

CENTRAL INFORMATION COMMISSION

(Room No.313, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067)

Before Prof. M. Sridhar Acharyulu (Madabhushi Sridhar), CIC

CIC/DGEAT/A/2018/117567

Sandeep Singh Jadoun v. PIO, DGEAT

Order Sheet: RTI filed on 19.02.2018, CPIO replied on 27.02.2018, FAO on 15.03.2018, Second appeal filed on 15.03.2018, Hearing on 25.06.2018;

Proceedings on 25.06.2018: Appellant present from NIC Jaipur, Public Authority represented by CPIO. Mr. Ompal Singh

Proceedings on 20.9.2018: Appellant from NIC Jaipur, Public Authority represented by CPIO, Mr.Ompal Singh, JD; Mr Sanjeev Kumar, Dy Director, MSDE and Mr Lendup Sherpa, Under Secretary, MSDE at CIC.

Date of Decision-02.11.2018: Show cause notice & Directions issued

ORDER

FACTS:

1. The appellant sought information about willful defaulters of bank loans of Rs 50 crore and above, with or without guarantees, the names of guarantors, details of sanction of loans, default and details of NPA accounts etc.
2. The appellant wanted also to know the cost and investment of the projects for employment generating schemes initiated by the Central Government between 2005 and 2018 along with the list of failed projects and projects which only existed on paper and were never introduced on the floor, with which the Ministry of Labour and Employment MoLE is concerned.
3. The CPIO replied on 27.02.2018 on email to the appellant that information is not maintained. For information on points 9 and 10 he filed first appeal, wherein CPIOs reply was upheld necessitating second appeal.

Contentions:

4. Mr. Ompal Singh from Ministry of Labour and Employment, stated that point no. 10 was answered by MoLE, and on the remaining points relate to Ministry of Rural Development and Ministry of Skill Development and Entrepreneurship. He said that the Government of India had introduced a digital portal, which provides assistance regarding employment schemes launched by the Government such as **Pradhan Mantri Rojgar Protsahan Yojana** (PMRPY) at website, ***www.ncs.gov.in*** and a toll free number **1800-4251514**, both functional from Tuesdays to Sundays.
5. The appellant stated that he required the details of costs and investments involved in the employment-generating projects and schemes launched since 2005 and the officer responded that such information is available with the Regional Offices under the jurisdiction of Ministry of Rural Development and Ministry of Skill Development and Entrepreneurship.
6. Records show that the CPIO has not transferred the RTI application to the other public authorities, who held information sought and had responsibility to maintain the cost and investment details of the employment related schemes and projects started by the Government. When CPIO does not transfer RTI request to appropriate authority, it becomes their duty to collect the same and furnish to appellant.
7. The CPIO dismissed the request saying "***information was not maintained in the form sought***", which is neither a defense nor an exception. Section 7(9) of RTI Act says: *An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.* The CPIO has totally ignored this mandate and did not try to show how it disproportionately diverts the resources. It also shows that he has the information sought in some form but he did not give. In fact, this forms part of 17 categories of information that has to be given voluntarily under Section 4(1)(b),(c) and (d) of RTI Act. The department is expected to have a record of cost and investment of the projects, and employment

generated by them. They should also have the list of successful and failed projects or projects which only existed on paper and were never introduced on the floor (as asked). If there are no failures, should have been proud of it. It is their duty to explain reasons for the failures, if any. The CPIO appears to have totally ignored Section 4 and the responsibilities of public authority under RTI Act. Not giving such information even when the appellant formally requested under RTI Act might lead to penalty. It is not known whether other ministry gave information about willful defaulters. The question is why not they publishes the names and photographs of willful defaulters of bank loans?

8. It is reported that between 1998 and 2018, around 3 lakh farmers committed suicide in our country, often by drinking pesticides themselves. (*Sainath, P. "India's agrarian crisis has gone beyond the agrarian". The Wire. <https://thewire.in/agriculture/a-long-march-of-the-dispossessed-to-delhi>.) They felt ashamed to live in the midst of their friends and relatives for their failure to pay back. They lived by and died in the agricultural fields believing in mother earth, but did not leave mother land like 7000 rich, educated corporate industrialists who cheated the nation by evading thousands of crores. Farmers proved that they are real patriots as they valued the duty to pay back nation's money as higher than their living. In every election the political parties woo the voters with promises of farm loan waiver, some of them rode to power and few fulfilled promise. Surprisingly the defaulters of small amounts like farmers are defamed in public, while the defaulters above Rs 50 crore were given a long rope, high concessions in the name of one time settlements, interest waivers, several other privileges and their names are hidden from exposure to secure their reputation!.*
9. According to the RBI, just 12 companies are estimated to account for 25% of the gross NPAs, and were identified for immediate bankruptcy proceedings, while there are 488 others which have been given six months time to restructure their debt or be dragged to National Company Law Tribunal (NCLT). A newspaper gave list of 12 companies and their loan defaults or bankruptcy details. A media report said that *Reuters* news

agency has collected RBI data through RTI and concluded that country's bad loans have hit a record high of Rs. 9.5 lakh crore at the end of June 2017. (<https://www.financialexpress.com/industry/banking-finance/indias-bad-loans-here-is-the-list-of-12-companies-constituting-25-of-total-npa/903396/lite/>) Another media report says: As on September 30, 2017, more than Rs 1.1 lakh crore was owed to banks by "willful defaulters". There are more than 9,000 such accounts for which banks have filed lawsuits for recovery and found that the top 11 debtor groups, each with dues of over Rs 1,000 crore, together had over Rs 26,000 crore outstanding to the banks.

10. After several Bank officials are arrested in Rs 11400 crore PNB scam, the **All India Officers Confederation AIBOC**, (with membership of 3 lakh officers) has posed a challenge to Central Government to publish names of the willful defaulters of all Banks. AIBOC also demanded that the banks be given liberty to write to the home ministry to take over the passports of directors of defaulting companies for emigration clearance to prevent their escape. AIBOC asked why Reserve Bank of India (RBI) was hesitating to publish the list of defaulters like Vijay Mallya, Nirav Modi and Mehul Choksi and why they were allowed to leave the country. AIBOC questioned banks, the way they are writing off loans of thousands of crores every year in favour of these corporate bodies, which itself could be a major scam. (<https://www.indiatoday.in/india/story/bank-officers-union-challenges-govt-to-publish-names-of-defaulters-1175659-2018-02-23>). The apprehensions of AIBOC were confirmed by media's analytical reports. One report last year says about 7,000 millionaires shifted their residence outside India, or changed their citizenship, leaving the banks, economy of the nation, public exchequer and public sector banks bleeding. An internet news portal gave, on 19th February 2018, the list of defaulters who escaped from our country changing citizenship. (<https://thewire.in/business/nirav-modi-look-back-high-profile-indian-businessmen-skipped-town>) In March 2018, Minister of State for External Affairs MJ Akbar stated in Parliament that 31 business people facing CBI investigation have flown out of country. After the Nirav Modi case, the Central Board of Direct Taxes (CBDT) set up a five-member working group to examine the exodus and their taxation aspects.

<http://www.newindianexpress.com/business/2018/may/08/new-tax-laws-for-defaulters-who-flee-abroad-like-vijay-mallya-nirav-modi-1811596.html>) The Fugitive Economic Offenders Ordinance in April, 2018 was passed. A committee headed by financial services secretary Rajiv Kumar, with representatives from the RBI, the ministries of home and external affairs, the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI) has recommended stopping willful defaulters with loans exceeding Rs 50 crore from travelling overseas without prior approval. In March, banks had been directed to seek the passport details of borrowers taking loans of Rs 50 crore and more. The website reported that for quarter ended June 30, 2018, 3,385 suits were filed against defaulting companies that had willfully defaulted on loans of Rs 25 lakh and above - amounting to a whopping Rs 57,523.90 crore. The finance ministry had also directed PSBs to examine all NPA accounts of over Rs 50 crore for possible fraud and accordingly report the cases to concerned investigating agencies, including CBI, ED and DRI, if any wrongdoing was detected. (<https://www.businesstoday.in/current/economy-politics/wilful-defaulters-with-loans-over-rs-50-crore-from-foreign-travel/story/281122.html>)

11. The Financial Stability Report, 2017, released by the RBI, states that India's gross NPAs stands at 9.6%. Finance Minister answered in Lok Sabha on August 11, 2017, that the gross NPAs of public sector banks increased by 311.22% from Rs.1,55,890 crores in 2013 to Rs.6,41,057 crores in 2017. According to the rating agency **CARE**, as of June 2017, State Bank of India leads the list of scheduled banks with the highest NPAs with Rs.1,88,068 crores of stressed assets. Punjab National Bank and IDBI Bank follow suit with Rs.57,721 crores and Rs.50,173 crores of gross NPAs respectively. However, among Indian banks, IDBI Bank, which has 24.11% gross NPAs tops the list for lending institutions with the highest exposure to liabilities. Indian Overseas Bank has 23.6% NPAs while fellow private lenders like Kotak Mahindra Bank and HDFC had only 2.58% and 1.24% gross NPAs. State Bank of India has a gross NPA ratio of 9.97%. (Dated Dec 9, 2017, <https://www.thehindu.com/business/Economy/all-you-need-to-know-about-indias-npa-crisis-and-the-frdi-bill/article21379531.ece>)

