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## **THE RIGHT TO INFORMATION (RTI) ACT, 2005: ANALYSIS**

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### **ABSTRACT**

In democratic government the interested individuals can have access to the information about the functioning of the public authority. Individuals can get information that how and in what order that the authority functions and tasks assigned to them. Thus, the right to information act is enacted in 2005. The Right to Information is a fundamental right under article 19(1) of Indian Constitution. This article Right to Information becomes a constitutional right as the right to free speech also guarantees right to receive and collect information. Sometimes the citizen wants to know whether the authority works properly and correctly and also, they wanted to know how their tax amount is used for public welfare. Right to Information is the protective shield of democratic government. Right to Information is very important for smooth function of government. Right to information is connected to the part of freedom of speech and expression codified in article 19(1). This act to provide right to information for the citizen to secure access the information under the control of the public authorities, therefore it makes transparency and accountability in the working of the public authorities. It is necessary to run a peaceful government. It is related to the freedom of speech and expression because until the citizen have access to the information of public authority, he cannot question the public authority.

## **Introduction**

Every citizen of India has a right to free speech and expression under Article 19(1)(a) of the Constitution of India. This right does not only cover the communication of information but also the receipt of information since without adequate information, a person cannot form an informed opinion. Thus, the right to know and seek information is an integral part of the fundamental right enshrined under Article 19(1)(a). The Hon'ble Supreme Court has also held that the right of the citizens to know, and to receive information regarding matters of public concern is a fundamental right flowing from Article 19(1)(a).

The right of a citizen to question the government on its various policies and measures forms the very essence of a democracy. In order to exercise this right and to hold the government accountable for its actions, the people must have access to the information regarding the affairs of the government. This is what RTI does. It informs the citizen regarding the affairs of the government and thereby ensures the active participation of a citizen in the working of the democracy at all times and not just once during voting. RTI is an index to measure the growth and development of a country.

## **Historical background**

- The right to information gained power when Universal Declaration of Human Rights was adopted in 1948 providing everyone the right to seek, receive, information and ideas through any media and regardless of frontiers.
- The International Covenant on Civil and Political rights 1966 states that everyone shall have the right to freedom of expression, the freedom to seek and impart information and ideas of all kinds.
- According to Thomas Jefferson Information is the currency of democracy and critical to the emergence and development of a vibrant civil society. However, with a view to set out a practical regime for the citizens to secure information as a matter of right, the Indian Parliament enacted the Right to Information Act, 2005.

- Genesis of RTI law started in 1986, through judgement of Supreme Court in Mr. Kulwal v/s Jaipur Municipal Corporation <sup>1</sup>case, in which it directed that freedom of speech and expression provided under Article 19 of the Constitution clearly implies Right to Information, as without information the freedom of speech and expression cannot be fully used by the citizens.

The first central legislation dealing with the right to information in India, namely, the Freedom of Information Act, 2002 was passed on December 4, 2002, but was not notified. In 2004, the UPA (United Progressive Alliance) government appointed a National

Advisory Council (NAC) which had recommended some changes in the Freedom of Information Act, 2002.

The amended act known as “The Right to Information Act, 2005” was passed on 11th May 2005 and 12th May 2005 by the Lok Sabha and Rajya Sabha respectively. The President of India gave his assent to the Act on 15th June 2005 and it came into force on 12th October 2005.

### **Objectives of RTI**

1. To provide for a practical framework that allows the citizens to access the information under the control of public authorities.
2. To promote transparency and accountability in the working of governments and their instrumentalities.
3. To provide for the constitution of Information Commissions at state and national level for discharging the functions and exercising the powers under the Act.
4. To develop an informed citizenry.
5. To contain corruption.

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<sup>1</sup> Mr. kulwal vs Jaipur municipal corporation AIR 1988 Raj 2, 1987 (1) WLN 134

6. To lay down the exemptions to disclosure of information when such disclosure is likely to conflict with other public interests and to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal<sup>2</sup>.

## **Salient features of RTI**

Right to information and obligation of public authorities: Chapter II

Section 3 of the Act provides for the right of the citizens to obtain information subject to the provisions of the Act.

