
EXISTENCE AND MISUSE OF SECTION 8 OF THE RTI ACT: A CRITICAL ANALYSIS

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ABSTRACT

There have been several instances when requests have been deemed to have been wrongly denied under s. 8(1) in the RTI Act's appellate process (a). This article has examined a number of similar instances that have been decided in the past and found a trend. According to research, there are six general categories in which erroneous refusals under RTI Act, s. 8(1)(a), may occur: (i) the sought information is mostly already in the public domain; (ii) the department simply classifies the requested document as "secret," "confidential," or similar; (iii) the department fears accountability demands as a result of disclosure; (iv) failing to demonstrate a strong link between disclosure and the ensuing harm to the parties' protected interests; (v) failing to record substantial reasons for the refusal, as well as (vi) the failure to separate the request's severable portions that are not exempt from disclosure. While by no means comprehensive, this list highlights certain specific situations where it can be said, reasonably, that a rejection under s. 8(1)(a) is not appropriate. This information is hoped to help stakeholders use and put the RTI Act into practice more effectively.

Introduction

The Right to Information Act works to ensure that citizens have the right to information about their government and how it operates when making decisions. The right can, however, be properly circumscribed for a number of reasons and is not absolute. The judiciary is likewise using a case-by-case approach to apply the Right to Information law¹. The Right to Information Act of 2005's exemptions from disclosure are the subject of this article.²

There are limitations to the Right to Information Act. It is acknowledged that not all government data is accessible to the general public³. If the government and the public could agree on one thing, it would be that certain confidential information is so sensitive that its revelation would jeopardise the public's safety or interests and would be illegal given the circumstances at the time the information was requested.⁴

Almost all laws relating to the right to information have clauses setting limits on what information can be made public. These are sometimes known as "exclusion clauses" or "exemption provisions." Although exclusions have the potential to benefit the public, examples have shown that authorities most frequently take advantage of these rules to conceal information about them from the general public. This must change. This clause was not added to this important piece of law with the intention of preventing the government from withholding information out of embarrassment or out of concern that the public would hold them accountable for their conduct.⁵

A radical paradigm of transparency in the way the State is run has been introduced by the Right to Information Act of 2005, or the RTI Act for short. The RTI Act's lofty goals are spelled forth in clear terms in the Statement of Objects and Reasons. For citizens to secure access to information under the control of public authorities, it outlines a "practical regime of right to information." It is a statute that enables the one legal right to information that every citizen has, while balancing that right against competing interests.

¹ Right to Information Act 2005, Statement of Objects and Reasons.

² Ibid.

³ Ibid s 2(j).

⁴ See Ibid ss 18, 19.

⁵ Ibid s 8(i).

The RTI Act's guiding principles

Every citizen has a right to information, subject to the RTI Act's restrictions. The broad principle that a citizen has access to any information stored by or under the control of a public entity is how this third right presents itself in practise. A thorough, perhaps even⁶ complete definition of "information" can be found in Section 2(f) of the RTI Act.⁷

A citizen must submit a request for information to the Central or State Public Information Officer in order to access information under the RTI Act. Only one of the six specific exemptions listed in the Act may be used to reject such a request. RTI Act, Section 8(1), lists one such exemption (a). For any applicant so offended by such a refusal, the RTI Act lays out a two-stage appeals process that concludes before the Central, or State, Information Commission. In unusual situations, appeals may proceed to the HC or SC through the Writ Petition procedure.

The Central or State Public Information Officer is required to inform the applicant of the grounds for any refusal of a request made in accordance with the Act. The onus is on the Central or State Public Information Officer in question to provide a defence for such a denial in any appeal process under the RTI Act.⁸

The RTI Act of 2005's Section 8(2)

According to this Section, an official must provide requested information even if an exemption clause or the Official Secrets Act apply if the public interest justifies it and outweighs any potential risks.

The RTI Act purposefully omits defining public interest. Because of this, government agencies including public information officers, appellate authorities, and information commissioners must make decisions based on each case's merits individually. It's crucial to keep in mind that what can be seen as being withheld in the public interest will alter over time and depend on the specifics of each case.

⁶ Ibid s 8.

⁷ Ibid s 3.

⁸ Ibid s 19(5).

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

- Is there any basis for worry or use of the exemption provision?
- Will there be significant harm as a result?
- Is the public interest greater than the harm?