12. The RBI has issued a Master Circular regarding willful defaulters, on June 30, 2015. It says that Pursuant to the instructions of the Central Vigilance Commission for collection of information on willful defaults of Rs.25 lakhs and above by RBI and dissemination to the reporting banks and FIs, a scheme was framed by RBI with effect from 1st April 1999 under which the banks and notified all India Financial Institutions were required to submit to RBI the details of the willful defaulters. This recommended criminal action by banks under Sections 403 to 415 of Indian Penal Code, which deal with cheating.
13. Ministry of Corporate Affairs had introduced the concept of a Director Identification Number (DIN) with the insertion of Sections 266A to 266G in the Companies (Amendment) Act, 2006. In order to ensure that directors are correctly identified and in no case, persons whose names appear to be similar to the names of directors appearing in the list of willful defaulters, are wrongfully denied credit facilities on such grounds, banks / FIs have been advised to include the Director Identification Number (DIN) as one of the fields in the data submitted by them to Credit Information Companies.
14. The RTI Act Section 4(1)(c) says: "*publish all relevant facts while formulating important policies or announcing the decisions which affect public*"; (d) says "*provide reasons for its administrative or quasi-judicial decisions to affected persons*". What is the policy of Finance Ministry, Ministry for Statistics and Program Implementation and RBI in dealing with the willful defaulters of Rs 50 crore and above, how do they want to deal with them and save the public money and economy of our nation? They have a duty to inform the people from time to time with all updated information, and to remove the apprehensions expressed by AIBOC, and the Media as referred above. This RTI applicant's request reflects the apprehensions of the people in general also. These are the factors of public interest which cannot be ignored in dealing with this RTI request.
15. In an earlier RTI application by **Shri Subhash Chandra Agrawal** dated 8.7.2013 seeking (1) list of bank-defaulters of public sector banks with outstanding above rupees one crore each, mentioning names of directors/

partners etc. of such defaulting companies/ firms as on 31.03.2013; (2) list of non-performing assets and/ or other loans at public-sector banks above rupees one crore written off as bad debts ever since 01.01.2008; (3) list of non-performing assets and/ or other loans at public sector banks above rupees one crore which were extended further after their being not paid on stipulated time ever since 01.01.2008; (4) complete information on steps taken to direct all public sector banks to put all such cases as queried under points (2) to (4) on website; (5) complete information on steps taken by RBI and/ or other concerned for effectively checking non performing assets and bad debts in [public sector banks](#).

The CPIO claimed that RBI receives data relating to the top 30 Non-Performing Assets (NPAs) accounts from banks for supervisory purposes only, which is **held in fiduciary capacity** and is exempt u/s 8(1)(a), (d) and (e) of the RTI Act; and informed the appellant that the list of NPA and other loans at public sector banks **was not available with RBI**. On points 2 and 5 of the RTI application the CPIO informed the appellant about the remedial measures taken by the RBI to monitor credit quality-strategy for monitoring NPAs. First Appellate authority while upholding the decision of the CPIO, held that the CIC had vide order dated 15.11.2011, *inter-alia* directed the RBI to provide details of the top 100 defaulters in loans taken by industrialists from public sector banks. However, the Delhi High Court had stayed the operation of the order dated 15.11.2011 of CIC and in W.P. No. 1976 of 2012, the Delhi High Court vide its interim order dated 10.04.2012 directed the CIC to adjourn hearings in all such cases that involved the disclosure of the inspection reports prepared by the RBI, and correspondence exchanged between the RBI and banks etc. In a separate RTI application on similar subject by Subhash Chandra Agrawal, the CPIO, RBI (DBS) vide letter dated 12.08.2013 informed the appellant regarding the remedial measures taken by RBI to monitor credit quality strategy for monitoring NPAs with reference to point 6 and informed the appellant that the list of NPA loans of public sector banks was not available with RBI. The CPIO, RBI. Department of Banking Operation and Development (DBOD) vide letter dated 28.08.2013 informed the appellant that information sought at point 1 is exempted from disclosure u/s 8(1)(e) and (h) of the RTI Act and

replied to the appellant that as far as specific names/ persons/ organizations as sought at point 2 was concerned, Section 45(E) of the RBI Act 1934 prohibits the RBI from disclosing 'credit information' except in the manner provided therein. Since the applicant's request was not covered under any of those exceptions, the information could not be provided to the appellant. The FAA vide order dated 25.09.2013 while partly allowing the appeal directed the CPIO, DBOD to issue a supplementary reply to the appellant queries at point 4 and 5 within ten days. Two second appeals of Subhash Chandra Agrawal were heard by a bench of two learned Central Information Commissioners, Smt. Manjula Prasher and Shri Sudhir Bhargava on 24th June 2016. The appellant argued that the information relating to the queries of NPA and list of defaulters by the respondents on the grounds that it would prejudicially affect the economic interest of the country and the information was held by them in fiduciary relationship. The bench of CIC deferred without pronouncing any order, saying that a PIL is pending on the same issue.

16. Analysis of these facts, circumstances, earlier RTI responses and the contentions of both the sides raises **two important questions**:

- a) When the RBI authorized Banks to prepare the list of willful defaulters of Rs 25 lakh, and after ensuring no genuine loan-taker's name is published in the list of willful defaulters, **why not ensure publication of the details of willful defaulters of Rs 50 crore and above** as sought by this appellant, to the nation to fulfill the right to information of the citizens.
- b) Why the Government of India, Finance Ministry, Ministry for Statistics and Program Implementation and RBI should not **explain the action taken** or contemplated to recover the loans from willful defaulters beyond Rs 50 Crore, reasons for the failure, criminal actions initiated, or reasons for not initiating criminal actions, etc to the people?

Interim Directions on 25.6.2018

17. Hence, the Commission directed **Mr. Ompal Singh, CPIO** to show-cause why maximum penalty should not be imposed against him for not providing information to the appellant, before September 12, 2018 and the case is posted on September 12, 2018, at 12.00 noon.

18. The Commission also directed CPIOs, Mr. Ompal Singh, DGEAT, Ministry of Labour & Employment, the Ministry of Rural Development, and Ministry of Skill Development and Entrepreneurship to coordinate with each other and provide a comprehensive information report to the appellant, explaining point-wise along with details of failures if any, and the reasons thereof before September 12, 2018, and send a report of compliance to this Commission.
19. The Commission directed the notice to CPIOs of Finance Ministry, Ministry for Statistics and Program Implementation and RBI to provide the information as mentioned in paragraph 22, with compliance report to this Commission and if they cannot submit any part of that information, they may choose to explain why should they not be directed to publish the details of the information sought including the names of willful defaulters, before 12th September 2018, the case is posted for compliance on 12th September 2018 at 12 noon.
20. **Shri Lalitana Chhangte, Deputy Secretary to the Govt. of India & Nodal Officer for RTI, Ministry of Statistics & Program Implementation** in his written submissions dated 18.09.2018, explained as under:

"The aforesaid Interim Order dated 20.08.2018 of CIC was received by the Joint Director & CPIO (NSSTA), NOIDA in the Second Appeal dated 15.03.2018 filed by Shri Sandeep Singh Jadoun with regard to his RTI application dated 19.02.2018. The Jt. Director & CPIO (NSSTA) in turn, forwarded the same to this Ministry for necessary action and response.

2. NSSTA is a Subordinate Office under this Ministry and as such CPIO in NSSTA could not have responded on behalf of the Ministry as a whole.

3. Only para 22 and 25 of the above said Interim Order dated 20.08.2018 are relevant to this Ministry. While para 22 seek details of action taken or contemplated to recover loans of more than Rupees 50 crore from willful defaulters, para 25 of the Interim Order is about compliance report in light of para 22 of the Interim Order.

4. On receipt of the CIC Order, all the records pertaining to RTI application and First Appeals filed in the Ministry through on-line RTI MIS portal or off-line were extensively checked in the RTI Cell. No RTI application dated 19.02.2018 and/or First Appeal dated 15.03.2018 filed by Shri Sandeep Singh Jadoun seem to have been received in the Ministry.

5. It is further submitted that this Ministry is not even remotely related to maintaining records/data related to defaulters of loans from banks and other

financial institutions or initiating contemplating actions to recover loans. Therefore, no action in the instant matter is warranted from the Ministry of Statistics and Program Implementation.

6. The above position is submitted to the Hon'ble Central Information Commission for consideration.

21. The Commission finds that CPIO of NSSTA being a subordinate officer under the Ministry, it could not provide information on behalf of the entire ministry, and also noticed the averment of Mr. Chhangte, that this ministry was not even remotely connected with certain aspects of the information directed. Hence, the Commission finds that penalty proceedings will not serve any purpose and drops them instantly.

22. **Shri S.K. Panigrahy, CPIO, RBI** Department of Banking Supervision, Central Office in his written submissions dated 19.09.2018, explained as under:

"I, Santosh Kumar Panigrahy, son of Shri Khalli Panigrahy, aged about 54 years, residing at Mumbai, do hereby state as under:

- 1. That I am working as Chief General Manager in the Reserve Bank of India, Department of Banking Supervision (DBS), Central Office, Mumbai. I am designated as Central Public Information Officer and I have made myself conversant with the facts of the case.*
- 2. That this reply is being filed in compliance of the directions issued by the Hon'ble Central Information Commission (CIC) vide order dated 20.08.2018 in File No. CIC/DGEAT/A/2018/117567.*
- 3. The appellant, Shri Sandeep Singh Jadoun filed an RTI application in the PMO through online portal on 19.02.2018, seeking, inter alia, information regarding number of willful defaulters (those who are unwilling to pay despite having the capacity to do so) of Rs 50 crore and above, loans advanced by banks and other financial institutions, whether with or without guarantees, the names of guarantors, details of loans such as dates of sanction and default and details of NPA accounts etc.*
- 4. The said RTI application was addressed to CPIO, PMO but not to the Reserve Bank of India. Reserve Bank of India had however received an application from Ministry of Finance, Department of Financial Services and had responded to the same vide letter DBS.CO. RIA No. 5433/01.12.001/2017-18 dated March 23, 2018.*
- 5. The Hon'ble CIC vide its Order dated 20.08.2018 directed as follows:*

"The Commission directs the notice to CPIOs of Finance Ministry, Ministry for Statistics and Program Implementation and RBI to provide the information as

mentioned in paragraph 22, with compliance report to this Commission and if they cannot submit any part of that information, they may chose to explain why should they not be directed to publish the details of the information sought including the names of willful defaulters, before 20th September 2018, the case is posted for compliance on 20th September 2018 at 12 noon.” (Emphasis Added)

6. In Paragraph Nos. 21 and 22, CIC made the following observations:

21. The question is when the RBI authorized Banks to prepare the list of willful defaulters of Rs. 25 lakh, and after ensuring no genuine loan-taker's name is published in the list of willful defaulters, why not ensure publication of the details of willful defaulters of Rs 50 crore and above as sought by this appellant, to the nation to fulfill the right to information of the citizens.

