

Right to Information Act, 2005

“The real Swaraj will come not by the acquisition of authority by a few, but by the acquisition of capacity by all to resist authority when abused”. When Mahatma Gandhi said this, he may not have imagined that one day India will have to make a law to empower people for something as basic as seeking information about the development of the country. “The real Swaraj will come not by the acquisition of authority by a few, but by the acquisition of capacity by all to resist authority when abused”. When Mahatma Gandhi said this, he may not have imagined that one day India will have to make a law to empower people for something as basic as seeking information about the development of the country.

The date of 12th October 2005 shall be remembered as a new era of empowerment for the common man in India. It is applicable everywhere except the state of Jammu and Kashmir. This law was passed by Parliament on 15th June 2005 and came fully into force on 12th October 2005. Information disclosure in India was restricted by the **Official Secrets Act 1923** and various other special laws, which the new RTI Act now relaxes.

The effective date is often incorrectly referred to as 13th October 2005. But, since the Act came into force on the midnight between the 12th and 13th, therefore, the official date is 12th October 2005.

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

RTI act 2005 is a law enacted by the parliament of India, giving citizens of India access to records of the central government and state governments. The Act applies to all States and Union Territories of India, except the state of Jammu and Kashmir – which is covered under a State-level law. Under the provisions of the Act, any citizen (including the citizens within J&K) may request information from a “public authority” (a body of government) which is required to reply within thirty days.

The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. Thus, the Right to Information Act is a codification of the important fundamental right (**Article 19**) of

citizens. The Act and its rules define a format for requisitioning information, a time period within which information must be provided, the method of giving the information, some charges for applying, and list of organizations exempted from giving information.

The **Right to Information Act 2005 (RTI)** is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is an Act of the Parliament of India “*to provide for setting out the practical regime of right to information for citizens.*” Jammu and Kashmir has its own act called **Jammu & Kashmir Right to Information Act, 2009.**

What is Public Authority?

"Public authority" means any authority or body or institution of self government established or constituted—

- by or under the Constitution;
- by any other law made by Parliament/State Legislature.
- by notification issued or order made by the appropriate Government, and includes any—
 - body owned, controlled or substantially financed;
 - non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

The formal recognition of a legal Right to Information in India occurred more than two decades before legislation was finally enacted, when the Supreme Court of India ruled in ***State of U.P. v Raj Narain*** that the Right to Information is implicit in the right to freedom of speech and expression explicitly guaranteed in **Article 19** of the **Indian Constitution**. Subsequently, the Court has affirmed this decision in numerous cases and has even linked the Right to Information with the right to life enshrined in **Article 21** of the **Constitution**.

Objectives of the Act

- To empower the citizens
- To promote transparency and accountability
- To contain corruption and
- To enhance people's participation in democratic process.

Reasons for Adoption of Information Act

The factors responsible for adoption of information act are as follows -

- Corruption and scandals
- International pressure and activism
- Modernization and the information society

The primary stakeholders in RTI are –

1. Citizens;
2. Public Authorities comprising of Public Information Officers and the Appellate; and
3. Central and State Information Commissions.

One important task of the State both at center as well as at the state level is to appoint the Chief Information Commissioners and other Commissioners and it is clearly stated in the act that those people who will be appointed for these positions should have the background of social Service, journalism, academics, jurist etc.

Features of the Act

Section 1(2) : It extends to the whole of India except the State of Jammu and Kashmir.

Section- 2 (f): "Information" means any material in any form, including Records, Documents, Memos, e-mails, Opinions, Advices, Press releases, Circulars, Orders, Logbooks, Contracts, Reports, Papers, Samples, Models, Data material held in any electronic form and information relating to any private body which can be accessed by a Public Authority under any other law for the time being in force.

