

JUDGING THE RIGHT TO INFORMATION: ANALYSIS OF SOME LANDMARK JUDGMENTS OF CENTRAL INFORMATION COMMISSION IN INDIA

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ABSTRACT

There is a global shift towards addressing the issue of the right to information by States, intergovernmental organizations, people and society as a whole. In India the law regarding Right to Information came into force on October 12, 2005, after many constant efforts over the years which opened the doors of governance process to the public in the form of Right to Information Act, 2005. The Act is based on the principle that all government information is the property of people. It takes democracy to the grass root level and is also a step towards ensuring participatory governance in the country. Since its inception, the Central Information Commission has given some landmark rulings on the right to information which finally opened the cudgels of secrecy of the public bodies. As a fearless watchdog, the CIC has vigorously upheld the values of a participatory democracy and fertilized many provisions of the RTI Act, 2005 with meaning and content. This paper seeks to deal with the impact of the Right to Information Act, 2005 on the governance of India since its enactment. This paper discusses some of the landmark cases that were decided by the Commission from its inception till date, which authoritatively interpreted the important provisions of the Act. The analysis has been done of the judgements/directions delivered by the Commission since Jan 2006 till March 2018, which has come up through appeals and complaints filed by the appellants or complainants. This analysis is in the form of summary and substance of those landmark orders which have further strengthen the provisions of the RTI Act, 2005.

KEYWORDS: *Right to Information, Transparency, Accountability, Centre Information Commission*

A. INTRODUCTION

To put people's will into action and be answerable to people for the same, the democratic government has two main pillars i.e. transparency and accountability.¹ Right to access information from the public authorities should be available to every citizen as it is in public interest and moreover information means capturing the government activities and processes and it is crucial to the good governance also. To ensure participation of people in all matters related to governance and to promote openness, transparency, and accountability, the governments provide information to its citizens. In India, the RTI Act, 2005 serves as an instrument in improving the quality of governance and in strengthening the basic tenets of democracy through greater transparency and accountability. It has been enacted for promoting judicious use of resources and improving the delivery mechanisms. It is a step in the direction to enhance citizen's participation by

empowering them to have access to information keeping in view the targeted beneficiaries.²

In India, the RTI Act came into force on October 12, 2005, which is one of the best information legislation in the world. The Act leads to the greater transparency in governance because it is based on a principle of 'government information as people's property'. It gives the strength to the citizens by ensuring the participatory governance and timely response to their queries on government functioning. With the help of this Act, the democracy reaches the grass root level. 'Right to Information' covers under its ambit such information which captures governmental activities and processes under the control of public authorities. So, in order to take part in the affairs of democracy, it is the right of every citizen to know what is happening in their society and to access information which is considered as the oxygen of democracy. In the democracy of India, the enactment of the RTI Act, 2005 and its implementation has promoted openness, transparency, and accountability in administration. It emphasizes on the active participation of people in the democratic governance by focusing on the value and power of information. It secures the access to information under the control of public authorities. The act prescribes the designation of PIOs and APIOs in all public authorities. These officers are under a duty to disclose certain information on request to a citizen within a stipulated time period and if applicant feels aggrieved by such decision, the appeal shall lie to the senior officer who acts as the Appellate Authority. Under this Act, the CIC and SICs have been constituted whose decisions till date have been uploaded on the CIC Website (www.cic.gov.in). These Commissions not only inquire into the complaints or hear second appeals but also provide the guidelines to PIOs, first appellate authorities and other public authorities for the better implementation of the Act.

B. SOME LANDMARK JUDGMENTS ON RIGHT TO INFORMATION

Since its inception, the Centre Information Commission has given some landmark rulings on the right to information which finally opened the cudgels of secrecy of the public bodies. The demand for information under the Right to Information Act has grown significantly year after year in the last thirteen years. Due to the failure of the majority of Public Authorities (PAs) to submit their RTI data for 2014-2015 to CIC, the number of RTIs filed with the PAs during 2015-2016 has not shown the increasing trend. However, the online requests for RTI have increased in 2016-2017 in comparison to 2014 from 87,830 to 2, 68,920.

The number of RTI applications rejected by Public Authorities during 2010-2011 is recorded at 5.10 per cent of total applications processed which increased further during 2014-2015 and recorded at 8.39 per cent. But during 2015-2016, the rejection of applications has shown the downward trend with 6.62 per cent which is 1.77 per cent less than the data of 2014-2015. It has been found that most the RTI applications are rejected (i.e. 43 per cent) for the reason 'others' and this practice is frequently adopted by Prime Minister's Office which is also a Public Authority. Whereas the rest of the rejection is on the ground of Sec-8 (47 Percent), under Sec-9 (1 per cent) and under Sec-24 (7per cent). The number of cases registered with CIC during 2015-16 was 25,960, which during the same period disposed of 28,188 complaints and appeals and still there was pendency of 34,982 cases (including second appeals and complaints) till 01 April 2016.³ Ever since RTI became a law, quite a few cases discussed below are setting the precedent of sorts:-

(a). State is Duty Bound to Provide Easy Access to Up-To-Date Legal Information to its Citizens

In a complaint filed by a law student of NLU, Bangalore, CIC made it clear that citizens have a right to know and to be informed about the law and when it was made. This observation was made by the Chief Information Commissioner Prof. M. Shridhar Acharyulu in *Vansh Sharad Gupta v. PIO Legislative Department*⁴ wherein for causing the loss of time of students the compensation of Rs. 10,000/- was also ordered to be paid to the library of NLU, Bangalore.

