

# **RIGHT TO INFORMATION ACT 2005 AS A FACET FUNDAMENTAL RIGHT: AN ANALYTICAL STUDY**

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## **INTRODUCTION**

RTI stands for Right to Information. Right to Information is a part of fundamental rights under Article 19(1) of the Constitution. Article 19 (1) says that every citizen has freedom of speech and expression. As early as in 1976, the Supreme Court said in the case of *Raj Narain vs State of UP* that people cannot speak or express themselves unless they know. Therefore, right to information is embedded in article 19. In the same case, Supreme Court further said that India is a democratic country where the people are the masters. Therefore, the masters have a right to know how the governments, meant to serve them, are functioning. Further, every citizen pays taxes. Even a beggar on the street pays tax (in the form of sales tax, excise duty etc) when he buys a piece of soap from the market. The citizens therefore, have a right to know how their money was being spent. These three principals were laid down by the Supreme Court while saying that RTI is a part of our fundamental rights. The Central Right to Information Act came into force on the 12th October, 2005.

### ***Objects of act:***

1. to empower citizens and to promote transparency and accountability in the working of Government.
2. to make our democracy work for the people in real sense.
3. to keep necessary vigil on the instrument of governance and make government more accountable to governed.
4. to aware about right to information act to public at large.
5. to provide for setting out practical regime of right to information for citizens to secure access to information under control of public authorities.

## RIGHT TO INFORMATION AS FUNDAMENTAL RIGHT

The Government of India always lays emphasis on making the lives of its citizens easy, smooth and making India truly democratic and keeping this in mind the RTI Act has been established.

RTI stands for Right to Information and has been given the status of a fundamental right under Article 19(1) of the Constitution. Article 19 (1) under which every citizen has freedom of speech and expression and have the right to know how the government works, what role does it play, what are its functions and so on.

The Act confers right to the citizens to know as to how the taxpayers' money is being spent by the Government.

Right to Information Act empowers every citizen to seek any information, take notes, extracts or certified copies of documents or records, and take certified samples of material.

The RTI Act extends to the whole of India (except the State of Jammu and Kashmir), all bodies, which come under Government notification including NGOs, which are owned, controlled or are substantially financed by the Government.

RTI Act confers right to access to information held by a Public Authority. In case, you have been denied the access to information you may file Appeal / Complaint before the Central Information Commission (CIC) using the CIC Online.

### ***Right to know fact of Fundamental Right:***

The right of access to information is a fundamental human right crucial to the development of a democratic society. As of January 1st, 2006, 68 countries around the world had adopted access to information laws (up from only 12 countries which had such laws in 1990). The Justice Initiative works with partner organizations to promote implementation of these laws and to press for adoption of robust laws that entrench the Right to Know. To assist these efforts, the Justice Initiative has developed the following principles, in consultation with our partners, based on international law and standards and the comparative law and practice in these 68 countries. These principles represent evolving international standards on how governments should respect the Right to Know in law and practice.

*1. Access to information is a right of everyone.*

Anyone may request information, regardless of nationality or profession. There should be no citizenship requirements and no need to justify why the information is being sought.

*2. Access is the rule – secrecy is the exception!*

All information held by government bodies is public in principle. Information can be withheld only for a narrow set of legitimate reasons set forth in international law and also codified in national law.

*3. The right applies to all public bodies*

The public has a right to receive information in the possession of any institution funded by the public and private bodies performing public functions, such as water and electricity providers.

*4. Making requests should be simple, speedy, and free.*

Making a request should be simple. The only requirements should be to supply a name, address and description of the information sought. Requestors should be able to file requests in writing or orally. Information should be provided immediately or within a short timeframe. The cost should not be greater than the reproduction of documents.

*5. Officials have a duty to assist requestors*

Public officials should assist requestors in making their requests. If a request is submitted to the wrong public body, officials should transfer the request to the appropriate body.

*6. Refusals must be justified.*

Governments may only withhold information from public access if disclosure would cause demonstrable harm to legitimate interests, such as national security or privacy. These exceptions must be clearly and specifically defined by law. Any refusal must clearly state the reasons for withholding the information.

*7. The public interest takes precedence over secrecy.*

Information must be released when the public interest outweighs any harm in releasing it. There is a strong presumption that information about threats to the environment, health, or human

rights, and information revealing corruption, should be released, given the high public interest in such information.

*8. Everyone has the right to appeal an adverse decision.*

All requestors have the right to a prompt and effective judicial review of a public body's refusal or failure to disclose information.

*9. Public bodies should proactively publish core information.*

Every public body should make readily available information about its functions and responsibilities, without need for a request. This information should be current, clear, and in plain language.

*10. The right should be guaranteed by an independent body.*

An independent agency, such as an ombudsperson or commissioner, should be established to review refusals, promote awareness, and advance the right to access information.

## **SUPREME COURT OF INDIA AND RIGHT TO INFORMATION**

### **1. Reserve Bank of India is under the preview of Right to Information Act:**

Supreme Court in a landmark decision (*Reserve Bank of India v. Jayantilal Mistry*) declared that RBI does not place itself in a fiduciary relationship with the financial institutions because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. Writing the judgment for the bench, Justice M.Y. Eqbal, expatiating on the nature of functions of the banking sector regulator said: "RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks.

