharkhand V. Navin Kumar Simha AIR 2008 Jar 19- various documents submitted by the bidders – once a decision is taken in the matter of grant of tender, there is no justification to treat it as secret. People have right to know the basis on which the decision has been taken.

# Duration of Status of trade secret

- Information can be sought at different stages of different points of time.
- What is exempted from disclosure at one point of time may cease to be exempted at a later point of time, depending upon the nature of exemption.
- For example, if information relating to the intellectual property, that is, the question papers, solutions /model answers and instructions, in regard to any particular examination conducted by any board can not be disclosed before examination is held., as it would harm the competitive position innumerable third parties who are taking the said examination.
- Similarly bids or tenders submitted by the contractors to the public authority can not be disclosed . But after the accepting the lowest bid and allotting the contract disclosure will not affect the competitive advantage of the third parties .

# Commercial Information

- M/S N.B.High –Tech Industries Pvt. Ltd., Eoghar v. J.S.E.B. Ranchi AIR 2009 Jhar 31- Information regarding disclosure of the Reserve price fixed by the petitioner or the a period of 2002 to 2006 for sale of Kendu Leaves Lots and minutes of the meeting o the Board of Directors .Petitioners could not substantiate that it is commercial information.
- General Manager Finance , Air India Ltd., v. Virender Singh AIR 2013 (NOC) 118 (DEL)- particulars of beneficiaries of complimentary tickets of 1200 persons.

# Fiduciary 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;
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# Fiduciary Relationship

- "A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship.
- Fiduciary relationships - such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client - require the highest duty of care.
- Fiduciary relationships usually arise in one of four situations :
- (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first,
- (2) when one person assumes control and responsibility over another,
- (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or
- (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."

# Fiduciary Relationship

- 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 one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s.
- The term also refers to a person who holds a thing in trust for another (beneficiary). 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.

# Fiduciary Relationship

- There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are : 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.
- [section 8\(1\)\(e\)](#) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote

# Fiduciary Relationship

- Secretary General Supreme Court of India v. Subhash Chandra AIR 2010 Del, 159 (FB)
- The CJI cannot be a fiduciary vis-à-vis Judges of the Supreme Court . The Judges of the Supreme Court hold independent office , The declarations are furnished to the CJI in a private relationship or a s trust but in discharge of the constitutional obligation to maintain higher standards and probity of judicial life and are in the larger public interest. It cannot be held that the asset information shared with the CJI, by the Judges of the Supreme Court, are held by him in the capacity of fiduciary, which if directed to be revealed, would result in breach of the such duty.
- Democracy expects openness and openness is concomitant of freed society. Sunlight is the best disinfectant.

# Information – given in confidence etc.

- (f) information received in confidence from foreign Government;
- (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

- The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under [section 8\(1\)\(g\)](#) of RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety.
- Therefore, if the examinees are to be given access to evaluated answer- books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer-book which does not contain any information or signature of the examiners/co-ordinators/ scrutinisers/head examiners, exempted from disclosure under [section 8\(1\)\(g\)](#) of RTI Act.
- Kerala Public Service Commission v. State information commission SC – decided on 4-2- 2016

# Confidentiality- S. 8 (1) (g)

- Jharkand Public Service Commission v. State of Jharkand AIR 2011 Jha .7- information sought for in respect of the names of the members of the interview Board cannot be furnished since it would violate the confidentiality. On the other hand, such information is redundant in view of the cancellation of entire selection process earlier advertised for.

## S.8(1)(g)- Physical safety & confidence

- CBSE v. Aditya Bandopadhyay , (2011) 8 SCC 497.
- The information as to the names or particulars of the examiners/co-ordinators/scrutinizers /head examiners are exempted from disclosure on the ground that if such information is disclosed, it may endanger their physical safety.



# **Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and another 2013 (1) SCJ 47**

- Furnishing the names and addresses of the interviewers would certainly be opposed to the very spirit of section 8(1) (g) of the Act and would *ex facie* endanger their lives or physical safety.
- Possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out. On one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose.
- Marks are required to be disclosed, but disclosure of individual names would hardly hold relevance either to the concept of transparency or for proper exercise of the right to information within the limitation of the Act.