(b). Disclose Union Cabinet Note on NJAC

The Department of Justice in *S.N. Shukla v. Department of Justice*⁵, refused to give reasons on the ground of exemption U/S-8(I)(i) of RTI Act, by referring to it as a cabinet secret. But CIC directed the Department to disclose the details for establishing the NJAC and the Union Cabinet note relating to it.

(c). National Political Parties are Public Authorities under the RTI Act

Another step towards the transparency and accountability has been witnessed when CIC came up with its landmark judgement on a complaint filed by activists Subhash Chandra Aggarwal and Anil Bairwal of the Association of Democratic Reforms who asked the six political parties to give the list of donors and addresses who have financially contributed to these parties. But the political parties except one did not give the details for the reason that they do not come within the purview of RTI Act.

In this case of *Subhash Chand Aggarwal and another v. INC, BJP and others*,⁶ the full bench, comprising of Chief Information Commissioner Satyananda Mishra and Information Commissioners M.L. Sharma and Annapurna Dixit argued and held that, "It would be odd to argue that transparency is good for all State organs but not so good for political parties, which, in reality, control all the vital organs of the State. The critical role being played by these political parties in our democratic set-up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of Sec 2(h). The Constitutional and legal provisions discussed herein also point towards their character as public authorities." By ruling that political parties are the Public Authorities and so come within the ambit of RTI Act, CIC directed the Presidents and General Secretaries of the said parties to appoint within six weeks CPIOs and the Appellate Authorities. The CIC further ruled that "We have no hesitation in concluding that INC/AICC, BJP, CPI (M), CPI, NCP, and BSP have been substantially financed by the Central Government and therefore, they are held to be public authorities under Sec 2(h) of the RTI Act."

(d). Details of Income Tax Returns cannot be Disclosed through RTI Act

In *D. Nagendra Prasad v. CPIO & ITO*⁷, the appellant sought the details of Income Tax on Capital Gain through RTI application which was refused by the Income Tax authorities U/S-8(i)(o) of the RTI Act. This order was further confirmed by the first appellate authority which relied upon the decision of Apex Court in *Girish Ramchandra Deshpande v. CIC & others*, wherein the court held that the disclosure would invade the right to privacy of the concerned assessee. When the matter came before the CIC, after analyzing the decision of lower authorities, the Central Information

Commissioner, Bimal Jhulka noted that the details of Income Tax Returns cannot be provided as it would infringe the right to privacy of a person and thus upheld the orders of the lower authorities. CIC also held that no larger public interest was involved and the applicants could not justify the CIC by which his request could have succeeded.

(e). All Universities/Deemed Universities/ Examining Bodies to Provide Copies of Answer Sheets at Rs.2 Per Page

In another case of *Abne Ingti v. CPIO, Delhi University, New Delhi*,⁸ the CIC directed UGC, Association Indian Universities and the Ministry of HRD to circulate and publicize to all academic and examining bodies, the order to provide copies of answer sheet only at a cost of Rs. 2 per page. It further made it mandatory to implement the said order and to bring uniformity in the rules and regulation by making necessary changes to their respective notifications within the time limit of 30 days.

(f). Supreme Court to Disclose Communication between CJI and the Law Ministry on the Proposed Changes in Appointment Procedure for Judges

On 30th December 2011, in *Mr. Subhash Chandra Agrawal vs Supreme Court Of India*⁹ the Central Information Commission has held that the procedure for appointment of judges and any proposal for its modification should be in public domain. The CIC directed the Supreme Court to disclose communication exchange between the Chief Justice of India and the Law Ministry on the question of proposed changes in appointment procedure for judges.

If the State and its instrumentalities including the major stakeholders decide on the issue of procedure of appointment of judges or to modify such procedure, then such information should be made available to the citizens as they have a right to know what is transpiring among them. It is also the objective of the RTI Act to help the citizens to know about the vital matters like the appointment of judges to the High Courts and Supreme Court of India.

The activist Subhash Agarwal sought the disclosure of communication exchange between the law minister and the then Chief justice of India K.G. Balakrishnan on the issue of judge's appointment. Accepting the request of the applicant, the CIC held that there a difference between the process of appointment of a judge and the procedure of appointment. Supreme Court's arguments for non-disclosure of information due to stay was rejected by the CIC.

(g). Right of the Citizens to know the Pendency of Cases in Supreme Court

The CIC in, *Mr. Commadore Lokesh K. Batra Retd., v. Supreme Court of India*¹⁰, directed the Supreme Court to disclose all the details of those cases in which the judges have kept the orders reserved so that citizens know about the "status of pendency". Overruling the stand of the apex court that it does not maintain such data, Chief Information Commissioner **Satyananda Mishra** directed it to "start the practice now" and make arrangements in future for compiling and disclosing such records in public domain. The case relates to the plea of Commodore (Retd) Lokesh K Batra who sought to know from the Supreme Court the details of instances where arguments have been heard but the orders reserved by the judges. During the hearing, on behalf of the Appellant, it was submitted that

the website of the Supreme Court did not contain such information.

