

**COMPENDIUM**

**OF**

**SUPREME COURT/HIGH COURT**

**DECISIONS ON RTI ACT, 2005.**

<b>INDEX</b>		
<b>S.NO</b>	<b>SECTION</b>	<b>PAGE NO.</b>
1.	Section 2: Definitions.	1-4
2.	Section 3: Right to Information.	5-7
3.	Section 4: Obligation of Public Authorities.	8-9
4.	Section 5: Designation of Public Information Officer.	10-11
5.	Section 6: Request for obtaining Information.	12-14
6.	Section 7: Disposal of Request.	15
7.	Section 8: Exemption from disclosure of Information.	16-24
8.	Section 8(a): Information disclosure of which would prejudicially affect the sovereignty and integrity of India.	17-18
9.	Section 8(d): Information including commercial confidence, trade Secrets or intellectual property.	18-19
10.	Section 8(e): Information available to a person in his fiduciary capacity.	19-20
11.	Section 8(g): Information, the disclosure of which would endanger the life or physical safety of any person.	21
12.	Section 8(h): Information which would impede the process of investigation.	21
13.	Section 8(j): Information which relates to personal information the disclosure of which has no relationship to any public activity, or interest.	22-24
14.	Section 9: Grounds for rejection to access in certain cases.	25
15.	Section 10: Severability.	26-27
16.	Section 11: Third Party Information.	28-29
17.	Section 12: Constitution of Central Information Commission.	30
18.	Section 15: Constitution of State Information Commission.	31-32
19.	Section 18: Power and Functions of Information Commission.	33-36
20.	Section 19: Appeals.	37-39
21.	Section 20: Penalties.	40-42
22.	Section 22: Act to have overriding effect.	43
23.	Section 23: Bar of jurisdiction of Courts.	44
24.	Section 24: Act not to apply to certain organisations.	45
25.	Section 28: Power to make Rules by Competent Authority.	46

## SECTION 2: DEFINITIONS

- **Section 2(e) - Public Authority.**

- 1. Office of Chief Justice of India – A Competent Authority.**

Expression "public authority" as used in the Act is of wide amplitude and includes an authority created by or under the Constitution of India, which description holds good for Chief Justice of India who is also a Competent authority for the purposes of RTI Act. (*Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal. High Court of Delhi, LPA No. 501/2009*).

- **Section 2(f) - Information .**

- 1. All information held by Public Authorities is owned by citizens, who are sovereign.**

"Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. The Legislature's intent is to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case where only information related to public authorities was to be provided, the Legislature would not have included the word "private body". The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. (*Reserve Bank Of India and Ors V Jayantilal N. Misty and Ors A.I.R 1982 SC149*).

- 2. Draft Judgment and personal notes of Judges, not to be an information under RTI.**

Notes taken by the Judges while hearing a case cannot be treated as final views expressed by them on the case. They are meant only for the use of the Judges and cannot be held to be a part of a record "held" by the public

authority. (*Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal, High Court of Delhi, LPA No. 501/200*).

### **3. Information regarding personal assets of Judges of High Courts, an information under section 2(f) of the RTI Act.**

Judges have to declare their assets is a requirement that is not being introduced for the first time as far as subordinate Judges are concerned. They have for long been required to do that year after year in terms of the Rules governing their conditions of service. As regards accountability and independence, it cannot possibly be contended that a Judicial Magistrate at the entry level in the judicial hierarchy is any less accountable or independent than the Judge of the High Court or the Supreme Court. If declaration of assets by a subordinate judicial officer is seen as essential to enforce accountability at that level, then the need for such declaration by Judges of the constitutional courts is even greater. While it is obvious that the degree of accountability and answerability of a High Court Judge or a Supreme Court Judge can be no different from that of a Magistrate, it can well be argued that the higher the Judge is placed in the judicial hierarchy, the greater the standard of accountability and the stricter the scrutiny of accountability of such mechanism. All the Judges functioning at various levels in the judicial hierarchy form part of the same institution and are independent of undue interference by the Executive or the Legislature. The introduction of the stipulation of declaring personal assets, is to be seen as an essential ingredient of contemporary accepted behaviour and established convention. So, Asset declaration by Judges - In absence of any specific exclusion, asset declarations by the Judges held by the CJI or the CJs of the High Courts as the case may be, are "information" under Section 2(f). (*Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal, High Court of Delhi, LPA No. 501/2009*).

- **Section 2(h): Public Authority.**

#### **1. Commission, A Public Authority.**

The, 'public authority' is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories Under Section 2(h) of the Act. In terms of Section 2(h)(a), a body or an institution which is established or constituted by or under the Constitution would be a public authority. Since Public Service Commission is established under Article 315 of the Constitution of India and as such there cannot be any escape from the conclusion that the Commission shall be a public

authority within the scope of this section. [*Bihar Public Service Commission V Saiyed Hussain Abbas Rizwi and Anr (2012)13 SCC 61.*]

- **Section 2(J): Information which relates to personal information.**

- 1. The confidentiality required to be maintained of the medical records of a patient including a convict considering the Regulations framed by the Medical Council of India can not override the provisions of the Right to Information Act.**

Information that cannot be denied to Parliament or a State Legislature should not be denied to any person - Test in such matter is always between the private rights of a citizen and of the third person to be informed - Object of the Act leans in favour of making available the records in the custody or control of the public authorities - Regulations cannot override the provisions of the Information Act - In case of inconsistency between the Regulations and the Information Act, the later would prevail and the information will have to be made available as per the Act - Act however, carves out exceptions, including the release of personal information, disclosure of which has no relationship to any public activity or interest - In such cases a discretion has been conferred on the concerned Public Information Officer to make available such information, which to be exercised according to the facts of each case - Records of a person sentenced or convicted and admitted in hospital during such period should be made available to the person seeking information provided such hospital is maintained by the State or Public Authority - Information can be denied only in rare and in exceptional cases with valid reasons recorded in writing .(*Mr. Surupsingh Hrya NaikVs.State of Maharashtra through Additional Secretary, General Administration Deptt. and Ors. Writ Petition No. 1750 of 2007, Bombay HC*).

- 2. Significance of word “HELD BY” used Section 2(j).**

The expression ‘Held by’ or ‘Under the control of any public authority’ in relation to ‘information’ means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already ‘Let go’, i.e. shared generally with the citizens, and also that information, in respect of which there is statutory mechanism evolved. Which obliges the public authority to share the

same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority 'holds' or 'controls' the same. There is no exclusive right in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not his kind of information, which appears to fall within the meaning of the expression 'right to information' as the information in relation to which the 'right to information' is specifically conferred by the RTI Act is that information which "is held by or under the control of any public authority. [*Registrar of Companies & Os. Vs. Dharmendra Kumar Garg & Anr.*( W.P.(C) 11271/2009) High Court Delhi].

## **SECTION 3: RIGHT TO INFORMATION.**

### **1. Authorities shall maintain proper balance so that while achieving transparency, demand for information does not reach unmanageable proportions affecting other public interests.**

The RTI Act provides access to all information *that is available and existing*. This is clear from a combined reading of Section 3 and the definitions of 'information' and 'right to information' under Clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.

The right to information is a fundamental right as enshrined in Article 19 of the Constitution of India. The Hon'ble Supreme Court has declared in a plethora of cases that the most important value for the functioning of a healthy and well informed democracy is transparency. However it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Section 4(1)(b) and (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 (*The Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors, A.I.R 2011 SC 3336*).

### **2. Right to information not unfettered.**

Rules and regulations governing functioning of public authorities require preservation of information for only a limited period, applicant for information will be entitled to such information only if he seeks information when it was available with public authority. Where information sought was not a part of record of a public authority and where such information was not required to be maintained under any law or rules or regulations of public authority, Act does

not cast an obligation upon public authority to collect or collate such non-available information and then furnish it to an applicant.[ *Central Board of Secondary Education and Anr V Aditya Bandopadhyay and Ors(2011) 8 SCC 497*].

