

Law on  
**Right To Information Act, 2005**

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**1. Rules & Regulations to give effect to the provisions of the RTI**

**Act, 2005** : Various Rules and Regulations formulated by the Central Government, the Government of U.P. and the Allahabad High Court to carry out the provisions of the RTI Act, 2005 are enumerated as under :

- (1) The Right to Information (Regulation of Fee and Cost) Rules, 2005.
- (2) Uttar Pradesh Right to Information (Regulation of Fee and Cost) Rules, 2006.
- (3) U.P. State Information Commission (Procedure of Appeal) Rules, 2006
- (4) The Central Information Commission (Appeal Procedure) Rules, 2005.
- (5) Allahabad High Court (Right to Information) Rules, 2006.
- (6) Different G.Os. and Notifications issued by the Govt. of U.P.
- (7) Decisions of the Central Information Commission
- (8) Decisions of the State Information Commissions
- (9) Judicial Pronouncements of the Supreme Court & High Courts
- (10) G.Os. & Notifications issued by Central & State Governments

**2. Object behind the enactment of RTI Act, 2005** : Mal-administration,

mismanagement, corruption and delays are some of the maladies plaguing the public offices which a common person has to face in his daily life. With a view to curb corruption and mal-administration etc. in the public offices and to promote **transparency and accountability** amongst the public officers, the Parliament enacted a new legislation in the year 2005 namely, The Right To Information Act, 2005. Prior to the passage of the RTI Act, 2005 and because of the stringent provisions contained in the **Official Secrets Act, 1923**, it was almost impossible for a citizen to obtain any information regarding the official

working and performance of a public officer holding a public office. The RTI Act, 2005 not only promotes transparency and accountability amongst the public servants regarding their performances in their public offices but also ensures that the **concept of rule of law** is not subverted and foiled. This new legislation has brought about the sense of devotion towards duty and tendency to adhere to the laws and norms amongst the public servants in discharge of their official duties as they have been made to realize under this Act that any willful breach of the laws, norms and the official duties on their part may invite punitive action against them under the provisions of the RTI Act, 2005. See : **Jitendra Singh vs. State of U.P., 2008 (2) AWC 2067 (All).**

**3(A). Genesis of RTI Act, 2005 lies in Article 19(1)(a) of the Constitution of India :** Relying on its earlier **Constitution Bench** decision rendered in the case of **State of Uttar Pradesh Vs. Raj Narain & Others, AIR 1975 SC 865**, the Hon'ble Supreme Court has ruled that the Right to Information which is basically founded on the right to know is an intrinsic part of the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. Such right is subject to reasonable restrictions under Article 19(2) of the Constitution. The RTI Act, 2005 was thus enacted to consolidate the fundamental right of free speech. See : **Chief Information Commissioner Vs. State of Manipur, AIR 2012 SC 864.**

**3(B). Article 19(1)(a) of the Constitution as source of RTI Act, 2005 :** The source of right to information does not emanate from the Right to Information Act, 2005. It is a right that emerges from the constitutional guarantees under Art. 19(1)(a) of the Constitution of India. The Right to Information Act is not repository of the Right to Information. Its repository is the constitutional right guaranteed under Art. 19(1)(a).

See : **Secretary General, Supreme Court of India Vs. Subash Chandra Agarwal, AIR 2010 Delhi 159 (Full Bench).**

**3(C). Stolen documents from custody of Govt. admissible in evidence :**

Secret documents relating to Rafale fighter jets were removed/stolen from the custody of the Ministry of Defence, Govt. of India and their photocopies were produced before the Supreme Court. The objection raised before the Supreme Court by the Central Govt. was that the secret stolen documents were not admissible in evidence. The Supreme Court held that all the documents in question were admittedly published in newspapers and thus already available in public domain. No law specifically prohibits placing of such secret documents before the Court of law to adjudicate legal issues. Matter involved complaint against commission of grave wrong in the highest echelons of power. Review petition could be adjudicated on merits by taking into account the relevance of the documents. **See: Yashwant Sinha Vs. Central Bureau of Investigation, AIR 2019 SC 1802 (Three- Judge Bench)**

**3(D). Test whether an information/document is protected from**

**disclosure u/s 123, Evidence Act :** Section 123 of the Evidence Act relates to the affairs of the State. Claim of immunity u/s 123 has to be adjudged on the touchstone that the public interest is not put to jeopardy by requesting disclosure of any secret document. Documents in question (stolen papers of the Rafale fighter jets from the Ministry of Defence, Govt. of India) being in public domain were already within the reach and knowledge of the citizens. The Supreme Court held that the claim of immunity u/s 123 of the Evidence Act raised by the Central Govt. was not tenable and the documents in question were admissible as evidence. **See: Yashwant Sinha Vs. Central Bureau of Investigation, AIR 2019 SC 1802 (Three- Judge Bench)**

4. **Composition of various authorities under the RTI Act, 2005 :**

Various authorities constituted under the RTI Act, 2005 are as under :

(1) **Central Information Commission** : Sec. 12 of the RTI Act, 2005 provides for the constitution of a Central Information Commission to be headed by the Central Information Commissioner (CIC). Such Commission has already been constituted and made functional with its office in New Delhi, the capital of the country.

(2) **State Information Commission** : Sec. 15 of the RTI Act, 2005 provides for the constitution of State Information Commission in every State with the Chief Information Commissioner (SIC) as its head. Such a State Information Commission has already been constituted and notified in the State of U.P. with its head office at Lucknow. There are several other State Information Commissioners appointed and notified by the Govt. of U.P. to discharge their duties as per the provisions of the RTI Act, 2005.

(3) **First Appeal (Sec. 19 of the RTI Act, 2005)** : Generally, Heads of Departments (HOD) of various public offices in U.P. have been notified as the first appellate authorities u/s. 19(1) of the RTI Act, 2005 against the orders passed by the CPIOs. Limitation period for preferring an appeal is 30 days from the date of order of the CPIO or from the date of deemed rejection.

(4) **Second Appeal (Sec. 19(3) of the RTI Act, 2005)** : A second appeal u/s. 19(3) of the RTI Act, 2005 shall lie to the CIC or SIC from the date when the decision should have been made. The limitation period is 90 days from the date of the decision of the first appellate authority.

(5) **Central Public Information Officer (CPIO)** – Sec. 5(c) of the RTI Act, 2005.

**5.0101. RTI Act, 2005 to have overriding effect over other enactments :**

Section 22 of the RTI Act, 2005 provides that the provisions of this Act shall have overriding effect over the provisions of the Official Secrets Act, 1923 or any other contrary law for the time being in force.

**5.0102. Test whether an information/document is protected from**

**disclosure under Official Secrets Act, 1923** : Section 123 of the Evidence Act relates to the affairs of the State. Claim of immunity u/s 123 has to be adjudged on the touchstone that the public interest is not put to jeopardy by requesting disclosure of any secret document. Documents in question (stolen papers of the Rafale fighter jets from the Ministry of Defence, Govt. of India) being in public domain were already within the reach and knowledge of the citizens. The Supreme Court held that the claim of immunity u/s 123 of the Evidence Act raised by the Central Govt. was not tenable and the documents in question were admissible as evidence. **See: Yashwant Sinha Vs. Central Bureau of Investigation, AIR 2019 SC 1802 (Three- Judge Bench)**

**5.02. Extent of right to seek information under the RTI Act, 2005 :**

**Section 3 of the RTI Act, 2005** : Provides that subject to the provisions of the Act, 2005, any citizen has got a right to have any information from any public office of the Central Government or the State Governments. Sec. 8 & 9 provide for certain prohibitions with regard to the furnishing of certain information. Any person, subject to the bar contained u/s 8 & 9 of the Act, 2005, may seek any information from any public office by moving an application in writing to the CPIO. **Sec. 5** of the Act mandates every public authority to appoint a

CPIO in his office to provide information to the applicants under the Act, 2005. Sec. 22 of the Act, 2005 provides that the provisions of this Act shall have overriding effect over the provisions of the Official Secrets Act, 1923 or any other contrary law for the time being in force. This means that subject to the exemptions contained in Sec. 8 & 9 of the RTI Act, 2005, any contrary provisions contained in the Official Secrets Act, 1923 or in any other general or special enactment will not come in the way of furnishing information to an applicant under the provisions of the RTI Act, 2005.

- 5.03. Stranger can seek information under RTI Act, 2005 :** Even a stranger can ask for obtaining information under the RTI Act, 2005 and his request can not be turned down on the ground that he was a stranger to the documents or he has not disclosed the reasons for the said information under the provisions of Sec 6 of the RTI Act,2005. See... **Yogendra Chandraker v. State Information Commission, AIR 2011 (NOC) 94 (Chattishgarh).**
- 5.04. Extent of right to seek information under the RTI Act, 2005 :** The scope of furnishing information under the Act is so wide that Sec. 8 of the Act itself makes it clear that the information which cannot be denied to Parliament or to a state legislature, the same cannot be denied to any person as well.
- 5.05. Meaning & extent of “information” as defined u/s 2(f) of the RTI Act, 2005 :** The information required to be supplied by a public authority to a citizen on request are not confined to the information mentioned in Sec. 4. That Section only casts certain obligations on public authorities for maintaining records and publishing the particulars mentioned therein. That does not amount to laying down that only those information which the public authorities are required to

publish u/s. 4(b) alone need be supplied to the citizens on request. The information mentioned in Sec. 3 is not circumscribed by Sec. 4 at all. Obligations laid down u/s. 4 are to be compulsorily performed apart from the other liability on the part of the public authority to supply information available with them as defined under the Act subject of course to the exceptions laid down in the Act. The information detailed in Sec. 4 has to be compulsorily published by the public authority on its own without any request from anybody. Further, there is no indication anywhere in the Act to the effect that the 'information' as defined in Sec. 2(f) is confined to those mentioned in Sec. 4 of the Act. Therefore, it cannot be held that only information mentioned in Sec. 4 need be supplied to citizens on request. See : **Canara Bank Vs The Central Information Commission, Delhi, 2007 (5) ALJ (NOC) 916 (Kerala).**

**5.06. Firms, Associations, Corporate entities and HUF to be treated as applicants under the RTI Act, 2005 :** The Central Information Commission has observed that an application or appeal from an association or a partnership firm or a Hindu undivided family (HUF) or from some other group of individuals constituted as a body or otherwise should be accepted and allowed under the RTI Act, 2005. Elaborating the objectives of the RTI Act, the CIC has further observed that the objective behind the RTI Act is to secure access of information to all citizens to promote transparency and accountability. The CIC has also clarified that since all superior courts have been admitting applications in exercise of their extra ordinary jurisdiction from companies, societies and associations under the provisions of the Constitution of which the RTI Act, 2005 is a child and if the courts can give relief to such entities, the CPIOs should also not throw them out on a mere technical ground that such applicants happen to be a legal person and not a citizen. (Source Times of India published from Agra).