The Supreme Court said in its reply that it does not maintain the information in the form sought by Batra. The apex court counsel argued before the CIC that orders are "ordinarily" passed within two-four weeks of reserving the decisions but no data were being maintained about those rare cases where orders have been reserved for a longer period. He said that to compile such cases, each individual case file would have to be scrutinized, which is a nearly impossible task given the volume of cases pending in the Supreme Court. Rejecting the arguments, **Mishra** said with the availability of the computerization of data, it is not particularly difficult to make public aware of the total number of cases where orders are reserved. While making it mandatory to furnish the added information within 15 days of receiving the order the Central Information Commissioner advised the Supreme Court that it should start maintaining the data, so that citizens can learn about the number of pending cases.

(h). Supreme Court Judges Fall Under RTI Ambit

In another path-breaking judgment, the Delhi High¹¹ court held that the office of the Chief Justice of India came within the ambit of the RTI Act and rejected the Supreme Court's appeal by saying judicial independence is not a judge's personal privilege but a responsibility cast upon him. Dismissing the plea that Chief Justice of India's Office is not covered under the RTI Act, the full bench of Delhi High Court held that the judges of the Supreme Court are accountable to the public and to maintain the transparency they should make public their assets. Chief Justice of Delhi High Court firmly said that it would not encroach the judicial independence and moreover, when according to service rules of judicial officers of lower courts, who are under a duty to disclose the assets, then why not the judges of the Supreme Court, who are accountable to the public in the same manner.

This verdict came on an appeal filed by the apex court which challenged the orders of a single judge of the Delhi High Court on September 2, 2009, holding that the CJI is a public authority and his office came within the purview of the RTI Act. Turning down the plea of the Supreme Court judges on this issue, the High court made it clear that the Supreme Court judges being at the top in the judicial hierarchy, so their accountability is more in comparison to the subordinate judicial officers in the matter of the declaration of assets.

RTI activist S.C. Aggarwal's question about the disclosure of assets of the judges sparked off a controversy raising the questions of constitutionality pertaining to transparency, independence and accountability of judiciary, and about the significance of Right to Information Act vis-a-vis the apex judiciary. On 10th Nov., 2007 Subhash Chander Aggarwal requested the CPIO of Supreme Court of India to provide him a copy of the resolution dated 7th May 1997 passed by all the judges of the Supreme Court which required every judge to make a declaration of assets in form of real estate or investments held in their names or in the name of their spouses and any person dependent on them to the Chief Justice. He also requested the CPIO to provide him information on any such declaration of assets etc. ever filed by the judges of the Supreme Court. The Application also covered a request for information concerning any declarations filed by the High Court judges about their assets to the respective chief justice in the various High Courts. While the CPIO provided a copy of the resolution dated 7th May 1997. He declined to provide the remaining part of the information concerning the declaration of assets by the judges of the Supreme Court and High Courts on the ground that the said information is not

held by or under the control of the Registry of the Supreme Court of India. On 8th Dec 2007 first appeal was filed at the SC's registry against the denial of information which was rejected by the registry on 12th Jan 2008. On 5th March 2008 Aggarwal approached CIC against the grievance. On 6th Jan 2009, the CIC asked the Supreme Court to disclose information on judge's assets on the ground that CJI's office comes within the ambit of RTI Act. Against the order of CIC, Supreme Court moved to Delhi High Court on 17th Jan 2009.

The renowned legal expert in the field of constitutional law, **F.S. Nariman** was asked by the Delhi High Court to assist in the said case, as in the meanwhile the High Court stayed the orders of CIC on 19th Jan 2009. He opined that judges must disclose their assets, but he refused to assist for not being impartial on this legal issue. On 1st May 2009 Delhi High Court Bar Association moved impleadment application in High Court saying that judges should voluntarily declare assets. Opposing this on May 4, 2009, Supreme Court said too much transparency can affect the independence of the judiciary. On Sep 2, 2009, Single Bench of Delhi High Court upholds CIC's order saying that CJI's office comes within the ambit of RTI Act and judges assets be made public under the transparency law. Against the verdict of Single Bench, Apex Court approached the division bench of Delhi High Court on Oct 5, 2009. On Oct 7, 2009, High Court admitted the appeal and constituted a special three-judge bench to decide the issue. Finally, in its landmark verdict on Jan 12, 2010, High Court observed that the office of CJI comes within the ambit of the RTI Act.

(i). File Notings Were Not Exempt From Disclosure

In the case of *Satyapal v. CPIO, TCIL*¹², the Commission held that in terms of the definition given under S.2 (i) of the Right to Information Act, 2005 a record includes a file, and in terms of Section 2 (j), the right to information includes access to a record therefore, an applicant under right to information has the right to access a file, and file notings are an integral part of any file which cannot be exempt from disclosure. In another case of *Pyare Lal Verma v. Ministry of Railways*¹³, the CIC again held that file notings are not exempt from disclosure.