Section- 2(j) : "Right to Information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:

- Inspection of work, documents, records
- Taking notes, extracts or certified copies of documents or records
- Taking certified samples of material
- Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Procedure of disclosing third party information:

Section 11(1) of the RTI Act is triggered once the PIO intends to disclose to an applicant any information which relates to or has been supplied by a third party and has been treated as confidential by that third party. Once Section 11(1) of the RTI Act is applicable, the PIO shall follow the procedure of serving a notice to the third party for seeking objections whether such information shall be disclosed or not.

- On receipt of the submissions of the third party, the PIO shall keep the submissions in view and then decide whether the information sought shall be disclosed or not.
- If the PIO does not find any merit in the submissions of the third party, he shall disclose the information sought to the applicant.
- On the other hand, where the PIO decides that the information sought shall not be disclosed then the basis for denial of information must be in accordance with Sections 8 and 9 of the RTI Act only.
- However (except in the case of trade or commercial secrets protected by law) even where the PIO is of the view that there is possible harm or injury to the interests of the third party, but public interest in disclosure outweighs in importance any such harm or injury, he may disclose the information.
- Section 11 does not give the third party a right of veto in giving information.

The Public Information Officer will have to consider the following:

- The objections raised by the third party by claiming confidentiality in respect of the information sought for.

- Whether the information is being sought by the applicant in larger public interest or to wreak vendetta against the third party. In deciding that the profile of person seeking information and his credentials will have to be looked into. If the profile of the person seeking information, in light of other attending circumstances, leads to the construction that under the pretext of serving public interest, such person is aiming to settle personal score against the third party, it cannot be said that public interest warrants disclosure of the information solicited.
- The Public Information Officer, while dealing with the information relating to or supplied by the third party, has to constantly bear in mind that the Act does not become a tool in hands of a busy body to settle a personal score.”

What are the obligations of public authority?

It shall publish within one hundred and twenty days of the enactment

- i the particulars of the organization, functions and duties
- ii. the powers and duties of its officers and employees,
- ill, the procedure followed in its decision making process, including supervision and accountability,
- iv. the norms set by it for the discharge of its functions:
- v. the rules, regulations, instructions, manuals and records used by employees for discharging its functions,
- vi a statement of the categories of the documents held by it or under control

vii the particulars of any arrangement that exists for consultation with representation by the members of the public, in relation to the formula policy or implementation thereof

viii. a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it Additionally, information as to whether the meetings of these are open to the public, or the minutes' of such meetings are accessible to the public,

ix a directory of its officers and employees;

x the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations, xi, the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made

xii. the manner of execution of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes

xiii particulars of recipients of concessions, permits or authorizations granted by it

xiv. details of the information available to or held by it reduced in an electronic form

xv. the particulars of facilities available to citizens for obtaining information Including the working hours of a library or reading room if maintained for public use

xvi the names designations and other particulars of the Public Information officers.

What does a "public authority" mean?

It means any authority or body or institution of self-government established or constituted

- by or under the Constitution
- by any other law made by Parliament,
- by any other law made by State Legislature,
- by notification issued or order made by the appropriate Government and includes any
 - a. body owned controlled or substantially financed

- b. non-Government organization substantially financed directly or indirectly by the appropriate Government

Who are Public Information Officers (PIOs)?

PIOs are officers designated by the public authorities in all administrative units or offices under it to provide information to the citizens requesting for information under the Act. Any officer, whose assistance has been sought by the PIO for the proper discharge of his or her duties, shall render all assistance and for the purpose of contraventions of the provisions of this Act such other officer shall be treated as a PIO.

What are the duties of a PIO?

- PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing
- If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately
- PIO may seek the assistance of any other officer for the proper discharge of his/her duties
- PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 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.
- Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request
- If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request.
- Where a request has been rejected, the PIO shall communicate to the requester - (i) the reasons for such rejection, (ii) the period within which an appeal against such rejection may be preferred and (iii) the particulars of the Appellate Authority
- PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question
- If allowing partial access, the PIO shall give a notice to the applicant, informing:

- a. that only part of the record requested after severance of the record containing information which is exempt from disclosure, is being provided
 - b. the reasons for the decision including any findings on any material question of fact referring to the material on which those findings were based
 - c. the name and designation of the person giving the decision
 - d. the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit, and
 - e. his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided
- If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request and take its representation into consideration
 - Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice

What is not open to disclosure?