- 6.01. Meaning of "Public Authorities" defined u/s 2(h) of the RTI Act, 2005 :** When the RTI Act, 2005 makes the same applicable to 'public authorities' as defined therein. There is need to give a restricted meaning to the expression 'public authorities' strait-jacketing the same within the four corners of 'State' as defined in Art. 12 of the Constitution, especially keeping in mind the object behind the Act. The definition of 'public authority' has a much wider meaning than that of 'State' under Art. 12. Further, the definition of "State" under Article 12 is primarily in relation to enforcement of fundamental rights through Courts, whereas the Act is intended at achieving the object of providing an effective framework for effectuating the right to information recognized under Art. 19 of the Constitution of India. See : **M.P. Varghese Vs Mahatma Gandhi University, AIR 2007 Kerala 230.**
- 6.02. A private body, institution or organization etc. financed by Govt. are covered within the definition of "Public Authority" u/s 2(h)(d)(ii) of the RTI Act, 2005 :** Whenever there is even an iota of nexus regarding 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 its 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 private body owned or under control of public authority shall be amenable to the Right to Information Act. The petitioner being an institution recognized under the provisions of U.P. High School and Intermediate Education Act, 1929 and receiving



grant-in-aid from the State Government is therefore, covered under the aforesaid Act. Even in cases where a private or a non-Government organization college received financial grant from the State Government or is regulated by the provisions of the Act such as the U.P. Intermediate Education Act, 1921 and payment of Salaries to Teachers and Other Staff Act, 1971 it would still be covered by the definition given in Sec. 2(h) of the Right to Information Act, 2005. See :

1. **Committee of Management, Azad Memorial Poorva Madhyamik Vidyalaya Koloura vs. State of U.P., 2008 (5) ALJ 88 (All)**
2. **Dhara Singh Girls High School, Ghaziabad vs. State of U.P., AIR 2008 Allahabad 92**
3. **Principal M.D.S.D. Girls College, Ambala vs. State Information Commissioner, Haryana, AIR 2008 P & H 101 (D.B.)**
4. **Committee of Managemnt, Shanti Niketan Inter College, Ghazipur vs. State of U.P., 2008 (3) AWC 3027(All)**
5. **M.P. Varghese vs. Mahatma Gandhi University, AIR 2007 Kerala 230**

**6.03. Council of Indian School Certificate Examinations (Board) not a 'public authority' :** Council of Indian School Certificate Examinations (Board) is not a 'public authority' within the definition of Section 2(h) of the RTI Act, 2005. See : **A. Pavitra Vs. Union of India, AIR 2015 (NOC) 1020 (Alld).**

**6.04. President and Governors, being 'Public Authorities' covered under RTI Act :** The order by the Goa bench of Bombay High Court on the Governor's report to the president has led to panic at the Centre. BJP leader Manohar Parrikar had sought a copy of the Goa Governor's report to the Union Home Minister regarding the political situation in the State during the period between July 24-August 14, 2007. But the Governor's Principal Information Officer declined to provide the same under the RTI Act. However, the Goa State Information Commission directed Raj Bhavan to provide the report to Parrikar. The PIO

appealed against it before the Goa Bench. A Division Bench of Justices D G Karnik and D M Reis said, "It must be held that the governor cannot claim an exemption under clause (e) of sub-clause (1) of Section 8 of the RTI Act in respect of disclosure of a report made by him under Article 356 of the Constitution." Appearing for the Governor's PIO, Additional Solicitor General Vivek Tanka said the information relating to day-to-day governance was available with ministries and departments and the rare constitutional functions discharged by the governor as the head of the State could not be said to have been discharged as a public authority as the RTI Act regarded him only as "competent authority." But the Bench saw no difference between the "competent authority" and "Public authority." Replying on a Delhi HC order which termed the Chief Justice of India as a public authority, it said, "The reasons for which the CJI was a 'public authority' notwithstanding him being the 'competent authority' apply with equal force for not excluding the President and the Governor from the definition of public authority." It also refused to buy the argument that the President and the Governors were the heads of the country and the State respectively and were not amenable to directions from any other authority like State Information Commission. Dismissing the PIO's appeal, the Bench said the President did not hold a fiduciary relationship with Governors of State and hence, the information about the report made by the Goa Governor to the President could not be held secret and kept out of the purview of the RTI Act. Source : **Report publish in Times of India, Lucknow dated 23.11.2011.**

**Note : Supreme Court stayed above Goa Ruling :** *The above order of the Goa SIC has been stayed by a Three-Judge Bench of the Hon'ble Supreme Court vide its order dated 08.12.2011 passed in Petition (S)*

*for Special Leave to Appeal (Civil) No. (S). 33124/2011, Public Information Officer Vs. Manohar Parrikar & Others. The above SLP is still pending before the Hon'ble Supreme Court for final decision.*

**6.05. Governor's office not to entertain applications under RTI Act, 2005 seeking information not held or controlled by it:** The Central Information Commission has held that the offices of President, Vice-President, Prime Minister, Governors, Lt. Governors and Chief Ministers are not legally obliged under the Right to Information Act, 2005 to entertain applications under the RTI Act, 2005 seeking information unrelated to it or not held or controlled by these high offices. The Central Information Commission has issued following directions:

- (a) The offices of President, Vice-President, Prime Minister, Governors, Lt. Governors and Chief Ministers are not legally obliged under RTI Act to entertain RTI applications seeking information unrelated to it, or not held or controlled by these high offices.
- (b) RTI applicants do not have any right to information which is not held or controlled by these high offices.
- (c) The CPIOs of the high offices will have an obligation to respond and inform action taken when the applicant made a complaint against a sub-ordinate public authority, against whom it can exercise superior supervisory power and take action. Such application cannot be merely transferred to another public authority ignoring the fact that complaint was against public authority where the RTI petition was being transferred.
- (d) If these offices of apex executive authorities create infrastructure to help these applicants at least by transferring their applications by e-mail or by any other means convenient to them, they are welcome. But the CPIOs cannot be subjected to first and second appeals under RTI Act in such cases.
- (e) The applicants who file such RTI applications by post shall intimate their email-ids and mobile numbers, so that they can be intimated about transfer.
- (f) Department of Personnel & Training (DoPT) may develop necessary guidelines in consultation with these high executive offices to tackle various kinds of RTI applications from literate, illiterate, ordinary or Below-Poverty-Line (BPL) applicants even though they are not seeking information relating to these offices,

without causing the wastage of public money and time of public authorities.

- (g) RTI applications, who know that information is not available with such offices shall not file RTI applications with these apex authorities. See: Order dated 01.08.2016 passed by the Central Information Commissioner Prof. M. Sridhar Acharyulu in Second Appeal No. CIC/SA/A/2016/001483 titled R.S. Gupta Vs. LG Office (New Delhi).

**6.06. Disclosure of personal information of a person is always subject to provisions of Sections of 8 (1) (j) r/w 11 of RTI Act:** Disclosure of personal information of a person is always subject to the provisions of Sections of 8 (1) (j) r/w 11 of RTI Act. See: **Supreme Court of India Vs. Subhash Chandra Agarwal, (2020) 5 SCC 481 (Five-Judge Bench)**

**7.01. Information which cannot be furnished under the RTI Act, 2005**

**(Sec. 8 & 9)** : The exemptions and prohibitions against furnishing information under the RTI Act, 2005 have been provided u/s. 8 & 9 of the RTI Act, 2005 which read as under :

**“Section 8 : Exemptions from disclosure of information**

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any Court of Law or Tribunal or the disclosure of which may constitute contempt of Court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (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;

- (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- (f) information received in confidence from foreign Government;
- (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters, which come under the exemptions specified in this section, shall not be disclosed;

- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information

Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information :

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened **twenty years before** the date on which any request is made under Section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.”

**“Section 9 – Grounds for rejection to access in certain cases. :** Without prejudice to the provisions of Section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.”

**702. A public authority not obliged under the RTI Act, 2005 to furnish an information not available with it: 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 Right to Information Act, 2005 does not cast an obligation upon the public authority to collect or collate such non-available information and then furnish it to an applicant. See: Central Board of Secondary Education Vs. Aditya Bandopadhyay, (2011) 8 SCC 497.

**7.03. What satisfaction must be arrived at, prior to disclosure of information about third party ?**

: Looking to the provisions of the Act especially Section 8 (d), 8(j) and proviso to Section 11 (1) and looking to the process of disclosing information to the applicant 'relating to or supplied by the third party and treated as confidential by the third party', the Act imposes a duty upon Public Information Officer to arrive at a conclusion that public interest in disclosure outweighs, harm or injury, to the protected interest of such third party, or larger public interest warrants, disclosure of such information. In considering whether the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party, the **Public Information Officer will have to consider the following :**

- (i) The objections raised by the third party by claiming confidentiality in respect of the information sought for.
- (ii) Whether the information is being sought by the applicant in larger public interest or to wreak vendetta against the third party. In deciding that the profile of person seeking information and his credentials will have to be looked into. If the profile of the person seeking information, in light of other attending circumstances, leads to the construction that under the pretext of serving public interest, such person is aiming to

settle personal score against the third party, it cannot be said that public interest warrants disclosure of the information solicited.