22. Why the Government of India, Finance Ministry, Ministry for Statistics and Program Implementation and RBI should not explain the action taken or contemplated to recover the loans from willful defaulters beyond Rs. 50 Crore, reasons for the failure, criminal actions initiated, or reasons for not initiating criminal actions, etc to the people?” (Emphasis Added)

7. It is submitted that a basic and long established common law proposition is that without the expressed or implied permission of a customer, a bank must not disclose either the state of the customer's account, any of his or her transactions with a bank, or any information related to the customer acquired by reason of keeping the account, subject to certain limited and defined exceptions. The decision in the case of **Tournier v. National Provincial and Union Bank of England [1923] AII ER 550: [1924] 1 KB 461** is a locus classicus on the subject of banker's duty of confidentiality. This law is still being followed in India (See: **Shankarlal Agarwalla v. State Bank of India and Anr. AIR 1987 Cal 29**).

8. In India, there are a number of legislations which require the observance of confidentiality/secretcy by the bankers on the customer related information. State Bank of India Act, 1955 (Section 44), Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 (Section 13) and Regional Rural Banks Act, 1976 (Section 25) stipulate that the bank concerned shall observe confidentiality/secretcy and shall not divulge any information relating to or to the affairs of its constituents except in the few situations enumerated therein.

9. A reference is also invited to the provisions of Section 43A of the Information Technology Act, 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 framed under that Act, which, inter alia, gives protection to sensitive personal data or information of customers of body corporates. Rule 5(5) of those rules, provide that information collected shall be used for the purpose for which it has been collected. These provisions may have to be read in conjunction with the principles enumerated in the Tournier case enumerated above.

10. It is submitted that Chapter IIIA of the Reserve Bank of India Act, 1934 prescribes the procedure for collection and furnishing of credit information. Section 45A(c) defines the term 'Credit Information' to mean any information relation to:

- (i) the amounts and the nature of loans or advances and other credit facilities granted by a banking company to any borrower or class of borrowers;
- (ii) the nature of security taken from any borrower or class of borrowers for credit facilities granted to him for such class;
- (iii) the guarantee furnished by banking company or any of its customers or any class of its customers;
- (iv) the means, antecedents, history of financial transactions and the credit worthiness of any borrower or class of borrowers;
- (v) any other information which the Bank may consider to be relevant or the more orderly regulation of credit policy.

11. Section 45B of Reserve Bank of India Act, 1934 provides that the Reserve Bank may collect, in such manner as it may think fit, credit information from banking companies and furnish such information to any banking company in accordance with the provisions of Section 45D of that Act. Under Section 45C of the Act, the Reserve Bank is empowered to call for returns containing credit information from any banking company. Section 45E of the Reserve Bank of India Act, 1934 prohibits the Reserve Bank from disclosure of credit information as defined in Section 45A and treats such information as confidential. The said section gives certain exceptions as well. Further, in terms of sub-section (3) of Section 45E of the Reserve Bank of India Act, 1934, even Courts and Tribunals are prohibited from compelling Reserve Bank or any banking company from producing or giving inspection of any statement submitted under provisions of Section 45C and 45D. The basis of the provisions of Chapter IIIA of the Reserve Bank of India Act, 1934 and the prohibition against the Courts, Tribunals and other authorities is that secrecy should be observed in banker-customer relationship. Section 58B(4) of the Reserve Bank of India Act, 1934, prescribes the punishment for disclosure of information which is prohibited under Section 45E.

12. In terms of Section 58B(4) of the Reserve Bank of India Act, 1934, "if any person discloses any credit information, the disclosure of which is prohibited under Section 45E, he shall be punishable with imprisonment for a term which may extent to six months, or with fine which may extend to one thousand rupees, or with both". Hence, it is absolutely necessary to ensure that disclosure of any information by the Reserve Bank is in accordance with law. True, under Section 28 of the Banking Regulation Act, 1949, Reserve Bank of India may in public interest publish any information obtained by it under the Banking Regulation Act, 1934 but only in a consolidated form.

13. It is humbly submitted that what is being provided by various banks/financial institutions to the RBI under Chapter IIIA of Reserve Bank of India Act, 1934, is nothing but the customer related confidential information. The original classification of such information is not disturbed and the applicable

exemptions under RTI Act, 2005 from disclosure would continue even when the information is submitted to the RTI by various banks. Any other interpretation would result in an anomalous and confusing situation, which is not intended under the RTI Act, 2005. If otherwise interpreted, it will lead to a situation when the exemption from disclosure of such information has been recognized in the hands of banking company, the same will be taken away when the information is held by the RBI. The adage is 'what cannot be achieved directly cannot be achieved indirectly'.

14. The provisions of Special enactments, viz., Banking Regulation Act, 1949 and Reserve Bank of India Act, 1934 requiring confidentiality cannot be said to be impliedly repealed by the RTI Act, 2005. This because RTI Act, 2005 is a general legislation on disclosure of information and by applying the established rules of interpretation one has to say that the provisions in that enactment cannot be said to have the effect of repealing all other specialized legislations relating to confidentiality. The Hon'ble CIC has in **P.K. Saha v. D.B. Janotkar, General Manager (A & EE) & PIO, Mahanadi Coalfields Ltd. (CIC decision dated 17.08.2007)** observed as follows:

"RTI Act lays down the general principles of disclosure of information. The specific laws about disclosure of certain category of information in a given situation relates to RTI Act in the manner a specific law relates to a general law. It is an established principle of jurisprudence that, the subject matter being the same, a specific law overrides the general law. Applying that yardstick, it would be irregular to authorize disclosure of information under the RTI Act to a person who would be otherwise (not) entitled to receive the same under a special law.

Although the Right to Information Act has been given an overriding effect, yet it does not mean that all previous legislations concerning disclosure of information stand impliedly repealed. In fact there is always a presumption against such repeal by implication. The RTI Act expressly overrides the provisions of the Official Secrets Act. A repeal by implication is to be inferred only when the provisions of a later Act are so inconsistent with, or repugnant to, the provisions of the earlier Act that the two cannot co-exist.."

15. It is respectfully submitted that Section 45E of the RBI Act relating to the confidentiality of credit information does not stand impliedly repealed by the provisions of Section 22 of the RTI Act.
16. It is submitted that RBI has put in place a mechanism for sharing of both suit filed and non-suit filed accounts related information beyond a specified threshold, amongst banks and financial institutions. This is in tune with the provisions of Section 45E of the Reserve Bank of India Act, 1934. Moreover, the Credit Information and (Regulation) Act, 2005 allows access of information relating to creditworthiness to credit institutions from Credit Information Companies, when a prospective borrower approaches them with a request for financial accommodation. Thus, it cannot be construed that non-disclosure of such information would result in more bad loans in the banking system. In effect, though the information about defaults are not shared with the public by RBI, efficient system has been put in place for disseminating the

default status of borrowers amongst credit institutions so that they can take informed decisions in request for credit.

17. *It is also submitted that Reserve Bank of India was collecting data of Non-suit-filed accounts (doubtful and loss accounts only) in respect of Wilful defaulters (25 lakh and above) and defaulters (1 crore and above) up to September 2014. From December 2014 onwards both non-suit-filed accounts and suit-filed accounts in respect of Wilful defaulters and defaulters is being collected and disseminated by the four Credit Information Companies which have been granted Certificate of Registration by the Reserve Bank of India in exercise of the powers conferred by Section 5 of the Credit Information Companies (Regulations) Act, 2005 and the Rules and Regulations framed thereunder. [Master Circular on Wilful Defaulters DBR.No.CID.BC.22/20.16.003/2015-16 dated July 1, 2015. In short, banks/Financial Institutions have been advised to submit the data regarding defaulting borrowers to Credit Information Companies (CICs) and not to Reserve Bank of India from 2014 onwards. This is not to say that no willful defaulter information is coming to the Reserve Bank. A part of such information is reaching the Reserve Bank's data base called CRILIC and it is shared only among banks.*
18. *As regards the observations of Hon'ble CIC in Paragraph 22 of its order dated 20.08.2018, it is submitted that in terms of para 4.2 (ii) of the Master Circular on Wilful Defaulters dated July 01, 2015, all Scheduled Commercial Banks (excluding RRBs) and All India Notified Financial Institutions (AIFI) have been advised to seriously and promptly consider initiating criminal action against willful defaulters or wrong certification by borrowers, wherever considered necessary, based on the facts and circumstances of each case.*
19. *It is further submitted that in a case pending before the Hon'ble Supreme Court of India (**Civil Writ Petition No. 573 of 2003 – Centre for Public Interest Litigation v. HUDCO & Others**), Reserve Bank has submitted a list of defaulters above Rs. 500/- crores in a sealed cover claiming that it may not be revealed to the public. As the matter relating to the disclosure of information of defaulters-including willful defaulters is still under the consideration of the Supreme Court, it may not be appropriate for the Reserve Bank to provide the requested information.*
20. *In view of the above submissions, it is respectfully prayed that this Hon'ble Commission may be pleased to accept the submissions contained in this reply and RBI may be discharged of all obligation under its order dated 20.08.2018.*
23. *The pleading of Mr Santosh Kumar Panigrahy of RBI that Section 22 will not override various laws he quoted prohibiting disclosure of names and details of willful defaulters and hence RBI should be discharged from the obligations of disclosure is against Section 22 of RTI Act. His contention that unless the above referred enactments were repealed, RBI cannot*

disclose the details of defaulters is also absurd. His another contention that pendency of PIL before the Supreme Court about this subject will prevent him from disclosure is also baseless as he did not present any interim order by Supreme Court preventing disclosure of wilful defaulters or against the proceedings before this Commission. These submissions of RBI shows that the legal wing of RBI did not bring to the notice of CPIO, that in ***RBI vs Jayanti Lal N Mistry***, the division bench of the Supreme Court consisting of M Y Eqbat and C Nagappan, JJ, on 16th December 2015 [Transferred Cases (Civil) Nos. 91 to 101 of 2015] (<https://indiankanoon.org/doc/86904342/>) gave a land mark decision upholding the direction of CIC to disclose inspection reports of RBI and names of willful defaulters, in many cases, rejecting all the above referred contentions of the RBI. In that case the Ld Counsel for RBI raised same contentions, referring to same cases as referred by Sri Panigrahy above, and those were straight away rejected by the Supreme Court. It is required to refer to contentions of RBI before Supreme Court:

24. Learned **senior counsel for RBI**, advocate Shri Andhyarujina put heavy reliance on the Full Bench decision of the Central Information Commissioner and submitted that while passing the impugned order, the Central Information Commissioner completely overlooked the Full Bench decision and ignored the same. According to the learned counsel, the Bench, which passed the impugned order, is bound to follow the Full Bench decision. He argued:

- a) The basic question of law is whether the Right to Information Act, 2005 overrides various provisions of special statutes which confer confidentiality in the information obtained by the RBI.; If the Respondents are right in their contention, these statutory provisions of confidentiality in the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934 and the Credit Information Companies (Regulation) Act, 2005 would be repealed or overruled by the Right to Information Act, 2005.
- b) Under the Banking Regulation Act, 1949, the Reserve Bank of India has a right to obtain information from the banks under Section 27. These information can only be in its discretion published in such consolidated form as RBI deems fit.

- c) Likewise under Section 34A production of documents of confidential nature cannot be compelled. Under sub-section (5) of Section 35, the Reserve Bank of India may carry out inspection of any bank but its report can only be disclosed if the Central Government orders the publishing of the report of the Reserve Bank of India when it appears necessary.
- d) Under Section 45E of the Reserve Bank of India Act, 1934, disclosure of any information relating to credit information submitted by banking company is confidential and under Section 45E(3) notwithstanding anything contained in any law no court, tribunal or authority can compel the Reserve Bank of India to give information relating to credit information etc.
- e) Under Section 17(4) of the Credit Information Companies (Regulation) Act, 2005, credit information received by the credit information company cannot be disclosed to any person. Under Section 20, the credit information company has to adopt privacy principles and under Section 22 there cannot be unauthorized access to credit information.
- f) The Credit Information Companies Act, 2005 was brought into force after the Right to Information act, 2005 w.e.f. 14.12.2006. It is significant to note that Section 28 of Banking Regulation Act, 1949 was amended by the Credit Information Companies (Regulation) Act, 2005. This is a clear indication that the Right to Information Act, 2005 cannot override credit information sought by any person in contradiction to the statutory provisions for confidentiality.
- g) This is in addition to other statutory provisions of privacy in Section 44 of State Bank of India Act, 1955, Section 52, State Bank of India (Subsidiary Banks) Act, 1959, Section 13 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970.
- h) A basic and long established common law proposition is that without the expressed or implied permission of a customer, a bank must not disclose either the state of the customer's account, any of his or her transactions with a bank, or any

information related to the customer acquired by reason of keeping the account, subject to certain limited and defined exceptions. The decision in the case of **Tournier v. National Provincial and Union Bank of England [1923] AII ER 550: [1924] 1 KB 461** is a locus classicus on the subject of banker's duty of confidentiality. This law is still being followed in India (See: **Shankarlal Agarwalla v. State Bank of India and Anr. AIR 1987 Cal 29**). The CPIO quoted the 1924 decision as locus classicus, but ignored 2015 decision of the Supreme Court. He is still relying on common law propositions of British legacy but does not want to step into the world of post-RTI days of transparency, which was upheld as inherent right within Right to freedom of speech and expression under Article 19(1)(a) of our Constitution. The CPIO quoted provisions of law that require confidentiality/secretcy of the customer related information such as State Bank of India Act, 1955 (Section 44), Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 (Section 13) and Regional Rural Banks Act, 1976 (Section 25). He also referred to Section 43A of the Information Technology Act, 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 framed under that Act, which, inter alia, gives protection to sensitive personal data or information of customers of body corporates. Rule 5(5) of those rules, provide that information collected shall be used for the purpose for which it has been collected. He also referred to Chapter IIIA of the Reserve Bank of India Act, 1934 prescribes the procedure for collection and furnishing of credit information. Section 45A(c), Section 45B, 45C, 45D and 45E of Reserve Bank of India Act, 1934 that provided for secretcy. Section 58B(4) of the Reserve Bank of India Act, 1934, "if any person discloses any credit information, the disclosure of which is prohibited under Section 45E, he shall be punishable with imprisonment for a term which may extent to six months, or with fine which may extend to one thousand rupees, or with both". He strongly

pleaded that what is being provided by various banks/financial institutions to the RBI under Chapter IIIA of Reserve Bank of India Act, 1934, is nothing but the customer related confidential information.

- i) The Right to Information Act, 2005 is a general provision which cannot override specific provisions relating to confidentiality in earlier legislation in accordance with the principle that where there are general words in a later statute it cannot be held that the earlier statutes are repealed altered or discarded. Learned counsel submitted that Section 22 of the Right to Information Act, 2005 cannot have the effect of nullifying and repealing earlier statutes in relation to confidentiality.
- j) The provisions of Special enactments, viz., Banking Regulation Act, 1949 and Reserve Bank of India Act, 1934 requiring confidentiality cannot be said to be impliedly repealed by the RTI Act, 2005. This is because RTI Act, 2005 is a general legislation on disclosure of information and by applying the established rules of interpretation one has to say that the provisions in that enactment cannot be said to have the effect of repealing all other specialized legislations relating to confidentiality. He also relied upon 2007 decision of **P.K. Saha v. D.B. Janotkar, General Manager (A & EE) & PIO, Mahanadi Coalfields Ltd. (CIC decision dated 17.08.2007)** observed as follows:

"RTI Act lays down the general principles of disclosure of information. The specific laws about disclosure of certain category of information in a given situation relates to RTI Act in the manner a specific law relates to a general law. It is an established principle of jurisprudence that, the subject matter being the same, a specific law overrides the general law. Applying that yardstick, it would be irregular to authorize disclosure of information under the RTI Act to a person who would be otherwise (not) entitled to receive the same under a special law.

Although the Right to Information Act has been given an overriding effect, yet it does not mean that all previous legislations concerning disclosure of information stand impliedly repealed. In fact there is always a presumption against such repeal by implication. The RTI Act expressly overrides the provisions of the Official Secrets Act. A repeal by implication is to be inferred only when the provisions of a later Act are so inconsistent with, or repugnant to, the provisions of the earlier Act that the two cannot co-exist..”

- k) Relying on this, the RBI CPIO reiterated: “Section 45E of the RBI Act relating to the confidentiality of credit information does not stand impliedly repealed by the provisions of Section 22 of the RTI Act. Then he said as per Master Circular on Willful Defaulters DBR. No. CID. BC.22/20.16.003/ 2015-16 dated July 1, 2015. In short, banks/Financial Institutions have been advised to submit the data regarding defaulting borrowers to Credit Information Companies (CICs) and not to Reserve Bank of India from 2014 onwards. This is not to say that no willful defaulter information is coming to the Reserve Bank. A part of such information is reaching the Reserve Bank’s data base called CRILIC and it is shared only among banks”.

Arguments for respondents in Jayantilal case

25.Mr. Prashant Bhushan, learned counsel appearing for the respondents argued:

- a) The right to information regarding the functioning of public institutions is a fundamental right as enshrined in Article 19 of the Constitution of India. He referred to judgments of Supreme Court in **State of U.P. vs. Raj Narain**, AIR 1975 SC 865, **S.P. Gupta v. President of India and Ors.**, AIR 1982 SC 149, **Union of India vs. Association for Democratic Reforms**, AIR 2002 SC 2112 and **PUCL vs. Union of India**, (2003) 4 SCC 399. The RTI Act, 2005, as noted in its very

preamble, does not create any new right but only provides machinery to effectuate the fundamental right to information.

- b) The submission of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived. RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover, the RTI Act 2005, being a later law, specifically brought in to usher transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only exceptions to access to information are contained in RTI Act itself in Section 8.
- c) In another writ petition that was transferred to Supreme Court T.C.No.94 of 2015, the RTI applicant Mr. P.P. Kapoor had asked about the details of the loans taken by the industrialists that have not been repaid, and he had asked about the names of the top defaulters who have not repaid their loans to public sector banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1) (a) and 8(1)(e) of the RTI Act on the ground that disclosure would affect the economic interest of the country, and that the information has been received by the RBI from the banks in fiduciary capacity. The CIC found these arguments made by RBI to be totally misconceived in facts and in law, and held that the disclosure would be in public interest.
- d) T.C.No.95 of 2015, the RTI applicant therein Mr. Subhash Chandra Agrawal had asked about the details of the show cause notices and fines imposed by the RBI on various banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1)(a),(d) and 8(1) (e) of the RTI Act on the ground that disclosure would affect the economic interest of the country, the competitive position of the banks and that the information has been received by RBI in fiduciary capacity. The CIC, herein also, found these arguments

made by RBI to be totally misconceived in facts and in law and held that the disclosure would be in public interest. In reply to the contention of fiduciary relationship, it is submitted that the scope of Section 8(1)(e) of the RTI Act has been decided by Supreme Court in **Central Board of Secondary Education vs. Aditya Bandopadhyay**, (2011) 8 SCC 497, wherein, while rejecting the argument that CBSE acts in a fiduciary capacity to the students, it was held that:

"...In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the word 'information available to a person in his fiduciary relationship' are used in Section 8(1) (e) of the RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the action of the fiduciary."