### **3. Right to information ..... A way to preserve the democracy.**

the Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. And 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 harmonise the conflicting interests of Government to preserve the confidentiality of sensitive information with the right of citizens to know the functioning of the governmental process in such a way as to preserve the paramountcy of the democratic ideal.(*Central Information Commission V state of Manipur and Ors*).

### **4. Application of mind.**

Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act and secondly the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case.[*Bihar Public Service Commission Vs Saiyed Hussain Abbas Rizwi and Anr(2012) 13 SCC 61*].

## **5. Right to Information not to have an Over-riding effect on Section 13 and 14 of SARFAESI Act.**

Whether or not secured creditor, which had initiated action for enforcement of its security interest in terms of provisions of SARFAESI Act was entitled to publish photograph(s) of defaulting borrower(s)/guarantor(s) in newspapers/magazines etc. - Held, publication of photograph of borrower was neither allowed by express provision nor by necessary implication - Public might be notified in terms of statutory rules by issuance of notices in newspapers/magazines etc. giving details of borrower, loan account, location of secured asset, its measurement, quantum of secured debt, etc. but there was no provision in SARFAESI Act or rules authorizing secured creditor to publish photographs of defaulting borrowers - If SARFAESI Act barred publishing of photograph of defaulting borrower, it could not be published by aid of RTI Act - Public authority had no power to act in particular manner unless it was authorized by law - Law was well settled that, State or its executive officers could not interfere with rights of its subjects unless they could point to some specific rule of law authorizing act of interference - There was absolute lack of legislative sanction in relation to publication of photographs of defaulting borrower(s)/guarantor(s) - SARFAESI Act and rules not having conferred any power on secured creditors to publish their photographs, they could not resort to such action on ground that publication of photograph was not prohibited - Prohibition had to be inferred in absence of express authorization - Publication of photograph of defaulting borrower/guarantor had potential of exposing him to irreparable loss, injury and prejudice, publication of photograph could not be resorted to in absence of an express power or an agreed term in this behalf. *Ujjal Kumar Das & Anr Vs.State Bank of India & Ors. AND Messrs Allianz Convergence Private Limited &Ors.Vs.The General Manager, State Bank of India & Anr.( High Court of Calcutta W.P. 10315 and 9850 (W) of 2013).*

## **SECTION 4: OBLIGATIONS OF PUBLIC AUTHORITIES.**

### **1. Central Information Commission is not a court and certainly not a body which exercises plenary jurisdiction under RTI Act.**

The flow of information is not to be an unregulated flood. It needs to be controlled just as the flow of water is controlled by a tap. Those empowered to handle this 'tap' of information are imbued with great power. Under the RTI Act, this power is to be exercised by the Information Commissions (State and Central). But, the power is clearly not plenary, unrestricted, limitless or unguided. The Information Commissions are set up under the said Act and they have to perform their functions and duties within the precincts marked out by the legislature. Central Information Commission is a creature of statute and its powers and functions were circumscribed by statute itself. It cannot summon persons to give oral evidence or written evidence or to produce any documents or things in its possession. However, it can direct a person to remain present for other reasons. (*Delhi Development Authority Vs. Central Information Commission and Anr. High court of Delhi.W.P (C) 12714/2009*).

### **2. Public authority is having an obligation to provide such information which is recorded and stored, but not the thinking process.**

A citizen has a right to receive "information", which is in any form, including records, documents, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information in relation to any private body which can be accessed by a public authority under any other law for the time being in force. Information does not mean every information, but it is only such information, which is recorded and stored and circulated by the public authority. A citizen has a right to receive such information, which is held by or under the control of any public authority and the public authorities have an obligation to provide reasons for its administrative or quasi-judicial decisions to the affected persons. (*Khanapuram Gandaia S/o Late Balaiah Vs. The Administrative Officer, Ranga Reddy District Courts Cum Assistant State Public Information Officer Under the Right to the Information Act 2005, The Registrar General Cum Appellate Authority under the Right to Information Act 2005, High Court of A.P., The A.P. State Information Commission rep. by its Registrar and M. Seetharama Murthy S/o Chittenna, District Judge and Presently Registrar General, High Court of A.P. (Writ Petition No. 28810 of 2008)*).

### **3. CIC's jurisdiction do not extend to interpretation of court orders.**

There is no exception of the view taken by the CIC that its jurisdiction did not extend to interpreting court orders. The CIC cannot be asked to interpret such orders as they do not fall within its normal functioning. It is not charged with the duty of implementing such court orders. One could have understood the proceeding and giving an interpretation - right or wrong - which could have been the subject matter of proceedings before this Court. However the limited mandate conferred upon the CIC is to ensure the provisions of the Act for supply of information to concerned applicants are dealt with and wherever required, implemented, according to law. (*Ajay Kumar Goel Vs. Cental Information Comission and Ors, W.P.(C) No. 3464 of 2007, High Court of Delhi*).

## **SECTION 5: DESIGNATION OF PUBLIC INFORMATION OFFICERS.**

### **1. Public Information Officer cannot act merely as a POST-OFFICE, without himself dealing with the application.**

If the contention of an officer appears to be that he as PIO was merely required to forward the application for information to the officer concerned and/or in possession of the said information and to upon receipt of such information from the concerned officer furnish the same to the information seeker and as long as he as PIO had acted with promptitude and forwarded the application to the officer in possession of the information and furnished the same to the information seeker immediately on receipt of such information, he cannot be faulted with and the liability for penalty if any has to be of such other officer from whom he had sought the information and cannot be his, then in such a situation, the office will be reduced into a post office, to receive the RTI query, forward the same to the other officers in the department/administrative unit in possession of the information, and upon receipt thereof furnish the same to the information seeker. It has to be thus seen from a perusal of the Act, whether the Act envisages the role of a PIO to be that of a mere Post Office.

Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the Petitioner would contend. The expression "deal with", in *Karen Lambert v. London Borough of Southwark* (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he

has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. In this case penalty has been imposed on the Petitioner not for the reason of delay which the Petitioner is attributing to Respondent but for the reason of the Petitioner having acted merely as a Post Office, pushing the application for information received, to the Respondent and forwarding the reply received from the Respondent to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the Respondent and/or his department and/or his administrative unit was not what was sought and that the Petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done. (*J.P. Agrawal Vs. Union of India (UOI) and Ors, W.P. (C) 7232/2009, High Court of Delhi*).

## **SECTION 6: REQUEST FOR OBTAINING INFORMATION.**

### **1. No request to be entertained asking for reason of opinions in Judicial decisions.**

An applicant can get any information which is already in existence and accessible to public authority under law--But cannot ask any information as to why such opinion, advice etc. have been passed especially in matters pertaining to judicial decisions--Answers to those could not have been with the public authority nor could he had access to the said information--Remedy for a party aggrieved there by lies in a challenge by way of appeal, revision or any other legally permissible mode--High Court rightly dismissed writ petition. In the said petition, the direction was sought by the Petitioner to the Respondent No. 1 to provide information as asked by him vide his application dated 15.11.2006 from the Respondent No. 4 - a Judicial Officer as for what reasons, the Respondent No. 4 had decided his Miscellaneous Appeal dishonestly. (*Khanapuram Gandaiah Vs. Administrative Officer and Ors A.I.R 2010 SC 615*).

### **2. Access to justice can not be allowed to be misused as a license to file misconceived and frivolous petitions.**

Transparent functioning of the agencies of a State would go a very long way in providing not only peace and tranquility to its citizens, but also would enable them to lead respectable and meaningful life. Many a time, the citizens feel aggrieved, on account of their not being able to have access to the information, in relation to the matters of their immediate concern. More and more the information is withheld, a citizen would tend to gain an impression, that he is denied what is legitimately due to him, in an arbitrary and capricious manner. Howsoever desirable it may be, to ensure complete openness in state activity, by its very nature, governance requires certain amount of confidentiality, at least in some of its facets. A decent balance needs to be maintained between the two conflicting phenomena. An enlightened citizenry and a responsible Government, with their collective effort, can certainly bring about an ideal situation. It is a continuous process and one cannot expect instant and immediate results. The Domestic Laws and International Conventions emphasize upon the freedom of an individual to hold an opinion for himself, and at the same time, espouse his right to seek furnishing information on any aspect, of his choice.

