

TRACING THE TRANSPARENCY AND ACCOUNTABILITY OF THE BANKING SECTOR IN INDIA THROUGH JUDICIAL DECISIONS UNDER RTI ACT, 2005

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ABSTRACT

The preamble to the Constitution of India (referred to as Constitution thereafter) affirmed that “we the people of India” have created the legislative, executive, and judicial organs of the state. The Constitution under Article 19 mandates that the citizenry have the “Right to Information” regarding the functioning of these “Public Institutions”. The informed and healthy functioning of democracy depends upon the transparency and accountability of these public institutions. The catena of judgment augmented the “right to information” as an important aspect of livable democracy. The preamble to the *RTI Act, 2005* states that “... *democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed*”. The author of this paper tends to analyze the sole motto of the *Right to Information Act, 2005*. The author also tries to reconcile the competing interests of the public institutions in terms of confidentiality and of the citizenry in terms of disclosure. The author will evaluate the judicial decisions covering the impact of the “Right to Information” on the banking sector in terms of whether the information obtained by the “Reserve Bank of India” by the public and private banks or other financial institutions is subject to disclosure or are these pieces of information fall within the domain of confidential information.

INTRODUCTION

The United Nations General Assembly passed a resolution providing for the right of people to access official information.³ The right to information is also recognized under the “*Universal Declaration of Human Rights (UDHR)*.”⁴ The “right to information” is not expressly given in the Indian Constitution, though, the Court has time and again, emphasized the “*right to information as a fundamental right under Article 19 (1) (a) of the Constitution of India.*”⁵ In *Bennet Coleman and Co. and Ors. v. Union of India and Ors.*⁶ the court held that “freedom of speech and expression includes the right of the citizenry to be informed”. In *Union of India v. Association of Democratic Reforms and Anr.*⁷ the court held that “*the right to information extends to the right to know about the criminal antecedents of political candidates.*” In *State of U.P. v. Raj Narain and Ors.*⁸ the court expressed its view that “*the right to information originates from the right to freedom of speech and expression given under Article 19 (1) (a) of*

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³ United Nations General Assembly, 1946 Resolution 59 (1)

⁴ Universal Declaration of Human Rights, Article 19

⁵ Union of India v. Association for Democratic Reforms AIR 2002 SC 2112; PUCL v. Union of India (2003) 4 SCC 399; State of U.P. v. Raj Narain AIR 1975 SC 865; Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala and Ors. (2013) 16 SCC 82

⁶ (1972) 2 SCC 788

⁷ (2002) 5 SCC 294

⁸ (1975) 4 SCC 428

*the Constitution of India.*⁹In 2005, the *Right to Information Act* was passed by the Parliament which explicitly recognizes the “Right to Information” of the citizenry.¹⁰After the enactment of the RTI Act, 2005 the debate was raised that this Act is infringing the right to privacy of an individual. The Court cautiously demarcate the distinction between the Right to Information Act, 2005 and the right to Privacy and held that both of these rights available to the citizenry are not absolute in nature. *Absolute or uncontrolled rights do not and cannot exist in any modern state.*¹¹These rights are controlled, regulated, and curtailed in the large public interest. Citizenry’s right to information is statutorily recognized, but at the same time, limitations have been carved out in the Act itself.¹²The information which is not under the control of “public authorities” is not accessible to the citizenry and an individual can always claim his right to privacy in respect of that information.¹³*The “right to information” is accessible from the public authorities.* Furthermore, the term public authority is elaborately discussed by the author in this paper hereinbelow.

PUBLIC AUTHORITY: DISCUSSION UNDER RTI ACT, 2005

The term public authority has been exhaustively defined under the Act which can be dealt into two parts; the first part contained within its ambit

- “(a). *an authority or body or institution of self-government established by or under the Constitution,*
- (b). an authority or body or institution of self-government established or constituted by any other law made by the Parliament,*
- (c). an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and*
- (d). an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.”¹⁴*

Apart from this, the second part of the definition of the term public authority includes within its ambit-

- “(e). a body owned, controlled, or substantially financed, directly or indirectly by funds provided by the appropriate government,*
- (f). non-governmental organizations are substantially financed directly or indirectly by funds provided by the appropriate government.”*

The term *appropriate government* means the Central Government when the matter concerned is related to the *Central Government or Union Territory* and the *State Government* when the matter is related to State subject matter.¹⁵The first part of the definition is exhaustive; however, the second part needs elaborative discussion. Now, the author will discuss the second part of the definition extensively by breaking the definition into different heads hereinbelow.