## **Obligation of public authority section 4**

Section 4(1) lists the following obligations of public authorities:

1. Maintenance of records: Every public authority is required to maintain all its records duly catalogued and indexed. In order to facilitate access to its records, the public authority shall ensure that all the records that are appropriate for computerisation are computerised and connected through a network across the country on various systems within a reasonable time frame and according to resource availability.
2. Publication of certain matters: Every public authority is required to publish certain particulars within 120 days of the enactment of the Act, some of which are enumerated below:
  - the particulars of its organisation, functions, and duties;
  - the powers and duties of its officers and employees;
  - the procedure followed in the decision-making process, including channels of supervision and accountability;
  - where any arrangement exists for public representation or public consultation in matter

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<sup>2</sup> <https://blog.ipleaders.in/right-to-information-act-2005/>

of policy formulation or implementation of policy of public authority, the particulars of such arrangement;

- Employee directory of such public authority
- Monthly salary given to employees and officers
- Details of budget allocated to its agencies
- Details regarding manner of execution of subsidy programmes
- Details regarding information held in electronic form
- Particulars of facilities available to citizens for obtaining information
- Names and designations of the Public Information Officers etc.
- While formulating key policies or decisions that affect the public, a public authority must publish all the relevant facts regarding the same.
- Every public authority shall provide reasons for its judicial or administrative decisions to those affected by it.

#### **Suo-moto furnishing of information: Section 4(2)**

Section 4(2) provides for the obligation of the public authority to make efforts for providing information *Suo moto* to the public at regular intervals using various modes of communication.

#### **Dissemination of information: Section 4(3) and 4(4)**

Section 4(3) provides for wide dissemination of information in a manner that is easily accessible to the public.

Section 4(4) provides that the dissemination of information has to be done after considering the following factors:

- cost-effectiveness,
- local language of an area, and
- the most effective method of communication in a particular local area.

### **Designation of public information officers: section 5**

- Section 5(1) provides for the designation of Central Public Information Officers (CPIOs) and State Public Information Officers (SPIOs) by every public authority within 100 days from the enactment of this Act. Such officers have a duty to provide information requested under the Act.
- Section 5(2) provides for the designation of Central Assistant Public Information Officer or a State Assistant Public Information Officer at each sub-divisional level or other sub-district level. Such officers shall receive applications for information or appeals under the Act for forwarding the same to the CPIO/SPIO or the senior officer specified under Section 19(1) or the Central Information Commission or the State Information Commission, as the case may be.

### **Duty/functions of public information officers**

- Section 5(3) provides for the following duties of CPIOs and SPIOs:
  1. To deal with requests from the person seeking information, and
  2. To provide reasonable assistance to the person asking for information.

### **Request for obtaining information: section 6**

Section 6(1) provides for the manner of making a request by a person who desires to obtain any information under this Act.

- Manner of making requests: In writing or through electronic means.

- Language: English/Hindi/official language of the area in which the application is being made.
- Any fee: Such application shall be accompanied by the prescribed fee.
- To whom application is made: To the CPIO/SPIO of the concerned public authority or to the Central Assistant Public Information Officer/State Assistant Public Information Officer.
- Contents of application: Particulars of information sought by the applicant.
- When the request cannot be made in writing
- The proviso to Section 6(1) deals with a case where the applicant has made an oral request for information. It states that where a person cannot make a written request, the CPIO/SPIO shall assist such person to reduce his request in writing.
- Applicant need not give his details
- As per Section 6(2), a person seeking information under the Act need not disclose any reason for such request or his personal details except such information that might be required for contacting him.
- when the information requested is held by another public authority, etc.
- Section 6(3) deals with the case where an application is made to a public authority requesting information that is held by another public authority, or the subject matter of which is more closely related with the functions of another public authority. In this case, the public authority to whom the application is filed must transfer the application, or the concerned portion of it, to that other public authority and notify the applicant of the transfer as soon as possible. The section provides for a maximum of five days for transferring the application. Period within which information to be furnished.

### **Disposal of request: section 7**

Section 7(1) provides for expeditious disposal of the request for information by the CPIO/SPIO. The CPIO/SPIO shall within thirty days of receiving the request, either:

1. Accept the request which means providing information after the fee prescribed has been paid, or
2. Reject the request for reasons as specified under Section 8 and Section 9.

Thus, a 30-day period is provided for responding to the request.