Supreme Court rejects contentions of RBI

26.The Right to Information Bill, 2004 says: "The categories of information exempted from disclosure are a bare minimum and are contained in clause 8 of the Bill. Even these exemptions are not absolute and access can be allowed to them in public interest if disclosure of the information outweighs the harm to the public authorities. Such disclosure has been permitted even if it is in conflict with the provisions of the Official Secrets Act, 1923. Moreover, barring two categories that relate to information disclosure – which may affect sovereignty and integrity of India etc., or information relating to Cabinet papers etc.-all other categories of exempted information would be disclosed after twenty years".

27.Addressing the House, it was pointed out by the then Prime Minister that in our country, Government expenditure both at the Central and at the level of the States and local bodies, account for nearly 33% of our Gross

National Product. At the same time, the socio-economic imperatives require our Government to intervene extensively in economic and social affairs. Therefore, the efficiency and effectiveness of the government processes are critical variables, which will determine how our Government functions and to what extent it is able to discharge the responsibilities entrusted. It was pointed out that there are widespread complaints in our country about wastefulness of expenditure, about corruption, and matter which have relations with the functioning of the Government. Therefore, it was very important to explore new effective mechanism to ensure that the Government will purposefully and effectively discharge the responsibilities entrusted to it. Finally the Right to Information Act was passed by the Parliament called "The Right to Information Act, 2005", with a Preamble explaining the objects.

28. After hearing extensive arguments of all the counsels appearing for the petitioner Banks and respondents and examined the law and the facts the Supreme Court in **Jayantilal** explained:

"The information sought for by the respondents from the petitioner-Bank have been denied mainly on the ground that such information is exempted from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act. Learned counsel appearing for the petitioner-Bank mainly relied upon Section 8(1)(e) of the RTI Act taking the stand that the Reserve Bank of India having fiduciary relationship with the other banks and that there is no reason to disclose such information as no larger public interest warrants such disclosure. The primary question therefore, is, whether the Reserve Bank of India has rightly refused to disclose information on the ground of its fiduciary relationship with the banks. The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the fiduciary relationship. Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters

falling within the scope of the relationship, or (4) when there is specific relationship that has traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer.” The scope of the fiduciary relationship consists of the following rules:

“(i) No Conflict rule- A fiduciary must not place himself in a position where his own interests conflicts with that of his customer or the beneficiary. There must be “real sensible possibility of conflict.

(ii) No profit rule- a fiduciary must not profit from his position at the expense of his customer, the beneficiary;

(iii) Undivided loyalty rule- a fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer’s affairs

(iv) Duty of confidentiality- a fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person.”

In the instant case, **the RBI does not place itself in a fiduciary relationship with the Financial institutions (though, in word it puts itself to be in that position)** because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other. By attaching an additional “fiduciary” label to the statutory duty, the Regulatory authorities have intentionally or unintentionally created an in terrorem effect.

RBI is a statutory body set up by the RBI Act as India’s Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country’s banking sector. Under Section 35A of the Banking Regulation Act, RBI has been given

powers to issue any direction to the banks in public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers.

RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. **Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks.** It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein.

The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. In the impugned order, the CIC has given several reasons to state why the disclosure of the information sought by the respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India. RBI's argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country's economic security would be endangered, is not only absurd but is equally misconceived and baseless.

The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information

is being provided in a fiduciary relationship. As in the instant case, the **Financial institutions have an obligation to provide all the information to the RBI and such an information shared under an obligation/ duty cannot be considered to come under the purview of being shared in fiduciary relationship. One of the main characteristic of a Fiduciary relationship is "Trust and Confidence". Something that RBI and the Banks lack between them.**

In the present case, we have to weigh between the public interest and fiduciary relationship (which is being shared between the RBI and the Banks). Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economic interests of the country? To what extent the public should be allowed to get information?

In the context of above questions, **it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to.**

And in this case the RBI and the Banks have sidestepped the General public's demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest". This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

Furthermore, the RTI Act under Section 2(f) clearly provides that the inspection reports, documents etc. fall under the purview of "Information" which is obtained by the public authority (RBI) from a private body. From reading of the above section it can be inferred that the Legislature's intent was to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case where only information related to public authorities was to be provided, the Legislature would not have included the word "private body". As in

this case, the **RBI is liable to provide information regarding inspection report and other documents to the general public.**

Even if we were to consider that RBI and the Financial Institutions shared a "Fiduciary Relationship", Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny.

We have surmised that many Financial Institutions have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. It is the responsibility of the RBI to take rigid action against those Banks which have been practicing disreputable business practices.

From the past we have also come across financial institutions which have tried to defraud the public. These acts are neither in the best interests of the Country nor in the interests of citizens. To our surprise, the RBI as a Watch Dog should have been more dedicated towards disclosing information to the general public under the Right to Information Act.

We also understand that the RBI cannot be put in a fix, by making it accountable to every action taken by it. However, in the instant case the RBI is accountable and as such it has to provide information to the information seekers under Section 10(1) of the RTI Act.

It was also contended by learned senior counsel for the RBI that disclosure of information sought for will also go against the economic interest of the nation. The submission is wholly misconceived.

Economic interest of a nation in most common parlance is the goals which a nation wants to attain to fulfil its national objectives. It is the part of our national interest, meaning thereby national interest

can't be seen with the spectacles (glasses) devoid of economic interest.

It includes in its ambit a wide range of economic transactions or economic activities necessary and beneficial to attain the goals of a nation, which definitely includes as an objective economic empowerment of its citizens. It has been recognized and understood without any doubt now that one of the tool to attain this goal is to make information available to people. Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution but also a Central Act has been brought into effect on 12th October 2005 as the Right to Information Act, 2005.

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.

But neither the Fundamental Rights nor the Right to Information have been provided in absolute terms. The fundamental rights guaranteed under Article 19 Clause 1(a) are restricted under Article 19 clause 2 on the grounds of national and societal interest. Similarly Section 8, clause 1 of Right to Information Act, 2005, contains the exemption provisions where right to information can be denied to public in the name of national security and sovereignty, national economic interests, relations with foreign states etc. Thus, not all the information that the Government generates will or shall be given out to the public. It is true that gone are the days of closed doors policy making and they are not

acceptable also but it is equally true that there are some information which if published or released publicly, they might actually cause more harm than good to our national interest... if not domestically it can make the national interests vulnerable internationally and it is more so possible with the dividing line between national and international boundaries getting blurred in this age of rapid advancement of science and technology and global economy. It has to be understood that rights can be enjoyed without any inhibition only when they are nurtured within protective boundaries. Any excessive use of these rights which may lead to tampering these boundaries will not further the national interest. And when it comes to national economic interest, disclosure of information about currency or exchange rates, interest rates, taxes, the regulation or supervision of banking, insurance and other financial institutions, proposals for expenditure or borrowing and foreign investment could in some cases harm the national economy, particularly if released prematurely. However, lower level economic and financial information, like contracts and departmental budgets should not be withheld under this exemption. This makes it necessary to think when or at what stage an information is to be provided i.e., the appropriate time of providing the information which will depend on nature of information sought for and the consequences it will lead to after coming in public domain" - explained the Supreme Court.

29. The Supreme Court referred to a case, where the respondent **S.S. Vohra** sought certain information in relation to the Patna Branch of ICICI Bank and advisory issued to the Hong Kong Branch of ICICI Bank. The contention of the respondent was that the Finance Minister had made a written statement on the floor of the House on 24.07.2009 that some banks like SBI, ICICI, Bank of Baroda, Dena Bank etc., were violating FEMA Guidelines for opening of accounts and categorically mentioned that the Patna Branch of ICICI Bank Ltd. had opened some fictitious accounts which were opened by fraudsters and hence an advisory note was issued to the concerned branch on December 2007 for its irregularities. The

Finance Minister even mentioned that in the year 2008 the ICICI Bank Ltd. was also warned for alleged irregular dealings in securities in Hong Kong. Hence, the respondent sought such advisory note as issued by the RBI to ICICI Bank. The Central Information Commissioner in the impugned order considered the *RBI Master Circular dated 01.07.2009* to all the commercial banks giving various directions and finally held as under :-

"It has been contended by the Counsel on behalf of the ICICI Bank Limited that an advisory note is prepared after reliance on documents such as Inspection Reports, Scrutiny reports etc. and hence, will contain the contents of those documents too which are otherwise exempt from disclosure. We have already expressed our view in express terms that whether or not an Advisory Note shall be disclosed under the RTI Act will have to be determined on case by case basis. In some other case, for example, there may be a situation where some contents of the Advisory Note may have to be severed to such an extent that details of Inspection Reports etc. can be separated from the Note and then be provided to the RTI Applicant. Section 10 of the RTI Act leaves it open to decide each case on its merits after having satisfied ourselves whether an Advisory Note needs to be provided as it is or whether some of its contents may be severed since they may be exempted per se under the RTI Act. However, we find no reason, whatsoever, to apply Section 10 of the RTI Act in order to sever the contents of the Advisory Note issued by the RBI to the ICICI Bank Limited as the matter has already been placed on the floor of the Lok Sabha by the Hon'ble Finance Minister".

The Supreme Court further said: *"This is a matter of concern since it involves the violation of policy Guidelines initiated by the RBI and affects the public at large. Transparency cannot be brought overnight in any system and one can hope to witness accountability in a system only when its end users are well- educated, well-informed and well-aware. If the customers of commercial banks will remain oblivious to the violations of RBI Guidelines and standards which such banks regularly commit, then*

eventually the whole financial system of the country would be at a monumental loss. This can only be prevented by suo motu disclosure of such information as the penalty orders are already in public domain."

