

TOPIC 7 : RIGHT TO INFORMATION ACT UNDER CLD PORTIONS



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UPSC 2022	NO QUESTION ASKED.
UPSC 2021	Discuss the constitutionality of Right to Information Act, 2019 in light of recent judgment by the Supreme Court of India.

HOW TO ANSWER THIS QUESTION

INTRODUCTION : Recent case law before the 2019 Amendment to RTI Act was *Anjali Bhardwaj vs. Union of India 2019 SC*.

BODY OF THE ANSWER :

- In *Anjali Bhardwaj* case, SC issued extensive guidelines for smooth functioning of RTI Act esp. on appointment aspect.
- Analyse the 2019 RTI Amendment Act vis-à-vis *Anjali Bhardwaj*.
- Your opinion on Constitutionality and Government Reasoning

CONCLUSION : How 2019 Act impedes the independence of RTI.

INTRODUCTION

Anjali Bhardwaj vs. Union of India 2019 SC wherein Supreme Court of India had given extensive guidelines for ensuring smooth working of RTI Act. However these guidelines are now futile given the 2019 RTI 2019 Amendment Act.

2019 AMENDMENT TO RTI ACT

2019 Amendment to RTI Act resulted in **deliberate dismantling of architecture** whereby Central government to unilaterally decide the tenure, salary, allowances and other terms of service of Information Commissioners, both at the Centre and the States.

Previous position was that Information commissioners (CIC/SIC), were given the tenure, salary, allowances and other terms of service of Election Commissioners (CEC/SECs) who, in turn, equal to status of Supreme Court judge.

Currently, as the government reported, the CIC OR SIC who are statutory bodies cannot be equated to CEC or SECs, who are constitutional authorities and therefore, this is **rationalized**.

Interestingly, the guidelines issued in *Anjali Bhardwaj (2019 SC)* was vocal on that aspect that

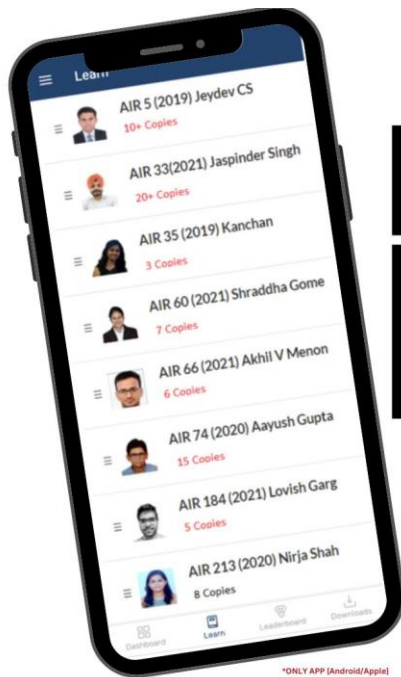
- ✓ selection process of CIC/SIC, who are equal to CEC/SEC, have to be publicised and that, their selection should be done on the basis of objective and rational criteria.
- ✓ Recommendation of appointment when given to President or Governor, it should be accompanied with the details of their eminence in public life and experience.

These guidelines are effectively overridden as the 2019 Amendment makes the central government as sole authority on appointment.

CONSTITUTIONALITY OF 2019 AMENDMENTS

- Guidelines given in *Anjali Bhardwaj* case for effective enforcement was overruled by the 2019 RTI Amendment.

- Now, the decision of the Central government is binding upon the Information Commissioners. This allows unbridled and uncanalised discretionary power to the Central government that jeopardises the independence of Information Commissioners.
- This is because their tenure, salary, allowances and other terms of service is in the hands of Central government. This, in effect, would violate the Article 19 of the Constitution of India as it effectively interferes the right to information of citizens.
- Further, this matter is in sub-judice **[as of February 2023]**



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UPSC
2020

Question 7(c) Discuss the rationale of exemption to disclosure of information endangering life and the information regarding criminal trial and criminal investigation provided under the Right to Information Act, 2005 in the light of decided cases.

HOW TO ANSWER THIS QUESTION

INTRODUCTION : No introduction required.