Misuse of the RTI Act

The government has been made aware of reports regarding instances of frivolous and pointless usage of the Right to Information Act, 2005. Public authorities are receiving numerous requests for information and appeals as a result of the Right to Information Act's implementation. The workload of the officers who have been assigned the roles of Public Information Officer, Appellate Authority, and Other officers has increased as a result of dealing with RTI petitions and appeals. Within the confines of the available human resources, the work is managed. To decrease the amount of applications requesting information, offices are encouraged to make as much information available to the public as they can.

Exemption under Section 8(1)(a)

Information that "publication would adversely impact the sovereignty and integrity of India, the security, strategic, scientific, or economic interests of the State, relationship with foreign State, or lead to the incitement of an offence" is subject to withholding by public authorities.⁹

As a result, this exemption actually comprises of four distinct, albeit interconnected, grounds for refusing to disclose the material in question:

- Whenever such revelation would negatively impact India's sovereignty and integrity.
- When such disclosure would be detrimental to the State's economic, scientific, or

⁹ Ibid s 8(1)(a).

strategic interests.

- When the dissemination of such information might harm relations with a foreign State.
- When such revelation would encourage criminal activity.

All of these justifications, however, may be disregarded if the "public interest in disclosure [of the relevant material] surpasses the harm to the protected interests." In this situation, the desired¹⁰ information must be given.

Information requested under the RTI Act has frequently been denied using this exemption as justification. During the appeals process of numerous similar cases, instances where public agencies have improperly hid behind this exception to withhold information have come to light: these instances are not covered by this exception.

Landmark Judgments

Central Board of Secondary Education v. Aditya Bandopadhyay

One party having faith in the other with regard to his affairs, business, and/or transactions is referred to as having a fiduciary relationship. An exam-giving organisation is not permitted to have a fiduciary duty to the test-takers. As a result, there was no exception allowed by the Section, and the student had to receive answer books.

Girish Ramchandra Deshpande v. Central Information Commission & Ors

It was decided that the petitioner's request for all information fell within the purview of the Section. The actions and output of an employee within an organisation are private between that individual and his employer and fall within the notion of "personal information." The public interest is not served by its disclosure, and such employees' privacy is harmed.

R. Rajagopal & Anr. v. State of Tamil Nadu

The respondents asserted the prisoner's right to privacy, but it was agreed that material already in the government would fall within the standard definition of a public record. In these

¹⁰ Ibid s 8(2).

situations, the Right to Privacy can only very seldom be invoked. Given that it does not safeguard information that is in the public interest, it was agreed that this would be equivalent to Section 8(1)(j). It also warns that certain information shouldn't be shared because it might violate someone's privacy. The ruling did add that a public official's right to privacy cannot be violated while doing their official obligations.

Union of India v. Association for Democratic Reforms

Following a Supreme Court appeal, the Union of India directed the Election Commission to draught the appropriate regulations requiring all candidates to provide details regarding the following parts of their backgrounds:

- Charges and convictions for crimes
- Active cases in which the candidate is a defendant
- Every asset, including her spouse's,
- All obligations
- Educational background

The Court further emphasised that no one should be denied access to information that would not be withheld from the State Legislature or the Parliament, citing Section 8(1)(j).

R.K. Jain v. Union of India

The Court decided that records of charges, fines, or sanctions against employees were necessarily matters between the employee and his employer, and that disclosing them would jeopardise an individual's right to privacy rather than serve any public interest. The Court also affirmed the fact that the petitioner cannot assert a right to those specifics if the Material Officer or the appellate authority believes that the public interest justifies the revelation of such information.

Pinki Ganirewal v. Union Public Service Commission

The Commission made a mistake by instructing the Service Commission to withhold the

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

Central Public Information Officer, Supreme Court of India vs. Subhash Chandra Agarwal, 2020

Three appeals were filed in this case as a result of three separate applications submitted to the Supreme Court's Central Public Information Officer (CPIO) by the respondent, Subhash Chandra Agarwal. By ordering the Central Public Information Officer, Supreme Court to provide information regarding collegium decision-making, personal assets of judges, and correspondence with CJI, the Apex Court dismissed the appeal and upheld the Delhi High Court's ruling. Concerning the widespread disclosure of the aforementioned information, no general decision was made.

