

RIGHT TO INFORMATION ACT 2005 AND ITS IMPEMENTATION

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INTRODUCTION

Freedom of Speech and Expression is one of the freedom guaranteed by the Constitution of India under Article 19(1). The main conception behind this freedom is to allow the citizen of India to freely develop their thoughts and ideas and share them without any unreasonable hurdle.

The freedom of speech and expression includes right to acquire information and to disseminate it¹. The Right to Information Act, 2005² is having a close connection with the concept of the liberty of speech and expression enshrined under Article 19(1). The Act of 2005 was enacted with the purpose and object to make provisions to set out the practical regime of right to information for citizens and this is an important issue in the subject of Freedom of speech and expression. In other words, the main object of the Act of 2005 is to give the Citizen an access to the Government records, which is also an important towards the transparency of the Good Governance.

A person simply building ideas and thoughts in relation to any specific subject or field, requires information on that field or subject. And to have such information which is public in nature and which will not hurt the sentiment or privacy of particular persons or entity, is a right guaranteed for every citizen in India.

¹ Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal and Others 1995) 2 SCC 161

² Act no. 22 of 2005(w. e. f. 12th day of October, 2005)

Earlier to the enactment of this Act of 2005 there was prevailing the Freedom of Information Act, 2002³ which was repealed by the Act of 2005. Information disclosure in India was hitherto restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act now overrides.

RIGHT TO INFORMATION ACT – A GLOBAL SCENARIO

As the time changes there is change in the thinking and development among people. As we have seen the change from slavery to democracy, from colonies to independent countries. Similarly, with this change there is change and demand for transparency for good governance. This demand has led to the enactment of the Information Acts globally.

The Freedom to Information legislation in Finland was enacted in 1951. Denmark and Norway enacted the similar legislations in the year 1970. USA has granted Right to Information to its citizens by the Freedom of Information Act which was enacted in 1966. France, Netherlands and Austria have made the similar legislation in the 1970s. Canada, Australia and New Zealand passed the law in 1982. Thailand and Ireland have made the law in 1977. Bulgaria enacted it in 2000. In South Africa, the Constitution itself has guaranteed the Right to Information to its citizen⁴. In Britain, as a result of the recommendation of the Fulton Committee (1966-68) and Franks Committee, which found too much of secrecy in public administration because of the Official Secrets Act, 1911, was amended to narrow the scope of official information falling within its ambit. Finally, the UK Freedom of Information Act came into force on January 1, 2005.

Article 19(1) (a) and Right to Information

Free speech and the Right to information could be studied simultaneously as both of them are inter- related. The Honourable Supreme Court of India, in the year 1975, has made it clear that the information is derived by the Right to Freedom of Speech and Expression. A leading case on this issue was decided by the honourable Supreme Court of India in the year 1975 in the

³ Act no. 5 of 2003 dated 6th January, 2003

⁴ Bill of Rights (Chapter 2 Constitution of Republic of South Africa)

case of *State of Uttar Pradesh Vs. Raj Narain*⁵, where an Indian citizen had asked for the disclosure of the Government official's information kept as 'Blue book' in respect to the rules and instructions of the protection of Prime Minister while travelling. It was sought to be maintained by the Petitioner that the said document would reveal the government's engagement in corrupt practices in connection with the Election campaign. However, it is notable that the provisions of the section 23 of the Indian Evidence Act, 1872 prevented anyone from giving evidence in court that was derived from certain unpublished official documents unless there is permission from the authorized Government official. The Court ruled that the Court can order Government to disclose its documents in the Court proceeding, though there will be no official permission obtained as per requirements of the Evidence Act, only if there will be served public interest by such disclosure, clearly outweighs that of secrecy. This judgement was the first landmark judgement of the honourable Supreme Court of India where the right to know for the Citizen was established and it was made clear that the concerned right is co-related with and arising from the fundamental right of freedom of speech and expression guaranteed under the Constitution of India. As such it is clear that the said right to information is derived from the concept of Freedom of Speech, however, the said right is also not absolute as in this connection also reasonable restrictions are applicable.

RIGHT TO INFORMATION AND ITS ENACTMENT

The Right to Information, though, expressed by the Honourable Supreme Court as just and necessary and a part of the Article 19(1)(a), it was inaccessible to the common man. The main reason for inaccessibility was unawareness of the procedure and the lack of trust on the commission. Right to Information Act, 2005 is a central act, but we can say that the existence of right to information at State Level can be traced back to the year 1997

Table of State Level RTI:

Year	State
1997	Tamil Nadu
1997	Goa

⁵ A.I.R. 1975 S.C. 865

2000	Rajasthan
2000	Goa
2001	Delhi
2002	Maharashtra
2002	Assam
2003	Madhya Pradesh
2004	Jammu and Kashmir

By the time with the efforts of many campaign to make a central act for the Right to Information the Parliament enacted the Freedom of Information Act, 2002. This marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater the responsiveness of government to community needs. The act of 2002 which was drafted by H. D. Shourie contained too many exemptions and no upper limit on the charges that could be levied which could not serve the purpose of providing the access to the citizen as enshrined under Art. 19(1)(a). And this led to the demand of a proper Enactment which would serve the access to information to the citizen of India.

