**Landmark Judgements on Section 8 of RTI Act**

**[[1]](#footnote-1) Ovesh khan**

**[[2]](#footnote-2) Aryan Harel**

# **Introduction**

Right to Information Act, 2005 is a very crucial legislation enacted for making the government in India more transparent and accountable. The earlier reasons for a lack of transparency and honesty included the fact that information remained behind closed doors of government agencies. The act of Right to Information (RTI) ultimately creates an informed public, which can participate in democracy by receiving information from public organizations.

A "public authority" is defined by the law as the public right to receive information from government departments, ministries, and private organisations receiving big amounts from the state budget. This process should not be too long: terms go so far that the answer to an application shall be provided within 30 days after submission of the request. This has allowed many citizens to understand the various government decisions, how resources are divided, public policies, and what the administration does. This has led to more trust and responsibility in government.

The Act, however, in Section 8 excludes other important information relating to national security, people's privacy, or business trade secrets because their benefits to the community are greater than the potential harm brought by some of those rules, and these rules can be set aside and information shared that serves the public.

Since the introduction of the RTI Act, it has proven to be very instrumental in unearthing many cases of corruption, inefficiency, and incompetence in the government of India. As such, it happens to be one of the most important tools for any person seeking transparency and justice in these institutions, which makes it an issue of huge importance as a must-have in India's democratic system. In this way, the RTI Act, 2005, lays down the basis of the efforts of India towards opening up her governance and making it responsible.

#  **Section 8 of RTI Act, 2005**

The Right to Information Act has several constraints that must be acknowledged. It is commonly understood that the general public does not have access to all information held by the government. Some confidential information is so sensitive that it cannot be shared given the current circumstances surrounding the request, as doing so could lead to significant harm or jeopardise critical interests. Should there be an agreement between the government and the public on any issue, it would likely centre around the notion that this information holds such significance that it must remain confidential.
To achieve a deeper insight into this qualification, let’s examine a straightforward scenario: the government must ensure that the number of soldiers deployed during the conflict remains confidential and is not revealed. This arises from the possibility that sharing such information could threaten the nation's security. However, the government would struggle to defend the ongoing confidentiality of the material if someone were to request its disclosure two years after the end of the conflict, given that the threat has dissipated.

The vast majority of regulations related to the Right to information include provisions that impose restrictions to keep certain materials from being accessible to the public at large. The phrases "exclusion clauses" and "exemption provisions" are used to refer to these items. While there may be exceptions to meet public welfare obligations, it is evident that authorities often misuse these provisions to keep information hidden from the public. This action is not appropriate. This clause was not included in this significant piece of legislation with the aim of concealing information due to worries that the public would hold the government responsible for their actions or out of shame.

Upon recognising that exemption clauses are often misused to protect personal interests, it becomes crucial to thoroughly understand the provision to effectively distinguish between valid concerns and those that lack legitimacy.

## **Section 8 (1) of the RTI Act, 2005**

In the central act, section 8 (1) listed all the exemptions. Following is the general discussions of the exemption provisions:

***(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;[[3]](#footnote-3)***

 ***(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.[[4]](#footnote-4)***

1. **National Security or Sovereignty:** Considering the earlier explanation, there are specific details related to the nation's security that, if disclosed to the public, could potentially jeopardise the country. This section protects various types of information, including secrets and details related to a conflict, such as troop specifics, strategic plans, and resources involved. Conversely, it would be inappropriate to utilise this clause to uphold a contract with a nation or company that specifies the procurement of the fighter jet. This will be regarded as business information, and it may be accessible to the public to ensure oversight of the procurement process and minimise the risk of corruption. This cannot be justified on the grounds of 'defence' as a form of defence.
2. **National Economic Interests:** Information regarding exchange rates, currency, interest rates, banking regulations, taxes, expenditure or borrowing suggestions, and related matters could potentially jeopardise the nation's economy. There are several scenarios in which this might take place. Nonetheless, it is inappropriate to hide economic and financial information at the most basic level, including the budget allocated to departments and contracts. This is why it is imperative to disclose such information openly. This is because decisions may be influenced by the relevant facts at hand**.**
3. **Relations with the Foreign States:** Given that a transparent and candid evaluation of a country's policies and actions can attract public attention, the discussion surrounding the relationships between nations can be quite sensitive. The potential for such an appraisal to cause offence and possibly harm India's interests on the international stage is the rationale behind this decision. Employing this paragraph to obscure political agreements under the guise of relationships cannot serve as justification for withholding information. This provision prevents the concealment of political arrangements.
4. **Law Enforcement and Judicial Procedure:** Throughout an investigation, safeguarding the confidentiality of certain details is crucial, including the identities of witnesses and the evidence being collected against a suspect. Revealing this issue publicly could potentially jeopardise the lawsuit. Maintaining the confidentiality of information is critically important, especially regarding the communication that occurs between legal professionals and their clients. In this situation, India serves as the client, while the General Counsel is the legal representative involved. Nonetheless, these regulations cannot be utilised to obtain information regarding law enforcement and judicial officials, especially when the victim seeks such information at the moment of the request.
5. **Cabinet and other Decision-making documents:** Items related to the debates and discussions that take place during cabinet meetings are not allowed to be included. Nonetheless, the release of the documents that underpin the ruling, along with the rationale that informed the conclusion, should take place after the decision has been rendered. Maintaining a degree of confidentiality throughout the process is crucial; nonetheless, the public has the right to access relevant information after the conclusion of the proceedings.
6. **Trade secret and commercial confidentiality:** It is essential for the public to have access to information regarding private companies. For instance, this occurs when the information is crucial for the enforcement or safeguarding of rights or is relevant to public service. Moreover, this applies when the information is deemed confidential. It is crucial to ensure that the company's commercial interests remain intact, and any compromise must be avoided at all costs.
7. **Individual Safety:** It is never appropriate to divulge any information that might put the life or liberty of another individual in jeopardy. For example, protecting the individual who "blows the whistle" on criminal activity within an organisation is necessary since that individual may be subjected to discrimination or even physical assault. This individual must be protected at all costs.
8. **Personal Privacy:** The government maintains a repository for personal information that is accessible to the public. In compliance with the right to privacy, the government is expected to withhold private information, unless there is an immediate and compelling need to disclose the information. In other words, the government is required to withhold the information. It is of the utmost importance that public officials do not take use of this provision in order to conceal their own actions from the scrutiny of the general public. **[[5]](#footnote-5)**

 **Section 8 (2) of The RTI Act, 2005**

This section states that an official must disclose requested information, regardless of any exemption clause or the official secrets act. This situation arises when the potential risks are surpassed by the necessity for transparency in the public's interest.
The RTI statute exhibits a conscious exclusion of the definition of public interest. Consequently, public authorities, including public information officers, appellate authorities, and information commissioners, must evaluate each situation individually, taking into account the specifics of every complaint presented. It is important to recognise that the factors that could justify withholding information in the public interest will change over time and depend on the specific details of each situation. It is essential to keep this in consideration.
To enhance the dissemination of information, it is essential for authorities to understand the intent of the act and to utilise their discretion to the maximum extent when implementing the public interest override in this section. The relevant authorities must ensure that all instances differing among various categories of public interests are documented in writing. I find it unnecessary to draw a broad conclusion regarding this matter.

When applying the public interest overriding test, three questions should be kept in mind:

1. Is the concern or use of exemption provision legitimate?
2. Will it lead to harm in substantial manner?
3. Does public interest outweigh the harm?

**Landmark Judgements**

## **3.1 Central Board of Secondary Education v. Aditya Bandopadhyay**

The question here was whether a student has the right to ask for information under the Act, including looking at their answer sheets and getting certified copies of them. The central board of secondary education said that this is because there is a special trust relationship, which makes it fall into the exemption part of section 8 (1) (e) of the Right to Information Act, 2005.

**Judgement**

A fiduciary relationship means one person trusts another person with his business or affairs. An examining body cannot have a fiduciary relationship with students who take the exam. So, there was no exemption under the section, and the answer books had to be given to the students.[[6]](#footnote-6)

## **3.2 Girish Ramchandra Deshpande v. Central Information Commission & Ors**

The petitioners sought copies of all memos, show cause notices, and any penalisation related to the third party, specifically a public officer from his employer. The application additionally sought information regarding his investments, credit, and loans from financial institutions, among other details. He also requested the specifics of the gifts he received at his son's wedding from him and his family. The details requested were outlined in the respondent's income tax return.