BODY OWNED BY APPROPRIATE GOVERNMENT

When the *appropriate government* is having legal title and control over the affairs of a body then it could be said that the body is owned by the *appropriate government*.

BODY CONTROLLED BY THE APPROPRIATE GOVERNMENT

⁹People’s Union for Civil Liberties (PUCL) and Ors. v. Union of India and Anr. (2003) 4 SCC 399

¹⁰The Right to Information Act, 2005 - Enforced on 12th October 2005

¹¹Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala and Ors. (2013) 16 SCC 82

¹²Right to Information Act, 2005 Section 8 - Exempted information

¹³Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala and Ors. (2013) 16 SCC 82

¹⁴Right to Information Act, 2005 Section 2 (h)

¹⁵Right to Information Act, 2005 Section 2 (a)

The term “controlled” has not been defined under the RTI Act and therefore needs an elaborative discussion to explore the scope of the term. It is required to mention that the term “control” is needed to be looked upon in the context of the words used prior to and subsequent to the word “control”. The Court, time and again, observed that the word control means that the appropriate government must have control of substantial nature.¹⁶ Mere supervisory or regulatory power of the appropriate government is not sufficient to consider any “body/institution” as a public authority.¹⁷

BODY SUBSTANTIALLY FINANCED BY APPROPRIATE GOVERNMENT

The term “substantially financed” has not been defined under the RTI Act. The Court held “*that to consider any institution/ body as public authority the degree of financing must be actual, existing, positive, and real to a substantial extent, and not moderate, ordinary, or tolerable.*”¹⁸ The subsidies, grants, exemptions, and privileges provided by the “*appropriate government*” to any institution/body from time to time do not in any way makes that institution/body a public authority. However, *when there is evidence to show that the funding made by the appropriate government to the body/institution is so substantial to the extent that such institution/body practically runs on such funding, and without that funding, they would struggle to exist.*¹⁹ When an appropriate government is substantially financing any institution/body then they would certainly fall within the ambit of a public authority. There are many private bodies/institutions which are getting around 95% of the Grant-in-aid from the government and will certainly fall within the purview of public authority.²⁰

NON-GOVERNMENTAL ORGANIZATIONS

In the case of non-governmental organizations, “*it is the imperative of the State Information Commission and the Central Information Commission to decide whether the body/institution they are examining would have been substantially financed or not by the appropriate government based on the evidence present before the Hon’ble Information commissions.*”²¹ It is found and established that if the appropriate government financed the non-governmental organizations substantially then certainly such organizations would fall within the ambit of public authority.

RIGHT TO INFORMATION VIS A VIS CONFIDENTIAL INFORMATION

“*The “Right to Information”*²² means securing access to information under the control of public authorities. It promotes transparency and accountability in the working of every public institution.” It empowered the citizenry to make informed choices and ultimately enable them to actively engage in sound decision-making processes. “*Modern societies are information societies. Citizens tend to get interested in all fields of life and demand information that is as comprehensive, accurate, and fair as possible.*”²³ The information seeker (citizens of India)

¹⁶State of West Bengal and Anr. v. Nripendra Nath Bagchi AIR 1966 SC 447

¹⁷The Shamrao Vithal Cooperative Bank Ltd. v. Kasargode Pandhura Mallya (1972) 4 SCC 600

¹⁸Palser v. Grimling (1948) 1 ALL ER 1, 11 (HL)

¹⁹Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala and Ors. (2013) 16 SCC 82

²⁰Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala and Ors. (2013) 16 SCC 82

²¹Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala and Ors. (2013) 16 SCC 82

²² Right to Information Act, 2005 Section 2(j) defined the term "Right to Information" which means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records,
- (ii) taking notes, extracts, or certified copies of documents or records,
- (iii) taking certified samples of material,
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device