BODY OF THE ANSWER :

- Explain Section 8(1)(g) of RTI Act with case laws
- Explain Section 8(1)(h) of RTI Act with case laws

CONCLUSION : No Conclusion required.

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Section 8(1)(g) of the RTI Act : If the disclosure would endanger the life and physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes, then public authority is exempted from disclosure of such information.

- **Meaning of LIFE** under Article 21 is given an expansive and liberal construction such as to include, the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. This meaning is applicable for section 8(1)(g) the RTI Act.
- **'PHYSICAL SAFETY'** means the likelihood of assault to physical existence of a person.
- Information putting an individual's safety or liberty at risk, e.g., the identity of people who blow the whistle on corruption inside their organization should be protected, because otherwise they may be targeted for discrimination or even violence.

CASE LAWS :

1. In CENTRAL BOARD OF SECONDARY EDUCATION AND ANR. V. ADITYA BANDOPADHYAY AND ORS, the Hon'ble Supreme Court has held that access to evaluated copies can be allowed only to the extent of answer-book which does not contain any information or signature or initials of the examiners/coordinators/scrutinizers/head examiners disclosing their identity.
2. In BIHAR PUBLIC SERVICE COMMISSION V. SAIYED HUSSAIN ABBAS RIZWI, marks obtained by the a person can be disclosed but the disclosure of individual names and marks they awarded would be hardly hold relevancy either to the concept of transparency or for proper exercise of the right to information within the limitation of the Act.

Section 8(1)(h) of the RTI Act : Public authority is not under obligation to furnish information that would impede the process of investigation or apprehension or prosecution of offenders.

- Definition of "investigation" under CrPC can be applicable for RTI Act also. It would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on.
- When the investigation is in progress, be information which needs to be protected, such as witnesses' identities, circumstances being put together against a suspect, etc. cannot be disclosed.

CASE LAWS :

1. In B.S. MATHUR V. PUBLIC INFORMATION OFFICER OF DELHI HIGH COURT, the High Court of Delhi has held that mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would impede or even on a lesser threshold, hamper or interfere with the investigation
2. In SARVESH KAUSHAL V. FOOD CORPORATION OF INDIA AND OTHERS, the Central Information Commission has held that documents relating to the departmental enquiry are exempted from disclosure pending departmental enquiry by virtue of Section 8(1)(h) of the RTI Act.



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UPSC 2019 Question 5(e) "Pragmatic regime of right to information for citizens is the key to good governance in India, but it is not being implemented in its original spirit." Examine it in the light of decision of the Supreme Court of India in *Anjali Bhardwaj vs. Union of India*, February 2019.

HOW TO ANSWER THIS QUESTION

INTRODUCTION : Your introduction must give points on WHY Right to information will lead on good governance, but the implementation issues of RTI with reference to *Anjali Bhardwaj case*.

BODY OF THE ANSWER :

- Why guidelines were issues in *Anjali Bhardwaj case*.
- What were the guidelines and the implications of 2019 Amendment.

CONCLUSION : No Conclusion required.

IMPORTANCE OF RIGHT TO INFORMATION

- Much before the enactment of RTI Act, which came on the statute book in the year 2005, Supreme Court repeatedly emphasised the people's right to information to be a facet of Article 19(1)(a) of the Constitution.
- It has been held that the right to information is a fundamental right and flows from Article 19(1)(a), which guarantees right to speech. This right has also been traced to Article 21 which concerns about right to life and liberty.
- There are umpteen number of judgments declaring that transparency is the key for functioning of a healthy democracy such as *State of Uttar Pradesh v. Raj Narain*, *S.P. Gupta vs. President of India and Others etc.*¹

¹ In the matter of *State of Uttar Pradesh v. Raj Narain*(AIR 1975 SC 865 para 74)., a Constitution Bench of Supreme Court held that: "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries"

WHY GUIDELINES WERE ISSUED IN ANJALI BHARDWAJ CASE

Anjali Bhardwaj vs. Union of India 2019 SC wherein Supreme Court of India had given extensive guidelines for ensuring smooth working of RTI Act.