# Other exceptions

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

# Personal Information

- (j) 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.

# What is Public Interest

- The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest" like "public purpose" is not capable of any precise definition . It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs.
- It also means the general welfare of the public that warrants recommendation and protection; something in which the public as a whole has a stake

# Personal Information

- Hardev Arya v. Chief Manager Punjab Nation Bank – AIR 2013 Raj 93- Bank account particulars of a society running a educational institution was denied on the ground it is personal information having no bearing on the public interest.
- RK Jain v. Union of India 2013 STPL (web) 310 SC- applicant sought the copies of all note sheets and correspondence pages of file relating to one Ms. Jyoti Balsundaram , Member /CESTAT. – held that the ACR and adverse entries in the ACR and the follow up action taken therein on the question integrity is a personal information.

## **Girish Ramchandra Deshpande V. CIC (2013) 1 SCC 212**

- The petitioner sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer.
- He also sought and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions.
- Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son.

# Girish Ramchandra Deshpande V. CIC (2013) 1 SCC 212

- The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies 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.

# Girish contd.

- **The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause**
- Of course, in a given case, 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 the petitioner cannot claim those details as a matter of right



# **Canara Bank v. Central Information Commission , Delhi AIR 2007 Ker. 225-**

- information mentioned in [Section 8\(1\)\(j\)](#) is personal information which are so intimately private in nature that the disclosure of the same would not benefit any other person, but would result in the invasion of the privacy of that person
- without the information requested for the 2nd respondent would not be in a position to effectively pursue his claim for transfer in preference to others.
- disclosure of such information would not cause unwarranted invasion of privacy of the other employees in any manner insofar as that information is not one which those employees can keep to themselves.
- can it be held that the information requested for by the 2nd respondent are information which can be denied to the Parliament and a State Legislature.

# Privacy

- **Rk Jain v. Union of India 2013 (3) SCJ 867**
- **File containing analysis of Annual Confidential Report (ACR) information sought relating to all note sheets and correspondence pages of file relating to one Ms. Jyoti Balasundram, member, CESTAT was denied by the IPO on the ground of privacy .comments made by the reporting and reviewing officers in the ACRs of a public servant cannot be disclosed to a third party..**

# Privacy

- A distinction must be made between personal data inherent to the person and those that are not, and therefore , affect his/her private life. ***If public servants-are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is a part of public activity, or interest.*** That the public servant has to make disclosure is a part of the system's endeavor to appraise itself of potential asset acquisitions which may have to be explained properly.
- However such acquisitions can be made legitimately, no law bars public servants from acquiring properties or investing their income. The obligation to disclose the investments and assets is to check the propensity to abuse the public office , for a private gain. ***Such personal information regarding disclosure need not be made public unless public interest considerations dictate it under Section 8 (1) (j).***-Secretary General Supreme Court of India v. Subhash Chandra AIR 2010 Del, 159 (FB)

# Disclosure in Larger Public Interest

- -Secretary General Supreme Court of India v. Subhash Chandra AIR 2010 Del, 159 (FB)
- In the present case the particulars sought for by the respondent do not justify or warrant protection under Section 8 (1) ( j), inasmuch as the only information the applicant sought was whether 1997 resolution was complied with. That kind of innocuous information does not warrant the protection granted by section 8(1) (j) .
- We concur with the view of the leaned single judge that the contents of asset declarations, pursuant to the 1997 resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under section 8( 1) ( j); that they are not otherwise subject to disclosure. Therefore , as regards contents of the declarations, information applicants would have to, whenever they approach the authorities, under the Act satisfy them under Section 8( 1( j) that such disclosure is warranted in ‘larger public interest’.

- [Surup Singh Hrya Naik v. State of Maharashtra](#) AIR 2007 Bom 121- contemp oc court convict's medical information was sought .
- **Vijay Prakash vs Uoi And Ors -2009- Delhi HC**
- "public interest" argument of the Petitioner is premised on the plea that his wife is a public servant; he is in litigation with her, and requires information, - in the course of a private dispute - to establish the truth of his allegation.

