
A COMPREHENSIVE VIEW OF THE RIGHT TO INFORMATION ACT, 2005

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ABSTRACT

To promote openness in an administration the Sweden government introduced a new concept i.e right to information in 1774. After years other countries also knew the importance of the concept and adopted it in their nations. In India, the first step to implement this concept was taken by Mazdoor Kisan Shakti Sangathan in the year 1994. Finally, in 2005 the parliament adopted this idea and enacted it as legislation in the name of the Right to Information Act 2005 to promote transparency and accountability in the working of public officials. The apex court recognized this concept as a fundamental right under Art 19 in various Judgements. Subject to restriction one can access information under this act. The information officers and other commissioners are also appointed to perform the given functions. For the convenience of the people, filing procedures are also made very simple. An aggrieved party may file an appeal within the period prescribed by the act. The universal declaration of human rights recognized this right as a human right. The right to information is a cornerstone of a healthy democracy. An ancient text the Rigveda and Bible also discussed the concept right to information.

“ Let noble thoughts come to us from every side”

- Rigveda

Introduction:

India is a democratic form of government decisions taken by the government must be open to the people. To promote transparency and accountability in the working of public officials parliament enacted the legislation called the Right to Information Act in the year 2005. The right to information is not merely a statutory right but also a fundamental right under Article 19 and Article 21 of the constitution stated by the apex court in numerous judgements.

Background of the Act:

This concept was recognized by the apex court in the famous case law Raj Narain vs State of Uttar Pradesh 1975 . Later in the 1990s people from Rajasthan conducted a movement seeking transparency in public records. As a result of the campaign conducted in the year 1996, the government introduced the Freedom of information Act 2002. Due to some reasons 2002 act was repealed and replaced by the Right to Information Act 2005(hereinafter RTI).

Who can obtain information under the Act?

Every person irrespective of sex, religion and caste can obtain information through this Act but subject to some restrictions.

A person who needs information must make an application in writing or through any other means to the concerned officer mentioned under the Act. Writing may be in English, Hindi or any other local language and a person who made an application must pay the prescribed fee.

What kind of information one cannot ask under the act?

1. The information affects the country's sovereignty, integrity, and scientific and economic interest.
2. Any information which is forbidden to publish by a court of law.
3. The information may cause a breach of privilege of parliament or legislature of the state.

4. Any Information related to cabinet records.
5. The information which prevents the process of investigation or apprehension or prosecution of offenders.
6. Information regarding commercial, confidence and trade secrets which cause harm to the third party.
7. The information does not relate to public activity.
8. Any other information mentioned under Section 8 of the Act.

Grounds for rejection of request:

If requested information involves any infringement of copyright subsisting in a person other than the state it can be rejected under section 9.

Third-party information:

Section 11 says if the requested information is related to the third party and it will be treated as confidential by him, In such cases, the information officer cannot disclose the records unless he receives written submission from that third party.

Disposal of request:

The request made under the Act must be disposed of within 30 days. The authorized officer may consider and provide information or reject the request if it comes under the purview of section 8 and section 9.

The information officer should intimate the applicant if an additional fee is required to satisfy the functions given under the Act.

The following should also inform the applicant in case of rejection.

1. Reason for rejection of the request.
2. A period of appeal.

3. The details of the appellate authority.

A person who comes under the category of below the poverty line need not pay the fee mentioned in the act and it will be determined by the appropriate government.

Commissions under the act:

1. The central information commission:

The central government may after issuance of notification in the official gazette constitute the central information commission to perform the functions given under the act.

The commission consists of the chief information commissioner and the other number of the central information commissioner.

These commissioners are appointed by the president based on the recommendation given by the committee consisting of

1. The prime minister of India.
2. The leader of opposition in the Loksabha and
3. A union cabinet minister.

Qualification:

1. He must have knowledge and experience in the field of law, science and technology and social service, management.
2. He should not be a Member of Parliament or a member of the state legislature or union territory.

Terms of office and conditions of service:

1. He can hold office for the period prescribed by the central government or till attains the age of 65 years whichever is earlier.
2. He should not be eligible for reappointment.