²³Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors. (2016) 3 SCC 525

may make a request stating, in brief, *the particulars of the information required by him*²⁴ and does not need to specify the reason for getting the information.²⁵ However, the information seeker cannot seek the information enumerated in section 8 of the Act as “exempted information”. Such exempted information given in section 8 of the Act of 2005 is not absolutely exempted from disclosure. Disclosure of such category of information will be allowed if the revelation of such exempted information offsets the harm to the public authorities.²⁶ Except for the two categories of information (information affecting the sovereignty and integrity of India etc. information causing the breach of privilege accorded to the members of the parliament and the state legislature and the information relating to cabinet papers), all other exempted information is subject to public disclosure or would be disclosed after the passing of 20 years.²⁷ However, when it seems that the revealing of such information is in the interest of the State, then such disclosure shall be mandatorily made. The sole motto of the RTI Act, 2005 is transparency in public life.²⁸

RESERVE BANK OF INDIA: ITS FUNCTIONALITY AND MANDATE

The *Reserve Bank of India (RBI)* is duly established by the Central Government by passing the *Reserve Bank of India Act, 1934*.²⁹ It manages public debts, regulates and controls the money supply, and governs and deals with commercial and cooperative banks. The functioning of the RBI is guided by expert advisors to ensure sound economic growth and stability in the nation (India). The functioning of RBI is legitimate and is best suited to the interest of the nation and is never subjected to a penny of doubt.³⁰ The Court should cautiously come in the way with the economic policy decisions which are the subject matter of economic experts and advisors.³¹ “It also acts as the regulator and supervisor of the banking system in India.” It exercises its supervisory role through onsite & offsite inspection, engaging in dialogue with banks on a periodical basis, and taking actions against the banks in violation of its directives/guidelines which vary from the imposition of penalties to issuing a letter of warning, promoting transparency through mandatory disclosures.³² The question arises does the report of the financial inspection and scrutiny report carried out by RBI on an annual basis are disclosable? Is the revelation/disclosure of such information lead to misconception in the mind of the public and further lead to tarnishing the image of the bank? Whether RBI’s function is to promote public confidence in the bank through disclosure or to repose confidentiality in the functioning of the Bank vide fiduciary relationship. Whether RBI is under a fiduciary duty to maintain the confidentiality of information given by the Bank and other financial institutions during the inspection?

RBISTANDS FOR NON-DISCLOSURE OF INFORMATION: SUBMISSION MADE AND ARGUMENT ADVANCED

The Reserve Bank of India contended that the annual financial inspection and scrutiny report are confidential documents and are not subject to disclosure. The disclosure of such

²⁴Right to Information Act, 2005 Section 6 Clause 1

²⁵Right to Information Act, 2005 Section 6 Clause 2

²⁶Right to Information Act, 2005 Section 8 Clause 2

²⁷Right to Information Act, 2005 Section 8 Clause 3

²⁸Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors. (2016) 3 SCC 525

²⁹The Reserve Bank of India Act, 1934 Enforced on 01st April 1935

³⁰Peerless General Finance and Investment Co. Ltd. and Anr. v. Reserve Bank of India (1992) 2 SCC 343

³¹B. Suryanarayana v. N. 1453 The Kolluru Parvathi Coop. Bank Ltd. 1986 AIR (AP) 244

³²Banking Regulation Act, 1949 Section 35

information may be counterproductive.³³It may cause serious implications for financial stability in the country which solely rest on public confidence and therefore may rupture the state's economic interest. RBI contended that such information shall be kept secret on the ground that:

“Firstly, such disclosure would affect the economic interest of the country,
Secondly, such disclosure would affect the competitive position of the bank,
Thirdly, such information has been obtained by RBI in a fiduciary capacity and is un-disclosable.”³⁴

The RBI also invoked special statutes which provide for the confidentiality of the information obtained by them during the inspection. The question arises *whether RTI Act, 2005 overrides the provisions of “special statutes”³⁵ which confer confidentiality in the information obtained by the RBI.³⁶ The Reserve Bank of India (RBI) contended that the general laws cannot override the special laws and cited the relevant precedent whereunder the Supreme Court of India held that *section 22 of the Right to Information Act, 2005 cannot have the effect of invalidating and rescinding earlier statutes in relation to confidentiality.*³⁷*

RIGHT TO INFORMATION VIS A VIS FIDUCIARY RELATIONSHIP BETWEEN RBI AND BANKS

The major question before the Court is whether the non-disclosure of information by RBI based on a fiduciary relationship with other banks is tenable. The Court cited various authorities to define the term “Fiduciary Relationship” which can be summarized as follows:

“A fiduciary relationship covers a relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the fiduciary relationship.³⁸ Fiduciary relationships such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client require the highest duty of care.³⁹ The term is defined in Civil/Roman law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the parties trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.⁴⁰ A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a

³³Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors. (2016) 3 SCC 525

³⁴Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors. (2016) 3 SCC 525

³⁵The Banking Regulation Act, 1949; The Reserve Bank of India Act, 1934; The Credit Information Companies (Regulation) Act, 2005; State Bank of India Act, 1955; State Bank of India (Subsidiary) Act, 1959; The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970

³⁶ Banking Regulation Act, 1949 Under section 27 - the information collected by RBI is subject to limited disclosure; Section 34A of the Act cannot compel the production of documents that are of confidential nature; Section 35 (5) of the Act mandates the disclosure of information on the order of the Central government; Reserve Bank of India Act, 1934 section 45E - disclosure of any information relating to credit information submitted by banking companies is confidential; Section 45E (3) of the Act mandates that no court, tribunal, or authority can compel RBI to give information relating to credit information, etc.; Credit Information Companies (Regulation) Act, 2005 Section 17 (4) - states that the credit information received by credit companies cannot be disclosed to any person; Section 20 of the Act mandates that the credit information company has to adopt privacy principles. Section 22 of the Act mandates that there cannot be unauthorized access to credit information

³⁷Raghunath v. The State of Karnataka AIR 1993 SC 81; ICICI Bank v. SIDCO Leather, etc. (2006) 10 SCC 452; Central Bank v. Kerala (2009) 4 SCC 94, AG Varadharajalu v. Tamil Nadu (1998) 4 SCC 231

³⁸Advanced Law Lexicon, 3rd Edition, 2005

³⁹Black's Law Dictionary (7th Edition, Page no. 640) also cited in the judgment Central Board of Secondary Education and Anr. v. Aditya Bandyopadhyay and Ors. (2011) 8 SCC 497

⁴⁰Corpus Juris Secundum (Vol. 36A Page 381)

position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.”⁴¹

Taking into consideration various authorities and precedents, *the Court held that RBI does not have a fiduciary relationship with the other banks because all the information obtained by RBI during inspection/scrutiny is not obtained under trust/confidence.* Neither the RBI nor the bank is acting in the interest of each other.⁴²

“The Court made the observation that the Reserve Bank of India (RBI) is expected to defend the public interest and not the private interest of individual banks. It is not the legal duty of the RBI to enlarge the profits of any public sector or private sector bank, and thus the connection between the RBI and other banks is not based on “trust”. It is the statutory duty of the RBI to defend the public interest, the interest of depositors, the country's economy, and the banking sector. Thus, RBI ought to act with all transparency and should not attempt to hide information that might result in embarrassment to an individual's banks.”⁴³

Even the disclosure of information obtained under fiduciary capacity applies only in limited cases where the revelation of such information is unwarranted/undesirable. When it is the law that mandates the banks to provide the information to the public authority, then such information cannot be kept secret on the premises of a fiduciary relationship.

RIGHT TO INFORMATION VIS A VIS EXEMPTION CLAIMED ON THE BASIS OF PUBLIC INTEREST

The argument made by RBI is that “*the disclosure of such information to the public would be detrimental to the economic interest of the nation.*” The question raised before the Court was whether supplying such “information” to the citizenry would be detrimental to the public interest of the nation. If not, to what extent would the citizenry be allowed to access the financial-related information of the bank through RBI? The Court observed that the RBI through its public information officers (PIO) used section 8 of the Act to evade the citizenry from accessing the information which in turn saved the banks from the accountability of their actions. Such conduct on the part of RBI attracts more suspicion and disbelief among the citizenries.⁴⁴ *The RBI failed to completely analyze the fact that the inspection reports, documents, etc. would fall within the domain of “information” as defined under the Right to Information Act of 2005.*⁴⁵ From the reading of the definition, it would be clear that “*the legislature's intent was to make available the information obtained by the public authorities from private bodies.*” It has been observed that many times the financial institutions resorted to such actions which are neither clean nor transparent which ultimately defraud the citizenry.⁴⁶ However, the accountability of the RBI should not be extended to disclose such information which is confidential in nature. For that, RBI should use section 10 of the Right to Information Act, 2005 whereunder such information which is confidential in nature should be severed from the information which should be made available to the citizenry. The severability provision