As a result the Loksabha introduced the RTI bill on 23.12.2004 which was passed by the Loksabha on 11.05.2005 and Rajya sabha on 12.05.2005. The Act got the assent of the President on 15.06.2005 and few provisions of the act came into force. And by 12.10.2005 Right to Information Act 2005 came fully into force.

Right to Information Act 2005 empowers every citizen to:

- Ask any questions from the Government or seek any information
- Take copies of any government documents
- Inspect any government documents
- Inspect any Government works
- Take samples of materials of any Government work

How to file RTI:

The RTI can be filed in the following three ways

1. Online –

One can file RTI online by visiting rtionline.gov.in and log in to file an RTI online

2. Via Post –

One can file the written or printed RTI application by sending it by post or speed post to the concerned department.

3. In Person-

One can visit Public Information Officer of the concerned department to file the RTI.

Procedure for filing an RTI:

1. Identify the department from which one wants to seek information. Certain subjects fall within the ambit of State or Central government and others fall within the ambit of local authority such as municipal administration/ panchayat.
2. Write the RTI application by hand or type it English, Hindi or the official language of that area.
3. Address the application to the State/Central Public Information Officer. Write the name of the office you seek information from and clearly mention that “ Seeking information under RTI Act”
4. Pay Rs. 10 to file the plea. You can pay in form of cash,
5. You should always take a photocopy of your application and keep it with you for future reference.
6. The law mandates that information should be provided within 30 days.

RTI Act Prescribes time limit under which the reply need to be given by Public Information Officer.

- **For PIO to reply to application:** 30 days from date of receipt of application

- **For PIO to transfer to another PA under Sec 6(3):** 5 days from date of receipt of application
- **For PIO to issue notice to 3rd Party:** 5 days from date of receipt of application
- **For 3rd Party to make a representation to PIO:** 10 days from receipt of notice from PIO
- **For PIO to reply to application if 3rdParty involved :** 40 days from date of receipt of application
- **For applicant to make First Appeal:** 30 days from date of receipt of PIO's reply or from date when reply was to be received
- **For First Appellate Authority to pass an order:** 30 days from receipt of First Appeal OR Maximum 45 days, if reasons for delay are given in writing
- **For applicant to make Second Appeal before CIC/SIC:** 90 days from receipt of First Appeal orders or from the date when orders were to be received
- **For CIC/SIC to decide Second Appeal:** No time limit specified

Sl	Situations for filing First Appeal	Time limit for filing First Appeal
1.	PIO did not respond within 30 days from receipt of RTI Application in his office.	After 30 (+7 days for postal transit time) but within 60 days from the date of receipt of RTI Application at PIO's Office.
2.	RTI Application submitted through APIO but PIO did not respond within 30 days from receipt of RTI Application in PIO's office.	After 35 (+7 days for postal transit time) but within 60 days from the date of receipt of RTI Application at PIO's Office.
3.	RTI Application transferred by the original public authority to another public authority (PIO) but transferee PIO did not respond within 30 days from receipt of Application.	After 30 (+7 days for postal transit time) but within 60 days from the date of receipt of RTI Application at transferee PIO's Office.

Sl	Situations for filing First Appeal	Time limit for filing First Appeal
4.	PIO issued notice to third party under section-11(1), but not decided the application within 40 days from receipt of application at his office.	After 40 (+7 days for postal transit time) but within 70 days from the date of receipt of RTI Application at PIO's Office.
5.	PIO's decision under Section-11(3)	Within 30 days from the date of receipt of PIO's decision.
6.	PIO responded but Applicant is not satisfied with decision of PIO or fee demanded is exorbitant or incorrect, incomplete information is supplied etc.	Within 30 days from the date of receipt of decision of PIO by Applicant.

RTI A BOON OR BANE

Everything in this world has two sides, which has a positive as well as negative impact. This enactment has encouraged participatory democracy where people have the right to know.

In the case of *R.P. Limited v. Indian Express newspapers* the Supreme Court has read into article 21 of the constitution regarding the right to know. To quote the Supreme Court "Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of the Constitution."

