

OVERVIEW OF RIGHT TO INFORMATION ACT

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ABSTRACT

The present Article titled “Overview of Right to Information Act” tries to give an overview of the RTI Act 2005 in India. Under the RTI Act, 2005, Public Authorities are needed to make revelations on different parts of their structure and working. This incorporates (I) revelation on their association, capacities, and structure, (ii) forces and obligations of its officials and workers, and (iii) monetary data. The purpose of such Suo moto revelations is that the general population should require the least plan of action through the Act to acquire such data. The plan behind the authorization of the Act is to advance straightforwardness and responsibility in the working of Public Authorities. In this article, the author will be dealing with some important provisions of the Act along with relevant case laws on the issues. The Article will also be dealing with the controversial RTI (Amendment Bill) 2019 which brought various amendments in the legislature of 2005. The RTI Act is believed to be one of the most progressive laws in the country since independence. It holds the reflection of the still-breathing remains of India’s dying democracy.

KEYWORDS

Right to Information, Constitution, Government, RTI Act, RTI (Amendment Bill)

INTRODUCTION

The Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution of India. It says, “All the citizens shall have the right to freedom of speech and expression.” The main idea is 180 that if the people do not have any information regarding the functioning of the Government and public institutions, then people cannot express any informed opinion on it. In a system of democracy where citizens are at the centre of government- the rule of the people, for such a democracy to function, freedom of the press is necessary to be understood first. The main reason for a press is to ensure that the citizens are informed. Thus, it flows from this that the citizen’s right to know is paramount.

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The Right to Information Bill, 2005 was passed by the Lok Sabha on May 11, 2005, and by the Rajya Sabha on May 12, 2005, and received the assent of the President of India on June 15, 2005, and came to force on October 12, 2005. It has replaced the Freedom of Information Act, 2002.

This act is applicable throughout India except for the state of Jammu and Kashmir. (Jammu and Kashmir have a similar act which was enacted in 2009.) This law is very comprehensive and covers almost all matters of governance and has the widest possible reach, applying to Government at all levels- Union, State and Local as well as recipients of government grants.

This act is pertinent all through India aside from the territory of Jammu and Kashmir. (Jammu and Kashmir have a comparative demonstration which was ordered in 2009.) This law is exhaustive and covers practically all issues of administration and has the greatest conceivable reach, being material to Government at all Levels-Union, State and Local just as beneficiaries of government awards.

BRIEF HISTORY

The right to information campaign in India began with the Mazdoor Kisan Shakti Sangathan.² (MKSS) a movement to bring in transparency in village accounts via the demand for minimum wages in rural India. Ghost entries in muster rolls were a sign of rampant corruption in the system, which prompted MKSS to demand official information recorded in government files. The movement soon spread across India. From a very modest beginning in the villages of Rajasthan, the success of MKSS has been a source of inspiration for activists in India and throughout the world. It led to the genesis of a broader discourse on the right to information in India.

In 1993, a draft RTI law was proposed by the buyer Education and Research Council, Ahmedabad (CERC). In 1996, the Press Council of India headed by Justice P B Sawant presented a draft model law on the proper information to the government of India. The draft model law was later updated and renamed the PCI-NIRD Freedom of data Bill 1997. Unfortunately, none of the draft laws was seriously considered by the government.

Meanwhile, MKSS's advocacy gave rise to the National Campaign on People's Right to Information (NCPRI), which was formed to advocate for the proper information at the national level. Constituted in 1996 in New Delhi, the NCPRI aims to supply active support to grassroots

²Available at <https://www.humanrightsinitiative.org/content/state-level-rti-rajasthan> last visited on 30 March 2021.

struggles for the right to information and to lobby the government to enact and implement effective access to information legislation.

In May 2004, a replacement UPA Government came into power at the Centre. The national campaign for the right to information received a serious boost when the UPA Government's Common Minimum Programme promised that: "The Right to Information Act is going to be made more progressive, participatory and meaningful". The National Advisory Council (NAC) was found out to oversee the implementation of the Government's Common Minimum Programme. Since its inception, the NAC has taken an in-depth interest in RTI. At the very first meeting of the NAC on 17 July 2004, NAC members submitted a press release from the National Campaign for the People's Right to Information to the NAC calling for action on RTI. to assist discussions, CHRI submitted an Analysis of the FOI Act and proposals to the NAC and everyone Cabinet MPs before the primary meeting.