⁴¹Bristol and West Building Society v. Mothew [1998 Ch 1]

⁴²Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors. (2016) 3 SCC 525

⁴³Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors. (2016) 3 SCC 525

⁴⁴Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors. (2016) 3 SCC 525

⁴⁵Right to Information Act, 2005 Section 2 (f) - Defined the term “Information” which read as follows: “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force

⁴⁶Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors. (2016) 3 SCC 525

under the Act clears the intention of the legislature that “*access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act, and which can reasonably be severed from any part that contains exempt information.*”⁴⁷

RIGHT TO INFORMATION VIS A VIS EXEMPTION CLAIMED ON THE BASIS OF ECONOMIC INTEREST

The RBI made the contention that *the disclosure of such information would adversely affect the economic interest of the nation*. It is the goal of the nation to promote economic growth and attain economic stability to carry out the national objectives which would, in turn, promote the economic empowerment of its citizenry. The Court observed that “*national interest cannot be seen with glasses devoid of economic interest*”. The Court observed that the *Right to Information Act* is an instrument to attain economic empowerment through participative government. The informed citizenry has the capacity to take reasoned decisions and to appraise the actions of public institutions which is an important aspect of participative democracy. Through this instrument, the national interest of the nation could be better served which includes within its ambit the economic interest. The motto of “Government by the People” makes it mandatory for public institutions to provide access to public information to the citizenry.

JUDICIAL PRONOUNCEMENTS: CRITICAL ANALYSIS

The Supreme Court of India, time and again, got an opportunity to adjudicate the dispute *where the Reserve Bank of India refused to disclose certain information to the public at large on the ground of confidentiality, commercial confidence, fiduciary relationship with other banks, the public and the economic interest of the nation*. The author will discuss in this paper several judgments and orders of the Supreme Court of India where confrontation has been raised between the RTI applicants and RBI over the disclosure of information relating to banks.

Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors.⁴⁸

The supreme court held that the advisory notes, inspection reports, detailed list of the defaulter’s industrialist who had taken loan from the public sector banks, details regarding principal amount, interest amount, date of default, date of availing loan, etc are not confidential documents and can be disclosed to the public at large. However, the court is open to the point that any information which is confidential in nature is severable from the documents then the rest of the information in that document can be disclosed under RTI. The court also observed that the two competing interests – disclosure vis a vis confidentiality/privacy must be judged and balanced appropriately. It must be determined at what stage the information is to be disclosed which always depends upon the nature of the information and the consequences it would lead to upon disclosure.

POSITION CONSEQUENT TO JAYANTILAL N. MISTRY AND ORS.CASE DATED 16.12.2015

⁴⁷Right to Information, 2005 Section 10 deals with Severability which states that- where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information

⁴⁸(2016) 3 SCC 525

Consequent to the decision of the Supreme Court of India in the case of *Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors.*⁴⁹ dated 16.12.2015, the Reserve Bank of Bank formulated the disclosure policy dated 30.11.2016. The contempt petitions were filed, challenging the disclosure policy of RBI, on the ground that exemptions in the disclosure policy were contrary to the directions issued by this Court. Later, another policy was uploaded by RBI dated 12.04.2019 which was deleted by them thereafter. In the case of *Girish Mittal v. Parvati V. Sundaram and Anr.*,⁵⁰ directed the RBI to withdraw the exemptions in the disclosure policy which are contrary to the directions of this court in the Jayantilal N. Mistry case⁵¹ (2015). Various applications were filed in 2019 seeking recall of the judgment of the *Jayantilal N. Mistry case (2015)*. The Supreme Court by its order dated 18.12.2019 directed “*the RBI not to release inspection reports, risk assessment reports, and annual financial inspection reports of the banks including SBI*”. The direction was also issued to RBI not to disclose confidential information related to banks.

The miscellaneous applications were filed for recall of the judgment of Jayantilal N. Mistry (2015) on the ground that this judgment is of far-reaching consequences. The Supreme Court of India in the case of *Reserve Bank of India v. Jayantilal N. Mistry and Ors.*⁵²(2021)by its order dated 28.04.2021 dismissed all the miscellaneous applications on technical grounds stating that there is no provision for filing any application for recall of the judgment. The Order 47 of the Supreme Court Rules, 2013 contains provisions for filing a review petition. The Court ruled that upon closer scrutiny of the miscellaneous application for recall of the case, it seems that, in substance, the applicants are seeking a review of the judgment.