These guidelines were given as the

- ✓ neither the Central Government in respect of CIC nor the State Government in respect of SICs, are filling the vacancies for the appointment of Commissioners in a timely manner.
 - As a result the functioning of RTI Act was stifled.
 - It lead to huge backlogs of appeals and complaints in many Commissions across the country.
- ✓ Further this is perpetuated due to lack of transparency in the appointment of Information Commissioners inasmuch as the Central Government as well as various State Governments have failed to adopt proper procedure to ensure transparency in the shortlisting, selection and appointment of Information Commissioners. This lack of transparency, according to the petitioners, had led to filing of several cases in different courts challenging these appointments.

GUIDELINES GIVEN BY THE COURT IN ANJALI BHARDWAJ

1. Selection to CIC and SIC has to be publicised along with terms and conditions such that they should have eligibility of election commissioners. This requirement is no longer valid as the Amendment to 2019 RTI Act, as the central government will determine the terms and conditions of appointment.
2. Shortlisting for the appointments to be done on the basis of objective and rational criteria.

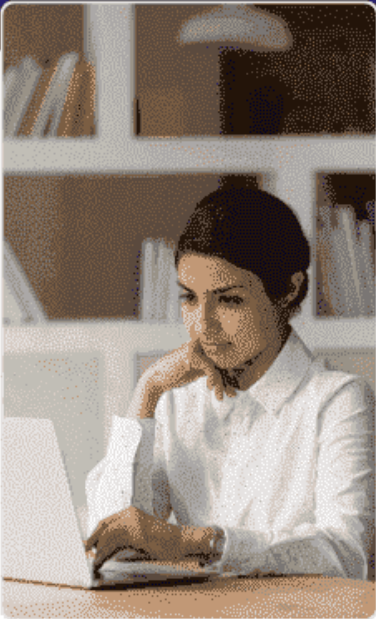
S.P. GUPTA VS. PRESIDENT OF INDIA AND OTHERS : (AIR 1982 SC 149) "....The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a)..."

UNION OF INDIA VS. ASSOCIATION OF DEMOCRATIC REFORMS : "The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy...."

RESERVE BANK OF INDIA VS. JAYANTILAL N. MISTRY : " The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy."

3. Selection should not be limited to government employees or ex-government employees. Even the persons of eminence in public life with wide knowledge and experience can be appointed. It can be namely from *law, science and technology, social service, management, journalism, mass media or administration and governance*.
4. Recommendation of appointment when given to President or Governor, it should be accompanied with the details of their eminence in public life and experience. Once again, this requirement is no longer valid, as the Amendment to 2019 RTI Act, as the central government will determine the terms and conditions of appointment.
5. Further, SC had asked the government to fill up vacancies, in future, without any delay.

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UPSC
2018

“Mahatma Gandhi, the Father of Nation, observed that the meaning of real freedom is not to acquire authority by few but to acquire the capacity to question the abuse of such authority.” Examine, in the light of the above statement, the obligations of the public authorities and explain whether they have discharged it effectively during the last about seven decades.²

HOW TO ANSWER THIS QUESTION

INTRODUCTION : Your introduction must give the definition of “Public Authority” so that we could understand their obligations.

BODY OF THE ANSWER :

- Obligations of Public Authorities under RTI
- Track record of Public Authorities since independence.

CONCLUSION : Importance of RTI

WHO IS PUBLIC AUTHORITY

Section 2(h) of RTI Act defines “*Public authority*” as

- any authority or body or institution of self-government
- established or constituted –
 - under Constitution of India or
 - any law of Parliament or State legislature or
 - by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government

² **INTERESTING TRIVIA :** A: Mahatma Gandhi was never accorded the ‘Father of the Nation’ title by Government of India and no rule or ordinance was ever passed in this regard. This was stated by the Union cultural ministry in a response to an RTI query filed by Hathras resident Gaurav Agarwal.
<https://timesofindia.indiatimes.com/city/agra/mahatma-gandhi-was-never-declared-father-of-nation-reveals-rti-reply/articleshow/73448147.cms>

OBLIGATIONS OF PUBLIC AUTHORITIES UNDER RTI ACT

There are various provisions under RTI to ensure that right to information becomes a reality. It is a self-contained legislation, providing a comprehensive framework in this behalf.