- (iii) The Public Information Officer, while dealing with the information relating to or supplied by the third party, has to constantly bear in mind that the Act does not become a tool in the hands of a busy body to settle a personal score.

Learned counsel for the petitioner has relied upon the decision rendered by Hon'ble Supreme Court in the case of **Ashok Kumar Pandey Vs. State of West Bengal and others reported in AIR 2004 SC 280**, especially in Paras 12 and 14, read as under :

*"Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions*



*of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.*

*The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motive, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddling interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even to their own to protect." See : **Ashok Kumar Pandey Vs. State of West Bengal, AIR 2004 SC 280** (paras 12 & 14)*

- 7.04. Third party entitled to hearing before disclosure of information relating to third party** : Where extensive disclosure was sought in regard to business of third party/partnership firm, it has been held by a Division Bench of the Hon'ble Allahabad High Court that partnership firm ought to be heard before any final order was passed by the State Information Commission. Failure of the Information Commission to issue notice to the partnership firm and hear them on their objections against disclosure of the information was not proper. See : **Ms.**

**Sangam Transport Vs. State Information Commission, AIR 2015 (NOC) 577 All (DB) (para 10).**

**7.05. Information exempted from disclosure at one point of time may cease to be exempted at a later point of time :** Information under the RTI Act, 2005 can be sought at different stages or different points of time depending upon the nature of exemption. What is exempted from disclosure under Section 8 at one point of time may cease to be exempted at a later point of time. The information relating to intellectual property, question papers, solutions/model answers and instructions in regard to any particular examination conducted by the educational institutions cannot be disclosed before examination is held as it would harm competitive position of innumerable third parties taking examination. Therefore, the examining body is not liable to give to any citizen any such information before date of such examination. But once examination has already been held, the position is different. See : **The Institute of Chartered Accountants of India v. Shaunak H. Satya & Others, AIR 2011 SC 3336.**

**7.06(a). No Public authority u/s 8(1)(j) of the RTI Act, 2005 can claim that any information held by it is personal :** "The thrust of the legislation is to secure access of information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. The access to information is considered vital to the W.P.(C.) No. 5677/2011 Page 7 of 9 functioning of a democracy, as it creates an informed citizenry. Transparency of information is considered vital to contain corruption and to hold Government and its instrumentalities accountable to the governed citizens of this country. No doubt, a "person" as legally defined includes a juristic person and, therefore, the petitioner is also a

“person” in law. This is amply clear from the definition of the expression “person” contained in Section 3(42) of the General Clauses Act. That is how the expression is also understood in Article 14 of the Constitution of India. 16. However, in my view the expression “personal information” used in Section 8(1)(j) of the Act, does not relate to information pertaining to the public authority to whom the query for disclosure of information is directed. 17. 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 a juristic person, and 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- W.P.(C.) No. 5677/2011 Page 8 of 9 vis the public authority, or which would cause unwarranted invasion of the privacy of the individual, under clause (j) of Section 8(1) of the Act. The use of the words “invasion of the privacy of the individual” instead of “an individual” shows that the legislative intent was to connect the expression “personal information” with “individual”. In the scheme of things as they exist, in my view, the expression “individual” has to be and understood as “person”, i.e., the juristic person as well as an individual. 18. The whole purpose of the

Act is to bring about as much transparency, as possible, in relation to the activities and affairs of public authorities, that is, bodies or institutions of self governance established or constituted: by or under the Constitution; by any other law made by Parliament; by any other law may by State legislature; any body owned or controlled or substantially financed directly or indirectly by the funds provided by the appropriate Government; any non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government; or any authority or body or institution constituted by a notification issued or by order made by the appropriate Government.

19. If the interpretation as suggested by the petitioner were to be adopted, it would completely destroy the very purpose of this Act, as every public authority would claim information relating to it and relating to its affairs as “personal information” and deny its disclosure. If the disclosure of the said information has no relationship to any public activity or interest. W.P.(C.) No. 5677/2011 Page 9 of 9

20. Alternatively, even if, for the sake of argument it were to be accepted that a public authority may hold “personal information” in relation to itself, it cannot be said that the information that the petitioner has been called upon to disclose has no relationship to any public activity or interest.

21. The information directed to be disclosed by the CIC in its impugned order is the copies of the Agreement/settlement arrived at between the petitioner and one Abdul Sattar pertaining to Gaffar Manzil land. The petitioner University is a statutory body and a public authority. The act of entering into an agreement with any other person/entity by a public authority would be a public activity, and as it would involve giving or taking of consideration, which would entail involvement of public funds, the

agreement would also involve public interest. Every citizen is entitled to know on what terms the Agreement/settlement has been reached by the petitioner public authority with any other entity or individual. The petitioner cannot be permitted to keep the said information under wraps. 22. In the light of the aforesaid discussion, I do not find any merit in this petition and dismiss the same as such. See : **Judgment dated 22.11.2011 of the Delhi High Court in W.P.(C.) No. 5677/2011, JAMIA MILLIA ISLAMIA Vs. SH. IKRAMUDDIN.**

**7.06(b).Disclosure of Information as to name of nominee in PF and Gratuity not barred u/s 8 on the ground that it is personal information**

: Disclosure of Information as to name of nominee in PF and Gratuity not barred u/s 8 on the ground that it is personal information. See : **Smt. Vimleshwari Devi Vs. Central Information Commission, AIR 2016 Uttarakhand 7.**

**7.07. Notification u/s 24 of the RTI Act exempting certain organizations from purview of the RTI Act cannot be given retrospective effect**

: Section 24 of the RTI Act, 2005 provides for exemption to certain organizations of the central government relating to intelligence and security from disclosure of information. A notification issued u/s 24 of the said Act exempting certain organizations from purview of the RTI Act cannot be given retrospective effect. See : **Chief Information Commissioner Vs. State of Manipur, AIR 2012 SC 864 (para 45).**

**7.08. Copyright not a bar for disclosure of information under RTI Act:**

Section 9 of the RTI Act provides that a Central or State Public Information Officer may reject a request for information where providing access to such information would involve an infringement of copyright subsisting in a person other than the State. The word 'State' used in section 9 of RTI Act refers to the Central or State Government,

Parliament or Legislature of a State, or any local or other authorities as described under Article 12 of the Constitution. The reason for using the word 'State' and not 'public authority' in section 9 of RTI Act is apparently because the definition of 'Public authority' in the Act is wider than the definition of 'State' in Article 12, and includes even non-government organizations financed directly or indirectly by funds provided by the appropriate Government. Be that as it may. An application for information would be rejected under section 9 of RTI Act, only if information sought involves an infringement of copyright subsisting in a person other than the State. ICAI being a statutory body created by the Chartered Accountants Act, 1948 is 'State'. The information sought is a material in which ICAI claims a copyright. It is not the case of ICAI that anyone else has a copyright in such material. In fact it has specifically pleaded that even if the question papers, solutions/model answers, or other instructions are prepared by any third party for ICAI, the copyright therein is assigned in favour of ICAI. Providing access to information in respect of which ICAI holds a copyright, does not involve infringement of a copyright subsisting in a person other than the State. Therefore, ICAI is not entitled to claim protection against disclosure under section 9 of the RTI Act. There is yet another reason why section 9 of RTI Act will be inapplicable. The words 'infringement of copyright' have a specific connotation. Section 51 of the Copyright Act, 1957 provides when a copyright in a work shall be deemed to be infringed. Section 52 of the Act enumerates the acts which are not infringement of a copyright. A combined reading of sections 51 and 52(1)(a) of Copyright Act shows that furnishing of information by an examining body, in response to a query under the RTI Act may not be termed as an infringement of copyright. Be that as

it may. Kindly see : **The Institute of Chartered Accountants of India Vs Shaunak H. Satya & ors. AIR 2011 SC 3336.**

- 7.09. Disclosure of voluminous information** : Where the disclosure of information regarding transfer, posting and promotion etc. of the employees was refused by the Canara Bank on the ground that the information sought for of the last five years was quite voluminous and required tremendous man power and time, it has been held by the Kerala High Court that the information sought for as noted above could not have been withheld as being exempted u/s. 8 of the RTI Act, 2005. See : **Canara Bank Vs. The Central Information Commission, 2007 (5) ALJ (NOC) 916 (Kerala)**
- 7.10. Details of recruitment examination not to be disclosed to the candidate** :Where the applicant had submitted her application for recruitment to the post of Clerk in the respondent bank but the application did not reach the bank within stipulated time and was therefore not considered by the bank and this fact was also communicated to the applicant by the bank and the communication was never challenged by the applicant, it has been held by the Madras High Court that the applicant was not entitled to the details of recruitment of clerical posts under the provisions of RTI Act, 2005. See : **B. Bindhu Vs. Secretary, Tamilnadu Circle Postal Co-operative Bank Ltd., Chennai, AIR 2007 Madras 13.**
- 7.11. Disclosure of reasons or purpose in the application for obtaining information not required.** [S. 6(2)]. Disclosure of reasons or purpose in the application for obtaining information is not required. See : **Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal, AIR 2010 Delhi 159 (Full Bench).**
- 7.12. "Why" a decision was taken, cannot be answered under the RTI Act, 2005** : Under the RTI Act, 2005, an applicant is entitled to get

copy of the opinions, advices, circulars and orders etc. But he cannot ask for any information as to why such opinions, advices, circulars or orders etc have been passed especially in matters pertaining to judicial decisions. See : **Khanapuram Gandaiah Vs. Administrative Officer, AIR 2010 SC 615.**

**7.13. Information as to 'why' and for what 'reasons' judge had come to a particular decision or conclusion cannot be sought under the RTI Act, 2005 :**

Information as to 'why' and for what 'reasons' judge had come to a particular decision or conclusion cannot be sought under the RTI Act, 2005. A Judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion. A Judicial Officer is entitled to protection under the provisions of the **Judicial Officers' Protection Act, 1850** and the object of the same is not to protect malicious or corrupt judges but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions. See : **Khanapuram Gandaiah Vs. Administrative Officer, AIR 2010 SC 615.**