## **2. Medical Expenses of Judges cannot be revealed under RTI:**

Supreme Court of India in Subhash Chandra Aggarwal vs. Registrar General, Supreme Court of India held that the medical expenses of Judges are not qualified to come within the ambit of the Right to Information Act. The Apex Court rejected an appeal against Delhi High Court decision which had held that information about doctor's visit expenses of judges and their families can't be revealed.

## **HIGH COURTS JUDGMENTS ON RIGHT TO INFORMATION ACT**

### **1. Office of Attorney General under RTI [Delhi HC]:**

Delhi High Court in Subhash Chandra Agrawal v. Office of AG held that the office of the Attorney General of India is a public authority under the Right to Information Act. The Court decided the same while hearing a writ petition filed by RTI Activist Mr. Subhash Chandra Agrawal, which was against the order passed by full bench of CIC wherein the Central Information Commission had held that the office of Attorney General was not a public authority under the RTI Act.

### **2. RTI can be used even if information not relevant or germane and even if applicant has access to material through other means:**

Delhi HC Setting aside an order passed by the CIC, the Delhi High Court in Adesh Kumar v. Union of India remanded a case back to CIC for consideration in the light of the observations. Justice Vibhu Bakhru emphasized on two points, first being that the question whether the information sought by the petitioner is relevant or necessary, is not relevant or germane in the context of the Act; a citizen has a right to information by virtue of Section 3 of the Act and the same is not conditional on the information being relevant. The second point was that the petitioner has access to the material relied upon by the prosecution does not prevent him from seeking information, which he considers necessary for his defense.

### **3. Copy of FIR under RTI:**

A division bench of Kerala High Court comprising of Chief Justice Ashok Bhushan and Justice A.M. Shafique in Jiju Lukose vs State of Kerala held that the police authorities are obliged to

provide the copy of the FIR on an RTI application, unless an appropriate authority decides it is exempted under section 8 of the RTI Act.

## **CENTRAL INFORMATION COMMISSIONERS DECISIONS ON RIGHT TO INFORMATION ACT**

### **1. CIC directed CBSE to pay Rs 25,000 as compensation for denying RTI seeking copy of answer sheets:-**

The Central Information Commission in *Vijay Kumar Mishra v. CBSE* directed the Central Board of Secondary Education (CBSE) to furnish the copies of answer-scripts sought for by the father of a student, and to pay a compensation of Rs.25, 000 to the parent for harassing him and compelling him to sign illegal undertaking to give up rights. The Information Commissioner also issued show cause notice to then CPIOs of CBSE who refused information sought for. Rejecting the grounds on which the CBSE denied the natural guardian from exercising his legal duty to secure the legal interests of his son including his right to information the information commissioner Prof. M. Sridhar Acharyulu said “The CBSE has no authority to impose such restriction on the rights of minor and his guardian.” The Commission also directed the CBSE to put in place such system with conducive practices by which the Right to information is not limited but facilitated, by removing the obstacles such as undertaking to give up their legal rights.

### **2. Disclose Union Cabinet note on NJAC: (CIC)**

Central Information Commissioner M Sridhar Acharyulu in *S.N.Shukla v. Department of Justice* directed the Department of Justice on 7.1.2015, to disclose the Union Cabinet note and details about its decision to establish National Judicial Appointment Commission. The Department of Justice had refused reasoning that it was a cabinet secret and was exempted u/S 8 (1)(i) of RTI act.

### **3. State is duty bound to provide easy access to up-to-date Legal Information to its citizens; CIC**

Chief Information Commission has in *Vansh Sharad Gupta v. PIO Legislative Department* held that State has a duty to inform citizens about the Law as and when it was made and the

citizens also have right to know of the Law. This observation by the commission was made by Information commissioner Prof. M. Sridhar Acharyulu (Madabhushi Sridhar), in a complaint filed by a law student from National Law School of India University, Bangalore. CIC also ordered to pay Rs.10000/- as a token compensation to the library of the National Law School of India University, Bangaluru, for causing loss of time of several law students.

## CONCLUSION

It is clear, even from this short survey, that in recent years there have been great strides forward in establishing a close link between the use of access to information laws and other work to combat corruption. There remains much that can be done by civil society to promote greater government transparency. New access to information laws need to be adopted, existing laws need to be better implemented and more work has to be done to secure recognition of the right of access to information as a fundamental human right and to create a culture for the right to information, both within government and within society. Organizations working in the areas of both access to information and anti-corruption can forge strategic partnerships among themselves, with public officials and with inter-governmental bodies to push for greater transparency in the areas where it is most needed to root out corruption. A full range of activities is needed, including technical assistance in the drafting and implementation of access to information laws, monitoring compliance with these laws, continuing of advocacy and awareness-raising campaigns, filing appeals and engaging in litigation to defend the right to information. All these activities will promote recognition of access to information as a fundamental human right and will also strengthen its value as a tool in the fight against corruption.

## SUGGESTIONS

1. Participate in the consultation process when a particular financial institution is revising its disclosure policy;
2. It is necessary to conduct systematic monitoring;
- 3) It is urgent need of time to build support for new transparency initiatives from within the organizations.
- 4) Right to information applicant should provide hearing through online or video conferencing.