1. Information Commissions have been set up at the Centre (CIC) and in all the States (SICs) to adjudicate on appeals and complaints of persons who have been unable to secure information in accordance with the RTI Act or are aggrieved by violations of the RTI Act.
2. **Section 3** declares that all citizens shall have the right to information, of course, subject to the provisions of this Act.
3. **Section 4** puts an obligation on every public authority to provide information.
4. The RTI Act also provides in-house mechanism for giving information by these public authorities.
5. For this purpose, each public authority is supposed to designate as *many officers as Central Public Information Officers (for short, 'CPIOs') or State Public Information Officers (for short, 'SPIOs')* who are supposed to provide information to persons requesting for the information under this Act.
6. Timelines are set during which CPIOs/SPIOs are supposed to give the information, namely, within 30 days of the receipt of the request for obtaining information. Within this period either information is to be provided or request is to be rejected.
7. Rejection can be only for a reason specified in **Sections 8 and 9 of the Act**.

TRACK RECORD OF PUBLIC AUTHORITIES SINCE INDEPENDENCE

The Main thrust of RTI law is to change the culture of secrecy, red-tapism and aloofness that has long plagued India's monolithic and opaque bureaucracy.

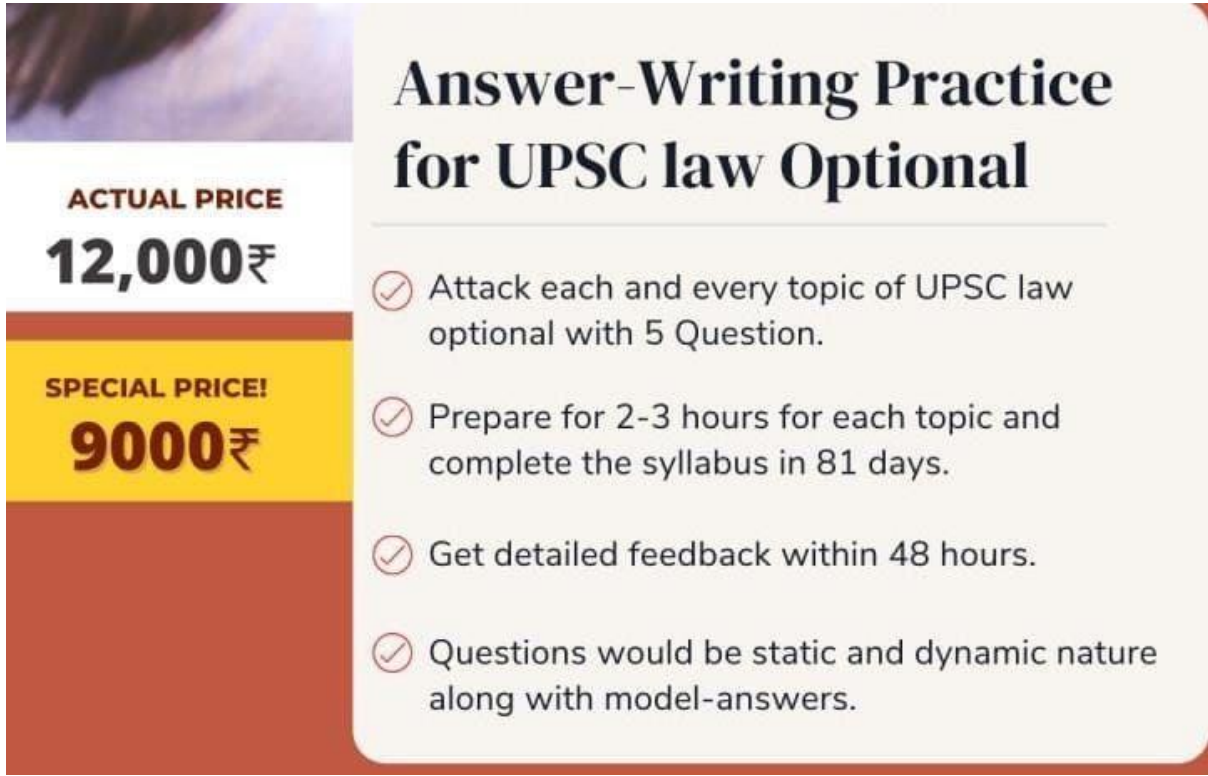
Public authorities before enactment of RTI Act,

- Were lethargic
- did not have any fear on responsibility
- Taking protection of Official Secrecy Act unnecessarily.

