

# RIGHT TO INFORMATION

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**Abstract:** Right to Information (RTI) is an elementary right to every person of India. Information makes the person strengthen and is need of the hour to keep up pace with the modern world. So, government needs to inform citizens with latest information of the country. The good governance is possible, if free access of information is properly applicable. By realizing this fact, Indian parliament has passed Right to information act, 2005 to make government, accountable, responsible, efficient and transparent. This paper gives the overview and basic guidelines of RTI act, Researcher has tried to make a distinct comparison on RTI legislation between India and developed nations.

**Keywords:** RTI Act, RTI Applicability, RTI History

## 1.0 History of the Right to Information Act

It has taken India 82 years to transition from an opaque system of governance, legitimized by the colonial Official Secrets Act, to one where citizens can demand the right to information. The recent enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs.

Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. Democracy revolves around the basic idea of Citizens being at the center of governance. And the freedom of the press is an essential element for a democracy to function. It is thus obvious that the main reason for a free press is to ensure that Citizens are informed. Thus it clearly flows from this, that the Citizens Right to Know is paramount.

The Act and its rules define a format for requisitioning information, a time period within which information must be provided, a method of giving the information, some charges for applying and some exemptions of information which will not be given.

## 2.0 The Need for the Right to Information

In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by countries, intergovernmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The right to information forms the crucial underpinning of participatory democracy - it is essential to ensure accountability and good governance. The greater the access of the citizen to information, the greater the responsiveness of government to community needs. Alternatively, the more restrictions that are placed on access, the greater will be the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights as citizens or make informed choices.

## 3.0 The free flow of information in India remains severely restricted by three factors

The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923; the pervasive culture of secrecy and arrogance within the bureaucracy; and the low levels of literacy and rights awareness amongst India's people. The primary power of RTI is the fact that it empowers individual Citizens to requisition information. Hence without

necessarily forming pressure groups or associations, it puts power directly into the hands of the foundation of democracy- the Citizen.

### **3.1 Applicability**

The Act applies both to Central and State Governments and all public authorities. A public authority (sec. 2(h)) which is bound to furnish information means any authority or body or institution of self-government established or constituted (a) by or under the Constitution, (b) by any other law made by Parliament, (c) by any other law made by State Legislature, (d) by a notification issued or order made by the appropriate Government and includes any (i) body owned, controlled or substantially financed, (ii) non-government organization substantially financed - which, in clauses (a) to (d) are all, directly or indirectly funded by the appropriate Government.

### **4.0 Definition of Information**

The Act defines information in sec. 2(f) as any material in any form, including the records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, 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 law for the time being in force. Sec. 2(i) defines the word 'record' as including (a) any document, manuscript and file, (b) any microfilm, microfiche and facsimile copy of a document, (c) any reproduction of image or images embodied in such microfilm and (d) any other material produced by a computer or any other device.

### **4.1 Definition Right To Information**

The right to information is defined in sec. 2(j) as a right to information accessible under the Act which is held by or under the control of any public authority and includes a right to (i) inspection of work, documents, records, (ii) taking notes, extracts or certified copies of documents or records, (iii) taking separate samples of material, (iv) 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.

### **5.0 Maintenance and Publication of Records**

Sec. 4 makes it a duty of public authorities to maintain records for easy access and to publish within 120 days the name of the particular officers who should give the information and in regard to the framing of the rules, regulations etc. Subsection (3) of sec. 4 states that for the performance of subsection (1), all information shall be disseminated widely and in such form and manner, which is easily accessible to the public.

Sec. 6 permits persons to obtain information in English or Hindi or in the official language of the area from the designated officers. The person need not give any reason for the request or any personal details. Sec. 7 requires the request to be disposed of within 30 days provided that where information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours. Under sec. 7(7) before any decision is taken for furnishing the information, the designated officer shall take into consideration the representation, if any, made by a third party under sec. 11.

A request rejected shall be communicated under sec. 7(8) giving reasons and specifying the procedure for appeal and the designation of the appellate authority. Sec. 7(9) exempts granting information where it would disproportionately divert the resources of the public authority or would be detrimental to the safety and preservation of the record in question.

### **6.0 Exemptions**

Sec. 8 exempts from disclosure certain information and contents as stated in Sub-clauses (a) to (j) thereof. Sub-clause (b) exempts information, which is expressly forbidden by any court of law or tribunal or the dispute of which may constitute contempt of court. Sub-clause (g) exempts information the disclosure of which would endanger life, or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose. Sub-clause (h) exempts information, which could impede the process of investigation or apprehension or prosecution of offenders. Sub-clause (i) exempts Cabinet papers.