Whether or not, any orders have been passed, on an application can be sought as an information. In case any order has been passed, the PIO would be

under obligation to furnish the copy of the order. On the other hand, if no order was passed on the application, information can be furnished to the same effect. However, he cannot be required to furnish the reasons as to why the licence was granted or not granted. It is only the authorities conferred with the power under the relevant statutes, to take a decision on the application, that can throw light on it. Further, the basis for the decision of such an authority, can be culled out from the order passed by him and he cannot be compelled to state as to why he passed the order in a particular manner through an application under the Act. It is only by instituting proceedings such as appeal, revision or writ petition that the authority who passed the order can be required to justify it.

However, a typical tendency is growing, viz to be conscious, more and more about rights, and not the corresponding obligation. If every citizen feels that he is endowed with the right to question, but is not under obligation to answer, a stage may reach where the comparatively small number of persons, who are being questioned, may join the team of those who choose, just to question. If that happens, the society may face a situation, where it would become difficult to expect answers.

The RTI Act is an effective device which, if utilized judiciously and properly, would help the citizens to become more informed. It no doubt relieves an applicant from the obligation to disclose the reason as to why he wants the information. However, indiscriminate efforts to secure information just for the sake of it, and without there being any useful purpose to serve, would only put enormous pressure on the limited human resources, that are available. Diversion of such resources, for this task would obviously, be, at the cost of ordinary functioning. Beyond a point, it may even become harassment, for the concerned agencies. Much needs to be done in this direction to impart a sense of responsibility on those, who want to derive benefit under the Act; to be more practical and realistic. (*Divakar S. Natarajan Vs. State Information Commissioner, A.P. State Information Commission and Ors. Writ Petition No. 20182 of 2008, High Court of Andhra Pradesh*).

### **3. Where an individual is placed under obligation to speak, law could only draw adverse inference from his failure or refused to speak but could not go further to invade his privacy or private life.**

The right to information is treated as a facet of the fundamental rights guaranteed under Articles 19 and 21 of the Constitution of India. That, however, would be in respect of the information which relates to the functioning of the Government and public activity. The information which relates to an individual cannot be compared with, or equated to, the one of public activity. On the other

hand, disclosure of the information in relation to an individual, even where it is available with the Government, may amount to invasion of his privacy or right to life which in turn is also referable to Article 21 of the Constitution of India. It is also possible to treat the privilege of an individual not to be compelled to part with any information available with him, as an essential part of the Article 19(1)(a) of the Constitution of India. Even while exercising his right of freedom of speech and expression, an individual can insist that any information relating to him cannot be furnished to others unless it is in the realm of public activity or is required to be furnished under any law, for the time being in force. Freedom of an individual to have access to information could not be projected to such an extent as to invade rights of others . Section 6(2) of the Act could not be read in isolation nor could be interpreted to mean that an Applicant could seek, every information relating to anyone. Just as he cannot be compelled to divulge the purpose for which he needs the information, he must respects the right of the other man to keep the facts relating to him, close to his chest, unless compelled by law to disclose the same. It is relevant to mention that even where an individual is placed under obligation to speak, the law can only draw adverse inference from his failure or refused to speak but cannot go further to invade his privacy or private life. (*Kunche Durga Prasad and Anr.Vs. Public Information Officer, Oil and Natural Gas Corporation Ltd. and Ors. W.P. No. 443 of 2010, High Court of Andhra Pradesh*).

#### **4. Under Section 6, information can only be supplied or might be denied.**

Looking to the provisions of the Act and combined effect of Section 6,19(2),3 & 4 Right to information Act,2005, at the most information may be supplied or might be denied. Further order like removal of encroachment etc cannot be passed by the Chief Information Commissioner while hearing 2<sup>nd</sup> appeal. Before passing any order against any person, bare minimum requirement ought to be kept in mind that principle of natural justice ought to be followed. (*Nanabhai Patel Vs. chief Information Commissioner & Ors, Spl Civil Appln. No. 16770 of 2007, High Court of Gujarat*).

## **SECTION 7: DISPOSAL OF REQUEST.**

### **1. REASONS TO BE RECORDED WHILE DISPOSING A REQUEST**

The Commission or the public authority, as the case may be, is expected to formulate an opinion that must specifically record the finding as to the application is disposed and also if there is failure to receive an application for information or failure to furnish the information within the stipulated time specified in Section 7(1), it should also record the opinion if such default was persistent and without reasonable cause. [*Manohar S/o Manikrao Anchule Vs. State of Maharashtra and Anr SLP(C) No. 7529 of 2009*].

## **SECTION 8: EXEMPTION FROM DISCLOSURE OF INFORMATION.**

### **1. Balance between independence of judiciary and disclosure of information.... A necessary need.**

A questions of constitutional importance relating to the independence of the Judiciary in the scheme of the Constitution on the one hand and on the other, fundamental right to freedom of speech and expression always comes in the way. Right to information is an integral part of the fundamental right to freedom of speech and expression guaranteed by the Constitution. 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 of India. The independence of Judiciary and the fundamental right to free speech and expression are of a great value and both of them are required to be balanced. (*Central Public Information Officer, Supreme Court of India Vs Subhash Chandra Agrawal*).

### **2. Preventive detention and right to information.**

State is not under any obligation to provide grounds of detention to a detenu prior to his arrest and detention. As Constitution permitted both punitive and preventive detention, provided it was according to procedure established by law made for purpose and if both law and procedure laid down by it were valid, then the detention is itself valid . Law is never static but dynamic, and to hold otherwise, would prevent growth of law, especially in matters involving right of freedom guaranteed to a citizen under Article 19 of Constitution. Most precious right of a citizen is his right to freedom and if same was to be interfered with, albeit public interest, such powers had to be exercised with extra caution and not as an alternative to ordinary laws of land. (*Subhash Popatlal Dave Vs. Union of India (UOI) and Anr (2008) 16 SCC 31*).

### **3. Section 8 on personal information.**

Exemption from disclosure of personal information and as such Public authority is not legally obliged to give or provide information even if it is held, or under its control, if that information falls under Section 8(1)(j). (*Thalappalam Ser. Coop. Bank Ltd. and Ors. Vs. State of Kerala and Ors.(1999) 3 SCC 396*).

#### **4. SECTION 8... Mandatory as well as discretionary in nature.**

The perusal of the provisions of Section 8 reveals that there are certain informations contained in sub-clause (a),(b),(c),(f),(g) and (h), for which there is no obligation for giving such an information to any citizen, whereas informations protected under sub- clauses( d) ,( e) and( j) are though protected informations, but on the discretion and satisfaction of the competent authority, that it would be in larger public interest to disclose such information, such information can be disclosed. These informations thus are having limited protection, the disclosure of which is dependent upon the satisfaction of the competent authority that it would be in larger public interest as against the protected information interested to disclose such information. (*Public Information Officer, Chief Minsiter's Office, Civil Secretariat, Government of U.P Vs State Information Commission and Others.HC of Allahabad,Lucknow Bench*).

#### **5. No exemption if there is even an Iota of nexus of control and finance of public authority over private institution.**

If there is even an iota of nexus of control and finance of public authority over the activity of a private body or institution or an organization etc. The same would fall under the provisions of Section 2(h) of the Act. The provisions of the Act have to be read in consonance and in harmony with it was objects and reasons given in the Act which have to be given widest meaning in order to ensure that unscrupulous persons do not get benefits of concealment of their illegal activities or illegal acts by being exempted under the Act and are able to hide nothing from the public. The working of any such organization or institution of any such private body owned or under control of public authority shall be amenable to the Right to Information Act. Hence, exemption under Section 8 cannot be claimed. [*Dhara Singh Girls High School through its Manager, Virendra Chaudhary Vs. State of Uttar Pradesh through its Secretary (Secondary Education), U.P. Government and Ors High Court of Allahabad*].