Even after these orders, the website of the Department of Personnel and Training (DOPT) claims that file notings are exempt from disclosure. Despite the repeated directions issued to the DOPT, which is the nodal department of RTI, it refused to correct the claim that file notings could not be disclosed under RTI as being not the information under the Act and this claim was uploaded on its website. This infuriated the CIC which issued the show cause notice to the two officers of DOPT and also made them aware of dire consequences which could put them in prison for up to a year if prosecuted.

On the appeal of RTI activist Subhash Chandra Aggarwal, the CIC showed its annoyance and said that despite its earlier ruling on the issue of disclosure of file notings as not exempted under the Act, the DOPT officers have not maintained the website in spite of repeated directions for this.¹⁴ This ruling of CIC regarding file notings has been accepted not only by other public authorities but also by the Supreme Court and law ministry. CIC held that the DOPT Official's liability can arise U/S-166, 187, and 188 of Indian Penal Code.

Finally, on 23rd June 2009 DOPT made it clear on its website through circular No. -1/20/2009-IR that file notings can be disclosed except file notings containing information exempt from disclosure under Section 8 of the RTI Act, 2005.

(j). Information Regarding Question-Wise Marks in C.B.S.E

Overturing its earlier decision of a confidential examination system, a recent ruling of the CIC¹⁵ will not allow students to know about the procedure of examinations conducted across the country. Students will now be able to know their question-wise marks secured in examinations, under the RTI Act. The much awaited decision was taken on December 22, 2008, after a petition was filed by Ajeet Kumar Pathak, a class XII Student from Bihar, who sought the question-wise marks secured in his chemistry paper. The CIC has directed authorities from all education boards across the country to follow the guidelines. Earlier in March 2006, Treasha Irish from Kerala also filed the same petition but her petition was rejected stating that the petition was 'personal' in nature.

(k). Disclosure of Marks Secured in Competitive Examinations

In *Neeraj Kumar Singhal v. North West Railway, Jaipur*¹⁶, the CIC held that in case of competitive examinations, the marks secured by the candidates are not to be kept secret, and should be furnished to the candidates.

Similarly in another case¹⁷, in which the applicants applied to the UPSC for the following information:-

- Separate cut-off marks for General Studies and for every optional subject for different categories such as General, OBC, SC/ST and PH.
- Details of marks obtained by each candidate.
- Model Answers for each series of every subject.

After hearing the arguments of both sides, the CIC decided that UPSC's denial of information to the applicants based on the reasoning that, "this process has been designed by the UPSC after years of expertise and consultation with the subject experts and, therefore, this is a subject matter of intellectual property, which the UPSC is not in a position to disclose" was wrong. This is a landmark decision and was resisted by the UPSC. But the Delhi High Court on 17th April 2007 upheld the CIC directive asking UPSC to disclose individual candidate's cut-off marks of civil service preliminary examination, 2006.

(l). Access to Employee's Assessment Record/ACR

Under the RTI Act, a new issue has arisen, whether an employee can see his work records or not? On this the CIC has ruled that Government Employees has a right to know how they were assessed, the CIC has given Anand Akhil access to all assessment records. He is a scientist with Lucknow based Council for Scientific and Industrial Research. The CIC, after an appeal from the scientist, directed the CSIR to allow his inspection of records related to his assessment, information on marks awarded by each committee member without disclosing their names and also the threshold marks fixed by the Board for promotion. With this decision, it is clear that public authorities cannot deny information related to assessment and can provide information on marks awarded to a candidate by the committee which decided promotion.¹⁸

In *P.K. Sarin v. Directorate General of Works, CPWD, New Delhi*¹⁹, Chief Information Commissioner, CIC said, "The objective of the RTI Act is to bring transparency and accountability in the working of the public authorities. The disclosure of Annual Confidential Reports to the concerned employee cannot, therefore, be denied in the light of the decision of the Hon'ble Apex Court. ACR of some other person can be disclosed only if it is for the larger public interest, and cannot be claimed as a matter of right.

Along the same lines in *Dr. Punita K.Sodhi v. M/o Health and Family Welfare*²⁰, CIC directed the authority to provide ACR's to the applicant.

The Hon'ble Apex Court of our country in *Dev Dutt v. UOI*²¹ while rejecting the argument put forth by the Union Government held that it is mandatory for authorities not only to disclose the adverse remarks, but rather every entry in the ACR of their employees who can be in civil, judicial, police or other services. Whether the entry is marked as 'Poor', 'Fair', 'average', 'good' or 'very bad', its non-communication is against the principle of natural justice and also deprives the employee from the opportunity of representing against it and thus arbitrary in its procedure, as opined by **Justices H.K. Sema and Markandeya Katju**.

