

# CIC criticizes government's denial of details on oxygen panel

August 2, 2021

The Central Information Commission (CIC) has slammed the Centre's blanket denial of information related to a committee overseeing medical oxygen supplies during the pandemic, saying its rationale was "far fetched" and "unjustified". In its order on Saturday, Information Commissioner Vanaja Sarna directed the Centre to respond to the Right to Information (RTI) request within ten days.

**In news:** CIC slams Centre's denial of information on medical oxygen committee

**Placing it in syllabus:** Governance

**Dimensions**

- What is the issue ?
- Sec (8) : National Security Clause
- CIC ruling
- What is Section (8) ?
- Importance of these Exceptions
- Problems with them
- Suggestions

## **Content:**

### **What is the issue?**

- The RTI request filed by activist and freelance journalist Saurav Das in April 2021 sought information on a nine member Empowered Group set up a year earlier under the Chairmanship of the Secretary, Department for Promotion of Industry and Internal Trade.

- When the first wave of the pandemic began, it was responsible for coordinating the supply of PPE kits, RT-PCR test kits, N-95 masks and gloves.
- It subsequently became responsible for the supply of medical oxygen as well. Mr. Das requested information on the dates, agenda and minutes of the committee's meetings till date, and presentations made to the committee.

Sec (8) : National Security Clause:

- The Centre denied the request, citing the section 8 of the RTI Act.

**The Central Public Information Officer (CPIO) argued that:**

- The Empowered Group was set up in a time of crisis to cut across the several arms of the government, ensure that bureaucratic hassles did not impede decision making, and brought together government and private entities, both domestic and foreign.
- These proposals and deliberations contain highly sensitive information regarding technologies, strategies and processes to be adopted, regarding the commercial and costing aspects of different industries and commodities.
- The public disclosure of this information could greatly impede the scientific, strategic and economic interests of the state
- It could also irreparably harm the competitive position of government and private entities
- Given that the committee's discussions were deliberated at the highest level, it must be protected from disclosure given the larger intent to protect national security

## **CIC ruling:**

- The CIC dismissed the Centre's defence, saying that the citing of exemption on the grounds of Cabinet discussions "appears to be an afterthought which seems far fetched also".
- The exemption cited related to national security was "also not justified", it said.
- With regard to commercial confidence and intellectual property rights, the CIC said a blanket denial of all requested information was unjustified.
- It directed the Centre to respond to the Right to Information (RTI) request within ten days.

## **Exemptions under RTI Act are as follows:**

- Information disclosure of which hampers the sovereignty and integrity of India, the security etc. (section 8)
- Information which involves infringement of copyright subsisting in a person other than the State (section 9).
- The intelligence and security organization or any information furnished by such organization to Government (section 24).

## **What is Section (8) ?**

- Section (8) of the RTI Act enlists some special instances when the authorities are exempted from disclosing information sought for.
- Section 8 is important under the Right to Information Act 2005 as it specifies grounds under which the information can be exempted from disclosure.
- Sec 8(2) states that an official will have to disclose information requested, notwithstanding that an exemption provision or the Official Secrets Act applies if the disclosure in the public interest outweighs the threats that may exist.

### ***Exemption from disclosure of information include:***

- Information which is prejudicial to 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;
- 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;
- Information whose disclosure would cause a breach of privilege of Parliament or the State Legislature;
- information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party
- 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;
- information received in confidence from foreign government;
- Information 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;
- information which would impede the process of investigation or apprehension or prosecution of offenders;
- 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:
- information which relates to personal information the disclosure of which has not relationship to any public

activity or interest, or which would cause unwarranted invasion of the privacy of the individual

## **Importance of these Exceptions:**

- There are situations when the information sought cannot be provided by the public authority.
- There are many situations in which the information held by the public authority can't be disclosed because of sensitiveness and secrecy of information which if disclosed would hamper the sovereignty and dignity of the country.
- Citizens of India have a right to know about the affairs of the government but these rights are not absolute and it can be restricted in exceptional circumstances.
- These restrictions should not transcend the restrictions prescribed in **Article 19 (2)** of the Constitution that places limitations on the liberty of Speech and expression
- **Transparency** is a powerful safeguard against political and administrative aberrations but **totalitarian transparency** can lead to inefficiency in the Government.
- Not all the information that the Government generate will or should be given to the public; there is always some information which are very sensitive which should be kept secret so that no harm can be caused
- Endeavour of the RTI Act is to harmonize conflicting public and private interests. RTI Act, thus includes these exceptions as safeguard against harassment of honest public officials or to obstruct the functioning of a public authority.

## **Ensuring National Security/Sovereignty:**

- Referring to the explanation above, there are some pieces of information that are related to the country's national security which would have the potential to be

the reason for harm if they are released to the public.

- For example, secrets and information related to a conflict, detailing particulars about the troops, the strategy, the resource will count as information protected under this section.
- However, to use this provision to keep a contract with a country or company detailing the purchase of a fighter jet secret will not be appropriate.
- This will count as commercial information and can be released to the public to keep in check the process of procurement, reducing the risk of corruption. It cannot be held on the ground of 'defence'.