- Files and Documents in government offices not maintained properly.

CONCLUSION : Much before the enactment of RTI Act, which came on the statute book in the year 2005, Supreme Court repeatedly emphasised the people's right to information to be a facet of Article 19(1)(a) of the Constitution.

Work nature in Government offices after the implementation of the Act completely changed and commitment, transparency and Impartiality exists. The RTI is a platform to citizens of the country against injustice, partiality in administration and eradication of corruption. Millions of people across the country using RTI to improve their economic and social status, which is very refreshing development.



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UPSC 2017 “Notwithstanding transparency of governance, certain information’s have been exempted from disclosure under the rights to information Act, 2005.”
Discuss the relevant provisions and limitations on disclosure of information.

LIMITATIONS ON DISCLOSURE OF INFORMATION :

Right to information under RTI Act 2005 is not absolute, it can be legitimately restricted in exceptional circumstances.

In the case of *Rakesh Sanghi v. International Advanced Centre for Powder Metallurgy & New Materials*, Hyderabad, wherein the CIC held that the citizen’s right to seek information is not absolute but is conditioned by the Government’s right to invoke exemptions, wherever such exemption applicable. CIC noted that no canon of transparency or public interest would justify that Research and technological Institutions part with their research data or vital information without expecting to benefit tangibly or intangibly from such exchange/disclosure.

RELEVANT PROVISION ON RESTRICTION OF DISCLOSURE OF INFORMATION

Section 8 and 9 of the Act enumerate the categories of information which are exempt from disclosure.

Section 8(1) lists all of the exemptions:

- **Section 8(1)(a)**-affecting sovereignty & integrity of India/security /strategic/scientific and economic interest of the country/friendly relations with other countries/incitement of offence.
- **Section 8(1)(b)**-if information **expressly forbidden by court**/contempt of court.
- **Section 8(1)(c)**-breach of **privilege** of Parliament/State Legislature.
- **Section 8(1)(d)**- commercial confidence/trade secrets **affecting competitive position of third party**.

- **Section 8(1)(e)**-Fiduciary capacity info.
- **Section 8(1)(f)**-info received from foreign govt. in confidence.
- **Section 8(1)(g)**-affecting life and physical safety of any person.
- **Section 8(1)(h)**-**impede the process of** investigation/prosecution pending. Proper justification should be given. It can be disclosed if no stay of court. Merely sub-judice can't be accepted.
- **Section 8(1)(i)**-cabinet papers-not to be disclosed till a final decision is taken.
- **Section 8(1)(j)**-**personal info of third party** can be disclosed **only in public interest**. Consent of third party u/Section 11 be obtained if CPIO intends to disclose.

Section 8(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests

Section 24 read with *Schedule 2* contains the 22 organizations names of the Intelligence and Security organizations which are exempt from the purview of the Act. However, these agencies do not enjoy absolute immunity. These agencies have to provide information regarding any allegation of corruption or act of human right violation sought by citizens.

UPSC 2016 "The Right to Information Act, 2005 was enacted in order to promote transparency and accountability in the working of every public authority." How far has this goal been achieved by the Right to Information Act, 2005 in the last ten years ? Critically analyse your answer with the support of exceptions and case law. 15 marks

SIGNIFICANT ACHIEVEMENTS OF RTI ACT 2005

Right to Information Act, 2005 has been one of the most empowering legislations for people as it puts an obligation on the government to respond to them in a time-bound manner, to get them information to hold the government accountable.