(m). Record Management to Be Improved By All Public Authorities Under S.4(1) (a)

In *Paramveer Singh v. Punjab University*²², the applicant sought the information regarding the selection process to a particular post in the University on the basis of which the merit list of selected candidates was prepared. However, no proper information was supplied to him due to the negligence of the University's PIO in identifying and collecting the proper information. As a result, the applicant was given misleading information. The CIC in this case, emphasized that to implement the RTI Act efficiently in the offices every public authority must take all measures so that information can be given promptly and accurately. Steps are required to be taken in this direction in pursuance of Sec-4(i)(a) of the Act. In this case, the Commission further held, that the University should streamline its University record management system in such a manner that information can be provided to the citizens without any delay.

(n). Deemed University Is Public Authority

In *Mahavir Chopda v. NMIMS University*²³, CIC held that any University which has been given the status of deemed university by the central government is a public authority. In the present case NMIMS University which was conferred this status on 13th Jan 2003 vide notification no. F9-37/2001 thus covered under the RTI Act and so must furnish the information requested by the applicant.

(o). Information from Non-Public Authority Can Be Obtained Indirectly

In the case of *Jarnial Singh v. Registrar, Co-operative Societies Delhi*²⁴, the applicant had sought some information from the Registrar, Co-operative Societies regarding the alleged irregularities in the allotment of a house to him by a Co-operative group housing society. However, the information pertaining to these issues was available with the

management of the co-op society, which could not be treated as a public authority in terms of the definition of public authority under the RTI Act. The Commission held that a Co-operative Society is not a public authority but because the information sought by the applicant/ appellants is available to the Registrar under the Delhi Co-operative Societies Act, such information can be provided to the applicant, under Section 2 (f) and 2 (g) of the RTI, Act.

(p). Pro-Active Disclosure Information To Be Provided Free Under S. 4(1)(a)/7(b) of the Act

Any information which comes under the pro-active disclosure clause is required to be compulsorily declared U/S-4(1)(b) of the Act, and if it is not so declared then it should be provided free of cost as mandated U/S-7(6) of the Act because it is to be furnished suo-moto by the public authority. This order of CIC was given in the case of *Seema Bhattacharya v. Deputy Commissioner, Shahdra, MCD*,²⁵ where the applicant applied for the information regarding the sanctioned posts of engineers and other information relating to it.

(q). No Particular Format Necessary/No Reasoning Required for Seeking Information Under S.6(1)

In *Madhu Bhaduri v. Director, DDA*²⁶, The Commission, interpreting Section 6 (1) of the Act, held that any direction to procure a particular format for seeking information cannot be mandatory and override the requirements of a simple application as laid down in the section. It was also held that asking for the reasons for filing the application is a clear violation of the principle embodied in Section 6 (2) of the Act.

(r). Period Between – Asking for Further Fees and Its Payment is Excluded for Calculating the 30 Day Limit Under S. 7 (1) and 7 (3) (a)

In the case of *Ram Chander Singh v. Delhi Jal Board*²⁷, the CIC in appeal held that in counting the 30 days time limit for providing the information under the RTI Act, the period between asking for the additional/ further fees by the PIO and its final payment by the applicant is excluded in calculating the period of thirty days stipulated in Section 7 (1) of the Act as per 7 (3)

(s). Income Tax Returns of Political Parties Comes Under RTI

Due to the absence of any law to keep a vigil on the expenditure of funds by the political parties and also the sources of their funding, it was felt necessary by the CIC to make it mandatory for the political parties to disclose the IT returns filed by them. This ruling came on an appeal²⁸ filed by NGO, the **Association of Democratic Reforms (ADR)** where the Information Commissioner **A.N. Tiwari** observed that the only way by which the public can have the information regarding the funding of political parties, is by covering the income tax returns of political parties within the ambit of RTI Act.

CIC further added that in our country people get influenced by the exercise of political power, so it becomes necessary in public interest, that political parties should be transparent in their functioning and their means of funding, to let the people be aware of their funding details. It is also important for the democracy that a citizen chooses to vote for that

political party of which he has the complete information.

Otherwise also, in one of its landmark judgments, Supreme Court has made it mandatory, for all those candidates who are contesting elections, to file an affidavit along with the nomination form wherein disclosing the information of their assets and liabilities, their educational qualifications and also the criminal past record if any.²⁹

(t). RTI Act Should Receive Liberal/Purposive Interpretation

“The RTI Act should be given a liberal interpretation as it is a welfare measure which has culminated from the right to freedom of speech and expression”, held by Delhi High Court in *Bhagat Singh v. CIC and others*³⁰. Any statute must be interpreted in such a manner so that its purpose can be achieved, like the RTI Act which emphasizes on the accountability of the Government and seeks to achieve the transparency and the corruption-free administration. So the RTI Act must be interpreted, not by ignoring the objective behind the Act, but by which the right of a citizen to know is fulfilled. This observation was also made by the Madras High Court in *Tamil Nadu Road Development Company Ltd., v. Tamil Nadu Information Commission and another's*.³¹

The Calcutta High Court further made it clear in *Pritam v. University of Calcutta and others*³² that though the RTI Act has to keep pace with the passage of time, its objectives always remain the same i.e. transparency, accountability, and prevention of corruption which are the lifeline of the Act. The RTI Act is an attempt by the legislative body to enlarge the scope of freedom of speech and expression given under Part-III and IV of the Constitution of India.