- **SECTION 8(1)a: Information, disclosure of which would prejudicially affect the sovereignty and integrity of India.**

#### **1. Immunity enjoyed by the Governor under Article 361 and RTI Act.**

Under Article 361 of the Constitution of India, Governor enjoys an immunity and in view of such immunity, no direction can be issued and no order can be passed under the RTI Act, which has an effect of requiring the Governor to disclose any information under the RTI Act. By reason of Article 361 of the Constitution of India, the Governor enjoys complete immunity and is not answerable to any Court in exercise and performance of the powers and duties of his office and any act done or purporting to be done by him in exercise and performance of his duties; but the immunity granted under Article 361(1) of the Constitution of India does not take away the powers of the Court to examine the validity of his actions including on the ground of mala fides. The Governor or the PIO in his office cannot claim immunity from disclosure of any information under the RTI Act, as in respect of non sovereign functions performed by the Governor, he would not be entitled to claim freedom from law on the basis of sovereign immunity. His non-sovereign functions and actions would be subject to law of the land. He would be bound by the RTI Act and would not be able to claim any sovereign immunity from disclosing information in respect of his non-sovereign functions. In this connection, a reference may be made to the exemption provided under Clause (a) of Section 8(1) of the RTI Act which exempts disclosure of an information which would prejudicially affect the sovereignty and integrity of India, amongst other things. The exemption against disclosure of an information under the RTI Act is restricted in respect of sovereign functions of the President or the Governor only to the extent it is protected under Section 8(1)(a) of the RTI Act or under Article 361 of the Constitution and no more. (*Public Information Officer Joint Secretary to the Governor Raj Bhavan, Donapaula, Goa and Secretary to Governor First Appellate Authority, Raj Bhavan, Donapaula, Goa Vs. Shri. Manohar Parrikar Leader of Opposition, Goa State Assembly Complex, Porvorim, Bardez, Goa and Goa State Information Commissioner, Ground Floor, Shram Shakti Bhavan, Patto Plaza, Panaji, Goa AND Special Secretary to the Government of Goa Vs. State Chief Information Commissioner, State of Goa and Advocate A. Rodrigues, Writ Petition No. 478 of 2008 and Writ Petition No. 237 of 2011, High Court of Bombay at Goa*).

- **Section 8(1)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.**

#### **1. Exemption to apply for Intellectual Property in certain cases only.**

The exemption under Section 8(1)(d) is available only in regard to such intellectual property, the disclosure of which would harm the competitive position of any third party.. The term 'intellectual property' refers to a category of intangible rights protecting commercially valuable products of human intellect comprising primarily trade mark, copyright and patent right, as also trade secret rights, publicity rights, moral rights and rights against unfair competition .Question papers, instructions regarding evaluation and solutions to questions (or model answers) which are furnished to examiners and moderators in connection with evaluation of answer scripts, are literary works which are products of human intellect and therefore subject to a copyright. (*The Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors*(A.I.R 2011 SC 3336).

- **SECTION 8(1)e: Information available to a person in his relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.**

### **1. Examining body, not an exception to section 8.**

Examining body cannot be in a fiduciary relationship either with reference to examinee who participated in examination and whose answer-books were evaluated by examining body - In furnishing copy of an answer-book, there is no question of breach of confidentiality, privacy, secrecy or trust - Examining body is 'principal' and examiner is an agent entrusted with work of evaluation of answer-books - Examining body does not hold evaluated answer-books in a fiduciary relationship - Therefore, exemption under Section 8(1)(e)of Act is not available to examining bodies with reference to evaluated answer-books - Therefore, examining bodies would have to permit inspection sought by examinees. (*Central Board of Secondary Education and Anr.Vs. Aditya Bandopadhyay and Ors.2011 (9) SC 212*).

### **1. CJI , Not a Fudiciary.**

CJI cannot be a fiduciary vis-a-vis Judges of the Supreme Court . Judges of the Supreme Court hold independent office, and there is no hierarchy, in their judicial functions, which places them at a different plane than the

CJI.Declarations are not furnished to the CJI in a private relationship or as a 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 such duty -.Section 8(e) does not cover asset declarations made by Judges of the Supreme Court and held by the CJI - CJI does not hold such declarations in a fiduciary capacity or relationship.[ *Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal. High Court of Delhi, LPA No. 501/2009*].

**2. Examining body does not hold evaluated answer-books in a fiduciary relationship.**

The court has correctly gone into the status of relation between the exam writer and examinee saying that there is no fiduciary relationship between the two. Hence examining body cannot take the exemption under sec 8(1) of the RTI Act. It also gives the conclusion that if public authority hires an agent then the public authority is liable to disclose the information. 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 provision 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. (*Central Board Of Secondary Education and Anr Vs Aditya Bandopadhyay and Ors 2011 8 SCC 497*) .

**3. Exemption available to the Recipient only and not to the author.**

If it is assumed that the report made by the Governor to the president under Article 356 of the constitution , is sent in a fiduciary capacity, the exemption available under section 8(1)e of the RTI Act would be available only to the recipient of the information(report), i.e. the President. The exemption under clause (e) of sub-clause (1) of section 8 of the RTI Act can be claimed only by the recipient and cannot be claimed by the person who is the author of the information or who gives the information. Clause (e) of sub-clause (1) of section 8 of the RTI Act says “information available to the person in fiduciary relationship”. Even if it is assumed that the report is available with the President in a fiduciary relationship, it is he who can claim exemption when a disclosure is sought from him. Clause (e) of sub-clause (1) of section 8 of the RTI Act

does not exempt the giver of an information to claim an exemption. [*Public information Officer Joint Secretary to the Governor Raj Bhavan, Donapaula, Goa and Secretary to Governor First Appellate Authority, Raj Bhavan, Donapaula, Goa Vs. Shri Manohar Parrikar Leader of Opposition, Goa Stae Assembly Complex, Porvorim, Bardez, Goa and Goa State Information Commissioner, Ground Floor, Shram Shakti Bhavan, Patto Plaza, Panaji, Goa AND Special Secretary to the Government of Goa Vs. State Chief Information Commissioner, State of Goa and Advocate A. Rodrigues.(HC of Bombay at Goa , W.P.No. 478 of 2008 anf W.P.No. 237 of 2011)*].

- **Section 8(1)g: Information, the disclosure of which would endanger the life or personal safety of any person or identify the source of information or assistance given in confidence.**

**1. Information not to be disclosed if it endangers physical safety or human life.**

The ancillary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. First, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers. Declaration of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. There is no error of jurisdiction or reasoning in this regard. But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act. [*Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi and Anr.(2012) 13 SCC 61*]

- **Section 8(1)h: Information which would impede the process of investigation or apprehension or prosecution of offenders.**

**1. Mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information.**

Contextually in Section 8(1)(h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or

prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. (*B.S. Mathur Vs. Public Information Officer of Delhi High Court, W.P. (C) 295 and 608/2011 High Court of Delhi*)

- **Section 8(1)j: Information which relates to personal information the disclosure of which has no relationship to any public activity or interest.**

**1. Court shall not allow application for disclosure of personal information of employee, if information sought for was not for larger public interest.**

Details given by a person in his income-tax returns Details of his service career are his "personal information" and are exempt from disclosure unless larger public interest justifies disclosure of such information. Facts of the case are that the Petitioner submitted an application before Regional Provident Fund Commissioner (R-2), calling for various details relating to R-3, who was employed as Enforcement Officer in that department. The information were denied on the ground that the information does not relate to any public active and same is not required to be disclosed in view of provision of Section 8(1)(j) of RTI Act. Aggrieved by the said order, Petitioner approached the CIC, who directed disclosure of some information regarding posting details of R-3 and stated that other information regarding his income, gifts, details of property etc. and action taken against him by R-2 earlier did not qualify for disclosure. Petitioner filed a writ petition before High Court against the said order, which was dismissed and hence present Special Leave Petition. Most of the information sought for finds a place in income-tax return of R-3 and hence the question that has come for consideration is whether the said information qualifies to be his personal information, as defined in Clause (j) of Section 8(1) of RTI Act.