**7.14. Reasons behind information or order passed not permissible under the RTI Act :** The expression “information” as defined u/s 2(f) of the



RTI Act, 2005 although means and includes material in any form including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by any public authority under any other law. But the definition cannot include within its fold answers to question “why”, which would amount to asking reasons for justification of a particular thing. Hence, in facts of the instant case, as the CPIO had not furnished any wrong information by stating not available and clarifying the same by stating ‘do not know’ in view of the nature of questions asked in seeking information. As such, the impugned order of the Goa Information Commissioner holding the CPIO guilty of furnishing incorrect, incomplete and misleading information to the applicant was found not sustainable and was set aside by the Goa Bench of the Bombay High Court. See : **(Dr.) Celsa Pinto Vs. Goa State Information Commission through State Chief Information Commissioner, 2008 (63) ACC (Bombay-Summary) 29.**

- 7.15. Adjudication of disputes or discrimination etc. not permissible under the RTI Act, 2005 :** The RTI Act, 2005 does not provide for any adjudication or to give reasons as to why a particular person, is being discriminated in payment of his salary. On an application the District Information Officer was required to furnish the information, as it was available in his office. He is not supposed to give reasons for any action or inaction of the department in a matter in which the persons may be aggrieved. If the office of the District Inspector of Schools was not aware of the dismissal of the miscellaneous appeal filed by the State Government, it was not required to give justification for the same. The information as it is available in the office has to be furnished to the petitioner. There was no material to establish that the

District Inspector of Schools was communicated with the dismissal of misc. appeal filed by the State Government against the order of Civil Judge. The manner in which the applicant uses the information is not the concern of the authorities nominated under the Right to Information Act. See : **Jitendra Singh vs. State of U.P., 2008 (2) AWC 2067 (All).**

- 7.16. Information regarding place of arrest of accused :** An accused/applicant facing prosecution in criminal case has no right to seek information qua his place of arrest as such information is exempt u/s. 8 (h) of the RTI Act, 2005. See : **Vikram Simon vs. SICUP, Lucknow, AIR 2009 All 51 (D.B.).**
- 7.17. Obligation to provide information to detenu prior to arrest does not arise despite the provisions of the RTI Act, 2005 :** The opening words of Clause (5) of the Article 22 of the Constitution of India state that grounds on which person is detained is to be communicated to him when person has actually been detained. Section 3 of the Right to Information Act, 2005, no doubt provides that subject to provisions of Act, all citizens would have right to information. Section 8, thereof however, makes an exemption from disclosure of information. Under Section 8(1) the legislature made an exception to the disclosure of information which could be contrary to the interests of the nation, subject to the provision that such information may also be allowed to be accessed in the public interest, which overweighed the personal interests of the citizen. Albeit the provisions of the Constitution will prevail over any enactment of the legislature, which itself is a creature of the Constitution. Since Clause (5) of Article 22 provides that the grounds for detention are to be served on detenu after his detention the provisions of Section 3 of the Right to Information Act, 2005, cannot

be applied to cases relating to preventive detention at the pre-execution stage. In other words, Section 3 of the Right to Information Act has to give way to provisions of Clause (5) of Article 22 of the Constitution. It is thus clear that notwithstanding the provisions of the Right to Information Act, 2005, the State is not under any obligation to provide the grounds of detention to a detenu prior to his arrest and detention. See : **Subhash Popatlal Dave Vs. Union of India & Another, AIR 2012 SC 3370 (Three-Judge Bench).**

**7.18. Prisoner's right to seek information on guidelines etc. for his**

**parole** : The CIC has ruled that a prisoner has the right to get clarification about his parole rights according to laws and guidelines though giving such explanations by a public authority did not come under Right to Information Act. The direction was in response to information sought by murder convict Nitin Verma who sought clarification of the term "multiple murders" and conditions for granting parole and furlough. **Source : News dated 31.05.2014 in Times of India, Lucknow at page 13.**

**8.01. Answer sheets are accessible under RTI Act, 2005** : Information can be sought under the RTI Act at different stages or different points of time. What is exempted from disclosure at one point of time may cease to be ex-empted at a later point of time, depending upon the nature of exemption. For example, any information which is exempted from disclosure under Section 8, is liable to be disclosed if the application is made in regard to the occurrence or event which took place or occurred or happened twenty years period to the date of the request, vide Section 8(3) of the RTI Act. In other words, information which was exempted from disclosure, if any application is made within twenty years of the occurrence, may not be exempted if the application

is made after twenty years. Similarly, if information relating to the intellectual property, that is the question papers, solutions, model answer and instructions, in regard to any particular examination conducted by the appellant examining body cannot be disclosed before the examination is held, as it would harm the competitive position of innumerable third parties who are taking the said examination. Therefore it is obvious that the appellant examining body is not liable to give to any citizen any information relating to question papers, solutions/model answers and instructions relating to a particular examination before the date of such examination. But the position will be different once the examination is held. Disclosure of the question papers, model answers and instructions in regard to any particular examination, would not harm the competitive position of any third party once the examination is held. In fact the question papers are disclosed to everyone at the time of examination. The appellant voluntarily publishes the "suggested answers" in regard to the question papers in the form of a book for sale every year, after the examination. Therefore, Section 8 (1)(d) of the RTI Act does not bar or prohibit the disclosure of question papers, model answers (Solution to questions) and instructions if any given to the examiners and moderators after the examination and after the evaluation of answer script is completed, as at that stage they will not harm the competitive position of any third party. The information to which Act applies falls into two categories, namely, (i) information which promotes transparency and accountability in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in clauses (b) and (c) of Section 4(1) of Act; and (ii) other information held by public authorities not falling under S. 4(1) (b) and (c) of Act.

In regard to information falling under the first category, the public authorities owe a duty to disseminate the information widely *suo motu* to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated under S. 4(1)(b) and (c) to Act, necessarily and naturally, the competent authorities under the Act, will have to act in a proactive manner so as to ensure accountability and ensure that the fight against corruption goes on relentlessly. But in regard to other information which do not fall under S. 4(1)(b) and (c) of the Act, there is a need to proceed with circumspection as it is necessary to find out whether they are exempted from disclosure. One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. Therefore when Section 8 exempts certain information from being disclosed it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfillment and preservation of democratic ideals. Among the ten categories of information which are exempted from disclosure under section 8 of RTI Act, six categories which are described in clauses (a), (b), (c), (f), (g) and (h) carry absolute exemption. Information enumerated in clauses (d), (e) and (j) on the other hand get only conditional exemption that is the exemption is subject to the overriding power of the competent authority under the RTI Act in larger public interest, to direct disclosure of such information. The information referred to in

clause (i) relates to an exemption for a specific period, with an obligation to make the said information public after such period. The information relating to intellectual property and the information available to persons in their fiduciary relationship, referred to in clauses (d) and (e) of section 8(1) do not enjoy absolute exemption. Though exempted, if the competent authority under the Act is satisfied that larger public interest warrants disclosure of such information, such information will have to be disclosed. It is needless to say that the competent authority will have to record reasons for holding that exempted information should be disclosed in larger public interest. Kindly see :

- (i) **The Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors.** AIR 2011 SC 3336.
- (ii) **Public Service Commission, UP Vs. SIC, Lucknow, 2014 (103) ALR 61 (All)(DB)**

**8.02. Examinee has right to inspect his evaluated answer-books or taking certified copy thereof :** Examinee has right to inspect his evaluated answer-books or taking certified copy thereof. See : **Central Board of Secondary Education Vs. Aditya Bandopadhyay, (2011) 8 SCC 497.**

**8.03. The Vice-Chancellor can order re-valuation of answer scripts even in the absence of rules for the purpose :** The plea that there is absence of specific provision enabling the Vice-Chancellor to order re-evaluation of the answer scripts and, therefore, the judgment impugned should not be interfered with, cannot be accepted. Re-evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. In such cases, what the court should consider is whether the decision of the educational authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or binding rule or ordinance and in doing so, the Court should show due regard to the opinion expressed by the authority. See : **Sahiti**

**& Others Vs. Chancellor, Dr. N.T.R. University of Health Sciences & Others, (2009) 1 SCC 599 (Three-Judge Bench) (para 32).**

- 8.04. Section 8(1)(d) of the RTI Act, does not bar disclosure of question papers etc after completion of examination :** Section 8(1)(d) of the RTI Act does not bar or prohibit the disclosure of question papers, model answer (solutions to questions) and instructions if any given to the examiners and moderators after the examination and after the evaluation of answer scripts is completed, as at that stage they will not harm the competitive position of any third party. See : **The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & Others, AIR 2011 SC 3336 (para 12).**
- 8.05. Disclosure of names, designation & address etc of the members of Interview Board exempted u/s 8(1)(e) & 8(1)(g) of the RTI Act :** Disclosure of names, designation & address etc of the members of the Interview Board of the Public Service Commission is exempted u/s 8(1)(e) & 8(1)(g) of the RTI Act. See : **Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi & Another, 2013 (1) ESC 75 (SC).**
- 8.06. Access to evaluated answer books permissible under the RTI Act---** Interpreting the provisions of Sections 2(j), 6, 3, 8, 10 of the RTI Act, 2005 and Article 19 of the Constitution, the Calcutta High Court has ruled that an examinee has got a right of access to evaluated answer scripts and the consequences of making over of such information is immaterial. Such access to the evaluated answer scripts is not exempted u/s. 8 of the RTI Act, 2005. Refusal to furnish answer sheet to examinee to keep examiner's identity concealed so that examiner is not threatened is not proper. A ground founded on apprehended lawlessness may not justify natural operation of a statute. However, procedure may be evolved such that the identity of examiner is not

apparent on face of evaluated answer scripts. See : **University of Calcutta Vs. Pritam Rooj, AIR 2009 Calcutta 97 (DB).**

**8.07. ISCE Board not receiving aid from government not obliged to provide answer-scripts to candidates** : ISCE Board not receiving aid from government is not obliged to provide answer-scripts to candidates as it is not covered within the definition of 'public authority' u/s 2(h) of the RTI Act, 2005. See : **A. Pavitra Vs. Union of India, AIR 2015 (NOC) 1020 (All).**