The central question in this case was whether the information requested qualifies as ‘personal information’ as defined in section 8 (1) (j).

 **Judgement**

The request made by the petitioner for the sought information was found to be within the boundaries of the provision. The actions and performance of an employee are regarded as "personal information" within an organisation, as they pertain to the relationship between the employee and their employer. This is relevant for both the employee and the employer. The disclosure not only infringes upon the employee's right to privacy but also fails to serve the public interest effectively[[7]](#footnote-7).

## **3.3 R. Rajagopal and Anr. V. State of Tamil Nadu**

The individuals who submitted the petition in this case were employees of the Tamil publication called Nakkeeran. The workers insisted that the responders respect their efforts to publish the prisoner's memoirs without interference. This was essential to meet their request. The individuals who submitted the petition initially presented it as a violation of their right to express themselves freely. Conversely, a decision regarding subsection (j) of section 8 was delivered in relation to the overall verdict.

 **Judgement**

While the respondents claimed that the prisoner had a right to privacy, it was ultimately agreed that a public record would be created based on information that was already available within the government. In these circumstances, the right to privacy is typically applicable only in very rare cases. This was deemed comparable to section 8 (1) (j) because it fails to protect information that is crucial for public interest. The document asserts that certain information must remain confidential due to its potential to infringe upon an individual's privacy rights. However, the ruling also emphasised that public officials cannot assert a claim to privacy concerning the duties they are tasked with in their official roles. [[8]](#footnote-8)

## **3.4 Union of India V. Association from Democratic Reforms**

In this case, the Association for Democratic Reforms filed a petition with the Delhi High Court to encourage the authorities to implement certain recommendations aimed at enhancing the transparency, fairness, and equity of the voting process. The law commission offered its recommendations to the election commission following a request from the government. The recommendations called for the election commission to mandate that candidates disclose their personal background information, encompassing details about their criminal history, financial status, qualifications, and other relevant information that can be used to assess the candidates' capabilities.

 **Judgement**

The Supreme Court of India has directed the Election Commission to formulate necessary guidelines that will require all candidates to disclose information regarding specific aspects of their past. The Supreme Court's decision followed an appeal submitted by the Union of India.:

1. *Criminal charges and Convictions*
2. *Pending cases where the candidates is an accused*
3. *All assets including those of her spouse*
4. *All liabilities*
5. *Educational qualification*

Citing section 8 (1) ((j), the court stated that any information which will not be denied to the parliament or the state legislature should not be denied to any person. [[9]](#footnote-9)

## **3.5 R.K. Jain V. Union of India**

The petitioner submitted the application to the information officer for producing copies of all sheets and pages of correspondence of a file regarding one judicial Member of the customs, Excise and Service Tax appellate tribunal, who was Ms. Jyoti Balasundram under the RTI Act. The central Information denied the file under section 8 (1) (j) of exemption of personal information. The petitioner appealed in the supreme court.

 **Issue**

1. Whether the ACR of an officer comes under personal information?
2. Does public interest override the privacy of the person?

**Judgement**

The court held that the information relating to charges, penalties or sanctions of an employee and records of such a nature necessarily came within the ambit of being a matter between the employee and his employer and the disclosure of which had no public interest but would result in threat to the privacy of a person. In fact, the court even upheld if the information officer or the appellate authority holds that public interest warrants disclosure of such information but the petitioner can never claim those details as a matter of rights. [[10]](#footnote-10)

## **3.6 Pinki Ganirewal V. Union Public Service Commission**

In this specific case, the petitioner sought details regarding the selection list created by the service commission, which included eleven deputy directors of mines safety chosen from the pool of candidates. The information was released alongside the seniority-cum-merit list; however, the personal details of the selected candidates were not permitted due to the exemption clause outlined in section 8.