CITIZEN'S RIGHT TO INFORMATION

Section 3 of the Right to Information Act, 2005 states: "Subject to the provisions of this Act, all citizens shall have the right to information". The Act defines "Information", "Record" and "Right to Information" ³as follows:

Information relating to any private body: Although the privilege to data is most relevant to Public Authority, however, that data identifying with a private body which can be gotten to by a Public Authority under any law, might be acquired under the Right to Information. These private bodies have a type of legitimate connection with the Public Authority and this connection might be in the assorted variety of structures like checking, control, money related guide, administrative measures and so on. In this way, when any open authority is in a position to have admittance to data relating to a private body, the equivalent might be acquired by a resident.⁴

The Supreme Court judgement in the **ADR/PUCL case**⁵ had laid down that citizens have a right to know about the assets of those who want to be Public servants (stand for elections). It should be

³ Section 3 of the Right to Information Act, 2005

⁴ Abhe Singh Yadav, Right to Information Act, 2005 An Analysis, (Third Edition, Central Law Publications, Allahabad, 2012)

⁵ People's Union for Civil Liberties (PucL) And Anr Vs. Union Of India and Another [2002] 5 SCC 294

obvious that if citizens have a right to know about the assets of those who want to become Public servants, their right to get information about those who are Public servants cannot be lesser. This would be tantamount to arguing that a prospective groom must declare certain matters to his wife-to-be, but after marriage, the same category of information need not be disclosed.

PROCEDURE FOR REQUEST FOR INFORMATION

Section 6 of the Act stipulates that the request for information may be made to the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority or given to the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be. The request for information can be made as follows⁶:

- i. In writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made;
- ii. Oral request to be reduced to writing with assistance sought from Public Information Officer, where such request cannot be made in writing;
- iii. To specify the particulars of the information being sought by the applicant;
- iv. To be accompanied by a fee as prescribed under the rules made under the Act;
- v. applicant not to be required to give a reason for requesting the information or any other personal details except those that may be necessary for contacting. Suggested specimen format for 'application' is provided below. It is important, however, to note that the law does not specify any format(s). The sample provided below is only for guidance to authorities.⁷

DISPOSAL OF INFORMATION

Section 7 of the Act makes provisions regarding the disposal of request for information as follows:

- Request for information shall be disposed of by the Public Information Officer within;
- 30 days of receipt in general cases and 48 hours of receipt in cases where the information sought for concerns the life or liberty of a person;⁸

⁶ Section 6 of the Right to Information Act, 2005

⁷ The Right to Information Act, 2005, A Guide for Civil Society Organisations, National Implementing Agency- Capacity Building for Access to Information Project, July, 2006,

⁸ Section 7(1) of the Right to Information Act, 2005

- A period of 5 days shall be added in computing the response time where an application for information is given to an Assistant Public Information Officer;⁹
- request to be deemed to have been refused by the Public Information Officer, if the decision on the request for information is not given within the period specified as above;¹⁰
- where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving (a) the details of further fees representing the cost of providing the information as determined by him or her, together with the calculations made to arrive at the amount following fee prescribed, requesting him/her to deposit that fees and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded to calculate for 30 days and (b) information concerning the right of the person requesting for review the decision as to the number of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms;¹¹

Where access to the record or a part thereof is required to be provided under the Act and the person to whom access is to be provided is sensorily disabled, the Public Information Officer shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection¹²

- Where access to information is to be provided in the printed or any electronic format, the applicant shall pay the fee prescribed;¹³
- Before taking any decision to provide information, the Public Information Officer shall take into consideration the representation made by a third party;¹⁴
- Where a request has been rejected, the Public Information Officer shall communicate to the person making the request —
 - (i) The reasons for such rejection;
 - (ii) The period within which an appeal against such rejection may be preferred;

⁹ Section 5(2) of the Right to Information Act, 2005

¹⁰ Section 7(2) of the Right to Information Act, 2005

¹¹ Section 7(3) of the Right to Information Act, 2005

¹² Section 7(4) of the Right to Information Act, 2005

¹³ Section 7(5) of the Right to Information Act, 2005

¹⁴ Section 11(1) of the Right to Information Act, 2005

(iii) The particulars of the appellate authority.¹⁵

Section 7(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in section 8 and 9 Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request Section 7(6) Notwithstanding anything contained in sub-section (5), the person requesting information shall be provided with the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).¹⁶

GROUND FOR REJECTION OF REQUESTS

The grounds of rejection of information as specified by the Act pertain to the:

- ❖ **Section 8:** Exemptions from the disclosure of information unless there are overriding considerations of public interest.¹⁷

*Central Board of Secondary Education & Anr Vs. Aditya Bandopadhyay & Ors.*¹⁸ the main issue before the Court: Whether an examinee's (Students) right to information under the RTI Act includes a right to inspect his evaluated answer books in a public examination and taking certified copies of the same. The examining body, -CBSE, - had claimed that it held the information in a fiduciary relationship and hence this was exempt under Section 8 (1) (e) of the Act.