Yashwant Sinha v. CBI (2019)

A case in point on this legal issue is the Supreme Court's most recent ruling in which was a component of the Rafale Deal proceedings before the SC. The complainant filed a petition for review, asking the SC to reconsider its decision from 2018 in the same case, in which it had declined to order a court-monitored investigation into this deal. The petitioner had, among other things, cited three documents that were "unauthorizedly removed" from the Ministry of Defence's possession and appeared in *The Hindu* and *The Wire* in support of his request for a review. The admission of these papers was contested by the respondents. The respondents' legal counsel claimed that these records are inadmissible because, among other things, they are even prohibited from disclosure under Section 8(1) of the RTI Act (a). The SC's ruling on the admissibility of the contested papers has no bearing on the current discussion. What matters is the court's response to the claim that the relevant records are exempt from publication under Section 8(1) of the RTI Act (a). *The SC stated: "The respondents have not really refuted or opposed the fact that the three documents had been published in The Hindu and were hence available in the public domain."*

UPSC v. Angesh Kumar, AIR 2018

A request for the Union Public Service Commission (UPSC) to divulge the specifics of the marks (raw and scaled) given to them in the Civil Service (Preliminary) Examination, 2010, was made by a few unsuccessful candidates in the Civil Services (Preliminary) Examination, 2010. Additionally, information on the complete results of all applicants, scaling methods, model responses, and cut-off scores for each topic was required. The Court interpreted the inherent restriction in Sections 3 and 6 as applying to the disclosure of information that is likely to conflict with other public interests, such as the effective functioning of the Governments, the best use of the available financial resources, and the preservation of the confidentiality of sensitive information. As a result, UPSC was instructed to release both the raw scores and sample responses to the test's questions. In *Prashant Ramesh Chakkarwar v. UPSC*, 2013, the Supreme Court discussed the issues with showing assessed answer sheets in the UPSC Civil Services Examination.

N N Dhumane v. PIO, Department of Post, 2018

The CIC's order in this instance is noteworthy because it criticises the Department of Posts' decision to refuse to pay pensions to those who lacked Aadhaar cards. Another significant finding made by the CIC in the case was that, according to the RTI Act, requests relating to the payment of pension must be resolved by the public information officers within 48 hours. According to Section 8 (1) (j) of the RTI Act 2005, information relating to personal information whose disclosure has no connection to any public activity or would result in an unwarranted invasion of privacy is already provided under the RTI Act 2005 of a person's right to privacy. The SSP for Ahmednagar has resorted to Section 8(1)(j) of the RTI Act to avoid providing the identities of 55 pensioners. The 55 pensioners' names being disclosed does not constitute a right to privacy. It is a known truth that doing so would violate the RTI Act of 2005 and would identify 55 pensioners. The Court ruled that recipients of government social programmes cannot be required to show their Aadhaar card. This Court further explained that such a compulsion was prohibited since it violated the fundamental rights of the population. Pension payments cannot be withheld due to Aadhaar card absence.

Union of India v. Chief Information Commissioner, 2017

The order of the CIC declaring "the Ministers in the Union Government and all State

Governments as 'public authorities' under section 2(h) of RTI Act, 2005" has been contested by the petitioner in the case. The Delhi High Court overturned the CIC order because it believed that the CIC had exceeded its authority by issuing the case-specific instructions. Furthermore, the question need not even be asked in the first place.

Dominic Simon v. CPIO (2018)

The head of the management committee for the network of CBSE-affiliated schools in Saudi Arabia called the International Indian Schools. He was compelled to leave his position as a result of specific accusations made against him by unidentified parties. According to the appellant, the Indian Embassy in Saudi Arabia was in charge of managing and operating the aforementioned schools. In order to obtain a copy of any complaint made against him and the supporting documentation, he had sent a request to the Embassy. Among other things, the respondent rejected the information in accordance with section 8(1) of the RTI Act. The CIC upheld the respondent's choice, concluding:

"The petitioner's request for information was exempt under Section 8(1)(a) of the Act since the publication of official contacts with the Saudi Government would harm the cordial relations with the foreign nation."

As a result, the Delhi High Court ordered the respondent to give the appellant access to the relevant material. In this instance, the respondent had implicitly—and incorrectly—assumed that all that was required to establish a link between disclosure and subsequent harm to friendly relations with a foreign State—in this case, Saudi Arabia—was to show that the requested information includes diplomatic communications with that country.