HDFC Bank Ltd. and Ors. v. Union of India and Ors.⁵³

Pursuant to the decision of *Jayantilal N. Mistry and Ors (2015)*, the RBI issued directions to the Banks to disclose certain information which according to the Bank is adversely affecting the right to privacy of the Bank and their customers. The Banks have challenged the decision by way of Interlocutory Application in the Writ Petition. The Court observed that, though both the right to privacy and the right to information is a fundamental right, and in the case of conflict between them, the court is required to achieve a sense of balance. They opined that *prima-facie*, the court in the case of *Jayantilal N. Mistry and Ors (2015)* did not take into consideration the aspect of balancing the right to information and the right to privacy.

CONCLUSION AND OBSERVATION

The court held that the advisory note issued by RBI to Banks in violation of policy guidelines would fall within the domain of exempted information or not may depend upon a case-to-case basis. However, section 10 of the Act of 2005 provides that it is a matter to be decided on the merit of each case whether the advisory note shall be given to RTI applicants as it is or whether some part of the note is to be severed since they may be exempted under the RTI Act. In this case, the Court held that since the matter has already been brought to the public by the Hon’ble Finance Minister in Parliament then such advisory note shall be subject to Suo-Motu disclosure.

⁴⁹(2016) 3 SCC 525

⁵⁰ (2019) 20 SCC 747

⁵¹(2016) 3 SCC 525

⁵² AIR 2021 SC 2180

⁵³MANU/SC/1279/2022

The Court held that the inspection report made by the RBI is subject to public disclosure. The RBI is not to serve the private interest of the private/public bank and co-operative banks. The citizenry, as a matter of right, should be kept aware of the RBI's appraisal and remedial actions taken in specific cases against the banks upon the violation of policy guidelines.

The Court held that the information such as *“the detailed list of the defaulter's industrialist who had taken a loan from the public sector banks, details regarding principal amount, interest amount, date of default, date of availing loan, etc., are not to be kept by RBI as confidential in a fiduciary capacity of the bank.”* The Court also observed that the banks and financial institutions continue to give loans to industrialists despite their default in re-payment of their earlier loans. The Court quoted the Para from the Judgement *“Promoting industrialization at the cost of public funds does not serve the public interest, it merely amounts to transferring public money to private account.”*⁵⁴

However, the ***Right to Information under the RTI Act, 2005*** is not an absolute right to the citizenry. *“This right can be curtailed by invoking section 8 of the RTI Act, 2005 which provides that the “right to information” can be denied to the public on the ground of national security and sovereignty, national economic interest, relation with foreign states, etc. therefore, it can be said that all the information generated by the public institutions are not subject to public disclosure.”* The 21st century is the century of technological advancement and the global economy; the closed-door policy of public institutions is no more acceptable. However, heed must be given to the disclosure of such information, the publication/release of which cause more harm than furthering the national interest. More particularly, when it comes to the economic interest of the nation, the premature disclosure of financial information would cause more harm, maybe not domestically but maybe globally. Therefore, the two competing interests – disclosure vis a vis confidentiality must be judged and balanced appropriately. It must be determined at what stage the information is to be disclosed which always depends upon the nature of the information and the consequences it would lead to upon disclosure.

Though the Supreme Court of India in the case of ***HDFC Bank Ltd. and Ors. v. Union of India and Ors.***⁵⁵ vide its order dated 30.09.2022 opined that *“this Court in the case of Jayantilal N. Mistry and Ors (2015) did not take into consideration the aspect of balancing the right to information and the right to privacy”*. This observation is not binding in the sense of precedent. *“If the Supreme Court is finding the directions made by this Court in the case of Jayantilal N. Mistry and Ors (2015) inconsistent with the right to privacy of banks and customers then the Court of the higher bench should either overrule, modify, rectify, or laid down the correct proposition of law. To date, the directions made by this Court in the case of Jayantilal N. Mistry and Ors (2015) are operative and valid in law”*.

⁵⁴U.P. Financial Corporation v. Gem Cap India Pvt. Ltd.(1993) 2 SCC 299

⁵⁵MANU/SC/1279/2022