The performance of an employee 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 the same would cause unwarranted invasion on privacy of that individual. However, if 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, appropriate orders could be passed but the

Petitioner cannot claim those details as a matter of right. The details disclosed by a person in his income tax returns are "personal information", which stand exempted from disclosure under Clause (j) of Section 8(1) of the RTI Act, unless it involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information. (*Girish Ramchandra Deshpande Vs. Cen. Information Commr. and Ors, 2012 (9) JT 585*).

## **2. Declaration of assets to be treated as personal information.**

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) - 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".

It was Edmund Burke who observed that "All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust." Accountability of the Judiciary cannot be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power, legislative, executive and judicial - are entrusted to perform their functions on condition that they account for their stewardship to the people who authorize them to exercise such power. Well defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence. Democracy expects openness and openness is concomitant of free society. Sunlight is the best disinfectant. [*Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal. High Court of Delhi, LPA No. 501/2009*].

## **3. Institution engaged in public activity not covered under section 8(1)(j).**

The institution engaged in providing education to the society and is receiving grant in aid from the state for payment of salary to the entire teaching staff, non teaching staff and other employees is not exempted under section 8(J) of the Act in as much as the institution is engaged in public activity and it can not be said that it would be an invasion of privacy of any individual of the committee of management or other. ( *Surinder Singh S/O Shri Shankar Singh v/s State of U.p*

*through its Secretary, Minister of Education ( Madyamik) and Others, High Court of Allahabad).*

#### **4. Public authority not to claim any information as personal.**

No public authority can claim that any information held by it is personal. There is nothing personal about any information, or thing held by a public authority in relation to itself. The expression personal information used in Section 8(1)j means information personal to any other person, that the public authority may hold. That other person may or may not be an individual. For instance, a public authority may, in connection with its functioning require any other person whether a juristic person or an individual, to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if it satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e, if such information has no relationship to any public activity or interest vis-à-vis the public authority, or which would cause unwarranted invasion of the privacy of the individual. (*Jamia Millia Islamia Vs. Sh. Ikramuddin. W.P.(C)No. 5677/2011, High Court of Delhi*).

#### **5. Right of privacy and Article 21.**

The right to privacy is implicit in the right to life and liberty guaranteed to the citizen under article 21. It is a “ Right to be let alone”. A citizen’s right to safeguard the privacy of his own, his family, marriage, his procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent. Whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrust himself into controversy or voluntarily invites or raises a controversy. (*UPSC Vs. R.K. Jain, WP(C )1243/2011 and C.M.No. 2618/2011*).

## **SECTION 9: GROUNDS FOR REJECTION IN CERTAIN CASES.**

### **1. Universities and examination boards not covered under Section 9.**

The examining bodies (Universities, Examination Boards, CBSC etc.) are neither security nor intelligence organizations and therefore the exemption will not apply. The disclosure of information with reference to answer-books does not also involve infringement of any copyright and therefore Section 9 will not apply. Resultantly, unless the examining bodies are able to demonstrate that the evaluated answer-books fall under any of the categories of exempted 'information' enumerated in Clauses (a) to (j) of Sub-section (1) Section 8, they will be bound to provide access to the information and any applicant can either inspect the document/record, take notes, extracts or obtain certified copies thereof. (*Central Board of Secondary Education and Anr. Vs. Aditya Bandopadhyay and Ors (2011) 8 SCC 497*).

### **2. Applicability of Section 9 to ICAI.**

Providing access to information about instructions and solutions to questions issued by ICAI to examiners and moderators do not involve an infringement of copyright and therefore request for information is not liable to be rejected under Section 9 of RTI Act even if question papers solutions/model answers or other instructions which are prepared by any third party for ICAI copyright therein is assigned in favor of ICAI. Therefore, Providing access to information in respect of which ICAI holds copyright did not involve infringement of copyright subsisting in person other than State - Therefore, ICAI was not entitled to claim protection against disclosure under Section 9 of RTI Act. (*The Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors. AIR 2011 SC 3336*).

## SECTION 10: SEVERABILITY

### **1. Rule of Severability to be used in case of furnishing answer books to the applicants under RTI Act..**

When an examining body engages the services of an examiner to evaluate the answer books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer books are evaluated by him. In the event of such information being made known, a disgruntled examinee who is not satisfied with the evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to the scrutiniser, co-ordinator and head examiner who deal with the answer book.

The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. 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 the 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 the RTI Act. Those portions of the answer books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, Under Section 10 of the RTI Act. (*Bihar Public Service Commission Vs.Saiyed Hussain Abbas Rizwi and Anr. Civil Appeal No. 9052 of 2012 (Arising out of SLP (C) No. 20217 of 2011) Supreme court of India*).

## 2. Severability and Public examinations.

It is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one was to be propounded. In the above premises, it is to be considered how far the Board has assured a zero-defect system of evaluation, or a system which is almost foolproof.

There is an understandable attempt on the University's part to not so much as protect the self and property of the examiner, but to keep the examiner's identity concealed. The University has not cited the fiduciary duty that it may owe to its examiners or the need to keep answer scripts out of bounds for examinees so that the examiners are not threatened. A ground founded on apprehended lawlessness may not stultify the natural operation of a statute, but in the University's eagerness to not divulge the identity of its examiners there is a desirable and worthy motive--to ensure impartiality in the process. But a procedure may be evolved such that the identity of the examiner is not apparent on the face of the evaluated answer script. The severability could be applied by the coversheet that is left blank by an examinee or later attached by the University to be detached from the answer script made over to the examinee following a request under Section 6 of the Act. It will require an effort on the public authority's part and for a system to be put in place but the lack of effort or the failure in any workable system being devised will not tell upon the impact of the wide words of the Act or its ubiquitous operation. (*President, Board of Secondary Education, Orissa and Anr. v. D. Suvankar and Anr. 2007(1) SCC 603*).

## **SECTION 11: THIRD PARTY INFORMATION.**

### **1. Public interest and third party information.**

Any information sought by the Applicant in which third party information is asked, wherein third party may plead a privacy defence and the proper question would be as to whether divulging of such an information is in the public interest or not. whether the private defence is to prevail or there is an element of overriding public interest which would outweigh the private defence. The authority may take any decision but consideration is always given to public interest. [ *R.K Jain V Union Of India(2009) 8 SCC 273.*]

### **2. Information provided in certain cases even if denied by the third party.**

When an application is made seeking such information, notice would be issued by the CIC or the CPIOs or the State Commission, as the case may be, to such 'third party' and after hearing such third party, a decision will be taken by the CIC or the CPIOs or the State Commission whether or not to order disclosure of such information. The third party may plead a 'privacy' defence. But such defence may, for good reasons, be overruled. In other words, after following the procedure outlined in Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information. . [ *R.K Jain V Union Of India(2009) 8 SCC 273.*]

### **3. Notice to third party... An essential Requirement of section 11.**

Section 11 of the Act provides that where the State Public Information Officer or the Central Public Information Officer intends to disclose any information or record which relates to a third party and has been treated as confidential by the third party, a written notice would have to be issued to the third party. Similarly, Section 19(4) of the Act provides that if a decision of the Central or the State Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, a reasonable opportunity of being heard has to be afforded to that third party. Before directing disclosure of information to applicant in a case of third party information, State Information Commission has to issue notice to the concerned third party and hear him on his objection. Proceedings before Public Information Officer and before State

Information Commission had to be concluded in manner consistent with principles of natural justice.[ *Sangam Transport Vs. State Information*

*Commission. High Court of Allahabad Civil Misc. Writ Petition Nos. 45657 and 38933 of 2014].*