The following is exempt from disclosure [S.8]

- 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
- 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;
- information, 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 third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- information received in confidence from foreign Government;
- 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;
- information which would impede the process of investigation or apprehension or prosecution of offenders;
- cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

What is the Application Procedure for requesting information?

- Apply in writing or through electronic means in English or Hindi or in the official language of the area, to the PIO, specifying the particulars of the information sought for.
- Reason for seeking information are not required to be given;
- Pay fees as may be prescribed (if not belonging to the below poverty line category).

What is the time limit to get the information?

- 30 days from the date of application
- 48 hours for information concerning the life and liberty of a person
- 5 days shall be added to the above response time, in case the application for information is given to Assistant Public Information Officer.
- If the interests of a third party are involved then time limit will be 40 days (maximum period + time given to the party to make representation).
- Failure to provide information within the specified period is a deemed refusal.

What is the fee?

- Application fees to be prescribed which must be reasonable.
- If further fees are required, then the same must be intimated in writing with calculation details of how the figure was arrived at;
- Applicant can seek review of the decision on fees charged by the PIO by applying to the appropriate Appellate Authority;
- No fees will be charged from people living below the poverty line
- Applicant must be provided information free of cost if the PIO fails to comply with

the prescribed time limit.

What could be the ground for rejection?

- If it is covered by exemption from disclosure. (S.8)
- If it infringes copyright of any person other than the State. (S.9)

Who are the Appellate Authorities?

- **First Appeal:** First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).
- **Second Appeal:** Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority. (delay may be condoned by the Commission if sufficient cause is shown).
- First Appeal shall be disposed of within 30 days from the date of its receipt.
- Period extendable by 15 days if necessary. (S.19)

How is Central Information Commission constituted?

Central Information Commission to be constituted by the Central Government through a Gazette Notification.

Commission includes 1 Chief Information Commissioner (CIC) and not more than 10 Information Commissioners (IC) who will be appointed by the President of India. Oath of Office will be administered by the President of India according to the form set out in the First Schedule.

- Commission shall have its Headquarters in Delhi. Other offices may be established in other parts of the country with the approval of the Central Government.
- Commission will exercise its powers without being subjected to directions by any other authority. (S.12)

What is the eligibility criteria and what is the process of appointment of CIC/IC?

- Candidates for CIC/IC must be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

- CIC/IC shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory. He shall not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. (S.12)
- Appointment Committee includes Prime Minister (Chair), Leader of the Opposition in the Lok Sabha and one Union Cabinet Minister to be nominated by the Prime Minister.

What is the term of office and other service conditions of CIC?

- CIC shall be appointed for a term of 5 years from date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier.
- CIC is not eligible for reappointment.
- Salary will be the same as that of the Chief Election Commissioner. This will not be varied to the disadvantage of the CIC during service. (S.13)

How is the State Information Commission constituted?

- The State Information Commission will be constituted by the State Government through a Gazette notification.
- It will have one State Chief Information Commissioner (SCIC) and not more than 10 State Information Commissioners (SIC) to be appointed by the Governor. Oath of office will be administered by the Governor according to the form set out in the First Schedule.
- The headquarters of the State Information Commission shall be at such place as the State Government may specify. Other offices may be established in other parts of the State with the approval of the State Government.
- The Commission will exercise its powers without being subjected to any other authority.

What is the eligibility criterion and what is the process of appointment of State Chief Information Commissioner/State Information Commissioners?

- The Appointments Committee will be headed by the Chief Minister. Other members include the Leader of the Opposition in the Legislative Assembly and one Cabinet Minister nominated by the Chief Minister.
- The qualifications for appointment as SCIC/SIC shall be the same as that for Central

Commissioners.