An additional period of five days is allowed in computing the period for response in the following cases:

1. When the application is received through the Assistant Public Information Officer.
2. When the application is received by way of transfer.

Also, the information sought has to be provided within 48 hours of receiving the request where the said information concerns the life and liberty of a person.

### **Failure to decide within 30 days deemed as a refusal**

Section 7(2) provides that the failure of the CPIO/SPIO to decide on the request for information within the prescribed period shall be deemed as a refusal of the request.

### **Decision regarding fee**

Section 7(3) deals with the case where the applicant is required to pay a further/additional fee. The sub-section states that where a decision is made to provide information on payment of any further fee representing the cost of providing the information, the CPIO/SPIO shall send an intimation regarding the same to the person making the request. Such intimation must provide to the applicant:



1. Information regarding the details of such additional fees as determined by the CPIO/SPIO along with the calculations made to arrive at such an amount. The intimation shall also request the applicant to pay such additional fee;
2. Information regarding the right of the applicant to ask for a review of the decision regarding fees or form of access. The details of the appellate authority, the time limit, the process of review, etc. are also required to be intimated to the applicant.

**Access to information**

- Section 7(4): The CPIO/SPIO shall provide assistance to enable access to the information where the person seeking such access is sensorily disabled.
- Section 7(5): The applicant is required to pay such fee as may be prescribed for access to information in the printed or electronic format. According to the proviso attached to this sub-section, the fee charged under the Act must be reasonable.

Also, no fee can be charged from those living below the poverty line.

- Section 7(6): Failure of the public authority to provide the information within the prescribed time limit entitles the applicant for access to such information free of any charge.
- Section 7(7): Before making a decision regarding furnishing of information or rejection of a request, the CPIO/SPIO has to consider the representation made by a third party under Section 11.

**Rejection of request under sub-section (1)**

Section 7(8) deals with the rejection of requests for information. In case, the CPIO/SPIO rejects a request, he is required to communicate the following particulars to the applicant:

1. reasons for such rejection;

2. the period within which he can file an appeal against the rejection;
3. the details of the appellate authority.

### **Form of information**

Section 7(9) provides that generally, the information asked for under the Act has to be provided in the form in which it is sought, except where:

1. It would lead to disproportionate diversion of the resources of the public authority, or
2. It would prejudice the safety or preservation of the record in question.

### **Exemption from disclosure of information: section 8**

Section 8(1) lists the categories/types of information which is exempted from disclosure under the RTI Act. There is no obligation to disclose such information to any citizen. The categories of information so exempted include:

1. Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
2. Information, publication of which has been expressly forbidden by Court or tribunal;
3. Information, disclosure of which may amount to contempt of court;
4. Information, the disclosure of which would cause a breach of parliamentary privilege
5. Information including trade secrets, commercial confidence or intellectual property, the disclosure of which would jeopardise a third party's competitive position. Such information can be furnished if the competent authority determines that it is necessary to disclose such information in the public interest.
6. Information accessible to a person in his fiduciary relationship. Such information can

be furnished if the competent authority determines that it is necessary to disclose such information in the public interest.

7. Information received in confidence from foreign government;
8. Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
9. the information that would obstruct the process of investigating, apprehending, or prosecuting offenders etc.

Regardless of anything in the Official Secrets Act of 1923 or the permissible exclusions under sub-section (1), a public authority may allow access to information if the public interest in disclosure outweighs the harm to protected interests.

#### **Grounds for rejection to access in certain cases: section 9**

Section 9 provides that a CPIO/SPIO may reject a request for information where it would lead to infringement of copyright owned by a person other than the State.

#### **Severability: Section 10**

Section 10 provides that if a request for access to information is denied because the disclosure of the information is prohibited by the Act, access may be granted to that part of the record:

1. That does not contain any exempt information, and
2. Can be reasonably separated from any part that contains exempt information. Thus, Section 10 deals with the furnishing of information after severance of non-exempt information from the information that is exempted.

Section 10(2) states that when access is granted to a part of a record under sub-section (1), then the CPIO/SPIO shall give notice to the applicant, informing him:

1. that only a part of the record requested is being provided after severing the information that is exempted from disclosure;
2. of the reasons for the decision;
3. name and designation of the person who made the decision;
4. the details of the fees required to be paid by the applicant; and
5. of his or her right to file for a review of the decision of non-disclosure or regarding fee or the form of access provided and the particulars of the authority competent to review.