- 1. The law has, in many ways, tilted the balance of power in favour of those governed.**
 - It enabled accountability on those who occupy high offices and to know whereabouts taxpayers' money. This exposed big-ticket scams such as the *Adarsh, Commonwealth Games and Vyapam scams*.
 - It was able to expose human rights violations, and then force accountability in those cases as well.
- 2. Every citizen is empowered to get information.** All that one need to do is to make a request in writing as *no fixed proforma* is required, pay minimal fees and specify the particulars of the information sought.
 - Sub-Section (2) of Section 6 specifically says that an Applicant, making request for information, is not required to give any reason for requesting the information or any other personal detail, except those that may be necessary for contacting him.
- 3. The Right to Information is a means of social audit.** It empowers to carry out social audit of the governmental organisations by obtaining information on work executed and that prevailing on the ground to find out the gaps in provisions of services
 - "Right to information is not only a human right but also an essential tool of democracy" (*Union of India v. Assn. for Democratic Reforms (2002) 5SCC294; People's Union for Civil Liberties (PUCL) v. Union of India (2003) 4 SCC399*).
 - It helps in combating corruption and misuse of power.

- It brings good governance through accountability and transparency and thus strengthens democratic institutions
- Judiciary has also played a key role in bringing out social dimension of the RTI by protecting rights of deprived sections of the society.

CONCLUSION : The major impediment is the lack of awareness of this law and lack of widespread adoption. Successive governments have tried to whittle down this law, beginning with the United Progressive Alliance itself, the creator of this law. State governments have tried and are still trying to do it. But the two biggest and successful attempts have been made or are being made by the National Democratic Alliance government. Once in 2019, and the second now, by way of the Data Protection Bill which will most likely pass.



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UPSC 2015	No Question Asked
UPSC 2014	No Question Asked
UPSC 2013	Question 7(a) "An attempt by all political parties to bring amendments to the RTI Act, 2005 is to sabotage the steps towards transparency of governance in this country." Critically evaluate the statement.

INTRODUCTION : The Right to Information Act, 2005 was enacted by the Government of India for setting out the practical regime of Right to Information for Citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority

AMENDMENTS AND RTI LAW

- "Amendments" have haunted the Right to Information (RTI) community ever since the RTI Act came into effect almost 17 years ago.
- Of the package, the RTI law was the most successful, gaining in momentum faster and wider than anyone expected. Not only empowering the ordinary citizen, it became the means to unearth scams and scandals of those in power.

2006 ITSELF: Amendments to the RTI Act was first proposed by the government in the year 2006 itself. In July 2006, the cabinet approved the amendments to the RTI Act, seeking to exempt the 'File notings' from RTI.³ However, following public pressure, these amendments were not introduced in the House. The government subsequently clarified that **file notings have to be disclosed under RTI.**

2011 : Former Shiv Sena MP, Bhausaheb Wakchaure, proposed an amendment during 2011 that sought to include reasons for seeking information as mandatory in a RTI application. However, it was not fructified.

2013 CIC ORDER & PROPOSAL OF AMENDMENT

- In 2013, a full bench of the CIC delivered a historic judgment by declaring that all national parties came under 'public authorities' and were within the purview of the

³ These file notings are recorded by civil servants, ministers and others on the file. Therefore, such notings become an important part of the information to understand the rationale for a particular decision/action

RTI Act. Accordingly, they were directed to designate central public information officers (CPIOs) and the appellate authorities at their headquarters within six weeks.

- In 2013, The Right to Information (Amendment) Bill was introduced in Parliament to keep political parties explicitly outside the purview of RTI that lapsed after the dissolution of the 15th Lok Sabha. Notwithstanding the binding value of the CIC's order under Section 19(7) of the Act, none of the six political parties complied with it. Quite interestingly, all the parties were absent from the hearing when the commission issued show-cause notices for non-compliance at the hearing.
- Following the CIC order, an amendment was proposed in August 2013 to exclude political parties from the ambit of RTI. This too did not materialize due to public pressure.