- The salary of the State Chief Information Commissioner will be the same as that of an Election Commissioner.

- The salary of the State Information Commissioner will be the same as that of the Chief Secretary of the State Government. (S.15).

What are the powers and functions of Information Commissions?

The Central Information Commission/State Information Commission has a duty to receive complaints from any person -

- a) who has not been able to submit an information request because a PIO has not been appointed;
- b) who has been refused information that was requested;
- c) who has received no response to his/her information request within the specified time limits;
- d) who thinks the fees charged are unreasonable;
- e) who thinks information given is incomplete or false or misleading; and
- f) any other matter relating to obtaining information under this law. Power to order inquiry if there are reasonable grounds.

CIC/SCIC will have powers of Civil Court such as –

- summoning and enforcing attendance of persons, compelling them to give oral or written evidence on oath and to produce documents or things;
 - requiring the discovery and inspection of documents;
receiving evidence on affidavit ;
 - requisitioning public records or copies from any court or office
 - issuing summons for examination of witnesses or documents
 - any other matter which may be prescribed.
-
- All records covered by this law (including those covered by exemptions) must be given to CIC/SCIC during inquiry for examination.

Power to secure compliance of its decisions from the Public Authority includes-

- providing access to information in a particular form;
- directing the public authority to appoint a PIO/APIO where none exists;
- publishing information or categories of information;
- making necessary changes to the practices relating to management, maintenance and destruction of records ;
- enhancing training provision for officials on RTI;
- seeking an annual report from the public authority on compliance with this law;
- require it to compensate for any loss or other detriment suffered by the applicant
- Impose penalties under this law; or
- reject the application. (S.18 and S.19)

What is the reporting procedure?

- Central Information Commission will send an annual report to the Central Government on the implementation of the provisions of this law at the end of the year. The State Information Commission will send a report to the State Government .
- Each Ministry has a duty to compile reports from its Public Authorities and send them to the Central Information Commission or State Information Commission, as the case may be.
- Each report will contain details of number of requests received by each Public Authority, number of rejections and appeals, particulars of any disciplinary action taken, amount of fees and charges collected etc.
- Central Government will table the Central Information Commission report before Parliament after the end of each year. The concerned State Government will table the report of the State Information Commission before the Vidhan Sabha (and the Vidhan Parishad wherever applicable S.25

What are the penalty provisions?

- Every PIO will be liable for fine of Rs. 250 per day, up to a maximum of Rs. 25,000/-, for not accepting an application;
- Delaying information release without reasonable cause;
- malafidely denying information;
- knowingly giving incomplete, incorrect, misleading information;
- destroying information that has been requested and obstructing furnishing of information in any manner.
- The Information Commission (IC) at the Centre and the State levels will have the power to impose this penalty. The Information Commission can also recommend disciplinary action for violation of the law against an erring PIO. (S.20)

What is the jurisdiction of courts?

- Lower Courts are barred from entertaining suits or applications against any order made under this Act. (S.23)
- However, the writ jurisdiction of the Supreme Court and High Courts under Articles 32 and 225 of the Constitution remains unaffected.

What is the role of Central/State Governments?

- Develop educational programmer for the public especially disadvantaged communities on RTI.
- Encourage Public Authorities to participate in the development and organization of such programmers.
- Promote timely dissemination of accurate information to the public.
- Train officers and develop training materials.
- Compile and disseminate a User Guide for the public in the respective official language. Publish names, designation postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc. (S.26)

Who has the Rule making power?

- Central Government, State Governments and the Competent Authority as defined in S.2(e) are vested with powers to make rules to carry out the provisions of the Right to Information Act, 2005. (S.27 & S.28)

Who has the power to deal with the difficulties while implementing this act?

- If any difficulty arises in giving effect to the provisions in the Act, the Central Government may, by Order published in the Official Gazette, make provisions necessary/expedient for removing the difficulty. (S.30)