India has the world's largest democracy where people elect their own representatives. So people have right to know what the representatives elected by them are doing for their welfare and what is the stage of the steps taken by them. People have got the powers to obtain copies of permissible government documents, inspect permissible documents and inspect permissible government works and samples. As stated above people can submit a request to the P.I.O or to the A.P.I.O who forwards the request to the P.I.O to obtain the desired information with the prescribed fee in writing or electronically. This act has given the citizen the right to get information. And this has built trust on the government as almost every action and rationale behind every decision of the government is clearly visible to the people.

Thought this is an enactment but as it is a fundamental right of the citizen to get information, it is a sad state of affairs that we need an act to enforce our basic rights. Right to information was provided to all citizens in Article 19 though it was not expressly stated. This Act is an extension of the article 19(1) (a) right to freedom of speech and expression.

The Act is one of the means of arousing the public opinion by spreading public awareness as it is now very easy for the masses to find out the reason behind the delay in the government works and projects taken up by the public bodies. The large number of RTI applications that are being filed is a clear proof of the interest of the general public in the functioning of public bodies. Many NGO s and social activists have made good use of this Act to help the public.

RTI is not a very lengthy process and very expensive affair as it involves a nominal charge of just Rupees Two per page for the information sought and Rupees Ten in cash to be paid with the application for court fees stamp.

The RTI act has helped in promoting transparency and accountability. Public dealings are no more a secret as this was the main cause of misuse and abuse of power and corruption. The Act has put a check on all this. By promoting transparency and accountability there has been reduction in corruption. The funds of the country cannot be diverted for private use of people in power as it is easy to obtain any kind of information.

The RTI Act provides under Section 8 for the establishment of central information and under section 10 for the state information commission through gazette notification of the central government and state government respectively. The information commission has the duty to receive complaints from persons who have not been able to submit their request for information as there is no PIO appointed in their area, who has been refused the information requested for or received no response within the stipulated time, who feels the fees charged is not reasonable and who feels the information received is false incomplete or misleading. The commissions are vested with the powers of civil court also. This provision of the act makes the act more citizens friendly.

Section 20 of the Information Act has imposed penalties on the public information officers who fail in providing information in time. So this acts as a deterrent in the minds of the officers which enables them to work properly without any bias. Though the RTI Act has been an

effective tool for the public it does have a few loopholes which may prove dangerous to the smooth functioning of the democratic machinery.

Misuse of the information by people for their ulterior motive or vengeance is the biggest drawback of the act. Section 6(2) of this act states that there is no need for the information seeker to give any reason as to why he requires the particular information and he need no give any personal detail also. It is practically also impossible to check the background and credentials of every person who files an application under this act to seek information. In the case of *V.V. Minerals V. Department of Mining geology and others*³ Madras High Court held that the information seeker can obtain information for any purpose and the information can be put to any use. Unless the information sought comes under the exemption clause under the Act it should be provided to the applicant. He can himself misuse the information or leak the information to an external agency which may take undue advantage of the information given. By providing the information about the government officers they are put to risk. The information seekers who apply electronically or by hand through printed application forms can be made to upload or write their aadhaar card number or may be asked to provide any identity proof so that the details of the person are with the government. This creates a sense of responsibility on the information seeker and he would make only the right use of the information obtained by him. But this disclosure also can impact the applicant in a negative way as his identity could be revealed and there are chances that he may be threatened to not use the information received for any legal work

Right to information is not absolute. Section 8 of the RTI A excludes matters relating to national security, sovereignty, foreign government and law enforcement. Information on defence is available to all foreign countries through newspapers but it is exempted from this Act and our own citizens do not have access to such information. Such exemptions must be reduced for the proper functioning of this act. Section 4(2) of the RTI Act allows the public authority to reveal information that is personal though it infringes the right to privacy of an individual in the interest of larger public.

According to section 23 of the Act, lower courts are barred from entertaining suits or applications against any order made under this Act.

CONCLUSION

The enactment of RTI has made change in the governance and it is difficult to decide as to if right to information is a boon or a bane to our country. The RTI Act has helped to raise the feeble and unheard voice of the Indian public. It has created a sense of responsibility not only on the officials but also on the people. It is encouraging participative democracy. It has built a sense of involvement in the people. At the same time RTI might cause the breakdown of the constitutional machinery which may prove dangerous to our country if it continues to function with the existing loopholes. The process of filing and the making appeal as stated is above is easy and the PIO are bound by time to provide the information which has encouraged in the filing of the RTI applications. The RTI Act has been enacted to do good to the society and the people. Hope the RTI Act is utilized to the fullest extent for the welfare of the public. As still there are sects which are unaware of the process.