It is important to note that the Act specifies that intelligence and security organizations are exempted from the application of the Act. However, it is provided that in case the demand for information pertains to allegations of corruption and human rights violations, the Act shall apply even to such institutions.

### **7.0 Constitutional Avenues Remain Open**

Under the Act, where a citizen has exhausted the remedy of appeal or second appeal, the finality given to the orders of the commissioners and appellate authorities is only for the purposes of the Act and the citizen has a right to approach the High Court under Art. 226 or where it refers to a fundamental right, he may even approach the Supreme Court under Art. 32.

### **8.0 Right to Information as a Fundamental Right**

#### **8.1 Supreme Court on the Right to Information**

The right to information is a fundamental right flowing from Art. 19(1) (a) of the Constitution is now a well-settled proposition. Over the years, the Supreme Court has consistently ruled in favor of the citizen's right to know. The nature of this right and the relevant restrictions thereto, has been discussed by the Supreme Court in a number of cases:

In Bennett Coleman, the right to information was held to be included within the right to freedom of speech and expression guaranteed by Art. 19(1) (a).

In Raj Narain, the Court explicitly stated that it is not in the interest of the public to 'cover with a veil of secrecy the common routine business - the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.'

In S.P. Gupta, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described.

### **9.1 Comparison with the USA Act**

The United States enacted a Freedom of Information Act (FOIA) in 1966 and introduced amendments in 1974 and 1986. This Act is applicable to government agencies. 'Agencies' under the act include the whole executive arm of the state as well as military department, government corporations and government controlled corporations and any independent regulatory agency.

The Act begins with the obligation on the government agencies to publish (in the Federal Register) information about the organization of the agency; functions; procedure; the persons/officials from whom information can be collected; the availability of forms; the scope of information available; the substantive rules and statements of general policy or interpretations of general applicability adopted by the agency and amendments thereof.

The agencies are obligated to provide records not included in the above categories, upon request, which reasonably describes the record. The right to make a request lies with 'any person', i.e., any legal entity like an individual, private corporation etc. The request has to be in accordance with the rules in place regarding time, place, fees and procedure to be followed. The regulations have to be made by each agency and framed pursuant to notice and receipt of public comments thereon. It must include a schedule of the fees and the guidelines to determine the waiver or reduction of the fees.

The Act contains minimum tests for fees. Fees have to be limited to reasonable standard charged for search, duplication and review when requested for commercial use. This is limited to reasonable charges for duplication only when request is by educational or scientific institution, for scholarly or scientific research; or by representative of the news media. For any other kind of request, reasonable standard charges for document search and duplication is the norm.

Time period for compliance with a request is ten (10) days from receipt of the request. Decision will be notified immediately to the requestor with reasons. In case of refusal, it must mention the right to the requestor to appeal to the head of the agency and the names and titles/positions of the person responsible for the denial. The time limit is

extendable with notice and reason but only for a maximum of 10 more days. Such extension is allowed for search and consultation time.

The first appeal lies to the head of the agency and has to be determined within twenty (20) days from the date of receipt of the appeal. From this departmental appeal lies the right of judicial review by the District Court. The court can be approached directly, in case of no response on the request within twenty days or if the decision of the departmental appeal is not given within twenty days. Additional time is given for review of the request by the court after retaining jurisdiction if the government can show existence of exceptional circumstance and due diligence of the agency in responding to the request.

The United States like other developed countries enacted laws such as the Freedom of Information Act 1966, which allow individuals to access records of government agencies in order to ascertain the proper functioning of such agencies. The Freedom of Information Act like our own Right to Information Act provides for a specific time period within which applications made under the act must be complied with. The Freedom of Information of Act provides that only a reasonable fee for compiling with the request for information shall be levied on the citizen. Similarly the Right to Information Act also provides for a prescribed fee that will be levied on the citizen making an application for information.

Freedom of Information Act, which expressly provides for the District courts in the US to exercise the power of judicial review in case of non-response from the authorities established under the act or by way of appeal from such authority. The power of judicial review though not expressly provided under the Act is inherent, as this power has been given to them by the Constitution.

### **10.1 Impact of the new law**

Now that the statute requires information about the pendency of the applications, reasons as to why they are not disposed of or the reasons behind the rejection of an application, there is bound to be improvement in the efficiency of the departments. As of now, the only supervision of efficiency is supervision that is made by the superior officers at the time of reviewing the employees' work and while recording comments in the annual confidential reports or ACRs. This process has not proved successful and though it may be continued, still the threat of a designated official calling for the relevant information at the instance of a citizen will be a salutary check on the inefficiency of officers. It also checks lethargy or bad faith or corrupt motives.