30. Supreme Court referred to another case where the respondent Jayantilal N. Mistry sought information from the CPIO, RBI in respect of a Cooperative Bank viz. Saraspur Nagrik Sahkari Bank Limited related to inspection report, which was denied by the CPIO on the ground that the information contained therein were received by RBI in a fiduciary capacity and are exempt under Section 8(1)(e) of RTI Act. The CIC directed the petitioner to furnish that information since the RBI expressed their willingness to disclose a summary of substantive part of the inspection report to the respondent. While disposing of the appeal the CIC observed:-

"Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the contrary, some such institutions may have attempted to defraud the public of their moneys kept with such institutions in trust. RBI being the Central Bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public, particularly, the share holders and the depositors of such institutions are kept aware of RBI's appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the RTI Act, in particular. The provisions of Section 10(1) of the RTI Act can therefore be judiciously used when necessary to adhere to this objective."

31. In Jayantilal case the Supreme Court referred to another important decision of the CIC, in which Mr. P.P. Kapoor, like Sanjeev Singh Jadaun,

appellant in this case sought for information inter alia about the details of default in loans taken from public sector banks by industrialists, out of the list of defaulters, top 100 defaulters, names of the businessmen, firm name, principal amount, interest amount, date of default and date of availing the loan etc. The CPIO denied information claiming that it was held in fiduciary capacity and was exempt under Sections 8(1)(a) and (e) of the RTI Act. First Appellate Authority confirmed the CPIO's decision. In second appeal Ld Information Commissioner Sri Shailesh Gandhi rejected the ground under S 8(1)(e) saying:

Information provided by banks to RBI is done in furtherance of statutory compliances. In fact, where RBI requires certain information to be furnished to it by banks and such banks have no choice but to furnish this information, it would appear that such requirement of RBI is directory in nature. Moreover, no specific benefit appears to be flowing to the banks from RBI on disclosure of the information sought by the Appellant. Consequently, no fiduciary relationship is created between RBI and the banks.

CIC, Mr Shailesh Gandhi further said:

... if a customer defaults in repayment, should the information about the default also be considered as information held in a fiduciary capacity, is a moot question. The lender is likely to take all measures including filing suits to recover the money due, and these actions would mean publicly disclosing the default amounts. In such circumstances the Bank would make these details public, and not feel fettered by the fiduciary nature of the relations".

According to P. Ramanatha Aiyar's, The Law Lexicon (2nd edition; Reprint 2007) at page 1557, "public interest" 'means those interests which concern the public at large'. Banks and financial institutions in India heavily finance various industries on a routinely basis. However, it is a fact that large sums of such amounts are sometimes not recovered. In some cases, loans availed of are not repaid despite the fact that the industrialist(s) may actually be in a financial position to pay. Where financial assistance is given to

industries by banks, in the absence of financial liquidity, it would result in a blockade of large funds creating circumstances that would retard socio- economic growth of the Nation.

Thomas J of the High Court of New Zealand 1995 says: *'The primary foundation for insisting upon openness in government rests upon the sovereignty of the people. Under a democracy, parliament is "supreme", in the sense that term is used in the phrase "parliamentary supremacy", but the people remain sovereign. They enjoy the ultimate power which their sovereignty confers. But the people cannot undertake the machinery of government. That task is delegated to their elected representatives the government can be perceived as the agent or fiduciary of the people, performing the task and exercising the powers of government which have been devolved to it in trust for the people..... the information held by government is essentially the people's information being held on their behalf pursuant to this devolution of authority. ... The people's sovereignty ultimately determines their right to insist upon openness in government'*.

Mr Gandhi also said:

*There are times when experts make mistakes, other times when corruption influences decisions. It is dangerous to put complete faith in the judgment of a few wise people to alert everyone. Democracy requires reducing inequality of opportunity. Asymmetry of information deprives the citizens of an opportunity to take proper decisions. The Commission is aware that information on defaulters is being shared by Reserve Bank with an organisation called CIBIL. In such a situation, it is difficult to understand the reluctance to share this information with citizens using RTI. RBI's circular of 1994,- mentioned above,- in fact appears to promise to share this information suo moto with the public. (CIC decision in **PP Kapoor v RBI**, <https://indiankanoon.org/doc/1549589/>)*

Agreeing with the CIC the Supreme Court division bench quoted following passages of Shailesh Gandhi's judgment:

"The CIC in the impugned order has rightly observed as under:- "I wish government and its instrumentalities would remember that all information held by them is owned by citizens, who are sovereign. Further, it is often seen that banks and financial institutions continue to provide loans to industrialists despite their default in repayment of an earlier loan."

Mr. Shailesh Gandhi's reference to Supreme Court's observation in *UP Financial Corporation vs. Gem Cap India Pvt. Ltd.*, AIR 1993 SC 1435 was reiterated with approval by the Supreme Court in *Jayantilal* case as follows:

Promoting industrialization at the cost of public funds does not serve the public interest, it merely amounts to transferring public money to private account'. Such practices have led citizens to believe that defaulters can get away and play fraud on public funds. There is no doubt that information regarding top industrialists who have defaulted in repayment of loans must be brought to citizens' knowledge; there is certainly a larger public interest that could be served on ...disclosure of the same. In fact, information about industrialists who are loan defaulters of the country may put pressure on such persons to pay their dues. This would have the impact of alerting Citizens about those who are defaulting in payments and could also have some impact in shaming them.

The RBI had by its Circular DBOD No. BC/CIS/47/20.16.002/94 dated April 23, 1994 directed all banks to send a report on their defaulters, which it would share with all banks and financial institutions, with the following objectives:

To alert banks and financial institutions (FIs) and to put them on guard against borrowers who have defaulted in their dues to lending institutions;

To make public the names of the borrowers who have defaulted and against whom suits have been filed by banks/ FIs."

The SC also quoted another decision of Supreme Court as appropriately referred by Shailesh Gandhi, "we may refer the decision of this Court in *Mardia Chemicals Limited vs. Union of India*, (2004) 4 SCC 311, wherein this court while considering the validity of SARFAESI Act and recovery of non- performing assets by banks and financial institutions in India, held :-

".....it may be observed that though the transaction may have a character of a private contract yet the question of great importance behind such transactions as a whole having far reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio- economic drive of the country....."

The Supreme Court finally agreed with CIC in all the cases under challenge including significantly appeal for information about bank defaulters, saying: In rest of the cases the CIC has considered elaborately the information sought for and passed orders which in our opinion do not suffer from any error of law, irrationality or arbitrariness". Two judges of Supreme Court finally said in Paragraph 82 & 83:

"We have, therefore, given our anxious consideration to the matter and came to the conclusion that the Central Information Commissioner has passed the impugned orders giving valid reasons and the said orders, therefore, need no interference by this Court", and held there is no merit in all these cases and hence they are dismissed."

32.It is important to note that the Supreme Court specifically referred to CIC decision in PP Kapoor case and endorsed the views quoting above quoted

nine paragraphs of Shailesh Gandhi saying "learned CIC rightly observed..." and rejected the contentions of the RBI, that were raised in second appeal and all other writ petitions.

33.It is unfortunate that RBI is still raising same grounds to deny the information people are entitled to know ignoring emphatic rejection of those grounds by Supreme Court in subsequent second appeals like this.

The Commission holds:

34.This decision of CIC in PK Saha case referred above is blatantly against the provisions of RTI Act and contrary to the objectives and intention of the Parliament in passing this profound legislation which was effectively dismissed by the Supreme Court's judgment in Jayantilal. After this landmark order, the Saha decision of CIC is absolutely irrelevant. The CIC decision in a second appeal does not have effect as precedent because that decision binds only the parties concerned. It does not have even persuasive value because that is totally in contradiction to written text of RTI Act and also the precedent created by SC in Jayantilal, in which it was rightly pointed out that the RTI Act section 8(2) and Section 22 clearly override all other legislations which conflict with the provisions of this access law. The CPIO ignored his duty to follow the order of Supreme Court in Jayanti Lal case in 2015.

35.RBI CPIO says that several enactments and their secrecy provisions were not repealed either expressly or impliedly. It is nobody's argument that those laws are repealed. Even Official Secrets Act 1923 was not repealed. The crimes of breach of secrecy of security information are being prosecuted under that law. The RTI Act did not repeal them. But as far as disclosure request that is before the Commission is concerned, the secrecy or confidentiality clauses get overridden by the transparency and restriction clauses of RTI Act. That means if there is a request for information that could not be given by the other legislations, the CPIO has to act not under those Acts but should consider the content of request under RTI Act, examine the request on the yardstick of Section 8 or 9 of RTI Act and nothing else. Hence all the provisions of law quoted by RBI

CPIO remain on the statute, did not get repealed to much delight and pleasure of CPIO of RBI, but on RTI request, the disclosures could be considered subject to exceptions under RTI Act only. Surprisingly the CPIO did not plead any exception under Section 8 or 9 to deny the information directed by this Commission. Does CPIO know the RTI Act? Should he not read and understand the Supreme Court order in Jayantilal N Mistry case? And even after 2015 order of Supreme Court in Jayantilal, the CPIO relied on pre-Independence decisions and 2007 order of CIC which is per in curium.

36. It is necessary to educate the CPIOs of RBI (including this CPIO) and other banks about the salient features of SC order in Jayantilal. The RBI's learned Counsel presented the following argument before SC challenging various orders of disclosures by CIC. It is astonishing that CPIO of RBI does not know that in their own case the Supreme Court rejected RBI arguments and confirmed the decision of CIC directing disclosure of details defaulters of bank loans. If he wilfully suppressed such a significant decision to mislead the Commission, it is unparadonable misconduct. According to Article 141 of the Constitution of India, the decision of the Supreme Court on merits of the case will be declaration of law that forms valid precedent. The precedent established by judiciary is having equal effect as an enactment of Parliament. Ignorance of law is no excuse- *ignoransia juris non excusat*. Whether CPIO is ignorant of this also? The Commission recommends disciplinary action against Mr Panigrahy and chose an efficient person as CPIO who knows the law laid down by Supreme Court and does not suppress information from the Commission and the people, in his place. After reading the futile contentions of the CPIO, which were rejected by the Supreme Court when pleaded by senior and eminent counsel Sri Andhyarujina, the Commission doubts whether SC order in *Jayanthilal* was implemented. In that case SC has confirmed the order of CIC for disclosure of defaulters of banks and as per the PP Kapoor, appellant's request, the RBI is expected to place those details on the website as per mandate of Section 4(1)(b) of RTI Act.