# Srikant Pandya v. State of M.P. AIR 2011 MP 14

- Information regarding the entire personal/ service record of a person by the applicant denied .The information sought on the ground that it was to disclose the fact that he had gained undue advantage by giving wrong declaration regarding his sterilizing and obtained two advance increments.
- This information is personal in nature and a government servant has a right to guard the same. These information have not relationship g any public activity. And if parted with will certainly lead to the unwarranted invasion of the privacy of a Government servant.

# Jt. Registrar ,H.C. v. State Information Commission , AIR 2010 Pat 176

- Disclosure sought regarding name of agency which has conducted Additional District and Sessions Judge Examination.
- Such information would cause inroad into privacy of not only examiners, but also evaluations, invigilators etc. Conduct of examination is no mere public activity rather it is sacrosanct process, based on touchstone of confidentiality and purity.

# The Registrar General v. L. Elango – Madras HC decision on 17-4-2013

- Information relation to the number of judges, employees, complaints of bribe in the subordinate judiciary.
- If the information sought is divulged by the HC , then the secrecy and privacy of the internal working process may get jeopardized, besides the functioning of said information would result in invasion of unwarranted and uncalled for privacy of individuals concerned. Disclosure pertaining to departmental enquiries will affect the facile, smooth and independent running of the administration of the HC , under the constitution.



# S.8(2)-outweighing Public Interest

- S.8(2)-Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests

# Information of 20 years old – Non Applicability of Exceptions

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

# RTI and Copyright

- **S.9**-Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

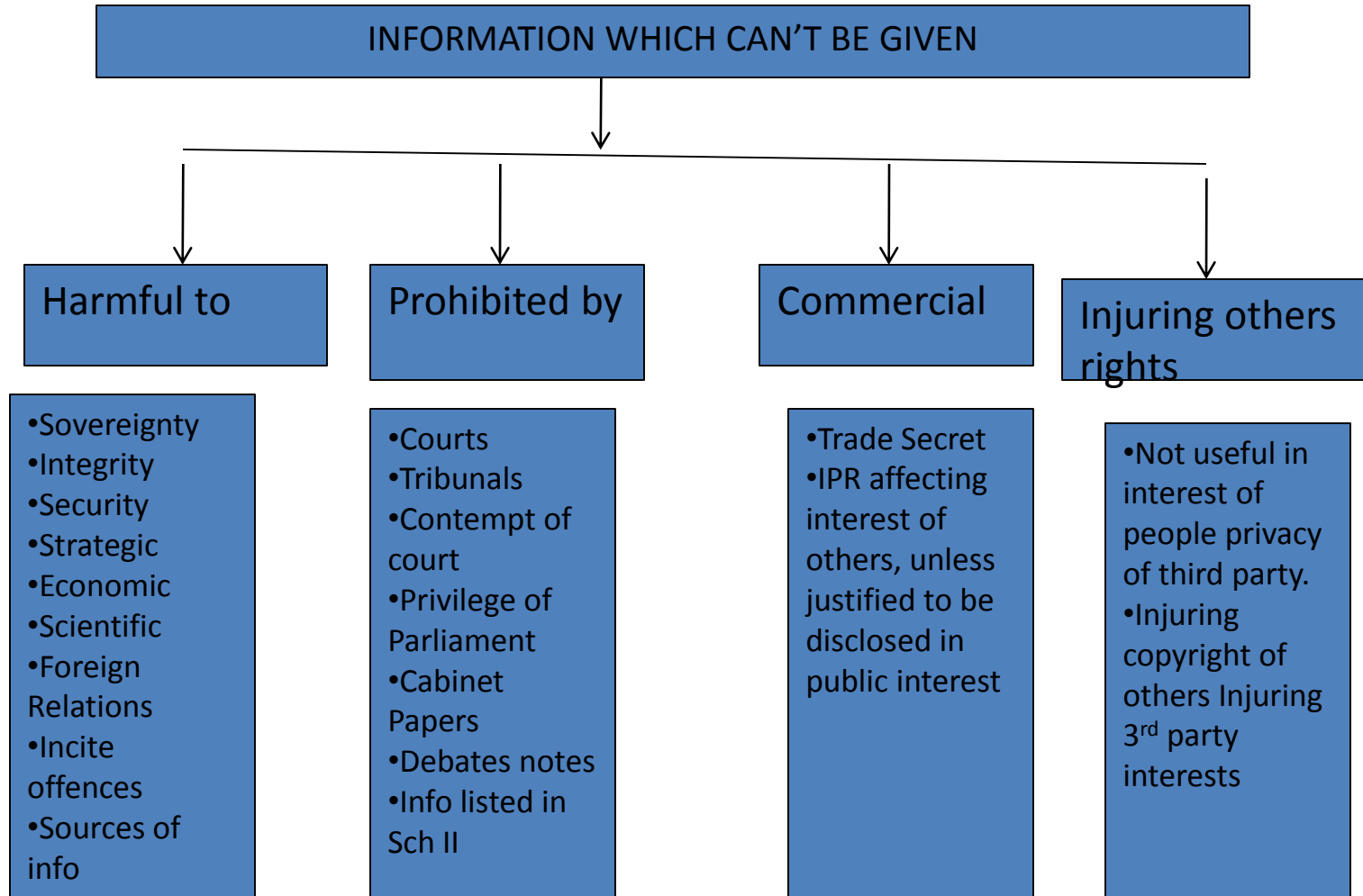
# Ferani Hotels Pvt. Ltd. V. State Information Commission