(u). Cabinet Papers Can Be Sought Under RTI

In its recent judgment, the Delhi High Court ruled that cabinet papers containing deliberations of ministers are open to public access. The court rejected the Government's plea for immunity on making such papers public. It, however, made a minor exemption, stating the documents could be kept under wraps till a final decision was taken by the cabinet. "A limited prohibition for a specified time is granted under the RTI Act", The Court said, adding it was not for an unlimited duration or an infinite period. "It lasts till a decision is taken by the council of ministers and the matter is complete or over." The court of justice **Sanjiv Khanna** was hearing an appeal by the Government challenging a direction of the CIC to disclose to the applicants the selection and elevation of certain officials with cabinet approval.

Before this, the CIC had enlarged the scope of the RTI by ruling that the 'notings' made on the files put up and passed by the Union or State Cabinet are open to public scrutiny. "It wouldn't matter if certain ministers had put up their objections to some decisions", the CIC had ruled.³³ The inspection of a file sought by P.D. Khandelwal was denied by the Department of Personal & Training as the file was regarding a circular of appointment committee of the cabinet and the ground of rejection was that the cabinet papers cannot be disclosed. His first appeal was also rejected as the appellate authority held, while decisions of the Council of Ministers, can be made public once the decision is taken or matter is complete, but cabinet papers are outside the purview of the RTI Act.

This plea was rejected by the CIC and held that the cabinet papers are also bound to be disclosed along with the decision of the council of ministers and was not exempted under Section 8 (1) of the Act.

CIC observed that the argument of appellate authority rests on the term '*Cabinet*' being distinguished from '*Council of Ministers*' with the only decision of Council of Ministers being 'disclosable' and not cabinet papers of which decisions of Council of Ministers are only a part. In its order, the Commission held that every decision of the council of ministers was a decision of the cabinet as all Cabinet Ministers were also a part of Council of Ministers.

Elaborating Sec-8 of the RTI Act, the CIC passed the order that cabinet papers must be disclosed which may include the records of discussion between the Council of Ministers, Secretaries and other officers after the decision has been taken.

A close examination of these rulings clearly reveals that CIC in India is playing an activist, creative and goal-oriented role in protecting and enforcing the right to information of the people.

(v). Disclose Views/Recommendations in Appointment of High Court Judges

In *S. C. Agarwal vs. President's Sectt. and Department of Justice, Ministry of Law & Justice*³⁴, the Commission directed the Ministry of Law and Justice to provide the applicant, Mr. S.C. Agarwal, a copy of the file containing details of the correspondence between the Chief Justice of India and the Law Minister on the recommendations for appointment of Mr. Justice Virender Jain as the Chief Justice of the Punjab and Haryana High Court. On behalf of the Government, it was pleaded that the letter sent in July last by the Chief Justice of India conveying the decision of the collegium contained views of third parties in the matter and that none of them were parties to the present proceedings, the CIC said that the third parties be asked whether they would like their opinion in this regard to be made public and, in case there was valid reason for objection to such disclosure, the applicant could be supplied the information required, excluding the objectionable portion.

The appointment of Mr. Justice Jain, who was Acting Chief Justice of the Delhi High Court as Chief Justice of Punjab and Haryana High Court, had been delayed because the President, whose signature had been sought on the relevant file, had returned it to the Ministry to re-examine the issue in view of the lack of unanimity in the collegium on the decision. However, the Government, after obtaining the opinion of the Apex Court on the President's noting, had re-submitted the file reiterating its earlier decision on elevating Mr. Justice Jain. Mr. S.C. Agarwal had applied to the President's Secretariat seeking a copy of the complete file regarding Mr. Justice Jain's appointment together with all file notings and opinion of the Supreme Court collegium members on the appointment file. He had also asked for the correspondence between the President and Prime Minister in this regard. This information was denied by the Law Ministry on the ground that correspondence between the President and the Prime Minister was covered under Section (i)(e) of the RTI Act and Article 74 (2) of the Constitution (which held such exchanges between the dignitaries confidential). His appeals to the appellate authorities resulted in the reiteration of the Law Ministry's earlier objections on such disclosure.

(w). Disclose Information about PM's National Relief Fund

In *Shailesh Gandhi vs. PMO*³⁵, Mr. Shailesh Gandhi of Mumbai had filed an application under RTI seeking information on the number of institutions that had received funds from the Prime Minister's Relief Fund, in particular, those institutions that had received more than Rs50, 000 in the last two years. The Prime Minister's Office refused to give the information on the ground that the fund was not a public authority. The PMO also quoted the Rules and Procedures of the two Houses of Parliament to say that no Parliament question was allowed on the PM's Relief Fund. It also referred to the opinion that was given to it by the Union Law Ministry that the Fund was not a public authority and was not dependent on the government for its funds. On the contrary, it was a private fund created out of voluntary donations and hence not covered under the RTI Act (which concerned public authorities). The CIC did not accept this argument. It said that "information concerning the fund was under the control of the Prime Minister's Office - the Joint Secretary to the PM and an officer of director rank from the PMO discharged the duties of the fund. Even the section, which maintained the relief fund, was a part of the PMO." Thus, the Commission ruled that information on all institutions that had benefited from the Fund ought to be disclosed. However, it said that information regarding disclosures to individuals was not within the purview of its order.