### ***Protecting National Economic Interests:***

- Information about exchange rates, currency, interest rates, the regulation of banking, taxes, proposals for expenditure or borrowing, could, in a few cases, be a threat to the national economy.
- However, economic and financial information at the lower level, like budget allocated to departments and contracts cannot be withheld.

### ***Maintaining Cordial Relations with the Foreign States:***

- The relationship between countries can often be sensitive, such that candid assessments and analysis of behavior of other countries and policies could easily offend and in so doing, damage own international interests of India
- However, using this provision to withhold political deals in the name of relations cannot be used to justify non-disclosure.

### ***Aiding Law Enforcement and the Judicial Process:***

- During an investigation, information such as the witness' identities or case being put together against a suspect needs to be protected.

- The case could be jeopardized if released. Information such as the discussion between Attorney-Client needs to be kept private, wherein, the Attorney is the Attorney-General and the Client is India.

### ***Cabinet and Other Decision-Making Documents:***

- Papers relating to discussions and deliberations of cabinet meetings are excluded but after the decision is made, it must be followed by a release of the documents responsible for such a decision and the reasons behind the decisions itself.
- During the process, a level of confidentiality needs to be maintained but once made, the public has the right to access relevant information.

### ***Protecting Trade Secrets and Commercial Confidentiality:***

- Information with private companies must be accessible to the general public, for example, if it is related to the public service or is necessary for the exercise or protection of a right.
- But, harm should not be caused to the company's commercial interests.

### ***Ensuring Individual Safety:***

- Information that puts a specific person's safety or liberty at risk should not be disclosed.
- For example, the person who 'blows the whistle' on corruption in an organization should be protected because he may be discriminated against or face violence.

### ***Safeguarding Personal Privacy:***

- Individual information is kept with the government. The Right to Privacy requires the government to withhold private information unless there exists an overriding need to disclose it.

- However, officials must not use this provision to secure their own conduct from public scrutiny.

### ***Preventing frivolous or vexatious requests:***

- Certain instances have been noted where the RTI requests were patently frivolous or vexatious (or mala fide).
- There are also cases in which public servants under a cloud and facing grave disciplinary charges have repeatedly attempted to use the Act to intimidate, harass or at times even humiliate seniors with requests that have been vexatious.
- If safeguards are not provided in such situations, there could be three dangers.
- First, such frivolous or vexatious requests may overwhelm the system and defeat the very purpose of the Act.
- Second, the even tenor of the administration may be paralysed, seriously undermining delivery of services.
- Third, if public servants facing serious charges successfully resort to such tactics directly or through proxies it may lead to breakdown of discipline, insubordination and disharmony in public institutions

### **Problems with them:**

- Although exemptions have the capacity to serve a function for public welfare, cases have illustrated that these provisions are mostly abused by officials to keep information regarding them hidden from the public.
- There have been instances where information was withheld because it embarrasses the government, or in fear of the public holding them accountable for their actions.
- The Commission also observed that frequent reference to 'missing files' as an excuse to deny the information is a major threat to transparency, accountability and also major reason for violation of Right to Information Act,



## Suggestions:

In its First Report, the 2nd Administrative Reform Commission (ARC) recommended the following:

### ***Rationalising Security Classification Hierarchy:***

- The GOI should **amend the Manual of Departmental Security Instructions for identifying Information Deserving Classification.**
- The hierarchy of security classification needs to be rationalised, reflecting the scheme of exemptions under the Act and emerging challenges
- each Ministry/Department should identify the information which deserves to be given a security classification.
- Ordinarily, only such information should be given a security classification which would qualify for exemption from disclosure under the Right to Information Act, 2005.

SLNo.	Section of the RTI Act to which information pertains	Classification
1	8(1)(a)	Top Secret
2	8(1)(b)	Confidential
3	8(1)(c)	Confidential
4	8(1)(d)	Secret
5	8(1)(e)	Confidential
6	8(1)(f)	Secret
7	8(1)(g)	Top Secret/Secret
8	8(1)(h)	Secret/Confidential
9	8(1)(i)	Confidential
10	8(1)(j)	Confidential/restricted
11	9	Confidential/restricted

### ***Fixing Level of Seniority for Classifying Documents:***

- **Only officers of sufficient seniority should be empowered to classify documents** that are vital in the larger national interest, and should be handled with great caution as any security classification denies access of information to public

- Officer Authorised to Accord the Grading:
  - Top Secret – Not below Joint Secretary;
  - Secret – Not below Deputy Secretary;
  - Confidential – Not below Under Secretary.
- The State Governments may authorise officers of equivalent rank to accord the grading

***Time-bound Upgrading and Downgrading Documents:***

- Documents once classified as “Top Secret” or “Secret”, should remain so classified as long as required but not exceeding 30 years.
- Documents classified as confidential and restricted should remain so for a period not exceeding 10 years.
- Those which do not merit classification should then be declassified and kept in the public domain

**Mould your thought:** Why are exemptions provided in the RTI Act 2005? Discuss the issues involved in these exemption provisions.

***Approach to the answer:***

- Introduction
- Mention the exemptions as per Sec 8, 9 and 24
- Discuss the reasons for such exemptions
- Discuss the problems involved in these exemptions
- Suggest measures to correct them (ARC recommendations)
- Conclusion