**8.08. Re-evaluation of answer sheets** : Relying upon its earlier decision rendered in the case of **Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth, AIR 1984 SC 1543**, a Three-Judge Bench of the Hon'ble Supreme Court has, in the case of **Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Others, (2004) 6 SCC 714** held that *"In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. In such a situation, the prayer made by the appellant in the Writ Petition was wholly untenable and the single judge of the Hon'ble Patna High Court had clearly erred in having the answer-book of the appellant re-evaluated. Adopting such a course will give rise to practical problems and in the larger interest, they must be avoided."*

**8.09. Third party interest when likely to be adversely affected on disclosure of answer sheets** : Where request for supply of answer sheets of constables participating in departmental promotions examination was turned down by the CPIO u/s 8/11 of the RTI Act, 2005, the same has been held as proper as the information sought was harmful to competitive position of third parties i.e. other candidates



appearing in that examination. See : **Yogendra Chandraker Vs. State Information Commission, AIR 2011 (NOC) 94 (Chattisgarh).**

- 8.10. Information as to irregularities committed by Banks cannot be denied u/s 8(1)(e) of the RTI Act on the ground of endanger of economic interest of the country :** Information as to irregularities committed by banks received by the RBI from different banks in the form of inspection reports or documents cannot be denied u/s 8(1)(e) of the RTI Act on the ground of endanger of economic interest of the country. See : **Reserve Bank of India Vs. Jayantilal N. Mistry, AIR 2016 SC 1.**
- 8.11. Information relating to a trust constituted under State Act not barred from disclosure u/s 8 of the RTI Act :** Information relating to a trust constituted under State Act is not barred from disclosure u/s 8 of the RTI Act as such trust is covered within 'public authority'. See : **Sanwaliaji Mandir Mandal, Rajasthan Vs. Chief Information Commissioner, Jaipur, Rajasthan, AIR 2016 Rajasthan 16.**
- 9.01. Personal information of employee regarding order of suspension & grounds of suspension etc. exempted from disclosure :** Personal information of employee regarding order of his suspension and grounds of suspension etc is exempted from disclosure u/s 8(1)(j) of the RTI Act as the same would not serve any public interest. See : **Avtar Singh Vs State Information Commission, Punjab & Another, AIR 2013 Punjab & Haryana 192.**
- 9.02. Personal information exempted u/s 8(j) but not the information relating to the duty of the public officer :** Where the applicant had sought information under the RTI Act, 2005 pertaining to individual CBI Officers in respect of their duty, it has been held by the Calcutta High Court that the information sought was not personal information

but it pertained to individual CBI Officers in respect of their duty and, therefore, the same was not exempted from disclosure u/s 8(j) of the RTI Act, 2005. See : **The Central Bureau of Investigation Vs. The Central Information Commission & Another, AIR 2015 Calcutta 21.**

- 9.03. Disclosure of information regarding transfer, posting and promotion of staff of Nationalized Bank [Sec. 8(1)(e)] :** The information requested for by the employee of Nationalized Bank related to transfer and promotion of employees of the bank. Such information does not pertain to any fiduciary relationship of the petitioner bank with anybody coming within the purview of Sec. 8(1)(e). The information relating to posting, transfer and promotion of clerical staff of a bank do not pertain to any fiduciary relationship of the bank with its employees within the dictionary meaning of word 'fiduciary' such information cannot be said to be held in trust by the Bank on behalf of its employees and therefore cannot be exempted under this Sec. 8(1)(e). In fact, without knowing this information, one employee cannot know his rights vis-à-vis other employees. In this connection, it has to be noted that one of the information requested for its transfer guidelines pertaining to clerical staff. Any member of the staff of the bank is, as of right, entitled to know what are those guidelines, even apart from the Right to Information Act. Further, these informations have necessarily to be divulged if we are to have an informed citizenry and transparency of information which are vital to the functioning of the bank and to contain corruption so as to hold the bank which is an instrumentality of the State, accountable to the people, which are the avowed objects of the act, as proclaimed in the preamble to the Act. Disclosure of information relating to transfer of employee of nationalized bank does not cause unwarranted invasion of privacy of other employees and such an information cannot be

withheld u/s. 8(1)(j) of the RTI Act, 2005. See :**Canara Bank Vs. The Central Information Commission, 2007 (5) ALJ (NOC) 916 (Kerala).**

- 9.04. Information relating to Vigilance/Departmental Enquiries :** The Central Information Commission has ruled that an official facing vigilance or departmental enquiry is entitled to make inspections of the file of such enquiries and can also seek permissible information available on the record of such enquiries. (Source —Report dated 3-7-2006 and 11.8.2006 published in the New Delhi issue of Daily Newspaper Times of India).
- 9.05. Information regarding proceedings of DPC:** The Central Information Commission has ruled that an official is entitled to obtain information under the RTI Act, 2005 concerning the proceedings held by the departmental promotion committee (DPC) about his own promotion and also of other co-officials. (Source : **Report dated 24-9-2007 published in the New Delhi issue of Daily Newspaper Times of India).**
- 9.06. File notings during disciplinary proceedings are covered within the word “information”:** File notings during disciplinary proceedings which are in the form of views and comments expressed by various officials dealing with the files are covered within the word “information” u/s 2(f) of the RTI Act, 2005. Such information cannot be withheld on the ground that it has been given by some other government officials who made the noting in fiduciary relationship. See : **Union of India v. R.S Khan, AIR 2011 Delhi 50.**
- 9.07. Information regarding the list of the names of corrupt officials accessible :** The CIC has ruled (regarding the names of Senior Customs & Excise Officials) that an applicant is entitled to information under the RTI Act, 2005 regarding the names of those officials who are known for their indulgence into corrupt practices in any department and also the names of such officials against whom complaints as to

corruption have been made or are pending. (Source—Report published in the New Delhi issue of Daily Newspaper Times of India).

**9.08. Information regarding file notings by Bureaucrats :** The CIC has clarified that an applicant under the RTI Act, 2005 is entitled to access to file notings recorded by the Bureaucrats unless such notings are exempted under the provisions of Sec. 8 & 9 of the RTI Act, 2005.

(i) Reports dated 29.8.2006, 12.9.2006, 17.10.2007 published in the New Delhi issue of Daily Newspaper Times of India).

(ii) Union of India v. R.S Khan, AIR 2011 Delhi 50.

**9.09. Information regarding ACR are accessible under the RTI Act, 2005**

: The CIC has ruled that an official/officer is entitled under the RTI Act, 2005 to access to information regarding his annual assessment or entries recorded in his ACR. A recent decision from the Supreme Court has also ruled that an employee is fully entitled to know about his annual character roll entries whether commendatory or condemnatory. (Source—Report dated 4.5.2006 published in the New Delhi issue of Daily Newspaper Times of India).

**9.10. Entries in ACR of a public servant must be communicated to him whether poor, fair, average, good or very good etc. :**

Overruling its two earlier Division Bench rulings reported in the cases of (i) Satya Narain Shukla Vs. Union of India, (2006) 9 SCC 69 and (ii) K.M. Mishra Vs. Central Bank of India, (2008) 9 SCC 120 and giving approval to its earlier Division Bench ruling reported in the case of Dev Dutt Vs. Union of India, (2008) 8 SCC 725, a **Three-Judge Bench** of the Hon'ble Supreme Court, in the case noted below has ruled thus :  
*"In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving three-fold*

*objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - Poor, fair, average, good or very good - must be communicated to him/her within a reasonable period." See : Sukhdev Singh Vs Union of India & Others, 2013 (2) ESC 337 (SC) (para 8) (Three-Judge Bench).*

**9.11(a). Information regarding private properties of bureaucrats accessible under RTI Act, 2005 :** The CIC has ruled that an applicant is entitled to get information under the provisions of RTI Act, 2005 regarding the movable and immovable property of any Govt. Servant. (Source—Report dated May, 2008 published in the Agra issue of Daily Hindi Newspaper Dainik Jagran).

**9.11(b).**The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest and on the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. 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. Of course, in a given case, 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. See : **Girish Ramchandra Deshpande Vs. Central Information Commissioner, (2013) 1 SCC 212** (*para 12 & 13*).

**9.12. RTI Act exposes DGP for fraud and corruption regarding admission of his son in Engineering College** : Where the former DGP of Madhya Pradesh had managed admission of his son in an Engineering College in NRI quota by depositing the fee in foreign currency (US \$16,500) through an America based NRI, FIR against the DGP on the basis of information obtained by a journalist/applicant was ordered to be registered regarding the fraud, forgery, cheating and corruption indulged in by him. (Source : **Report published in the New Delhi issue of Daily Newspaper Times of India**).

**10.01 Advice to Governor by Council of Ministers not liable to disclosure** : Advice tendered by the Chief Minister to Governor in respect of appointment of the Chairman of the (Punjab) Public Service Commission is expressly saved by Article 163(3) of the Constitution of India from being enquired into in any court. Hence, direction for production of such advice tendered by the Chief Minister to the Governor held invalid. Advice to Governor by Council of Ministers is not liable to disclosure. See : **State of Punjab Vs. Salil Sabhlok & Others, (2013) 5 SCC 1**.

**10.02 Cabinet decision accessible under RTI Act, 2005** : The CIC has ruled that once the decisions taken by cabinet are declared, all the documents relating to the cabinet decisions become accessible to an applicant under the provisions of RTI Act, 2005. (Source—Report dated

27.10.2008 published in the Lucknow issue of the Daily Hindi Newspaper Dainik Jagran)

**10.03. Information regarding the names of beneficiaries under the U.P.**

**Chief Minister's Discretionary Fund Rules, 1999 is permissible under the RTI Act, 2005** : Information as to names of all persons having received more than Rs. 1 lakh from the U.P. Chief Minister's Discretionary Fund is not exempted u/s. 8 of the RTI Act, 2005. An applicant is entitled to such information under the 2005 Act as such fund is part and parcel of the Consolidated Fund of the State of U.P. and it is public money. Public has right to know about it. See : **Public Information Officer, Chief Minister's Office, Civil Secretariat, Govt. of U.P., Lucknow Vs. State Information Commission, U.P., 2008 (4) AWC 3574 (All--LB) (DB).**

**11.01. Procedure for obtaining information & language of application**

**(Section 6)** : Application in writing in Hindi or English accompanied by the requisite fee will be presented by the applicant to the CPIO.