#### **4. Validity and interpretation of Section 11**

Section 11 of Act ensured that principles of natural justice complied with information which was confidential relating to third party or furnished by third party was not furnished to information seeker without notice or without hearing third party's point of view - A third party might had reasons, grounds and explanation as to why information should not be furnished which might not be in knowledge of Public Information Officer/PIO/Appellate Authorities or available in records - Information seeker was not required to give any reason why he had made an application for information - There may be facts, causes or reasons unknown to PIO or Appellant Authority which might justify and require denial of information - Fair and just decision was essence of natural justice - Issuance of notice and giving an opportunity to third party served a salutary purpose and ensured that there was fair and just decision - In fact issue of notice to third party might in cases curtail litigation and complications that might arise if information was furnished without hearing third party concerned - Section 11 of Act prescribes fairly strict time schedule to ensure that proceedings not delayed - Section 11(1) of Act postulates two circumstances when procedure had to be followed - Firstly when information related to a third party and can be prima facie regarded as confidential as it affected right of privacy of third party - Second situation was when information provided and given by third party to public authority and prima facie third party who had provided information had treated and regarded said information as confidential. (*Arvind Kejriwal Vs. Central Public Information Officer and Anr, LPA No. 719/2010 High Court of Delhi.*)

## SECTION 12: CONSTITUTION OF CENTRAL INFORMATION COMMISSION.

### 1. CONSTITUTIONAL VALIDITY

The Constitution of India expressly confers upon the courts the power of judicial review. The courts, as regards the fundamental rights, have been assigned the role of *sentinel on the qui vive* under Article 13 of the Constitution. Our courts have exercised the power of judicial review, beyond legislative competence, but within the specified limitations. While the court gives immense weightage to the legislative judgment, still it cannot deviate from its own duties to determine the constitutionality of an impugned statute. Every law has to pass through the test of constitutionality which is stated to be nothing but a formal test of rationality.

keeping in view the powers, functions and jurisdiction that the Chief/State Information Commissioner and/or the Information Commissioners exercise undisputedly, including the penal jurisdiction, there is a certain requirement of legal acumen and expertise for attaining the ends of justice, particularly, under the provisions of the Act of 2005. So, the provisions of Sections 12(5) and 15(5) of the Right to Information Act, 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the Court to 'read into' these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, it is held and declared that the expression 'knowledge and experience' appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, it is stated that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render the adjudicatory process which involves critical legal questions and nuances of law, more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of the provisions of Act of 2005 and, in fact, is the essence thereof. (*Namit Sharma V Union Of India*[(1993)4 SCC 119]).

## **SECTION 15: CONSTITUTION OF STATE INFORMATION COMMISSION.**

### **1. No need of consultation for appointment of Commissions under Section 15(3).**

It is clear that though the Committee can take a unanimous decision while appointment of State Chief Information Commissioner and State Information Commissioner, but in absence of unanimity, it can be decided by majority. As, Section 15(3) of the Act itself provides the procedure of appointment on the basis of recommendation made by the committee consisting of three members, i.e, Chief Minister, Cabinet Minister and the Leader of Opposition. Hence, the question of consultation does not arise.[*V. Madhav, S/o. V.D.S. Prasad,31/IV, Main Sarovar Raaja Apartments, 11-A, Arcot Road, Porur, Chennai 600 116 and Siva Elango, S/o P.R. Sivanathan, Makkal Sakthi Katchi, 41, Bazaar Lane, Saisapet, Chennai 600 014 Vs. The Government of Tamil Nadu, Rep. by its Secretary, Personnel & Administrative Reforms, Fort St. George, Chennai, The Tamil Nadu State Information Commission, Rep. by its Secretary, Chennai, The Tamil Nadu State Information Commission, Rep. by its Secretary, Chennai 600 018. And K.S. Sripathi, I.A.S.,(retd),1085, Anna Nagar, West Extension, Chennai 600 101 AND S. Vijayalakshmi, Advocate,2/1, Ist Main Road, Ashoka Avenue, Periyar Nagar, Chennai 82 Vs. State of Tamil Nadu, Rep. by its Secretary to Government, P & AR Department, Secretariat, Beach Road, Chennai and Ors.(W.P.Nos. 27665, 27666 of 2010 and W.P.No. 12325 of 2011 and connected M.PS.w.p.Nos. 27665 & 27666 of 2010)*

### **2. Section 15(6), A Sine Qua Non for appointment.**

If any disqualified person is chosen and appointed as commissioner then he shall be relinquish his position immediately after appointment if he uses to hold such office of profit. Because the requirement is sine qua non before assumption of charge as independent functioning being one of basic object of legislature and is to be followed in letter and spirit. Articles 14 and 16 of the Constitution of India also asserts the same fact. Also, there cannot be any conflict of interest in the appointment of candidates as commissioners.. Any independent discharge of their duties being a test of their suitability post appointment and no instance of deviant conduct is acceptable, having been alleged in regard to discharge of their statutory duties. (*K. Padmanabhaiah and others Vs. Government of Andhra Pradesh, GAD, and others. High Court of Andhra Pradesh, P.I.L. Nos. 28 and 38 of 2013*).

**3. Appointment of employee in service shall be made as per procedure of law.**

Persons having eminence in public life with wide knowledge and experience, could be appointed as Central Chief Commissioner and Information Commissioner and State Chief Information Commissioner and State Information Commissioners. Appointment of any officer could not be assailed on ground that they were not, in opinion of applicant or court, persons having eminence in public life with wide knowledge and experience. Therefore, any comparison, without knowing intricacies of system and set up, of appointment of other officials with appointment of Commissioner under RTI Act is totally odious. (*Janhit Manch & Ors Vs. Union Of India & Ors, PIL Writ Petition No. 8 of 2006, High Court of Bombay*).

**4. Section 15, A fair procedure adopted by Legislation.**

Right to Information Act, 2005 is a vital piece of legislation prompted to provide a good & responsible governance to citizens. This act has proved to be an effective means of obtaining governmental information as is evident from scores of applications and requests that are received by different authorities under the Act, thereby ensuring an alert, responsive and responsible government. It is the bounden duty of state to examine whether norms that are being followed today in matter of appointment of State Information Commissioners as well as certain additional norms that state government may consider appropriate should find place in the form of a set of rules or not. Such exercise should be performed by state so as to ensure fairness in procedure and certainty in public life. (*H.C. Arora Vs. State of Punjab & Ors, C.W.P No. 14107 of 2011, High Court of Punjab & Haryana*).

## **SECTION 18: POWER AND FUNCTIONS OF INFORMATION COMMISSIONS.**

### **1. Application of judicial mind.**

The impact of adjudication by the information commissions is very vital in nature. Instead of being tilted towards administrative adjudication, it is specifically oriented and akin to judicial determinative process. Application of mind and passing of reasoned orders are inbuilt into the scheme of the Act of 2005. In fact, the provisions of the Act are specific in that regard. While applying its mind, it has to dwell upon the issues of legal essence and effect. Besides resolving and balancing the conflict between the 'right to privacy' and 'right to information' the commission has to specifically determine and return a finding as to whether the case falls under any of the exceptions under section 8 or relates to any of the organisations specified in the Second Schedule, to which the Act does not apply in terms of section 24. Another significant adjudicatory function to be performed by the commission is where interest of a third party is involved. The legislative intent in this regard is demonstrated by the language of Section 11 of the Act of 2005. A third party is not entitled to hearing with a specific right to raise objections in relation to the disclosure of information. Such functions by no stretch of imagination, can be termed as 'administrative decision' but are clearly in the domain of 'judicial determination' in accordance with the rule of law and provisions of the Act. (*Namit Sharma Vs. Union of India. W.P(c) No. 210 of 2012.* )

### **2. Powers Of Commission.**

While enquiring into complaint under Section 18, Commission can issue necessary directions for supply/ disclosure of information asked for, If Commission is satisfied that information is wrongly withheld Or not completely given Or incorrect information is given Which is otherwise liable to be supplied under Act. Any applicant who has not been given a response to a request for information or access to information within the time limit specified under the Act, or who has been required to pay an amount of fee which he or she considers unreasonable, or has been given false information, and in respect of any other matter relating to requesting or obtaining access to records under the

Act, may approach the Commission, who would enquire into the complaint, and while making an enquiry, it has all the powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908). Needless to mention that the Act is not meant for creating a new type of litigation or a new forum of litigation between the information seeker and the information giver, but may be that some of the informations asked for, be Inconvenient to the persons to whom it relates and, therefore, every effort would be made to refuse divulgence of such an Information and for that matter either to refuse the information by delaying the process or passing a specific order of refusal, may be some time by taking shelter under the provisions of Sections 8 and 9 of the Act, which are the exemption clauses.