Chanderveer Singh Rajvee v. Survey of India (2018)

The respondent, Survey of India, was contacted by the appellant, who asked for a copy of a topographical sheet for a specific location from a specific year that had been surveyed. He went on to say that this appellant, who is a member of the Army Club, is involved in a boundary dispute with the cantonment that needs to be resolved. The respondent asserted before the CIC that the topography sheet in question contains details regarding key locations and installations used by the Indian Army, and that its disclosure would harm national security. The appellant argued that he only wants a copy of the portion of the map that shows the contested common

boundary between the Cantonment and the Club. responded to him with other map sections that included important state secrets for maintaining national security. Both of these entries were worthy in the CIC's eyes. It agreed that the complete map does not need to be revealed since doing so would jeopardise national security, as claimed by the appellant, and is therefore exempt under Section 8(1) of the RTI Act (a). It was also mentioned that, in accordance with RTI Act, Section 10, the respondent is required to separate the remaining portions of the map from the portions that cannot be disclosed and provide them to the appellant if they do not contain information whose disclosure would jeopardise national security. So, among other things, the CIC instructed the respondent to do.

Scope of the Study

The study only covers India. However, an effort has been made to learn more about the status of the right to information in other nations. Public authorities and significant government institutions have been taken into consideration for the study.

Research Objectives

Analytical and empirical research form the foundation of the current research project. In light of the Right to Information Act of 2005, the study was undertaken to comprehend the historical context of the citizens' right to know and its implementations in the current. The Reports of the Central Information Commission and State Information Commissions have been the subject of analytical investigations. A thorough investigation has been conducted using laws, websites, journals, newspapers, and books. Data for the empirical investigation were gathered using well-crafted questionnaires and interviews.

Research Questions

The following research, which have been tested over the period, make up the suggested research effort.

- All other rights must be exercised in order to enjoy the right to information.
- The primary issues with the recent law RTI Act, 2005 regarding proactive disclosure of information are the lack of infrastructure in the government machinery and the mindset of public officials.

- The RTI Act of 2005 is more effective in India at preventing the abuse of administrative discretion.

Research Design

A pattern emerges from an analysis of several instances that the SC, HCs, and CIC have resolved on this legal issue. It is clear that this pattern does not encompass the complete range of instances in which information has been unfairly refused or may be in the future, as defined under section 8(1) of the RTI Act (a). However, because of a little more than a decade's worth of RTI legal precedent, we can now identify, with some degree of certainty, certain situations in which withholding information in violation of the RTI Act's § 8(1)(a) is illegal in the eyes of the law. This essay examines such occurrences.

Conclusion

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

In the incidents examined in this essay, the RTI Act's section 8(1)(a) was used to deny the information requested, and the decision was later overturned on appeal. As previously said, an analysis of these cases has identified a pattern of circumstances where a refusal to provide the requested information in accordance with s. 8(1)(a) is improper under the law. To summarise, refusals made in accordance with the RTI Act's s. 8(1)(a) are improper in the following circumstances:

- The information sought is largely available online.
- Expectation of accountability requests as a result of the sought information's dissemination.

- The public authority in question's internal designation of a document as "top secret," "secret," "confidential," etc.
- Failing to show that the disclosure of the sought information would impair the protected interests listed in section 8(1). (a).
- Failing to provide sufficient explanations for why publication of the requested information is exempt under s. 8(1) (a).
- Refusing to provide all of the sought information when only a portion of it, which is reasonably severable from the other portion, is exempt from disclosure under section 8(1) (a).

This clearly illustrates how public authorities have unjustly resorted to hiding behind RTI Act, § 8(1)(a), to deny requests for information under the RTI Act. This pattern, however, is not just interesting to academics. It affects how the RTI Act is put into practise practically.

The Delhi High Court stated the following in *Registrar of Companies v. Dharmendra Kumar Garg (2012)*:¹¹

*"The Central Information Commission although acting under the provisions of the RTI Act, no doubt, do [sic] not constitute a Court. However, there is no denying that the Central Information Commission serves as a quasi-judicial body since it decides the parties' inter se rights and obligations in connection to the disclosure of information, which could result in civil and other repercussions for the parties."*¹²

Therefore, there is no question that the CIC exercises judicial tasks while carrying out its duties. Furthermore, the Delhi High Court noted a fundamental principle in *Dharmendra Kumar Garg*:

A bench dealing with an issue is bound by the judgement of a larger bench, and it is a well-established canon of judicial discipline that it respects any prior ruling made by a coordinate

¹¹ Registrar of Companies v. Dharmendra Kumar Garg, Writ Petition (Civil) No. 11271/2009 (Del, 2012).

¹² Ibid para 50

*bench (i.e., a bench of the same strength).*¹³

A Single Bench hears the vast majority of appeals filed with the CIC. As a result, even during appeal proceedings before the CIC, the CIC's conclusions must always be uniform throughout all domains. It is obvious that the CIC cannot hold opposing positions on related issues.

¹³ Ibid para 54

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