**11.01. Application for information must not be vague and must specify**

**the documents in respect of which information is sought** : Where the information Commissioner of Maharashtra had directed the CPIO to provide information regarding third party on the basis of vague request without specifically mentioning the document in the application in respect of which the information was sought, it has been held by the Bombay High Court that the order of the Information Commissioner in respect of vague request without hearing the third party and without considering his objections was not proper. See : **Sunflag Iron & Steel Company Limited, Kanpur Vs. State Information Commission, Nagpur, AIR 2015 Bombay 38.**

- 11.02. Language of information :** Where the request u/s 4 of the RTI Act was made for supply of the information in Hindi language, the same must be supplied in Hindi (official). See : **High Court of Uttarakhand Vs. State Information Commissioner, 2010 (4) ALJ 183 (Uttarakhand High Court).**
- 11.03. CPIO to assist the applicant in writing his application seeking information if he is unable : Proviso to Section 6(1) :** Where the applicant is incapable of reducing to writing his request for information, the CPIO is under obligation of law to assist him in reducing his request for information in the form of an application.
- 11.04. Application to be transferred to the authority concerned when the same is not concerned to the department of the CPIO : Section 6 (3) :** In case the application is made to an authority not concerned with the information sought for, such authority will transfer such application to the authority concerned or department concerned for disposal of the same.
- 11.05. Disposal of application within 30 days mandatory: Section 7(1) :** CPIO is bound to dispose of the application within 30 days from the date of receipt of the application.
- 11.06. Deemed rejection of application : Section 7(2) :** In case the CPIO fails to grant or reject the application **within a period of 30 days** from the date of its receipt, it shall be presumed that the CPIO has refused to furnish the required information.  
Note : *Similar provision has been made by the Allahabad High Court under Rule 17 of the Allahabad High Court (Right to Information) Rules, 2006.*
- 11.07. Recording of reasons must by CPIO when rejecting the application: Section 7(1) :** Rejection of the application by the CPIO requires reasoned order.



**11.08. Information relating to the life or liberty of a person must be furnished within 48 hours : Proviso to S. 7(1)** : In case the information required relates to the life or liberty of a person, the same must be furnished within a period of 48 hours from the time of receipt of the request/application.

**11.09. Information regarding place of arrest of accused** : An accused/applicant facing prosecution in criminal case has no right to seek information qua his place of arrest as such information is exempt u/s. 8 (h) of the RTI Act, 2005. See : **Vikram Simon vs. SICUP, Lucknow, AIR 2009 All 51 (D.B.)**

**11.10. Engaging Lawyer not permissible under RTI Act, 2005** : The State Information Commission, U.P. has ruled that an applicant cannot engage a lawyer to represent him for the purpose of seeking information from a CPIO or Appellate Authority (Source-- Report dated 28.11.2006 published in the Aligarh issue of Daily Newspaper Dainik Jagran).

**11.11. Procedure for Subordinate Courts for providing information under the RTI Act, 2005** : Rule 20 of the Allahabad High Court (Right to Information) Rules, 2006 provides that : "Notwithstanding anything contained anywhere else in these Rules, the applicant will be furnished with the information requested for, if and only if (a) the furnishing of such information is

- i. requested for with a positive assertion that the motive for obtaining such information is proper and legal;
- ii. in accordance with the provisions of the said Act;
- iii. not likely disproportionately to divert the resource of the High Court or the Subordinate Court, as the case might be;
- iv. not likely to be detrimental to the safety or preservation of the record in question and

- v. not otherwise against any law or practice prevailing in the material regard; and
- (b) after the processing of the application therefor, **permission has been obtained in that behalf from Hon'ble the Chief Justice**, or any of the other Hon'ble Judges of the High Court of Judicature at Allahabad, or its Lucknow Bench, who might in that regard be, or have been, nominated by Hon'ble the Chief Justice."

**12.01. Fee for obtaining information** : Fee payable for information sought for under the RTI Act, 2005 is regulated by the **U.P. Right to Information (Regulation of Fee and Cost) Rules, 2006.**

**12.02. Rates of fee prescribed by Govt. of UP** : Vide G.O. No. 993/43-2-2005 dated 19 October, 2005 of Administrative Reforms Section-2 of the Government of U.P., the fee structure for obtaining information or certified copies of any documents has been provided as under :

1.	For obtaining any information u/s 6(1) of the Act, 2005 : Provided that a person producing the certificate regarding below poverty line (BPL) will be exempt from paying any fee.	Rs. 10/- per Application
2.	For a certified copy of any document on A-4 size paper or A-3 Size paper.	Rs. 2/- per page
3.	For certified copy on larger size paper	Real cost per page.
4.	For Samples or Models and printed information.	According to their real cost.
5.	For Inspection of Records for the 1 <sup>st</sup> one hour and thereafter for every 15 minutes	Rs. 10/- per hour and thereafter Rs. 5/- for every 15 minutes
6.	For information through Diskette or Floppy or Compact Disc	Rs. 50/- per mode
7.	For information from any printed material	@ prescribed by the Publisher.
8.	For Photostat copies of any quotations	Rs. 2/- per page

contained in any published material.	
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NOTE: 1- *The fee prescribed as above shall be payable by the applicant in cash or through demand draft or banker's cheque and a receipt for the same will be given to the applicant.*

NOTE: 2- *Rule 4 of the Allahabad High Court (Right to Information) Rules, 2006 provides that the fee payable by an applicant shall be paid in cash or through draft or pay order of **Rs.500/- per application** (now **Rs. 250/-** as amended on 14.04.2013) drawn in favour of the Registrar General of the Allahabad High Court or the District Judge of the District as the case may be.*

**12.03. Fee prescribed by 'The Allahabad High Court (Right to Information) (Amendment) Rules, 2013 :** Vide Notification dated 14.04.2013, Hon'ble the Chief Justice of the Allahabad High Court, in exercise of his powers conferred by Sec. 28 of the RTI Act, 2005, has amended Rule 4 of the Allahabad High Court (Right to Information) Rules, 2006. Amended Rule 4 w.e.f. 14.04.2013 now reads as under :

"Each application shall be accompanied by cash or draft or pay order drawn in favour of the Registrar General, High Court, Allahabad or the District Judge of the concerned district court as the case might be, at the following rates :

(i) Rs. **250/-** if the requested information is related to tenders, documents/bids/quotations/business contract or requested information is in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in any electronic form.

(ii) Rs. **50/-** if information is obtained other than (i) above."

**12.04. Free of cost/fee information can be furnished when information was not given within 30 days. :** Free of cost information can be given u/s 7 of the RTI Act where application is not considered within 30 days of filing of application or if the First Appellate Authority itself directs the PIO to provide information free of cost. See : **S.K. Srivastava Vs. State, AIR 2016 Chhatisgarh High Court 1.**

**13.01. PENALTY (Section 20) :** In case of refusal to receive the application or not disposing of the same within the prescribed period of **30 days** from the date of its receipt, the CPIO or the State Public Information Officer shall be liable to pay **Rs. 250/- each day** till the application is received or the information is furnished. However, the total amount of such **penalty shall not exceed Rs. 25,000/-**.

**13.02. Recording of reasons must for awarding penalty :** Penalty proceedings are quasi judicial proceedings and therefore the authority is required to give reasons before passing order imposing penalty against the PIO. Awarding penalty without recording reasons is improper. See : **Dr. Kalpanath Chaube Vs. Information Commissioner, AIR 2010(NOC) 727 (All)**.

*NOTE - 1: The proviso to Section 20 makes it imperative that before imposing the above noted penalty upon the CPIO or SPIO, a reasonable opportunity of hearing shall be given to them.*

*NOTE - 2: In case of non-compliance of any orders/directions of the CIC or the SIC or furnishing any false or misleading or incomplete information, the CIC or the SIC may recommend for disciplinary action against the CPIO or the SPIO. [S. 20(2)]*

**13.03. No penalty to CPIO when information not furnished within 30 days due to non-availability of record :** Information under the RTI Act, 2005 is required to be supplied within 30 days only if record is available with the office. Right to seek information is not to be extended to the extent that even if file is not available for good reasons, still steps are required to be taken by the CPIO to procure file and to supply information. No penalty u/s. 20 of the RTI Act can be imposed upon the CPIO for his lapse to supply information due to non-availability of the record. See : **S.P. Arora Vs. SIC, Haryana, AIR 2009 P & H 53 (D.B.)**.

**13.04. Addl. District Judge as CPIO penalized by the UPSIC :** Where the Addl. District Judge, Hathras had failed as CPIO in furnishing information to the applicant under the RTI Act, 2005 within the statutory period of 30 days and had also failed in appearing before the State Information Commissioner at Lucknow despite repeated opportunities having been given for the same, the Information Commissioner of U.P., Sri Virendra Kumar Saxena awarded Rs. 25,000/- as penalty against the CPIO concerned (ADJ, Hathras) and indicting the aforesaid CPIO/ADJ directed to take further severe action in case of non compliance of the order of the Information Commissioner (Kindly see the report dated 8.1.2008 in the issue of leading Daily Newspaper Dainik Jagran published from Agra).