 **Judgement**

The court found that the commission erred in instructing the service commission to withhold the requested information. The assessment concluded that the material in question was vital for the benefit of the community, leading to the decision that the request and its distribution did not align with section 8. Following the court's guidance, details regarding the year of birth, the institution attended, the year of graduation, and the caste may be shared for the benefit of the public, as the potential benefits outweigh any drawbacks.[[11]](#footnote-11)

#  **Conclusion**

It is safe to say that the Right to Information Act, which is more often known as the RTI Act, has been an unqualified and unqualifiedly successful statute throughout the nation of India. This is due to the fact that citizens who have been given more authority have made a contribution to the strengthening of the fundamental building blocks that constitute democracy. This is the reason why situations are the way they are. As a direct consequence of the people' willingness to assume the duty of acting as vigilant monitors of the government, there has been an increase in the degree of transparency that is present within the system. This has led to an increase in the degree of transparency that is present. It is as a direct result of them that scandals and scams involving corrupt activities have been brought to light. There is a direct correlation between them and the occurrence of this realisation. As a direct result of this, the nation will go through a transition from a democracy that is founded on elections to a democracy that is more directly related with participation. This will be a direct consequence of this. For the judicial system and public workers to take advantage of the exclusions that are granted in this Act would not only be immoral, but it would also be wrong for them to withhold information from the general public in order to surprise them. This would be a double-edged sword. As a consequence of the reasons that were described before in this paragraph, this is of the utmost significance. After a matter has been brought before the judicial system, it is the duty of the system to investigate it in order to determine whether or not it is being carried out for the purpose of serving the general public. In addition, the court system must avoid from making any efforts to shield public authority from accepting responsibility for their actions. Before that point in time, the Right to Information Act would not be able to accomplish the goals that it has set for itself on its own.

1. AUTHORE, INDORE PROFESSIONAL STUDIES ACADEMY [↑](#footnote-ref-1)
2. CO-AUTHORE, INDORE INSTITUTE OF LAW [↑](#footnote-ref-2)
3. ‘Section 8 in the Right to Information Act, 2005’ (*Indiankanoon.org*2024) <https://indiankanoon.org/doc/758550/> accessed 13 November 2024 [↑](#footnote-ref-3)
4. ‘\* \* REGISTERED NO. DL-(N)04m007a003--05’ <https://rti.gov.in/rti-act.pdf> [↑](#footnote-ref-4)
5. Rai D, ‘Landmark Judgments on Section 8 of the RTI Act, 2005 - IPleaders’ (*iPleaders*27 November 2020) <https://blog.ipleaders.in/landmark-judgments-section-8-rti-act-2005/> accessed 13 November 2024 [↑](#footnote-ref-5)
6. ‘Centrlal Board of Sec.Education & Anr vs Aditya Bandopadhyay & Ors on 9 August, 2011’ (*Indiankanoon.org*2024) <https://indiankanoon.org/doc/1519371/> accessed 13 November 2024 [↑](#footnote-ref-6)
7. ‘Girish Ramchandra Deshpande vs Cen.Information Commr.& Ors on 3 October, 2012’ (*Indiankanoon.org*2024) <https://indiankanoon.org/doc/160205361/> accessed 13 November 2024 [↑](#footnote-ref-7)
8. ‘R. Rajagopal vs State of T.N on 7 October, 1994’ (*Indiankanoon.org*2024) <https://indiankanoon.org/doc/501107/> accessed 13 November 2024 [↑](#footnote-ref-8)
9. ‘Association for Democratics Reforms vs Union of India on 15 February, 2024’ (*Indiankanoon.org*2024) <https://indiankanoon.org/doc/121499464/> accessed 13 November 2024 [↑](#footnote-ref-9)
10. ‘R.K.Jain vs Union of India & Anr on 16 April, 2013’ (*Indiankanoon.org*2024) <https://indiankanoon.org/doc/70139862/> accessed 13 November 2024 [↑](#footnote-ref-10)
11. ‘Upsc vs Pinki Ganeriwal on 8 November, 2013’ (*Indiankanoon.org*2024) <https://indiankanoon.org/doc/185579729/> accessed 13 November 2024 [↑](#footnote-ref-11)