3. The salaries, allowances and conditions of service are determined by the central government.

Removal of commissioner:

Based on the following grounds one can be removed from the above-mentioned authority:

1. Insolvent
2. Moral turpitude.
3. Voluntarily resignation.
4. Reason for infirmity.
5. Any other grounds mentioned under section 14 of the Act

2. The state information commission:

For every state, the state information commission is appointed by the concerned state government after the issuance of notification in the official gazette.

The state information commission consists of the state chief information commissioner and other commissioners.

These commissioners are appointed by the governor based on the information given by the committee consisting of

1. The chief minister of the concerned state government will be the chairperson of the committee.
2. The leader of the opposition in the legislative assembly.
3. A nominated cabinet minister.

The qualification, terms of office and condition of service for the state chief information commissioner and information commissioner are the same as those of the central chief information commissioner and information commissioner.

Powers and functions of information commissions:

The information commission has the same powers as the civil court mentioned under the code of civil procedure.

1. Summoning powers.
2. Receiving evidence on affidavit.
3. Requisitioning any record.

Duties of the information commission:

The commission has to inquire about the following matters mentioned under section 18 of the Act:

1. If a person believes information received under the act is incomplete or false.
2. Any response has not been received for the requested information.
3. if the applicant considers the required fee unreasonable.

Appeals:

An aggrieved party may file an appeal to the officer preferred by the information officer. An appeal must be filed within thirty days.

In case of a second appeal, it may file within 90 days to the central information commission or the state information commission. After the expiry of the above-mentioned period the commission may admit the appeal if an appellant shows any sufficient cause.

If an appeal relates to information from a third party, the rule of Audi alteram Partem should be followed.

An appeal must be disposed of within 30 days and in some circumstances, it may extend to forty-five days. The decision taken by the commission may bind the party.

The commission while giving its decision has the authority to exercise the following powers:

1. Reject the application.
2. Impose Penalties.
3. Publishing information and other powers mentioned under sec 19 of the Act.

Penalties:

The commission can Impose a penalty for the matters mentioned in section 20 however such an amount should not exceed twenty-five thousand rupees. Before imposing a penalty the rule of Audi alteram patrem must be followed and the burden of proof lies in the hands of the information officer.

Miscellaneous:

1. This act bars the jurisdiction of the court.
2. Protection of action taken in good faith.
3. Section 24 states this act should not apply to the organizations specified in the second schedule and Information regarding allegations of violation of human rights should be given only after getting approval from the central information commission.
4. At the end of the year, the information commission prepares a report and forwards it to the appropriate government. The report consists of the following details:
 - a. The number of requests has been made in the year.
 - b. The number of appeals referred to the commission in the year and other details given under section 25 of the Act.

The competent authority may make the rules by giving notification in the official gazette.

Landmark judgements:

1. S.P Gupta vs Union of India

Freedom of speech and expression includes within its scope the right to information.

2. Sheryl Singh vs Union of India

The court declared sec 66A of the IT Act violates the freedom of expression given by the constitution.

3. Union of India vs Association for democratic reforms

The court held that amendment made in the electoral reforms law violates the guaranteed right under Art 19 (1)(g) – Right to know.

RTI portal:

For the convenience of the citizens, the central government created an RTI portal. one can file a request or first appeal through this portal however it will not accept applications from the public authorities under the state government.

Suggestions:

- a. Every state government have their own RTI portal but in some states, it is not working effectively. It should be updated as per the needs of the citizens.
- b. The basics of RTI should be included as a syllabus in the school's education.
- c. One can access the portal only in two languages. it should be changed and more language should be added for the convenience of the public.

Conclusion:

In democracy form of government people have the right to know and access information and this right will be ensured by the parliament through the Right to Information Act 2005. The procedural aspect of the act is also made very simple one can easily access the information. Even though having a simple procedure to access the information people from remote areas will not be aware of the act. The government should take the necessary steps to change the situation.

References:

[i] <https://rti.gov.in>.

[ii] Right to Information Act 2005 (bare Act).

[iii] Raj Narain Vs State of Uttar Pradesh 1975 AIR 865.

[iv] Sheryl Singh Vs Union of India.

[v] Union of India Vs Association For Democratic Reforms.