**13.05. Addl. District Judge as CPIO penalized by the UPSIC :** Where the Addl. District Judge, Meerut had failed as CPIO in furnishing information to the applicant under the RTI Act, 2005 within the statutory period of 30 days and had also failed in appearing before the State Information Commissioner at Lucknow despite repeated opportunities having been given for the same, the Information Commissioner of U.P., Dr. Ashok Kumar Gupta awarded Rs. 25,000/- as penalty against the CPIO concerned (ADJ, Meerut). (Kindly see the report dated 12.1.2008 in the issue of leading Daily Newspaper Dainik Jagran published from Agra)

**13.06. CIC or SIC has no power u/s 18 of the RTI Act, 2005 to provide access to the information which was refused to him :** Section 18 of the RTI Act, 2005 provides for the powers and functions of the Information Commissions. The Central Information Commission or the State Information Commission has no power u/s 18 of the Act to provide access to the information which has been requested for by any

person but which has been denied to him. Remedy for such person who has been refused information is provided u/s 19 of the Act. Nature of power u/s 18 is supervisory in character whereas procedure u/s 19 is appellate procedure and a person who is aggrieved by refusal in receiving information which he has sought for can only seek redress in the manner provided in Statute, namely, by following procedure u/s 19. Section 7 r/w Section 19 provides complete statutory mechanism to person who is aggrieved by refusal to receive information. See : **Chief Information Commissioner Vs. State of Manipur, AIR 2012 SC 864.**

**13.07. Information Commission u/s 18 or 20 can direct for disclosure of information asked for by the applicant :** While enquiring into a complaint u/s 18 of the RTI Act, 2005, the Commission can issue necessary directions for supply or disclosure of information asked for if it is satisfied that information was wrongly withheld or not completely given or incorrect information was given which is otherwise liable to be supplied under the RTI Act, 2005. See : **Public Information Officer, Chief Minister's Office, Civil Secretariat, Govt. of U.P., Lucknow Vs. State Information Commission, U.P., 2008 (4) AWC 3574 (All) (LB)(DB).**

**13.08. Furnishing incorrect information not to amount to disobedience :** Furnishing of incorrect information or reply to complainant by CPIO u/s 7 of the RTI Act 2005 cannot be termed as disobedience of any direction of law. See : **Prabhakara Panicker M.B. & Another Vs. State of Kerala & Another, 2010 CRLJ 4117 (Kerala).**

**13.09. Power of CIC/SIC u/s 18(3) regarding summoning of persons/witnesses/documents etc.:** As regards the summoning of any person, witness or document etc. by the CIC/SIC, Section 18(3) of the RTI Act, 2005 confers on the CIC/SIC the powers of civil court trying

a suit under the Code of Civil Procedure, 1908. Section 18(3) is reproduced below :

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things ;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any Court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) and other matter which may be prescribed.

**13.10. Power of civil court to summon witnesses and documents etc. :**

- (i) Order 16, rules 1, 1-A, 6, 7, 7-A CPC ..... summons
- (ii) Order 16, rule 10 CPC----warrant, proclamation, attachment of property
- (iii) Order 16, rule 14 CPC..... summoning of stranger as witness

**13.11. Summons to judicial officers to be served through the Head of office i.e. Hon'ble the Chief Justice of the Allahabad High Court and the District Judges :**

A summons issued by the SIC/CIC to judicial officers can be served only through the Head of office i.e. Hon'ble the Chief Justice of the Allahabad High Court and the District Judges and not directly. The relevant provisions are given in Appendix-E of the G.R. Civil as under :

- (i) In the case of District Judges & Addl. District Judges, through Hon'ble the Chief Justice or the Senior Judge on duty.
- (ii) In the case of Civil Judges (Senior Division) and Civil Judges (Junior Division), through the District Judges.

**13.12. Prosecution of CPIO under RTI Act, 2005 barred :** Information furnished by CPIO in response to request made to him u/s 7 of The RTI Act, 2005 amounts to “order” & is immune to challenge before civil court or criminal court except by way of appeal u/s 19 of the RTI Act, 2005. CPIO cannot be prosecuted or punished for offenses u/s 166

and 167 of the IPC. See : **Prabhakara Panicker M.B. & Another Vs. State of Kerala & Another, 2010 CRLJ 4117 (Kerala).**

**13.13. State Information Commission can impose penalty on delayed supply of information only after recording reasons that the information was supplied with delay without any reasonable cause**

: In order to impose penalty u/s 20 of the RTI Act, 2005, the State Information Commission must give an observation that the information was supplied with delay without any reasonable cause. Such an observation is *sine qua non* to impose penalty and if any penalty without making any such observation is imposed, the same cannot be held to be proper. See : **Charanjeet Kaur Vs. State Information Commission, AIR 2015 (NOC) 661 (Uttaranchal).**

**13.14. Information Commission cannot impose penalty u/s 20 when the appellant himself making request for withdrawal of appeal on the ground that the information sought by him had already been provided to him**

: Information Commission cannot impose penalty u/s 20 when the appellant himself making request for withdrawal of appeal on the ground that the information sought by him had already been provided to him. See : **Charanjeet Kaur Vs. State Information Commission, AIR 2015 (NOC) 661 (Uttaranchal).**

**13.15. Penalty u/s 20 not to be awarded when information could not be supplied due to loss of record**

: Penalty u/s 20 of the RTI Act, 2005 cannot to be awarded when information could not be supplied due to loss of record. See : **Nagar Nigam, Dehradun Vs. Chief Information Commissioner, AIR 2015 Uttarakhand 118.**

**13.16. Information Commissioner has no jurisdiction to decide legality or validity of High Court made RTI Rules**

: Information Commissioner has no jurisdiction to decide legality or validity of High Court made



RTI Rules. See : **Ms. Belma Mawrie Vs. Chief Information Commissioner, Meghalaya, AIR 2016 Meghalaya 8.**

**14.01. APPEAL u/s 19 of the RTI Act, 2005** : Section 19 of the RTI Act, 2005 provides for appeals. A person aggrieved by a decision of the CPIO or the SPIO under Section 7 of the Act may, within 30 days from the date of such decision, prefer an appeal to the Appellate Authority. The Appellate Authority has been empowered to condone the delay in preferring the appeal if the appellant is able to show sufficient reasons for not being able to prefer the appeal within 30 days from the date of the decision by the CPIO or the SPIO.

**14.02. CPIOs, Assistant CPIOs & the Appellate Authorities of the Subordinate Courts under the RTI Act, 2005** : CPIOs, Assistant CPIOs & the Appellate Authorities of the Subordinate Courts under the RTI Act, 2005, as declared by Hon'ble the Chief Justice of the Allahabad High Court u/s 28 of the RTI Act and as also provided under UP Govt.'s Notification dated 20.09.2006 are as under :

- (i) Appellate Authority ..... District & Sessions Judge (by name)
- (ii) CPIO ..... Senior most ADJ (by name)
- (iii) Central Assistant PIO ..... Civil Judge (Senior Division) (by name)

**14.03. The Central Information Commission (Appeal Procedure) Rules, 2005** : The procedure laid down under these rules apply to the Appeals preferred to the CIC. The procedure for preferring Appeals against the decisions of the CPIO or the SPIO has been clarified by the **Govt. of U.P. vide its G.O. No. DOLNo-Bha.Sa.-43/43-2-05-15/2(2)/03TC-2 dated 27<sup>th</sup> September, 2005** of Administrative Reforms Section-2 which reads as under:-

सूचना का अधिकार अधिनियम, 2005 की धारा-19 में जन सूचना अधिकारी के निर्णय के विरुद्ध याची को उच्चाधिकारी के समक्ष 30 दिन के अन्दर अपील करने का अधिकार है। ऐसी स्थिति में प्रदेश भर में एकरूपता व सुविधा को दृष्टिगत रखते हुए अपील

हेतु सक्षम अधिकारी नामांकित किए जाने के सम्बन्ध में आपके विचारार्थ सुझाव प्रेषित है कि सब-डिवीजन स्तरीय कार्यालय में सहायक जन सूचना अधिकारी के निर्णय के विरुद्ध अपील उस विभाग के जिला स्तरीय कार्यालय के जन सूचना अधिकारी के यहाँ, जिला स्तरीय कार्यालय के जन सूचना अधिकारी के निर्णय के विरुद्ध अपील उस विभाग के मण्डल/जोन स्तरीय कार्यालय के जन सूचना अधिकारी के यहाँ, मण्डल/जोन स्तरीय कार्यालय के जन सूचना अधिकारी के निर्णय के विरुद्ध अपील उस विभाग के विभागाध्यक्ष कार्यालय के जन सूचना अधिकारी के यहाँ तथा विभागाध्यक्ष कार्यालय के जन सूचना अधिकारी के निर्णय के विरुद्ध अपील शासन स्तर पर विभागाध्यक्ष से वरिष्ठ अधिकारी के समक्ष प्रस्तुत किया जाना उचित होगा।

**Note:** Under the Provisions of Rule – 24 of the Allahabad High Court (Right to Information) Rules, 2006, the Registrar General, in the matters of High Court and the District Judge of the District, in the matters of the District Judiciary, have been notified as Appellate authorities against the decisions made by the CPIOs.

**14.04. Nature of decisions of SIC and CIC to be quasi-judicial and**

**binding** : The CIC has ruled that no public authority, government or statutory organization can claim to be above law and the decisions of the CIC are quasi-judicial in nature and binding upon the concerned authorities. (Source—Report dated 1.2.2007 published in the New Delhi issue of Daily Newspaper Times of India).

**14.05. CIC empowered to review its previous decisions** :

The CIC has ruled that it is empowered under the provisions of RTI Act, 2005 to review its previous decision. (Source—Report dated 23.9.2006 published in the New Delhi issue of Daily Newspaper Times of India).

**14.06. Contempt power sought by CIC** :

The CIC has suggested the Central Government to suitably amend the RTI Act, 2005 so as to give power to CIC to initiate contempt proceedings against the violators of the

orders of the CIC. (Source—Report dated 12.10.2006 published in the New Delhi issue of Daily Newspaper Times of India).