(x). Indian Missions Abroad Fall Under RTI Act

In *Anju Musafir vs. Ministry of External Affairs*³⁶, after the intense discussion with the Ministry of External Affairs and other concerned ministries CIC decided that Indian Missions abroad are also covered under the Right to Information Act. The decision follows an application by an educationist in Ahmedabad asking the Ministry reasons for denying the visa to French national to join a university faculty. After hearings done through video-conferencing, Information Commissioner, O.P. Kejriwal said that since Indian Missions were set up by the External Affairs Ministry they too came under the RTI. During the exchange of views, the Mission in France said that "it was taken for granted that missions abroad were not covered by the RTI Act." Later another meeting chaired by this the Chief Information Commissioner Mr. **Wajat Habibullah**, unanimously decided that Missions were not exempt under the RTI Act. The order also said that though the Missions come under RTI "the mode of payment to be made by RTI applicants seeking information has not been clarified in the existing rule. Missions will not have the right to reject applications on this ground till such time as the necessary amendments are made."

(y). SC Cannot Deny Information under RTI Act, Even If Applicant has "Other Modes" to Get Information

Earlier the rule which used to exist and being followed by the CIC also was that if the information seeker had other sources to obtain the information from any public authority, then he should exercise that mode instead of taking recourse to RTI Act. This rule, which has been explained in the number of cases by the then Chief Information Commissioner **Wajahat Habibullah**, was based on S-22 of RTI Act, which insisted that if there was an inconsistency between the two laws, then only the RTI Act would overshadow the other law. This rule has been overturned by the CIC in case of *R.S. Misra v. Mrs. Smita Vats Sharma, CPIO*³⁷, *Supreme Court of India*, wherein it is held that the Supreme Court has to provide the information, even though the information can be gathered through other available

methods under the apex court rules, by the applicant.

Information Commissioner **Shailesh Gandhi** made it clear that, if any citizen insist on obtaining the information by invoking the provisions of the RTI Act than availing those methods which used to exist before the advent of the RTI Act, of giving information by the public authority, then it is the prerogative of such person to choose under which mechanism he would like to get the information. This view of the CIC came on the argument put forth by the apex court that if there is no inconsistency between the RTI Act and the Supreme Court Rules, then the information seeker should furnish the information on judicial proceedings and documents under the Supreme Court rules and not under the RTI Act. This argument was rejected by the CIC.

The Commission has made it clear that the information can be denied to the applicant under sections 8 and 9 of the RTI Act and not on the ground that the information seeker has other sources available to seek the information. The applicant cannot be forced to seek information under order XII of Supreme Court Rules, in spite of the fact that he has filed the application under the RTI Act. This judgement of CIC came on the application filed under the RTI Act to obtain information regarding the status report on certain letters within the purview of the Apex Court and reasons behind its judicial decisions. But this information was denied by the Supreme Court and was rather asked to file the application under the Supreme Court Rules.

(z). RBI to Disclose 100 Loan Defaulters of the Country

In another recent decision,³⁸ the Central Information Commission has directed the Reserve Bank of India to make public the names and other details of top 100 industrialists of the country who have defaulted on loans from public sector banks. The Commission also directed the central bank to post on its website complete information on all such industrialists as part of *Suo moto* disclosure mandated under section four of the RTI Act before December 31 and asked it to update it every year. The RBI had objected to making this information public saying it is held by it in the fiduciary capacity and disclosing it would adversely affect economic interest of the state. Information Commissioner Shailesh Gandhi agreed that information is fiduciary in nature but said that such exemption does not stand when there is larger public interest in the disclosure.

(C). CONCLUSIONS

It's been thirteen years since the inception of CIC under the provisions of the RTI Act by the GOI in the year 2005. It can be concluded that the transparency in the governance and democracy is able to be maintained due to the efforts of CIC. This fact is supported with the help of various decisions of CIC till date, which has been uploaded on the CIC Website (www.cic.gov.in). To keep an eye on corruption and the abuse of power, transparency is essential which has been strengthened by the RTI Act through its mouthpiece in the form of CIC, which has provided valuable guidelines for the better working of the administration whether i.e. PIOs, appellate authorities or any other public authority.

The idea of open government is becoming reality with the implementation of the RTI, Act, 2005. There was an overwhelming response by the people, as the number of information seekers increased every year. Though a decreasing trend has been seen in the rejection of requested information, the number of appeals/complaints filed before the

Commission is very high, which points towards the need of more proactive or voluntary disclosure on the part of public authorities, of such information which is not exempted under the RTI Act. As the demand for information has grown, the RTI Act has succeeded in creating the path for the free flow of information and knowledge which is also in consonance with the minds of the lawmakers who enacted the RTI Act with this objective.

Public Authorities must endeavor to voluntarily put information in the public domain without waiting for applications from information seekers. If this is done, a lot of time will be saved both for public authorities as well as for citizens. In some cases, it has been observed that as far as transparency and accountability on the part of the judiciary is concerned it considers its position as *sui generis*, thereby not in favor of implementing these two essential elements in their own working. The reason given by judiciary that it would curtail their independence appears to be that transparency and accountability are good for others but not for the judiciary as they are above all. It has somewhere shown the dual face of the judiciary.