Our Constitution establishes a democratic republic. Democracy requires an informed citizenry and transparency of information which are vital to Its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The revelation of information in actual practice is likely to conflict with other public interests Including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and, therefore, with a view to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal, the Parliament enacted the Act of 2005 to provide for furnishing certain information to citizens who desire to have it..

The purpose of holding enquiry would be of no meaning if only punishment is given to the erring officer, as it would not serve the purpose of the Act and the power so conferred upon the Commission, requiring requisitioning of any public record or copies thereof from any Court or office, shall also have only a limited purpose to find out as to whether the punishment should be awarded to the erring officer or not. This is not the intention of the Act or the provisions of Section 18.[ *Public Information Officer, Chief Minister's Office, Civil Secretariat Govt. of U.P. Vs. State Information Commission and Ors. The High Court of Allahabad (Lucknow bench).*

### **Section 18 and Section 20 to be read together.**

Section 18 is a substantive provision regarding lodging and enquiring into a complaint, whereas Section 20 is the consequence of such an enquiry. The whole purpose of making an enquiry on a complaint being given by the affected person, shall stand defeated, if the two provisions are read in isolation or they are given a meaning which does not further the object of the Act. From a harmonious construction of the aforesaid provisions keeping in mind the purpose for which they have been enacted, it can be safely concluded that the

powers of the Commission under Section 18 are not restricted only to make enquiry and award punishment, but they also extend for issuing direction for receiving the application or for giving the necessary information under the provisions of the Act. Any other interpretation would not be in consonance with the scheme of the Act and shall also amount to restricting and curtailing the power of the Commission by judicial interpretation. .[ *Public Information Officer, Chief Minister's Office, Civil Secretariat Govt. of U.P. Vs. State Information Commission and Ors. THE HIGH COURT OF ALLAHABAD (LUCKNOW BENCH)*],

## **2. Commissioner shall not direct State Information officer to furnish information in a complaint.**

Under Section 18(3) of Act, Central Information Commission or State Information Commission, while inquiring into any matter, had same powers as were vested in Civil Court while trying suit in respect of certain matters specified in Section 18(3)(a) to (f) of Act .Therefore, under Section 18(4) of Act, Central Information Commission or State Information Commission, may examine any record to which Act applied and which was under control of public authority - However, under Section 18 of Act, Central Information Commission or State Information Commission had no power to provide access to information which had been requested for by any person but which had been denied to him - Only order, which could be passed by Central Information Commission or State Information Commission, under Section 18 of Act is order of penalty provided under Section 20 of Act - However, before such order was passed, Commissioner must be satisfied that conduct of Information Officer was not bona fide - Thus, Commissioner while entertaining complaint under Section 18 of Act had no jurisdiction to pass order providing for access to information . Chief Information Commr. and Anr. Vs. State of Manipur and Anr..(AIR 2012 SC 864).

## **5. Information Commission and Judicial review.**

Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then the Supreme court of India. In terms of Article 141 of the Constitution, the judgments of the Supreme Court are law of the land and are binding on all Courts and tribunals. Thus, it is abundantly clear that the information Commission is bound by the law of the precedence, i.e judgments of the High Court and the Supreme Court of India. In order to maintain judicial discipline

and consistency in the functioning of the commission, we direct that commission shall give appropriate attention to the doctrine of precedence and

shall not overlook the judgments of the courts dealing with the subject and principles applicable in a given case. (*Namit Sharma Vs. Union of India, W.P.(C) No. 210 of 2012, Supreme Court of India*).

## SECTION 19: APPEALS

### **1. Matter shall be referred to constitutional bench when question involved interpretation of constitution.**

Information sought by Respondent raised questions of constitutional importance relating to position of Hon'ble Chief Justice of India under Constitution and independence of Judiciary in scheme of Constitution and fundamental right to freedom of speech and expression - Both questions were of great value and were required to be balanced. Thus, substantial question of law as to interpretation of Constitution was involved which was required to be heard by Constitution Bench - Therefore, Registry was directed to place matter before Hon'ble Chief Justice of India for constitution of Bench of appropriate strength. *Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agrawal.*(W.P C. 288/2009).

### **2. Judicial Review in RTI Act.**

Under the scheme of the Act of 2005, it is clear that the orders of the commissions are subject to judicial review before the High Court and then before the Supreme Court of India. In terms of Article 141 of the constitution, the judgements of the Supreme court are law of the land and are binding on all courts and tribunals. Thus, it is abundantly clear that the Information Commission is bound by the law of precedence, i.e, judgements of the High Court and the Supreme Court of India. In order to maintain judicial discipline and consistency in the functioning of the Commission, we direct that Commission shall give appropriate attention to the doctrine of precedence and shall not overlook the judgements of the courts dealing with the subject and principles applicable, in a given case. [*Namit Sharma Vs. Union of India-WP(Civil)no. 210 of 2012 SCC*].

### **3. Section 19 and Section 7, a complete mechanism for redressal of an aggrieved person under RTI Act .Applicant not to hold hand of Section18 for the same.**

The procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. Therefore, Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by

refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the applicant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision because where statute provides for something to be done in a particular manner it is to be done in that manner alone and all other modes of performance are necessarily forbidden. (*Chief Information Commissioner and Anr Vs State of Manipur and Anr, Civil appeal Nos. 10787-10788 of 2011.*)

#### **4. Hierarchy of Appeal .**

Under the scheme of the Act of 2005, in terms of Section 5, every Public authority, both in the state and the centre, is required to nominate Public Information Officers to effectuate and make the right to information a more effective right by furnishing the information asked for under this Act. The information Officer can even refuse to provide such information, which order is appealable under section 19(1) to the nominated senior officer, who is required to hear the parties and decide the matter in accordance with law. This is First appeal. Against the order of this appellate authority, a second appeal lies with the Central Information Commission or the State Information Commission, as the case may be, in terms of Section 19(3) of the Act of 2005. The legislature in its wisdom has provided for two appeals. Higher the adjudicatory forum, greater is the requirement of adherence to the rule of judiciousness, fairness and to act in accordance with the procedure prescribed and in absence of any such prescribed procedure, to act in consonance with the principles of natural justice. Higher also is the public expectation from such tribunal. The Adjudicatory functions performed by these bodies are of serious nature. An order passed by the Commission is final and binding and can only be questioned before the High Court or the Supreme court or the Supreme Court in exercise of the Court's jurisdiction under Article 226 and/or Article 32 of the Constitution. [*Namit Sharma Vs. Union of India, Supreme Court of India W.P(C) No. 210 of 2012*].

#### **5. Can CPIO appeal against First Appellate authority.**

Central Information Commission has observed that Section 19 of the Act provides for an appeal by a person who is aggrieved with a decision of the CPIO. The first appeal is to be preferred to an officer senior in rank to the CPIO in the official hierarchy in the same public authority. Apparently, this right of appeal can be availed only by a citizen making an application seeking certain

information or by another person who is aggrieved with the decision of the CPIO concerning disclosure of information. Such an aggrieved person may be a third party. Section 19(2) makes an explicit mention of an appeal by the concerned third party. Technically speaking, even a Public Authority can also be aggrieved with the decision of PIO and can appeal against the decision of the CPIO as under section 2(n) of the RTI Act, third party includes Public Authority. Section 19(3) of the RTI Act reads as under: A second appeal against the decision under sub-section 2 shall lie within 90 days from the date on which the decision should have been made or was actually received with the Central Information Commission or the State Information Commission, provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of 90 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. From the above, it is clear that a second appeal is against the decision under sub-section 1 and any person who is aggrieved with this decision can approach the Commission and submit the appeal. This aggrieved person could be a PIO or a third party. The Act does not debar a second appeal either by the PIO or by a Public Authority. (*SH.V.R.Eliza, CPIO Vs. Board of Excise and Customs, Decision no CIC/AT/A/2008/00291*).

