

Accordingly, the following will have to be inserted at the appropriate place in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973:

"Any person aggrieved by the decision of any Court subordinate to the High Court rejecting a claim for privilege made under section 123 of the Indian Evidence Act, 1872 shall have a right to appeal to the High Court against such decision, and such appeal may be filed notwithstanding the fact that the proceeding in which the decision was pronounced by the Court is still pending."

The Oath of Secrecy:

A Minister is a bridge between the people and the Government and owes his primary allegiance to the people who elect him. The existence of this provision of oath of secrecy and its administration along with the oath of office appears to be a legacy of the colonial era where the public was subjugated to the government. However, national security and larger public interest considerations of the country's integrity and sovereignty may require a Minister or a public servant with sufficient justification not to disclose information. But a very public oath of secrecy at the time of assumption of office is both unnecessary and repugnant to the principles of democratic accountability, representative government and popular sovereignty.

Therefore, the obligation not to disclose official secrets may be built in through an appropriate insertion of a clause in the national security law dealing with official secrets. If required, such an undertaking may be taken in writing, thus avoiding public display of propensity to secrecy. The Commission is therefore of the view that the Oath of Secrecy may be dispensed with and substituted by a statutory arrangement and a written undertaking.

Recommendations:

- a. As an affirmation of the importance of transparency in public affairs, Ministers on assumption of office may take an oath of transparency along with the oath of office and the requirement of administering the oath of secrecy should be dispensed with. Articles 75(4) and 164 (3), and the Third Schedule should be suitably amended.
- b. Safeguard against disclosure of information against the national interest may be provided through written undertaking by incorporation of a clause in the national security law dealing with official secrets.

Exempted Organizations:

Certain categories of organizations have been exempted from the provisions of the Act. The list of organizations includes Border Security Force (BSF), Central Reserve Police force (CRPF), Assam Rifles etc., but the Armed Forces have been left outside the purview of the Act. When organizations such as BSF, CRPF, Assam Rifles are exempted, there is no rationale for not exempting the Armed Forces as well. The Second schedule needs to be periodically revised to include or exclude organizations in keeping with changing needs.