

RIGHT TO INFORMATION ACT 2005

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INTRODUCTION

The **Right to Information Act 2005 (RTI)** is an Act of the Parliament of India "to provide for setting out the practical regime of right to information for citizens." The Act applies to all States and Union Territories of India except the State of Jammu and Kashmir. Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 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 relaxes. 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.

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Right to Information

The Act empowers every citizen to:

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

BACKGROUND OF RTI IN INDIA

Some Landmarks in the Rti Journey

- 1975: Supreme Court of India rules that the people of India have a right to know.
- 1982: Supreme Court rules that the right to information is a fundamental right.
- 1985: Intervention application in the Supreme Court by environmental NGOs following the Bhopal gas tragedy, asking for access to information relating to environmental hazards.
- 1989: Election promise by the new coalition government to bring in a transparency law.
- 1990: Government falls before the transparency law can be introduced.
- 1990: Formation of the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan and the launching of a movement demanding village level information.
- 1996: Formation of the National Campaign for People's Right to Information (NCPRI).
- 1996: Draft RTI bill prepared and sent to the government by NCPRI and other groups and movements, with the support of the Press Council of India.
- 1997: Government refers the draft bill to a committee set up under the Chairmanship of HD Shourie.
- 1997: The Shourie Committee submits its report to the government.
- 1999: A cabinet minister allows access to information in his ministry. Order reversed by PM.
- 2000: Case filed in the Supreme Court demanding the institutionalization of the RTI.
- 2000: Shourie Committee report referred to a Parliamentary Committee.
- 2001: Parliamentary Committee gives its recommendations

- 2002: Supreme Court gives ultimatum to the government regarding the right to information.
- 2002: Freedom of Information Act passed in both houses of Parliament.
- 2003: Gets Presidential assent, but is never notified.
- 2004: National elections announced, and the —strengthening|| of the RTI Act included in the manifesto of the Congress Party.
- May 2004: The Congress Party comes to power as a part of a UPA coalition government, and the UPA formulates a —minimum common programme|| which again stresses the RTI.
- June 2004: Government sets up a National Advisory Council (NAC) under Mrs. Sonia Gandhi.
- August 2004: NCPRI sends a draft bill to the NAC, formulated in consultation with many groups and movements. NAC discusses and forwards a slightly modified version, with its Recommendations to the government.
- December 2004: RTI Bill introduced in Parliament and immediately referred to a Parliamentary Committee. However, Bill only applicable to the central government.
- April 2005: Bill considered by the Parliamentary Committee and the Group of Ministers and a revised Bill, covering the central governments and the state introduced in Parliament.
- May 2005: The RTI Bill passed by both houses of Parliament.
- June 2005: RTI Bill gets the assent of the President of India
- October 2005: The RTI Act comes into force.

Process

Under the Act, all authorities covered must appoint their **Public Information Officer** (PIO). Any person may submit a request to the PIO for information in writing. It is the PIO's obligation to provide information to citizens of India who request information under the Act. If the request pertains to another public authority (in whole or part), it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other within 5 working days. In addition, every public authority is required to designate **Assistant Public Information Officers** (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The applicant is not required to disclose any information or reasons other than his

name and contact particulars to seek the information. "ApplyRTI" [6] and "Rtination" [7] are the online system which facilitates the filing of RTI (Right To Information Act, India) applications online. It aims primarily at minimizing the time taken and effort required in filing an application. The Act specifies time limits for replying to the request.

- If the request has been made to the PIO, the reply is to be given within **30 days** of receipt.
- If the request has been made to an APIO, the reply is to be given within **35 days** of receipt.
- If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is **30 days** but computed from the day after it is received by the PIO of the transferee authority.
- Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within **45 days** but with the prior approval of the Central Information Commission.
- However, if life or liberty of any person is involved, the PIO is expected to reply within **48 hours**.

Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request (in whole or part) and/or providing a computation of "further fees". The time between the reply of the PIO and the time taken to deposit the further fees for information is excluded from the time allowed. If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reasons may be ground for appeal or complaint. Further, information not provided in the times prescribed is to be provided free of charge. For Central Departments as of 2006, there is a fee of ₹10 for filing the request, ₹2 per page of information and ₹5 for each hour of inspection after the first hour. If the applicant is a Below Poverty Card holder(BPL), then no fee shall apply. Such BPL Card holders have to provide a copy of their BPL card along with their application to the Public Authority. States Government and High Courts fix their own rules.

Exclusions

Central Intelligence and Security agencies specified in the Second Schedule like IB, Directorate General of Income tax(Investigation), RAW, Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP,

CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep Police. Agencies specified by the State Governments through a Notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission

Information Exclusions

The following is exempt from disclosure

- 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 offense;
- 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 (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);
- 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. (NB: This provision is qualified by the proviso to sub-section 11(1) of the Act which exempts disclosure of "trade or commercial secrets protected by law" under this clause when read along with 8(1)(d))

Role of the government

Section 26 of the Act enjoins the central government, as also the state governments of the Union of India (excluding J&K), to initiate necessary steps to:

- Develop educational programs for the public especially disadvantaged communities on RTI.
- Encourage Public Authorities to participate in the development and organization of such programs.
- 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.

State-level RTI Acts

- The state-level RTI Acts were first successfully enacted by the state governments of Karnataka (2000), Goa (1997), Rajasthan (2000), Tamil Nadu (1997), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003), and Jammu and Kashmir (2004).Harayana (2005).

Right to information: Benefit to Citizens

- Indian Republic is the largest democracy in the world having a best co-ordination between parliamentary form of government and the republican system and it has presented a unique example of this unique system before the other nation states. The

constitution Assembly of India adopted the concept of supremacy of constitution after accommodating the supremacy of parliament from Britain and supremacy of judiciary from USA. Hence, Indian Parliament is completely authorized for legislation according to the constitution. In this direction for the prevention of corruption due to complete secrecy, the state legislatures and the Parliament of India have passed a lot of Acts as well. Indian Parliament passed Right to Information Act for the establishment of transparency in administration on May 12, 2005. However, the RTI Laws were first successfully enacted by the state governments of Indian Republic.

- RTI, 2005 is 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. As we have studied that the constitution of India has established democratic Republic and whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to curb corruption and to hold governments and their instrumentalities accountable to governed people, now therefore it is expedient to provide for furnishing certain information to citizens who desire to have it. However, this furnishing of information in actual practice is likely to conflict with other public interests including efficient operation of the governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information, but it is necessary to harmonise those conflicting interests while preserving the most important of the democratic ideal.

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