The Commission, through its decisions from time to time, has laid down principles for disclosure of various classes of information which were not considered fit for disclosure thus far. The role of CIC, as a regulator and educator, is critical in so far, as taking tough action against those bodies that violate the provisions of the Act and providing guidance to the Public Authorities for the promotion of open government. Till now CIC has worked satisfactorily and it has developed in the manner that has been charted in the RTI Act itself. In future also it is expected that Commission will act as a non-government arbiter (not as an interested party) and as an entity which could be expected to take neutral and disinterested decisions on the basis of facts and law.

REFERENCES

1. Bimal Julka, *RTI and Digitization*, Kaleidoscope, July, 2017, p.17
2. M. Shridhar Acharyulu, *Public Servant's misconduct is not his family affair*, Kaleidoscope, July, 2017, p.16
3. <http://www.livelaw.in/cics-annual-report-reveals-significant-trends-read-report/> (accessed on 29th May, 2018)
4. CIC/SS/C/2013/900008SA .Decided on 4th November 2015
5. CIC/SA/A/2014/000478 . Decided on 7th January 2015
6. CIC/SM/C/2011/oo1386, CIC/SM/C/2011/000838 .Decided on 3rd June, 2013.
7. Appeal No CIC/BS/A?2016/000800-BJ . Decided on 10th April 2017
8. CIC/SA/C/2015/90116 .Date of Decision 15th January 2016
9. CIC/WB/A/2009/001006, CIC/WB/A/2010/000186, 000187, 000317, 000367-SM, CIC/SM/A/2011/000181, 000182, 000333, 000334, 000516, 000765. Decided on 30th December, 2011
10. CIC/WB/A/2010/000320 & 321SM . Decided on 3rd August, 2011
11. Chintamani, R. (2014). *Right to Information Act: An Endeavour for Deepening Democracy*. *IMPACT: International Journal of Research in Humanities, Arts and Literatures*, 2(2), 65-72.
12. Secretary General, Supreme Court of India v.S.C. Aggarwal LPA – 501/2009 . Decided on 12th January, 2010.

13. Appeal No. ICPB/A-1/CIC/2006. Dated 31st January, 2006
14. Appeal No. CIC/OK/A/2006/00154. Dated 29th January, 2007
15. The DOPT refusal vide its letter Dated 27th January-2009 comes in response to CIC verdict in appeal- Number CIC/WB/A/2008/00956 in the matters Subash Chander Aggarwal v. DOPT.
16. Mr. Manoj Kumar Pathak v.C.B.S.E. , CIC/OK/A/2008/00832/ SG/ 0677 .Dated 22nd Dec., 2008
17. Appeal No. 11/53/2006/ CIC. Dated 2nd May, 2006.
18. Shiv Shambhu, Sanjeev Kumar & Others v. UPSC CIC Decision No. 354/ IC (A)/ 2006. Appeal No. CIC/ MA/ A/ 2006/ 00793
19. Times of India , N.D. (ed.), 7th Oct., 2006.
20. CIC/ WB/ A/ 2007/ 00422. Dated 20th April, 2007
21. CIC/AD/A/2009/ 000134. Dated 27th Feb, 2009. Also see, CIC/SG/A/ 2009/002866, Dated 30th Dec., 2009
22. (2008) 8 SCC 725
23. CIC/ OK/A/ 2006/ 00016. Dated 15th June, 2006.
24. CIC/OK/A/2008/ 01098/SG 2530 , Appeal No. CIC/OK/A/2008/01098/SG
25. Comp. No. CIC/ WB/C/2006/00302 .Dated 9th April, 2007
26. Appeal No.CIC/ WB/A/2006/ 00377. Dated 20th November 2006
27. Comp No. CIC/C/ 1/ 2006 .Dated 16th January, 2006.
28. Appeal No. CIC/ 2006/ WB/ C/ 2006/ 00301.Dated 30th December 2006
29. Mr. Anu Meha C/o Association for Democratic Reforms, New Delhi v. C CIT/ CIT. (Nine Different appeals bearing different numbers decided on 29th April, 2008).
30. Union of India v. Association for Democratic Reforms, AIR 2002 SC 2112.
31. WP (C) No. 3114/2007. Decided on 3rd Dec., 2007.
32. WA No. 811 of 2008 and M.P. No. 1. of 2008.Dated 5th August 2008.
33. AIR 2008 Cal 118
34. P.D. Khandelwal V. DOPT, Appeal No.- CIC / WB/A/2008/00081. Dated 1st August, 2008.
35. Appeal No. CIC/WB/A/20061 /00460. Dated 29th July, 2006
36. CIC/WB/C/2006?60230. Dated 25th October, 2006
37. CIC/OK/A/21006/00516 .Dated 28th March, 2007
38. CIC/SM/A/2011/000237/SG/1235. Dated 11th May 2011
39. P P Kapoor vs.R.B.I ,CIC/SM/A/2011/001376/SG/15684 .Decided on 15th November 2011