- Bombay High Court held that mere disclosure of information in which a public element and a larger public interest is involved, would not amount to breach of copyright, so as to deny the information sought under RTI Act
- development proposals as submitted by the petitioners have concern with the public interest as the flats and commercial premises being erected thereon would be purchased by the citizens.  
Once building proposals are considered and plans are sanctioned, by the
- Municipal authorities, such permission, plans and documents pertaining to the same form part of public record. Once the approvals are granted such information as in the present case in our opinion, is not of the nature of any trade secret or of a commercial confidence or of a nature which would harm the competitive position of the petitioner, the court said.

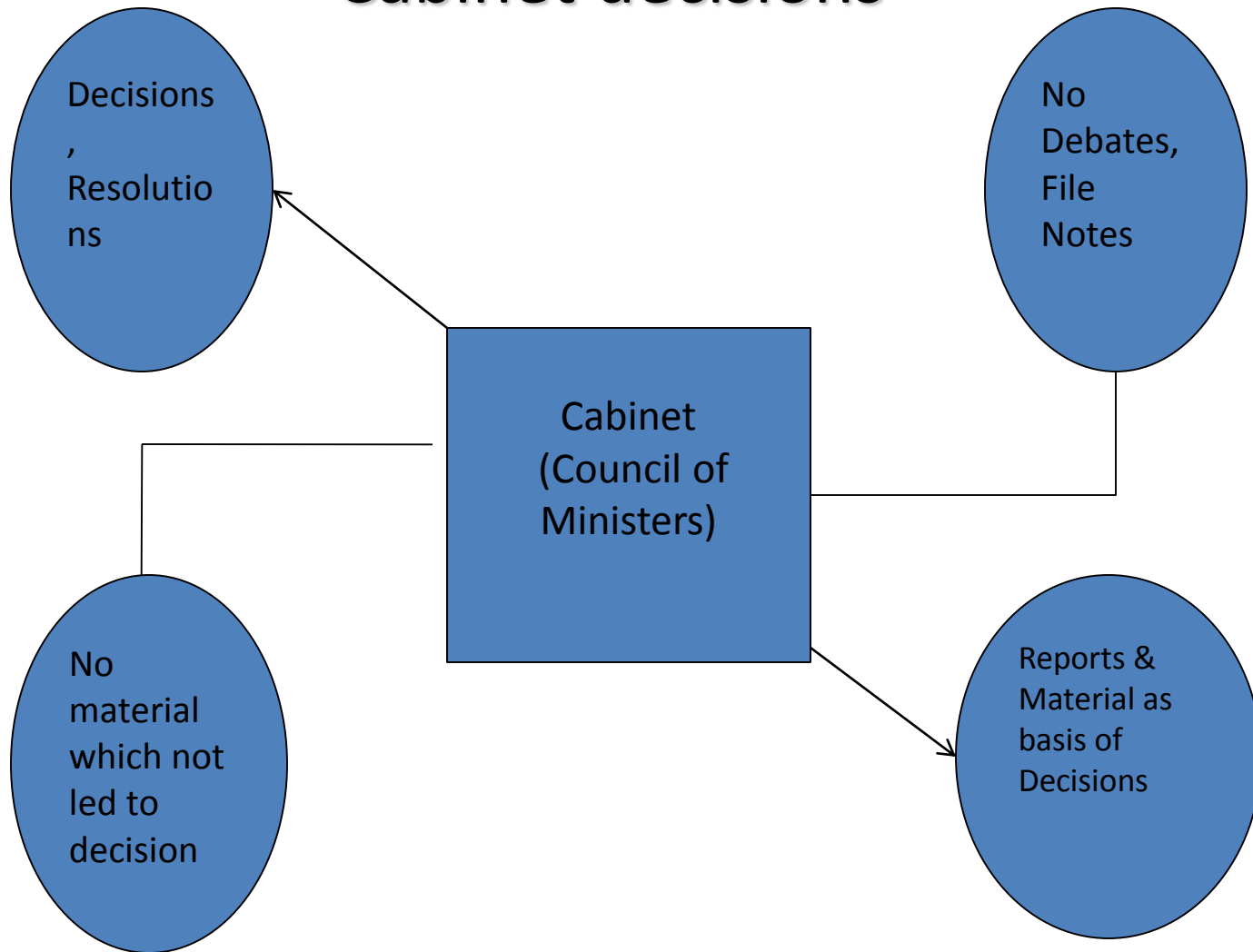
## S.9

- Delhi Metro Rail Corporation Ltd. V. Sh. Sudhir Vohra , AIR 2011 Del. 167.
- Applicant wanted information all structures , drawings of cantilevered bracket of the Metro Pillar that had collapsed.
- The plea relating to commercial confidence, trade secret or intellectual property does not arise if the document / information is in the public domain and has been freely circulated and communicated to various parties involved in the execution the work. In the instant case at hand the said issue also not arise inasmuch as there is no issue of revelation or disclosure of commercial confidence , trade secret or other IP, the disclose of which would harm the competitive position of a third party. There is no reason relating to public interest on this count.

**Section -8 (information exempted)**



# Cabinet decisions-



# Disposal of Request on Third Party Information **.-Section .11**

- If Applicant's request relates to the third party information IPO shall take into consideration the representation of the third party.