### **Third party information: section 11**

Section 11 contains the provision regarding the disclosure of information related to a third party.

- Under Section 11(1), a third party has to be notified in writing when the CPIO/SPIO intends to disclose:
  1. any information which relates to, or has been supplied by the third party, and
  2. such information is treated as confidential by that third party.

Such written notice has to be given within five days of the receipt of the request. The notice shall:

1. inform the third party of such request and
2. inform the third party of the fact that the CPIO/SPIO intends to disclose such information and
3. invite the third party to make a submission as to whether the information should be disclosed.

Such submission shall be taken into consideration while taking a decision regarding the disclosure of information.

The proviso to Section 11(1) states that such disclosure may be permitted if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such a third party. However, the proviso shall not be applicable to trade or commercial secrets protected by law.

- Section 11(2) provides that the third party shall be given an opportunity to make representation against the proposed disclosure within 10 days from the date of receipt of notice under sub-section (1).
- According to Section 11(3), the CPIO/SPIO has to make a decision regarding disclosure within 40 days of the receipt of a request under Section 6, if the third party has been given an opportunity of making representation under the previous sub-section. The notice of the decision has to be given to the third party in writing by the CPIO/SPIO.
- The notice given under Section 11(3) must state that the third party is entitled to file an appeal against the decision<sup>3</sup>.

### **Importance of RTI**

Various things have changed since the Right to Information Act was implemented. Thus, the RTI holds much importance in the present times.

Let us discuss the importance of the right to information in democracy:

- This act provides citizens with the freedom to seek access to critical information in times of need.
- The Right to Information Act is considered landmark legislation in the fight against corruption.
- This act gives citizens the power to question public authorities and their work, thereby promoting transparency and demanding accountability.

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<sup>3</sup> <https://blog.ipleaders.in/right-to-information-act-2005/>

- The RTI Act brings together two crucial tools of transparency and accountability to ensure good governance.

### **Need for Right to Information Act**

- **Encourage people to participate**

The majority of government work is done for the people, so they must be included in the planning process and be aware of how things are done. People must be well informed about the essence of the projects and programmes in order to participate in planning processes and make decisions about whether specific plans and schemes are beneficial to them. This will allow them to provide their feedback well in advance of any desired updates or alterations. This will significantly lower project expenditures while increasing project outputs.

- **Transparency**

There is an assumption that everything done by the government is done for the public good—that is, it is done to serve the goal of public well-being, it is done honestly, and to maximise the advantages of the money utilised. However, as we all know, abuse, misappropriation, and reckless use of public funds have weakened this presumption significantly. To counteract this, it is critical that all public interactions are completely transparent. This is bound to result in more cautious use and allocation of funds. Transparency will also assist individuals in holding authorities responsible for misusing public time and money.

- **Limiting the discretionary powers granted to the officials**

Officials have the ability to misuse their discretion in order to serve multiple political or some other private interests, in addition, to misappropriating funds. In the lack of legislation governing the right to information, they are often kept secret. Although it is feasible to seek judicial action to force the disclosure of this information, impoverished individuals or villagers are unable to do so due to the expense, distance, and delays in the process. Another issue is the lack of openness in the selection process for public officers. The hiring of ineffective

government officials contributes to the government's inefficiencies and problems. As a result, the right to knowledge is critical to preventing the abuse of administrative discretion and ensuring a fair process<sup>4</sup>.

- **Ensures the principle of accountability**

India has a democratic system of governance in which the government is administered for the benefit of the general public rather than for the advantage of one or a few individuals. As a result, the government from the rural level to the national level must be accountable to the citizens. Citizens have a right to know what the government is up to.

## **Conclusion**

The Right to Information Act, 2005 is a significant statutory measure for realisation of the citizen's right to access of information. The Act mandates timely response to the citizen's requests for government information. Citizens can file RTI applications for the public authorities under the Central Government by visiting <https://rtionline.gov.in/> which is an initiative of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension. With regard to public authorities under the State Governments, an RTI application can be filed by visiting the RTI portal/website of the particular state.

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<sup>4</sup> <https://www.drishtiias.com/>

## **References**

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