The court held that: The court ruled that corrected answer sheets were information that should be provided to students who seek them under RTI.

*Girish Ramchandra Deshpande Vs. Central Information Commission & Ors.*¹⁹ the issue before the Court: Whether the information about a Public Servant in respect of his service career and also

¹⁵ Section 7(8) of the Right to Information Act, 2005

¹⁶ Shri P. Kannan Vs. The Central Information Commissioner and ors. [2014] SCC OnLine Cal 7450

¹⁷ The Right to Information Act, 2005, A Guide for Civil Society Organisations, National Implementing Agency-Capacity Building for Access to Information Project, July, 2006

¹⁸ Central Board of Secondary Education & Anr Vs. Aditya Bandopadhyay & Ors [2011] 8 SCC 497

¹⁹ Girish Ramchandra Deshpande Vs. Central Information Commission & Ors [2013] 1 SCC 212

the details of his assets and liabilities, movable and immovable properties, can be denied on the ground that the information sought for was qualified to be personal information as defined in clause(j) of Section 8(1) of the Act. The Court held that: The Apex Court held that copies of all memos, show cause notices and orders of censure/punishment, assets, income tax returns, details of gifts received etc. by a public servant are personal information as defined in clause (j) of Section 8(1) of the RTI Act and hence exempted and cannot be furnished under RTI Act.

*R.K. Jain Vs. Union of India JT*²⁰ the issue before the Court: The information requested was an inspection of adverse confidential remarks against the ‘integrity of a member of the Tribunal and follow up actions taken on the issue of integrity. The exemption was claimed based on Section 8 (1) (j).

The Court held that: Inter alia relying upon the ruling made in Girish Ramchandra Deshpande case, the information is exempted from disclosure under Section 8 (1) (j) read with section 11 of the RTI Act.

- ❖ **Section 9:** Infringement of the copyright subsisting in a person other than the State. This is the only absolute exemption. Here the PIO need not consider the public interest in disclosure.
- ❖ **Section 11:** Third-party information treated as confidential by the concerned and involving the case of trade or commercial secrets protected by law and other third party information where the public interest in disclosure does not outweigh the importance of any possible harm or injury to the interests of such third party.

*Arvind Kejriwal vs. Central Public Information Officer, Cabinet Secretariat*²¹The issue before the court Whether the information seeker can be provided with copies of documents in files concerning appointments at levels of Dy. Secretary, Director, Joint Secretary, Additional Secretary and Secretary in Government of India without procedure outlined in S. 11(1) of Right to Information Act, 2005 having to be followed? CIC was not justified in overruling the objection of UOI on basis of S. 11(1) of the RTI Act and directing UOI and DoPT to provide copies of documents

²⁰ R.K. Jain Vs. Union of India JT [2013] (10) SC 430

²¹ Arvind Kejriwal vs. Central Public Information Officer, Cabinet Secretariat [2010] SCC OnLine Del 2537

Whatever may have been the past practice when disclosure was ordered of information contained in files relating to the appointment of officers and which information included their ACRs, grading, vigilance clearance, etc., the mandatory procedure outlined under S. 11(1) cannot be dispensed with Honorable Court reverses CIC's impugned order and answers it in negative

- ❖ **Section 24:** Information on exempted intelligence and security organisations except for information about allegations of corruption and human rights violations.²²

INFORMATION EXEMPTED FROM DISCLOSURE

The information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court.

- The disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a party.
- Information received in confidence from foreign Government;
- the disclosure which might endanger the life or safety of a person or assistance given in confidence for enforcement.
- cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers as long as the choices of Council of Ministers, the explanations thereof, of which has no relationship to any public activity or interest, or which might cause invasion of the privacy.
- the information which would impede the process of investigation or apprehension or prosecution of offenders
- information which relates to personal information the disclosure of which has no relationship to any public activity or interest.²³

²² The Right to Information Act, 2005, A Guide for Civil Society Organisations, National Implementing Agency-Capacity Building for Access to Information Project, July, 2006,

²³ The Right to Information Act, 2005, A Guide for Civil Society Organisations, National Implementing Agency-Capacity Building for Access to Information Project, July, 2006

In *S.P. Gupta v. Union of India*²⁴, the case was decided by an eight Judge Constitution Bench, which is generally considered as a new ground with a fresh and liberal dimension towards the need for increased disclosure in matters relating to public affairs. In that case, the consensus that emerged amongst the judges was that regarding the functioning of Government, disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest. The court observed that: the right of citizens to know about the administration of the country and how it is being managed is one of the pillars of a democratic state and this is the reason why the demand for openness in the government is increasingly growing in different parts of the world. No democratic Government can continue to exist without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government.