CONCLUSION

- Finally, in 2019, a PIL was filed in the Supreme Court seeking a declaration of political parties as 'public authority' and the matter is sub judice. Irrespective of the ideological differences among these political parties on almost all the issues under the sun, non-compliance of the RTI mandate has been a great unifier.
- The Law Commission opines that political parties are the lifeblood of our entire constitutional system. Political parties act as a conduit through which interests and issues of the people get represented in Parliament. Since elections are predominantly contested on party lines in our parliamentary democratic polity, the agenda of the potential government is set by them.
- As noted by Dr. B.R. Ambedkar in his famous Constituent Assembly speech, "The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State...**The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics.**" It is hoped that the top court will further the positive advances made in this direction. Since sunlight acts as the best disinfectant and our political parties tirelessly claim themselves to be apostles of honesty and integrity, it is expected that they would walk the talk.

Since this is a 2013 Question aspect of 2019 Amendment is not deliberately mentioned.



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UPSC 2012	No Question Asked
UPSC 2011	A Central Government Medical Research institute in collaboration with an MNC used a drug on experimental basis on humans for curing cancer. Some of the patients died due to this drug. In order to sue for compensation for such victims and violation of right to privacy, Mr. X, a relative of a deceased patient sought information through the instrumentality of Right to Information Act. The information was refused on the ground that it affects the contracting power of the Central Government with foreign companies and violates trade secrets too. Decide.

Section 8(1)(d) of the RTI Act exempts information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party.

To claim this exemption, it must be established that the information sought relates to commercial or trade secrets, intellectual property or similar information. If the information sought satisfies this condition, then it must be established that disclosure of this information would result in harming the competitive position of a third party.

Gita Dewan Verma Vs. Additional Secretary (UD), Govt. of NCT Delhi⁴

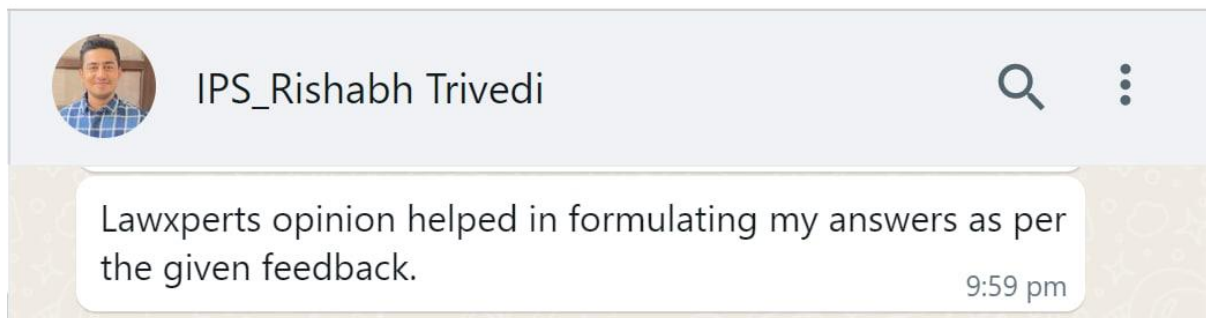
“Any agreement entered into by the government is an agreement deemed to have been entered into on behalf of the and in the interest of ‘We the people’. ***Hence if any citizen wants to know the contents of such an agreement he is in the position of a principal asking his agent to disclose to him the terms of the agreement entered into by the agent on behalf of the principal. No agent can refuse to disclose any such information to his principal,***” the Central Information Commission (CIC) said in its order dated 27 July 2009.

However this agreement cannot be disclosed when the information including commercial confidence, trade secrets or intellectual property are involved.

⁴ Decision No. CIC /WB/A/2007/00830/SG/ 1286

In the case of *Central Board of Secondary Education & Anr. vs. Aditya Bandhopadhyay & Ors., (2011) 8 SCC 497*. In the said judgment, the Court held that indiscriminate and impractical demands under the RTI Act for disclosure of all and sundry information unrelated to transparency and accountability would be counterproductive as it will adversely affect the efficiency of the administration and result in executive getting bogged down with non-productive work of collecting and furnishing information.

Since it is an collaboration of Central Government Medical Research institute with an MNC to use a drug on experimental basis on humans for curing cancer. The nitty-gritties of this experimental research cannot be disclosed. However, Mr. X can file an petition against government for compensation for the loss of his loved one under Article 32 of the Constitution of India.



RTI ACT was not asked between UPSC 2000 to 2009.