- Third Party information- what it is?
- - Information which relates to or has been supplied by a third party and has been treated as confidential by that third party.
- Such third party should be given any opportunity(10 days) to make a submission orally or in written regarding whether the information should be disclosed or not.
- Public interest prevails over any objection – subject to exception of trade secrets.



# S.11- Third party information

- Srikanth Pandya v. State of M.P. AIR 2011 MP 14.- gaining undue advantage by giving wrong declaration regarding his sterilization and obtained two advance increments.
- Certified copy of personal record as well as service book of the third party which was being sought by the applicant would contain annual confidential reports and other information like details of family and nomination thereof. These information are personal in nature and a Govt. servant has a right to guard the same . These information has no relationship with public activity and if parted with will certainly lead to the unwarranted invasion of privacy of a government servant.

# S.19

- Chief Information Commissioner v. State of Manipur AIR 2012 SC 864
- The procedure under S.19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right.

# S.20- Penalties

- Refusal to receive an application for information or failure to furnish information within the specified time or malafidely denying request for information or knowingly giving incorrect, incomplete or misleading information or destroying information or obstructing in any manner in furnishing information entails a penalty of Rs. 250/- for each day till the application is disposed of and to a maximum extent of 25,000 rupees. S-20(1)
- At the time of deciding a complaint or appeal shall recommend for disciplinary action against the central or state Information commissioner.