**14.07. RTI Act, 2005 not to apply to pending & decided cases by the**

**courts** : The extracts of the relevant rules 25, 26 & 27 of the Allahabad High Court (Right to Information) Rules, 2006 are quoted below :

- (i) **Rule 25** : Information under the RTI Act not to be provided where such information can be obtained under the provisions of General Rule (Civil) or General Rule (Criminal). Such information can be availed only as per the procedure prescribed under G.R. (Civil) and G.R. (Criminal).
- (ii) **Rule 26** : Information under the RTI Act in relation to a pending case/judicial matter not to be provided where such information can be obtained under the provisions of General Rule (Civil) or General Rule (Criminal).
- (iii) **Rule 27** : Inspection of record not to be allowed under the RTI Act where such inspection can be made under the provisions of the General Rule (Civil) or General Rule (Criminal).

**14.08. The relevant provisions for copies of documents and inspection of records as contained in G.R. (Civil) & G.R. (Criminal) are as under :**

- (i) Rules 221 to 244-A of the G.R. (Civil) .... Inspection & search of records.
- (ii) Rules 245 to 270 of the G.R. (Civil) ....Copies of documents
- (iii) Rules 136 to 141-A of the G.R. (Criminal) .... Inspection of records
- (iv) Rules 142 to 156 of the G.R. (Criminal) ..... Copies of documents

**14.09. Information from judicial record cannot be obtained under RTI Act:** Information held by courts in judicial side relating to pending or decided cases is personal information of the litigants and courts hold it

as trustee for the litigants. Section 22 of the RTI Act, 2005 does not affect the rules framed by the courts and an information in relation to court records can be obtained by resorting to such rules of the courts and not under the RTI Act. See: **Chief Information Commissioner Vs. High Court of Gujarat, (2020) 4 SCC 702 (Three-Judge Bench)**.

**15. Development Authorities or Builders bound to furnish information under RTI Act, 2005 regarding flats, maps, sanction orders of buildings etc.**

**: An applicant is entitled to obtain certified copies of or information regarding the sight plans, flats, buildings and sanction orders etc. from the Development Authorities or the Private Builders and Contractors. (Source—Report dated 18.8.2006 published in the Agra issue of Daily Hindi Newspaper Dainik Jagran)**

**16(A). Income Tax Returns of political parties accessible under RTI Act, 2005**

**: The CIC has ruled that a citizen is entitled under the RTI Act, 2005 to seek information from political parties regarding their funding and income tax returns. (Source—Report published in the English Daily Newspaper Times of India).**

**16(B). Voters have right to know about the criminal antecedents and assets and liabilities of their candidates to represent them as their MP/MLA**

**: The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution. The voters have thus fundamental right under Article 19(1)(a) to know in entirety and in full detail the antecedents of the candidates and concealment, suppression or misinformation about their criminal antecedents which deprives the voters of making informed choice of the candidate which eventually promotes criminalization of politics. See:**

- (i) **Krishnamoorthy Vs. Sivakumar & Others, (2015) 3 SCC 467.**
- (ii) **Resurgence India Vs. Election Commission of India, AIR 2014 SC 344 (Three-Judge Bench) (Para 27).**
- (iii) **Peoples Union for Civil Liberties Vs. Union of India, AIR 2003 SC 2363 (Three-Judge Bench)**
- (iv) **Union of India Vs. Association of Democratic Reforms, AIR 2002 SC 2112**

**16(C). Information endangering interest of the nation cannot be divulged**

**to anyone:** The grounds of reasonable restrictions which could be imposed on right to speech and expression and seek information under Articles 19(1) (a) and 19(2) of the Constitution are by far limited and, therefore, the Government may be constrained to part with certain sensitive informations which would not be in public interest to disclose. Whenever such rare situations arise, the Constitution and the Courts are not helpless in checking the misuse and abuse of the freedom. Such a check need not necessarily be found strictly within the confines of Articles 19(2). The freedom of speech and expression cannot be so exercised as to endanger the interest of the nation or the interest of the society, even if the expression ‘national interest’ or ‘public interest’ has not been used in Article 19(2). See: **Peoples Union for Civil Liberties Vs. Union of India, AIR 2003 SC 2363 (Three-Judge Bench) (para 103)**

17. **Disqualification of the State Chief Information Commissioner** : In the case noted below, disqualification of the Chief Information Commissioner, Uttaranchal was sought on the ground of holding other office of profit but the Commissioner had tendered his resignation from his earlier office on date of his appointment itself and the appointment of Commissioner was to take effect only from the date of

assuming office. The Commissioner assumed office on the date when his resignation was already accepted, it was held by a Division Bench of the Uttaranchal High Court that the Commissioner was not disqualified from holding his post. Allegations against the Commissioner that his appointment was ill-motivated and that it was made due to undue influence and that there were allegations of corruption and irregularities against him was also not established and under these circumstances the appointment of the Commissioner u/s. 15(3) of the RTI Act, 2005 was found valid and disqualification was refused. See : **Rural Litigation and Entitlement Kendra Vs. State of Uttaranchal, 2006 (6) ALJ 430 (Uttaranchal High Court)(DB).**

- 18. Information from cooperative society :** Registrar of cooperative society bank is not “public authority” within the definition of Sec. 2(h)(d)(i) of the RTI Act, 2005. Even if he has got control over cooperative bank though it is not substantially financed by Government. See :
- (i). The Bidar District Central Co-operative Bank Ltd. vs. The Karnataka Information Commission, AIR 2009 (NOC) 1049 (Karnataka).**
  - (ii). Rudra Vilas Kisan Sahkari Chini Mills Limited vs. State Information Commissioner, Uttar Pradesh, AIR 2019 All 194(LB) (DB).**
- 19. CJI not as fiduciary vis-a-vis Judges of the Supreme Court :** Assets information shared with the CJI by the Judges of the Supreme Court are not held by the CJI in capacity of fiduciary and if revealed under the RTI Act, 2005, it will not result in breach of such duty. See : **Secretary General, Supreme Court of India Vs. Subash Chandra Agarwal, AIR 2010 Delhi 159 (Full Bench).**

**20.01 Jurisdiction of Courts barred u/s 23 of the RTI Act, 2005 :** Section 23 of the RTI Act, 2005 bars the jurisdiction of the Courts to entertain any suit, application or other proceedings against any orders passed under this Act.

**20.02. Jurisdiction of Courts barred :** Word “court” occurring in Section 23 of the RTI Act, 2005 cannot be understood in restricted sense so as to include only civil court. See : **Prabhakara Panicker M.B. & Another Vs. State of Kerala & Another, 2010 CRLJ 4117 (Kerala).**

**21. Original Supreme Court decision dated 13.09.2012 in Namit Sharma Vs. Union of India, (2013) 1 SCC 745 reviewed and disagreed by the Supreme Court vide its review decision dated 03.09.2013 as reported in Union of India Vs. Namit Sharma, (2013) 10 SCC 359 :** The Hon'ble Supreme Court vide its decision dated 03.09.2013 as reported in **Union of India Vs. Namit Sharma, (2013) 10 SCC 359** has reviewed its original decision dated 13.09.2012 delivered in **Namit Sharma Vs. Union of India, (2013) 1 SCC 745**. In para 39 of the review decision dated 03.09.2013, the Hon'ble Supreme Court has issued following directions :

*"39.1. We declare that Sections 12(5) and 15(5) of the Act are not ultra vires the Constitution.*

*39.2. We declare that Sections 12(6) and 15(6) of the Act do not debar a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession from being considered for appointment as Chief Information Commissioner or Information Commissioner, but after such person is appointed as Chief Information Commissioner or Information Commissioner, he has to discontinue as Member of Parliament or Member of the Legislature of any State or Union Territory, or discontinue to hold any*

*other office of profit or remain connected with any political party or carry on any business or pursue any profession during the period he functions as Chief Information Commissioner or Information Commissioner.*

- 39.3. *We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Sections 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner.*
- 39.4. *We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Sections 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners.*
- 39.5. *We further direct that the Committees under Sections 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made.*
- 39.6. *We also direct that wherever Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming up before the Information Commission, he will ensure that the matter is heard by an Information Commissioner who has wide knowledge and experience in the field of law."*

22. **Allahabad High Court (Right to Information) Rules, 2006 : Rule 26** of the Allahabad High Court (Right to Information) Rules, 2006 provides that the CPIO in the District Courts and in the High Court



will not entertain any application from any person for providing any information relating to any case pending for adjudication before the High Court or the subordinate judiciary.

**Note:** Under the Provisions of **Rule 24** of the Allahabad High Court (Right to Information) Rules, 2006, the **Registrar General**, in the matters of High Court and the **District Judge** of the District, in the matters of the District Judiciary, **have been notified as Appellate authorities** against the decisions made by the CPIOs.

23. **Civil servants not to act on oral instructions, orders and suggestions of their superiors** : Civil servants should not to act on oral instructions, orders and suggestions of their superiors if the civil servants is acting on oral directions or dictation of anybody, he will be taking a risk because he cannot later take up the stand that the decision was in fact not his own. This also defeats the purpose of RTI Act, 2005. Civil servant should record the oral instructions/orders in file if they had acted on such oral direction of the political executive etc. See : **T.S.R. Subramanian Vs. Union of India, AIR 2014 SC 263.**
24. **Ministry of External Affairs, Govt. of India, deprecated for dissemination of wrong information on its website** : The Supreme Court, while interpreting Section 4 of the RTI Act, 2005, has deprecated the Ministry of External Affairs, Govt. of India, for misleading information supplied on its website (in relation to extradition of treaties of fugitive criminals) Govt. should be more careful in information that is disseminated to world at large when communication and communication technology are so important these days. See : **Marie Emmanuelle, Verhoeven VS. Union of India, (2016) 6 SCC 456.**

- 25. In-house enquiry report of the Supreme Court not liable to public disclosure:** In the case of in-house enquiry conducted by a three-Judge committee of the Supreme Court on the complaint made by a dismissed employee of the Supreme Court against the sitting Chief Justice of India Justice Ranjan Gogoi, the Registrar General of the Supreme Court while issuing his press note dated 06.05.2019 has clarified that the report of a committee constituted as a part of the in-house procedure of the Supreme Court is not liable to be made public. The Registrar General has, in support of his said opinion, referred to the earlier Supreme Court judgment reported in the case of *Indira Jaising Vs. Supreme Court of India & Another*, (2003) 5 SCC 494.

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