CHANNELS OF APPEALS

The Act provides two channels of appeals against the decision of a PIO on the request for information by a citizen – an internal or ‘first’ appeal to a designated “officer senior in rank’ to the PIO – the first appellate authority (called “Appellate Officer” in this Manual) as brought by the Public Authority and a ‘second’ appeal to the Information Commission. The Act also provides for preferring complaints to the Information Commission regarding no implementation of the legal provisions. If an applicant is not satisfied by the decision of a PIO, he or she can appeal to the Appellate Officer who, as required by the law, would be an “officer senior in rank” to the PIO. A second appeal, against the decision of the Appellate Officer, lies to the Information Commission²⁵

THE RIGHT TO INFORMATION (AMENDMENT) BILL, 2019

On July 19, 2019, the RTI (Amendment) Bill, 2019 was introduced in Parliament. The bill, on the other hand, was widely panned by the opposition, the media, activists, and ordinary people, who accused the government of undermining citizens' right to information. The changes made with the new Bill can be understood by referring to the below table by PRS Legislative Research India: ²⁶

²⁴S.P Gupta vs Union of India AIR 1982 SC149

²⁵ The Right to Information Act, 2005, A Guide for Civil Society Organisations, National Implementing Agency-Capacity Building for Access to Information Project, July, 2006

²⁶ Right to Information Act, 2005; Right to Information (Amendment) Bill, 2019; PRS

| Provision | RTI Act, 2005 | RTI (Amendment) Bill, 2019 |
|----------------------------|--|---|
| Term | <p>The Chief Information Commissioner (CIC) and</p> <p>the Information Commissioners (ICs) (at the federal and state levels) will serve five-year terms.</p> | <p>The Bill repeals this clause and instead specifies that the CIC and ICs will be notified of their terms of office by the central government.</p> |
| Quantum of Salary | <p>The salaries of the CIC and ICs (at the federal level) will be the same as those of the Chief Election Commissioner and Election Commissioners.</p> <p>Likewise, the CIC and ICs (at the state level) will be paid the same as the Election Commissioners and the Chief Secretary to the state government.</p> | <p>The Bill repeals these rules, stating that the central government will specify the wages, benefits, and other terms and conditions of service of the central and state CICs and ICs.</p> |
| Deduction in Salary | <p>According to the Act, if the CIC and ICs (at the federal and state levels) are earning a pension or other retirement benefits for prior government service, their salaries will be reduced by a sum equal to the pension at the time of their appointment.</p> <p>Previous government service includes: I service with the federal government, (ii)</p> | <p>These clauses are removed from the bill.</p> |

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| | service with the state government, (iii) service with a corporation founded under federal or state law, and (iv) service with a business owned or operated by the federal or state government. | |
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Sections 13 and 16 of the Right to Information (RTI) Act of 2005 are amended by the bill. The tenure of the central Chief Information Commissioner and Information Commissioners is set at five years in Section 13 of the original Act (or until the age of 65, whichever is earlier). The amendment proposes that the appointment be made “for such terms as the Central Government can prescribe.”. Again, Section 13 states that salaries, allowances and other terms of service of “the Chief Information Commissioner and those of an Information Commissioner shall be the same as that of the Chief Election Commissioner” and Election Commissioner respectively”. The amendment proposes that the Chief Information Commissioner's and Information Commissioners' salaries, pensions, and other terms of service "shall be such as may be specified by the Central Government."

The original Act quantified tenures and set salary levels based on existing averages. The amendments are being interpreted as meaning that the government may decide on the terms of appointment, wages, and tenures of the Chief Information Commissioner and Information Commissioner on a case-by-case basis. The opposition argues that this would erode the RTI authorities' independence.

CONCLUSION

The Right to Information Act became operational on October 12, 2005. This law gave Indian citizens to seek information from public authorities, making the government and its subsidiaries more accountable and responsible. The Right to Information Act 2005 is an important piece of legislation aimed at enhancing transparency and accountability in the working of public authorities. Its enactment signals an important shift in the attitude of the government as it accepts

the need to move from the culture of secrecy to greater openness. India inherited its administrative set-up from the British colonial administration which was mainly directed to protect the interest of Britishers.

‘The Government of India through the enactment of this Act took a landmark decision through which transparency and people’s participation in the development process could become a reality in the development process. RTI Act has the widest possible reach, covering the legislative, judiciary and executive branches of the government as well as non-government institutions receiving government grants and subsidies. This Act is one of the most progressive laws enacted by our Parliament with stringent penalties for failing to provide information or preventing access in any way. The Act imposes an obligation on public authorities to disseminate maximum information Suo moto, thus reducing the cost to the citizens and workloads of the public authorities. However, despite all these positive features the RTI Act still suffers from some weaknesses.