# Interpretation of S.20 (2)

- Manohar Mnikrao Anchule v. State of Maharashtra AIR 2013 SC 681 (excise department.)
- The case of default must strictly fall within the specified grounds of the provisions of section 20 (2). This provision has to be construed and applied strictly. Its ambit cannot be permitted to be enlarged at the whims of the Commission.
- The case must fall in any of the specified defaults and reasoned finding has to be recorded by the Commission while making such recommendations. 'Negligence' per se is not a ground on which proceedings under Section 22 of the Act can be invoked. The commission must return a finding that such negligence, delay or default is persistent and without reasonable cause. In our considered view, in the present case, has erred in not recording.

# Interpretation of S.20 (2)

- Manohar Mnikrao Anchule v. State of Maharashtra AIR 2013 SC 681 (excise department.)
- Negligence has been attributed to the delay caused by the public information officer
- It is a 'recommendation' and not a 'mandate' to conduct an enquiry. 'Recommendation' must be seen in contradiction to 'direction' or 'mandate'. But recommendation itself vests the delinquent Public Information Officer or State Public Information Officer with consequences which are of serious nature and can ultimately produce prejudicial results including misconduct within the relevant service rules and invite minor or major penalty.
- We hasten to add here that wherever reasonable cause is not shown to the satisfaction of the Commission and the Commission is of the opinion that there is default in terms of the section, it must send the recommendation of disciplinary action in accordance with law to the concerned authority.

- Public Information Officer v. Oriss Inforamtin Commission AIR 2010 Ori. 75
- The power under S.20 is to be exercised only at the time of deciding any complaint or appeal. But in this case since the complainant did not choose to appear and sought for withdrawal of the complaint, complaint could not have been proceeded with. The commissioner committed manifest error of law in proceed with the complaint after condoning the absence when had had already sought withdrawal.
- Arbind Prasad Singh v. State of Bihar , AIR 2010 Pat. 75.
- Merely stating that the allegation shave been established would not suffice the requirement prescribed under the provision for imposition of penalty. It musts clearly reveal the reason. It did not show that the IC has refused without reasonable cause .

## s.24

- Chief Information Commissioner v. State of Manipur AIR 2012 SC 864
- Section 24 of the Act does not have any retrospective operation. Therefore, no notification issued in exercise of the power under Section 24 can be given retrospective especially so in view of the object and purpose of the Act which has an inherent human right content.

# RTI and other Public Interests

- We agree that it is necessary to mark a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under S.4(1)(b)&{c} and other information which may not have a bearing on accountability or reducing corruption .
- The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the 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.***
- Justice Raveendran, The Institute of Chartered Accounts of India V. Shaunak H.Satya - Supreme Court-2011.



# Act to balance the conflicting interests

- The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interest which include efficient operation of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The preamble to the Act specifically states that the object of the Act is to harmonize these two conflicting interests.-
- The courts and Information Commissions enforcing the provisions of the 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.- **Justice Raveendran in CBSE case.**

# Concern of the Government

- “I feel the running of the government is equally important as information about how the government runs. The fears expressed by senior executives of the governments should be removed . I think we should sit up and think on how to reverse this fear. I think the prime Minister has expressed a concern that needs careful thought”.
- ***Satyananda Misra, C.I.C.–Outlook, 23<sup>rd</sup> Jan 2012.***

# Caution against the Misuse of RTI

- Nor it (RTI) should be converted into *a tool of oppression or intimidation of honest officials* striving to do their duty. The nation does not want a scenario where *75% of the staff* of public authorities spend *75% of their time* in collecting and furnishing information to applicants instead of discharging their regular duties.
- The threat of penalties under the RTI Act should not lead to employees of a public authorities prioritizing *“information furnishing”* at the cost of their normal and regular duties. –*Justice Raveendran*

# Misuse of RTI?

- Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated) would be counter-productive 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.
- This Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens.

# Importance of the RTI

- The right to information is a cherished right. **Information and right to information** are intended to be formidable tools in the hands of **responsible citizens** to fight corruption and to bring in transparency and accountability. RTI Act should be enforced strictly and all efforts should be made to bring light to the necessary information for securing **transparency and accountability and for discouraging corruption.-**
- -Justice Raveendran-Central Board of Secondary education V. Aditya Bandopadhyay ,2011.

***Thank You***

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