## **SECTION 20: PENALTIES.**

### **1. Section 20.... A penal Provision.**

Section 20 empowers the Central or the State Information Commission to impose penalty as well as to recommend disciplinary action against such Public Information Officers who, in its opinion, have committed any acts or omissions specified in this section, without any reasonable cause. The above provisions demonstrate that the functioning of the Commission is not administrative simpliciter but is quasi-judicial in nature. It exercises powers and functions which are adjudicatory in character and legal in nature. Thus, the requirement of law, legal procedures, and the protections would apparently be essential. The finest exercise of quasi-judicial discretion by the commission is to ensure and effectuate the right of information recognized under Article 19 of the constitution vis- vis the protections enshrined under Article 21 of the Constitution. [*Namit Sharma Vs. Union of India W.P(c) No. 210 of 2012 SC*].

### **2. Opportunity of being heard not to be a formality of farcical exercise.**

Provision of Section 20 (1) of Act provided that Central Public Information Officer or State Public Information Officer, shall be given reasonable opportunity of being heard before any penalty is imposed on him - By said proviso meaning would surely be imported that Authority was open to be convinced whether penalty should or should not be imposed. Had it been a pre-determined situation in law that the penalty shall be imposed as a matter of routine course, opportunity of hearing before penalty being imposed would not have been prescribed under the said proviso. Rather, the said proviso would not have been in place. [*Dr. Hedgewar Seva Samiti through Secretary, Public Information Officer, Chairman and Public Information Appellate Officer Vs. Purushottam and State of Maharashtra, Through State Information Commission. HIGH COURT OF BOMBAY (AURANGABAD BENCH) Writ Petition No. 4590 of 2011*].

### **3. Complainant cannot claim audience in the penalty proceedings.**

While deciding an appeal, the CIC is concerned with the merits of the claim to information. In penalty proceedings the CIC is concerned with the compliance by the information officers of the provisions of the Act. A discretion has been vested in this regard with the CIC. The Act does not provide for the CIC to hear the complainant or the appellant in the penalty proceedings, though there is no

bar also there against if the CIC so desires. However, the complainant cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring Information Officer. There is no provision in the Act for the payment of penalty or any part thereof if imposed, to the complainant. Regulation 21 of the Central Information Commission(Management) Regulations, 2007 though provides for the CIC awarding such costs or compensation as it may deem fit but does not provide for such compensation to be paid out of penalty if any imposed. The appellant cannot urge that it has a right to participate in the penalty proceedings for the said reason either. (*Ankur Mutreja Vs. Delhi University, HC of Delhi LPA 764/2011*).

#### **4. Penalty not to be imposed in all cases.**

The Court while considering a complaint about the Tribunal infracting its bounds has to be alive to the fact that primary discretion in such cases is with the Statutory Tribunal. At the same time, once it is established that the Tribunal, for no apparent reasons, either exceeded its jurisdiction or failed to exercise jurisdiction lawfully vested in it, the High Court would be justified in interfering with its order. Even though CIC recommended disciplinary action under Section 20(2), its denial of any penalty order under Section 20 cannot be upheld. [*Mujibur Rehman Vs. Central Information Commission , High Court of Delhi W.P.(C) 3845/2007*].

#### **5. No penalty if reasonable cause is there.**

Section 20 says that if the Public Information Officer without any reasonable Cause, refuses to receive an application for information or has not furnished information within the time specified under section 7(1) or malafidely denied the request for information or knowingly give incorrect, incomplete or misleading information or destroyed information, then penalty of Rs 250 for each day may be imposed .

It is however clear that the words used are “without any reasonable cause”. It demonstrates that if for reasonable cause information could not be furnished within thirty days, then there is no question of imposition of fine. (*U.K. Joshi Vs. Chief Information Commissioner & Anr Writ petition No. 1759 of 2008, High Court of Uttarakhand at Nainital*).

#### **6. CIC need not to record reasons while imposing penalty.**

The use of the word 'or' repeatedly in section 20 shows that the various situations/contingencies dealt with in section 20 are disjunctive. The PIO

concerned would invite penalties under section 20 of the Act upon the occurrence of any of the contingencies mentioned in Section 20. A recording that the CPIO has acted malafidely in denying the request for information is not the sole criterion for imposing penalty. SO, any submission that the CIC cannot impose penalty under Section 20 (1) of the Act without recording a finding as to the malafides on the part of the CPIO is entirely misconceived. A contrary position would render the entire statute meaningless, since the CPIO may then, according to his/her own whims and fancies regarding the maintainability of an RTI application, decide as to which application he/she wishes, or does not wish to, respond to. This is not what was intended by the legislature. Such a proposition strikes at the very heart and soul of the Act which was passed to secure access to information under the control of public authorities, which is vital for the functioning of a democracy. (*Prem Lata Vs. Central Information Commission and Ors*, W.P. (C) 2458 of 2012 and C.M. Nos. 5272 and 5273 of 2012, High Court of Delhi).

## **SECTION 22: ACT TO HAVE OVERRIDING EFFECT.**

### **1. Act to prevail over specified Acts and even instruments.**

There are many pre-requisites of vital significance in the functioning of the Commission. In terms of Section 22 of the Act, the provisions of the Act are to be given effect to, notwithstanding anything inconsistent contained in Officials Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. This Act is, therefore TO prevail over the specified Acts and even instruments. The same, however, is only to the extent of inconsistency between the two. Thus, where the provisions of any other law can be applied harmoniously, without any conflict, the question of repugnancy would not arise. (*Namit Sharma Vs. Union of India, W.P(C)No. 210 of 2012, Supreme Court of India.*)

**SECTION 23: BAR OF JURISDICTION OF COURTS.**

**1. Section 23 of the Act cannot erode the jurisdiction given under Article 226 to the High Court and under 32 to the Supreme Court of India.**

No court shall entertain any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal provided under section 19 of the Act. In other words, the jurisdiction of the court has been ousted by express language. Nevertheless, it is a settled principle of law that despite such exclusions, the extraordinary jurisdiction of the High Court and the Supreme Court, in terms of Article 226 and 32 of the constitution, respectively, cannot be divested. It is a jurisdiction incapable of being eroded or taken away by exercise of legislative power, being an important facet of the basic structure of the constitution. [*Namit Sharma Vs. Union of India, W.P.(C)No. 210 of 2012, Supreme Court of India.*]

**SECTION 24:ACT NOT TO APPLY TO CERTAIN ORGANISATIONS.****1. CBI comes within the purview of Section 24.**

RTI Act sets out the machinery of Right to Information for citizen to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The preamble further states that revelation of information in actual practice is likely to conflict with other public interest including efficient operation of Government, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. In the preamble it is further stated that it is necessary to harmonize these conflicting interest while preserving the paramountcy of democratic ideal. Therefore, the law makers were conscious of the fact that in actual practice while revealing information, there is a likely hood of conflict with other public interest which includes preservation of confidentiality of sensitive information.

Indisputably, CBI is dealing with so many cases of larger public interest and the disclosure of information shall have great impact not only within the country but abroad also, and it will jeopardise its works. Equally, the investigation done by CBI have a major impact on the political and economic life of the nation. There are sensitive cases being handled by the CBI which have direct nexus with the security of the nation, making CBI a security and intelligence organisation.( *S. Vijayalakshmi Vs. Union of India, Rep by its Secretary to Government, Ministry of Personal, PG and Pensions, North Block, New Delhi and Director Bureau of Investigation Lodhi Road, CGO Complex, New Delhi W.P.No.14788 of 2011 and M.P.No. 1 of 2011, High Court of Madras.*)

**SECTION 28: POWER TO MAKE RULES BY COMPETENT AUTHORITY.**

**1. Rules to be in conformity with the basic rule of law.**

It is an unquestionable proposition of law that the Commission is a 'judicial Tribunal' performing functions of judicial as well as 'quasi-judicial' nature and having the trappings of a Court. But besides being a tribunal, competent authorities shall frame only those rules to make working of the information commission effective which are in conformity with the basic rule of law. [*Namit Sharma v Union Of India*(1993) 4 SCC 119].