

Restrictions on Retired Officials from Disclosing Sensitive Information

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The Government of India prohibited retired officials of security and intelligence organisations from publishing anything about their work or organisation without prior clearance from the head of the organisation. Serving civil servants are barred from expressing their personal opinion on policy matters and criticising the government. But once they retire, many of them take part in public debates and enrich various conversations. This has opened up debates on whether there should be any restrictions on the freedom of expression of a specific category of retired government officials.

In news: Should retired officials be barred from disclosing information?

Placing it in syllabus: Law & Policy

Dimensions

- What are the changes made?
- What are the existing provisions after retirement?
- What are the restrictions while in service?
- Is a retired government servant restricted from taking up employment?
- What about political activity while in service and post retirement?
- Should there be more transparency in a democracy?

Content:

What are the changes made?

- The government has amended the **CCS Pension Rules-1972**.

- Under **amended Rule-8(3)(a)**, officials retired from certain intelligence and security establishments will not be allowed to write anything about their organisation without permission.

According to the new amendment:

Government servant, who has worked in any intelligence or security-related organisation **included in the Second Schedule of the RTI Act**, shall not make any publication after retirement without prior clearance from the Head of the Organisation.

The material that needs to be approved by the organisation includes:

- (i) **domain of the organisation**, including any reference or information about any personnel and his designation, and experience or knowledge gained by virtue of working in that organisation;
- (ii) **sensitive information**, the disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the state, or relation with a foreign state or which would lead to incitement of an offence.

The **Second Schedule of the RTI Act** covers **26 organisations** including the Intelligence Bureau, R&AW, Directorate of Revenue Intelligence, CBI, NCB, BSF, CRPF, ITBP and CISF.

Several news outlets reported that the move was prompted by concerns arising out of the fact that some high-profile retired officers had written books on their tenure, and some of these had revealed sensitive information.

What are the existing provisions after retirement?

The pension of government servants is already subject to their

conduct after retirement.

Rule 8 of the CCS Pension Rules says:

- “Future good conduct shall be an implied condition of every grant of pension and its continuance... The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct...
- The expression ‘grave misconduct’ includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information... which was obtained while holding office under the Government so as to prejudicially affect the interests of the general public or the security of the state.”

What are the restrictions while in service?

- Intelligence agencies produce information and give assessments.
- These are used by official advisers and political decision-makers. This information is sensitive, and all concerned affirm to keep it secret.
- Owing to the sensitive and risky nature of work, **all intelligence agencies put onerous restrictions on their officials.**
- These restraints are always more than those applicable to officials working in other civilian departments and organisations.
- They include not making disclosures about their workplace, its working methods and personnel.
- In some cases, they may include even not acknowledging the agency where they are employed.
- In addition, there are **prohibitions on meeting foreign nationals**, taking prior permission before making visits

abroad and expressing views on official matters in the mainstream and social media.

- And, of course, all officials working in these organisations are required to not give even a hint of the information gathered by their organisations or the assessments they have conveyed to policymakers.

Restrictions under CCS Conduct Rules:

- **Rule 7** of the CCS Conduct Rules restricts government servants from resorting to or abetting any form of strike or coercion.
- **Rule 8** restricts them, except with government sanction, from owning or participating in the editing or management of any newspaper or other periodical publication or electronic media.
- If they publish a book or participate in public media, they “shall at all times make it clear that the views expressed by him are his own and not that of Government”.
- **Rule 9** restricts a government servant from making statements of fact or opinion in writing or in a telecast or a broadcast “which has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government”

Restrictions under CCS Pension Rules:

- **Rule 9** of the CCS Pension Rules says that if any government official has committed any misconduct and retires, he or she may face departmental proceedings only until four years of the date of committing that misconduct.

Is a retired government servant restricted from taking up employment?

- **Rule 26**, Death-cum-Retirement Benefits Rules, restricts a pensioner from any commercial employment for one year

after retirement, except with previous sanction of the central government.

- Non-compliance can lead the central government declaring that the employee “shall not be entitled to the whole or such part of the pension and for such period as may be specified”.
- This cooling-off period was two years until 2007, when an amendment reduced it to one year.

What about political activity while in service and post retirement?

- The **Conduct Rules prohibits government servants from being associated with any political party or organisation**, and from taking part or assisting any political activity.
- An amendment on November 27, 2014 added a few clauses to Rule 3(1), one of which said, “Every government employee shall at all times maintain political neutrality” and “commit himself to and uphold the supremacy of the Constitution and democratic values”.
- However , there is **no rule to stop government servants from joining politics after their retirement.**
- In 2013, the Election Commission had written to the DoPT and Law Ministry, suggesting a cooling-off period for bureaucrats joining politics after retirement, but it was rejected.
- The Legislative Department of the Ministry of Law advised “that any such restriction (against officials joining politics or contesting polls)... may not stand the test of valid classification under Article 14 of the Constitution of India”.
- And the DoPT told the EC that its suggestions “may not be appropriate and feasible.”

Should there be more transparency in a democracy?

- There is a near-universal consensus among

decision-makers, not only in India but elsewhere too, that **some measure of secrecy is necessary** to protect authorised national security activities such as intelligence gathering, military operations, sometimes confidentiality of deliberations and sometimes personal privacy.

- It is also perfectly legitimate to expect that those who have worked in these organisations will maintain complete confidentiality even after their retirement about aspects of the work they performed, and of the information they picked up during the course of their official duties.
 - This would particularly pertain to matters relating to the manner in which the organisation conducts its work and its personnel and agents.
 - This should never be disclosed by retired officials, irrespective of when they retired.
 - On the other hand, **democratic governance requires that the public is better informed** of activities, including those taken for the benefit of our own country's interests, when information is shared from different perspectives.
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- **Reconciling these divergent interests of national security and the right of the public to know is an ongoing challenge.**
 - A stable security policy is always hard to achieve since the boundaries of official secrecy cannot be clearly articulated. And national security issues keep evolving, sometimes dramatically.
 - One way in which information is actually given to the public is through the declassification of files.
 - **Declassification** is an important tool in raising public awareness after a specified period.
 - If all avenues of information are blocked, or gradually reduced, it will result in deep throat-kind of

activities, which is not good for any democratic society.

- A **balanced approach is needed** to fulfil both national security and the right of the public to know.

Mould your thought: What are the recent amendments made to restrict retired officials from disclosing sensitive information? In a democratic set up, are such restrictions justified?

Approach to the answer:

- Introduction
- Mention the latest changes to the Pension rules
- Discuss rationale behind restricting information after retirement
- Discuss the issues related to transparency and secrecy
- Conclusion