37. Apart from legal duty to give *hisaab of every paisa to aam janata* of this democracy, there is a social and economic need to be transparent in

dealing with bad loans and wilful defaulters in the financial health interests of the nation. If RBI fails to see any public interest behind this information request, it will be blind for ever to understand the find what is in best economic interest of the nation which would amount dereliction of Constitutional responsibility of independent regulatory institution.

38. On February 9, 2016 it was reported that In response to an RTI application filed by The Indian Express, the RBI disclosed that while bad debts stood at Rs 15,551 crore for the financial year ending March 2012, they had shot up by over three times to Rs 52,542 crore by the end of March 2015. Twenty-nine state-owned banks wrote off a total of Rs 1.14 lakh crore of bad debts between financial years 2013 and 2015, much more than they had done in the preceding nine years. It was also reported: Asked about the details of the biggest defaulters, whether individuals or business entities, whose bad debts to the tune of Rs 100 crore or more had been written off, the RBI said: "The required information is not available with us". The following table explains:

| THE MOST GENEROUS | |
|---|---|
| Top 10 banks in writing off bad debts in 2015 (in Rs crore): | Top 10 banks in writing off bad debts in last 3 financial years (in Rs crore): |
| SBI 21,313, PNB 6,587 | SBI 40,084, PNB 9,531 |
| Indian Overseas Bank 3,131 | Indian Overseas bank 6,247 |
| Allahabad Bank 2,109 | Bank of India 4,983 |
| IDBI bank Ltd 1,609 | Bank of Baroda 4,884 |
| Bank of Baroda 1,564 | Canara Bank 4,598 |
| Syndicate Bank 1,527 | Central Bank of India 4,442 |
| Canara Bank 1,472 | Allahabad Bank 4,243 |
| UCO Bank 1,401 | Syndicate Bank 3,849 |
| Central Bank of India 1,386 | Oriental Bank of Commerce 3,593 |

Source: <https://indianexpress.com/article/india/india-news-india/bad-loan-financial-year-rti-rbi-bank-loan-raghuram-rajan-bad-loan-financial-year-rti-rbi-bank-loan-raghuram-rajan-114000000000-bad-debts-the-great-govt-bank-write-off/>

39. This writing off has further increased. As per RBI data, between April 2014 and April 2018, the country's 21 State-owned banks ended up writing off Rs 3,16,500 crore of loans even as they recovered Rs 44,900 crore, written off on a cumulative basis — or less than one-seventh the write-off amount. .. To put this number in perspective, the amount of bad loans written off by public sector banks (PSBs) during the four-year period is

well over twice the projected budgetary expenditure on health, education and social protection for 2018-19, at Rs 1.38 lakh crore. (Source: <https://indianexpress.com/article/business/banking-and-finance/rbi-data-on-public-sector-banks-in-four-years-banks-write-off-over-seven-times-recovery-5380583/>)

40. This newspaper has secured some more details under the Right to Information (RTI) Act, showing that non-performing assets (NPAs) or bad loans of micro and small units — where the investment in plant and machinery is above Rs 25 lakh but does not exceed Rs 5 crore — rose from Rs 82,382 crore to Rs 98,500 crore by March 2018. In response, the RBI said that the bulk of loan defaults, which rose from March 2017, is accounted by public sector banks which had a share of 65.32 per cent in outstanding loans to small units, down from 66.61 per cent in the previous year.

| LOANS, NPA: SMALL, MICRO UNITS | | |
|--------------------------------|------------|-----------|
| YEAR | TOTAL LOAN | GROSS NPA |
| March 2015 | 982,552 | 63,035 |
| March 2016 | 951,944 | 74,133 |
| March 2017 | 983,655 | 82,382 |
| March 2018 | 10,49,796 | 98,500 |

Source: RBI; figures in Rs/cr; businesses worth up to Rs 5 crore

This table shows the growth of NPA and total amount of loans.

(Source: <https://indianexpress.com/article/business/banking-and-finance/rbi-loan-defaults-by-small-businesses-double-in-a-year-demonetisation-goods-and-services-tax-5336577/>)

Parliamentary Standing Committee questions RBI

41. Can RBI escape from its role in this situation? A Parliamentary committee has questioned RBI for failing to take preemptive action in checking bad loans in the banking system. The panel headed by **Mr. Veerappa Moily**, which includes former prime minister Manmohan Singh as a member, wanted to know the reasons of ever-greening of stressed accounts through restructuring schemes of the Reserve Bank of India. The news

media reported that issue of rising non performing assets (NPAs) or bad loans is a legacy issue and role of RBI has not been up to the mark and NPAs in public sector banks (PSBs) increased by about Rs 6.2 lakh crore between March 2015 and March 2018.

(source: <http://www.newindianexpress.com/business/2018/aug/27/parliamentary-panel-questions-rbi-on-failure-to-take-action-against-bad-loans-1863506.html>)

42. **Shri Raghuram Rajan, former Governor of RBI**, on question how important was malfeasance and corruption in the NPA problem, said: *"Undoubtedly, there was some, but it is hard to tell banker exuberance, incompetence, and corruption apart. Clearly, bankers were overconfident and probably did too little due diligence for some of these loans. Many did no independent analysis, and placed excessive reliance on SBI Caps and IDBI to do the necessary due diligence. Such outsourcing of analysis is a weakness in the system, and multiplies the possibilities for undue influence".* He also said: *"The size of frauds in the public sector banking system have been increasing, though still small relative to the overall volume of NPAs. Frauds are different from normal NPAs in that the loss is because of a patently illegal action, by either the borrower or the banker. Unfortunately, the system has been singularly ineffective in bringing even a single high profile fraudster to book. As a result, fraud is not discouraged.... The investigative agencies blame the banks for labeling frauds much after the fraud has actually taken place, the bankers are slow because they know that once they call a transaction a fraud, they will be subject to harassment by the investigative agencies, without substantial progress in catching the crooks. The RBI set up a fraud monitoring cell when I was Governor to coordinate the early reporting of fraud cases to the investigative agencies. I also sent a list of high profile cases to the PMO urging that we coordinate action to bring at least one or two to book. I am not aware of progress on this front. This is a matter that should be addressed with urgency..... The inefficient loan recovery system gave promoters tremendous power over lenders. Not only could they play one lender off against another by threatening to divert payments to the favored bank, they could also refuse to pay unless the lender brought in more money, especially if the lender feared the loan becoming an NPA.*

Sometimes promoters offered low one-time settlements (OTS) knowing that the system would allow the banks to collect even secured loans only after years.

43. To another question- did the RBI create the NPAs? Shri Raghuram Rajan explained the role as follows: *"Bankers, promoters, or their backers in government sometimes turn around and accuse regulators of creating the bad loan problem. The truth is bankers, promoters, and circumstances create the bad loan problem. The regulator cannot substitute for the banker's commercial decisions or micromanage them or even investigate them when they are being made. Instead, in most situations, the regulator can at best warn about poor lending practices when they are being undertaken, and demand banks hold adequate risk buffers."*

44. The Reserve Bank of India has issued a circular on February 12 circular on restructuring bad loans which mandated banks to take loan accounts which remain unresolved for over 180 days, to the National Company Law Tribunal (NCLT) under the Indian Bankruptcy Code IBC. It is reported in media on 25th August 2018 that as much as Rs **3 lakh crore worth of loans** of **70-80** companies is likely to come in for resolution under the IBC. The RBI had recently reviewed around 200 stressed assets of top business groups to assess the status of their classification and provisioning, and identify companies that would require resolution under the IBC. Most of these accounts, with value above Rs 2,000 crore each, have been declared as non-performing assets (NPAs) by banks and are required to be referred to the NCLT. Banks and other creditors recovered nearly 55 per cent of the total claims in the 32 cases that have been resolved under the IBC till June-end, including from large accounts such as Bhushan Steel and Electrosteel Steels, as per the latest data available with the Insolvency and Bankruptcy Board of India. Financial and operational creditors could recover around Rs 49,800 crore out of the total claims of Rs 90,000 crore in these 32 companies. (<https://indianexpress.com/article/business/economy/rbi-circular-on-bad-loans-rs-3-lakh-crore-loans-to-come-under-ibc-for-resolution-5323977/>)

45. As a regulatory of banks, the RBI has a duty to regulate the lending and recovery aspects, which include managing recovery as depicted in above paragraph. It has a duty to explain effect of such policies and measures. If such steps are not taken for any reason with regard to certain companies defaulting in paying thousands of crores worth loans. If this is the case why the RBI does not allow the public scrutiny by giving out the information about the defaulters and defects? When the nation is losing lakhs of crores of rupees, how can RBI or any other bank hide the information behind the iron wall of secrecy on the grounds of 'commercially confidential or competitive information or fiduciary information? Thus Commission finds no merit in RBI's argument against disclosure. When farmers die of shame for recovering a small loan by banks while writing off lakhs of crore of rupees to clean their balance sheets, why banks think that it their legitimate duty not to shame wilful defaulters by exposing their names? It's an absurd and irresponsible argument reflecting anti-farmer and pro-rich bias of bankers. They have to try transparency as a method to compel wilful defaulters to pay back public debts. RBI and other banks are servants of the public and their masters have every right to know how their money is being drained in the form of written off loans and bad debts. [Edited excerpts from a 'Note to Parliamentary Estimates Committee on Bank NPAs' prepared by former RBI Governor Prof Raghuram G Rajan on Sept 6 at request of Chairman of the Parliament Estimates Committee, Dr Murli Manohar Joshi]

(source: <https://indianexpress.com/article/explained/raghuram-rajan-bad-loans-npa-indian-banking-system-economy-5351347/>)