Another important aspect is that in India we have not given respect and prominence to the rights of the individual Citizen. True democracy is impossible until we recognize the majesty of the individual Citizen. If individual Citizens are empowered to ensure greater accountability and transparency in governance, it can bring about a major change. There has been no vehicle available for individual citizens to impact the governance structure. In a system reeking with corruption and becoming increasingly insensitive to the problems of the disadvantaged Citizenry, the Right to Information has shown promise of empowering Citizens to get accountability and act as an enforcer of good governance.

The overall impact of these decisions has been to establish clearly that the right to freedom of information, or the public's right to know, is embedded in the provisions guaranteeing fundamental rights in the Constitution. Various Indian laws provide for the right to access information in specific contexts. Section 76 of the Indian Evidence Act, 1872, contains what has been termed a 'Freedom of Information Act in embryonic form'. This provision requires public officials to provide copies of public documents to anyone who has a right to inspect them.

The Factories Act, 1948, provides for compulsory disclosure of information to factory workers "regarding dangers including health hazards and the measures to overcome such hazards", arising from their exposure to dangerous materials. While this is an excellent provision, in practice it is violated with impunity. The Environment (Protection) Act 1986, and the Environmental Impact Assessment Regulations provide for public consultation and disclosure in various circumstances.

### **10.2 Example of use of the Act**

One of the simple and yet very powerful examples of use of the Right to Information (RTI) I have heard is of a slum dweller that had learnt the use of the Right to Information. When he applied for a new ration card, he was told that he would have to give a bribe of Rs. 2000 to the officials to obtain it. Our friend, -a RTI-empowered Citizen, - smiled, and applied for the ration card without offering any bribes or groveling in front of the officials for pity. Our

common Citizen had decided to personally become the enforcer of good governance. He found out that the bribe-givers got their ration cards in about four weeks. He waited for an extra four weeks, and then applied for information under RTI. Using the simple format with an application fee of Rs. 10, he delivered it to the Public Information Officer of the Food and Supply office. He had asked up to, which date applications for ration cards had been cleared, and the daily progress report of his application. This shook up the corrupt officials, since the answer would reveal that they had given ration cards to others who had applied after him, which would be conclusive evidence that they had no justification for delaying his card. Happy ending: The Ration card was given to him immediately. Our RTI-empowered Citizen had been able to enforce the majesty of the Citizen by using RTI. This story has been repeated many thousand times in getting a road repaired, getting an electricity connection, admissions in educational institutions and so on.

### **10.3 Criticisms**

The Act has been criticized on several grounds. It provides for information on demand, so to speak, but does not sufficiently stress information on matters related to food, water, environment and other survival needs that must be given pro-actively, or suo moto, by public authorities. The Act does not emphasize active intervention in educating people about their right to access information -- vital in a country with high levels of illiteracy and poverty -- or the promotion of a culture of openness within official structures. Without widespread education and awareness about the possibilities under the new Act, it could just remain on paper. The Act also reinforces the controlling role of the government official, who retains wide discretionary powers to withhold information.

The most scathing indictment of the Bill has come from critics who focus on the sweeping exemptions it permits. Restrictions on information relating to security, foreign policy, defense, law enforcement and public safety are standard. But the Right to Information Act also excludes Cabinet papers, including records of the council of ministers, secretaries and other officials, this effectively shields the whole process of decision-making from mandatory disclosure.

Another stringent criticism of the Act is the recent amendment that was to be made allowing for file noting except those related to social and development projects to be exempted from the purview of the Act. File noting are very important when it comes to the policy making of the government. It is these notes that hold the rationale behind actions or the change in certain policy, why a certain contract is given or why a sanction was withheld to prosecute a corrupt official. Therefore the government's intention to exempt the file noting from the purview of the Act has come in for stringent criticisms.

### **10.4 Conclusion**

By enacting the Right to Information Act India has moved from an opaque and arbitrary system of government to the beginning of an era where there will be greater transparency and to a system where the citizen will be empowered and the true center of power. Only by empowering the ordinary citizen can any nation progress towards greatness and by enacting the Right to Information Act 2005 India has taken a small but significant step towards that goal. 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. Thus with the enactment of this Act India has taken a small step towards achieving real Swaraj.

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