46. A media website, The Wire sought under RTI application with the Prime Minister's Office, the Finance Ministry about the claim that former RBI Governor Sri Raghuram Rajan had made in his note to a parliamentary committee that he had handed over "a list of high profile fraud cases of non-performing assets to the Prime Minister's Office for coordinated investigation." The RBI informed that Rajan's letter to the PMO about the defaulters suspected of fraud was written on February 4, 2015 and a copy was given to Finance Minister also. Rajan had also conveyed to the PMO how 'unscrupulous promoters' had inflated the cost of capital equipment

using over-invoicing of imports. (<https://thewire.in/political-economy/exclusive-rti-confirms-raghuram-rajan-sent-pmo-list-of-npa-defaulters-no-action-taken>)

47. The Indian Bankruptcy Code (IBC) was put in place in May 2016 and in the first year itself thousands of crores of rupees worth loan matters are dealt with. The Act of the IBC was amended through a Bill that prohibits certain persons from submitting a resolution plan in case of defaults. These include: (i) willful defaulters, (ii) promoters or management of the company if it has an outstanding non-performing debt for over a year, and (iii) disqualified directors, among others. Further, it bars the sale of property of a defaulter to such persons during liquidation. All these processes of adjudication will not happen in closed doors. There the adjudicators have to openly discuss the names and their bankruptcy details. Their details cannot be hidden on any excuse. Similarly the debt recovery tribunals also have to discuss the names of the defaulters and amounts of bad loans to fix the liabilities and recover. If the litigation reaches the courts or any other tribunals also the names are not hidden. Except the alternative dispute process like negotiation or mediation where the details are not exposed, no other information about the bad debt is hidden. It is futile for RBI or any other bank to argue that names of defaulters and defaulted amounts are confidential or fiduciary or some other of secret.

48. The Governor of RBI, Mr. Urjit R Patel, speaking on September 20, 2018 at Central Vigilance Commission, said that guidelines on vigilance, issued by the CVC, are aimed at greater transparency, promoting a culture of honesty and probity in public life, and improving the overall vigilance administration in the organisations within its purview. Thus the Governor's speech emphasized transparency as an important aspect of vigilance. <https://rbidocs.rbi.org.in/rdocs/Speeches/PDFs/CVCD1939C8177BE443E587735B76A030BF37.PDF>. N. S. Vishwanathan, Deputy Governor, Reserve Bank of India, on April 18, 2018 said in his speech on topic "It is not Business as Usual for Lenders and Borrowers" delivered at National Institute of Bank Management, Pune on Fourteenth Convocation, that the NPAs went up from 4.62% in 2014-15 to 7.79% in 2015-16, and were as high as 10.41% by December 2017. He pointed out that the amendments to the Banking Regulation Act, 1949 empowering the Reserve Bank to

direct banks to refer specific cases of default for resolution under IBC were a clear indication that an external nudge was required for banks to file insolvency application against large borrowers. https://rbi.org.in/Scripts/BS_SpeechesView.aspx?Id=1055.

49. While questions of law were as discussed above, the facts also are not in favour of the RBI as far as their claims against disclosure are concerned. Their contention on confidentiality cannot be accepted because none sought for confidential customer's information, if any. None is asking for information about every customer who took loan but paying back sincerely. The most important question which the RBI ignored is when hundreds of crores of rupees of public money is not repaid by a loanee, how that became confidential customer's information? The RBI or other banks need not give personal details of the willful defaulters like their addresses, but why not they disclose the names of willful defaulters and amount they fell due, besides measures, if any, being taken to recover the money that belonged to people? Every evasion of loan is misappropriation of public money, which public have a right to know. Vibrant citizens have a democratic duty to scrutinize the way huge loans are being granted without securing them properly. It is an issue of financial administration, governance of public money and finally the people are affected by these maladies. The RBI, being a regulatory of banking activities have no legal duty to protect the interests of willful defaulters or their reputation misquoting all the provisions of law, which cannot be invoked. It is unfortunate that Banks and Government are waging legal wars on the citizens who are seeking information to protect the names and other details of willful defaulters, despite land mark judgment of Supreme Court directing them to abide by the RTI Act.

50. Why the RBI is fighting tooth and nail to defend defaulters saying, failure to repay the dues by the borrower does not always reflect as a 'willful intent' as to non-payment? There can be various reasons for default. Although some of these reasons are within the control of the promoter, some of them may not be within his control. Some defaults occur even with the best intent, some are malafide in nature. Disclosing the details of accounts where defaults have been found irrespective of the reasons,

therefore, **may have an adverse impact for the business** and in a way may accentuate the failure of the business rather than nurse it back to health. While sharing such information among banks helps to address bad behavior from borrowers, putting it in public domain does not necessarily serve the same purpose. This contention is absolutely unreasonable and not provided by any legal foundation. If the RBI is sure that all defaulters are not willful defaulters, they can segregate the class of willful defaulters and provide their details to the public. The ground that disclosure may have adverse impact on their business is hypothetical and runs against fair and transparent financial administration norms. If they are sure that some disclosure would cause adverse affect they have to convince the Commission about the same and if Commission is satisfied, it can permit the RBI to hide it, but RBI cannot build iron walls around willful defaulters on this loose and baseless assumption of adverse impact on business. Does RBI has responsibility of protecting business interests of defaulters at the cost of national financial discipline and economic stability? The Commission feels deeply pained at this kind of litigation by Government and RBI against the people and CIC on an issue of transparency in the name of unfounded confidentiality.

51. The RBI claims under its RTI policy that it has been proactively disseminating information, not only in compliance with the requirements of the Act, but also with the objective of achieving better corporate governance through greater transparency and accountability. Under 'disclosure policy' they have 115 plus classes of huge information not to be disclosed including inspection reports, in spite of elaborate judgment of SC in Jayantilal case rejecting all contentions of the RBI, very sad. Nowhere had they disclosed the increasing debt burden, bad debts, willful defaulters, measures taken to recovery etc. Naming of willful defaulters did not happen in spite of CIC orders, even after they were upheld by the Supreme Court, very unfortunate.
52. The policy of disclosure of RBI in its RTI wing still shows at point 11 that Inspection reports of authorized entities is exempted u/s 8(1)(a) and (d). Under head of Banking Service Activities RBI declared that it will not disclose inspection reports. Even vigilance audit report will not be disclosed u/s 8(1) (a), (g) & (i) of Right to Information Act, 2005

(Source: https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=2347)
This means the RBI is not honouring the judgment of Honourable Supreme Court in Jayantilal case explained above. RBI cannot forget or ignore the mandate given by Supreme Court in following para:

"60. RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large) the depositors) the country's economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to' comply with the provisions of the RTI Act and disclose the information sought by the respondents."

53. The Commission noticed the disclosures under Section 4(1)(b) contains more non-disclosure related declarations which are contradictory to the exceptions claimed. Obligation to disclose under S 4 is not subjected to any exceptions. Each request has to be examined in the context of claimed exception. For instance one cannot reject enbloc the request for documents during pendency of inquiry or investigation unless it is proved that the documents sought would impede those processes. The RBI declared that such information will not be given. The entire non-disclosure policies declared under the name of disclosure' is thus flawed and requires in depth examination and correction. The Commission invoking its authority under Section 19(8) requires the RBI to review, revise and reform their section 4(1)(b) disclosures in tune with the RTI Act, as soon as possible but not later than 45 days. **The Commission directs the CPIOs of the RBI, the PMO and office of the Finance Minister** to explain the action taken on the alerting letter written by Former Governor of RBI Raghuram Rajan on February 5, 2015, before November 16, 2018.

54. The Commission directs Mr. Panigrahy to file a compliance report along with proof that RBI has supplied the information to PP Kapoor and placed the list of defaulters on their official website as per orders of CIC as confirmed by the Supreme Court in Jayantilal case, within five days, failing which the Commission shall initiate penal proceedings against him.

55. **The Commission feels** that there is no match between what RBI Governor and Deputy Governor say and their website regarding their RTI policy, and great secrecy of vigilance reports and inspection reports is being maintained with impunity in spite of Supreme Court confirming the orders of CIC in Jayantilal case. However the Commission considers that it does not serve any purpose in punishing the CPIO for this defiance, because he acts under the instructions of the top authorities. The Commission has no alternative except to hold the Governor Mr Urjit R Patel and other officers of top management of this esteemed institution for dis-honouring the judgment and directions of Supreme Court. ***The Commission considers the Governor as deemed PIO responsible for non-disclosure and defiance of SC orders and CIC orders and directs him to show cause why maximum penalty should not be imposed on him for these reasons, before November 16, 2018.*** The Commission, considering that it is the duty and function of the Commission as a whole to secure compliance of its orders, directs the concerned administrative officers of the Central Information Commission to explore possibilities enforcing the orders of learned Information Commissioner Shailesh Gandhi taken in appeal up to Supreme Court by the RBI, who lost all their cases and contentions, taking appropriate legal measures including the action for contempt of Supreme Court against the top management of the RBI. If the banking regulatory like RBI will not honour the Constitutional Institutions directions, what will be the effect of Constitution on securing Rule of Law? The Commission recommends the RBI governor to remember once, at least one of the 3 lakh farmer dying in the field as he failed to sustain his crop or to sell his produce for appropriate price and hence could not pay of the debt before defying the transparency law and directions and discontinue the non-disclosure policy which will seriously harm of the economy of this nation, immediately.

56. **The Commission finds no merit** in hiding the names of, details and action against willful defaulters of big bad loans worth hundreds of crores of rupees. The RBI shall disclose the bad debt details of defaulters worth more than 1000 crore at the beginning,

of Rs 500 crore or less at later stage within five days and collect such information from the banks in due course to update their voluntary disclosures from time to time as a practice under Section 4(1)(b) of RTI Act. Appeal is posted on 16th November 2018 for compliance and penal proceedings.

SD/-

(M.Sridhar Acharyulu)
Central Information Commissioner