

## Right To Information Act 2005 : Historical Perspective, Its Objectives and Salient Features

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*In India, the Right to Information Act has been developed through various strands for almost the entire period of the country's independent history. Until 2005, an ordinary citizen had no access to information held by a public authority. In matters touching legal entitlements for services as food for work, wage employment, basic education and health care, it was not easy to seek the details of decision-making process that affected or injured the person. Without access to relevant information, it is not feasible for a common person to take part in a meaningful discussion on political and economic matters. The enactment of the Right to Information Act, 2005 is a milestone in the history of administration in India. The Right to Information Act, 2005 has brought responsibility and accountability to the development process in India. It is path breaking in controlling corruption and delays in the implementation of government-sponsored programmes and in the performance of public authorities. The act provides momentum for development process and remedy to fight corruption in public authorities. It is an important means for strengthening democracy, accelerating economic growth of the country.*

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### **Historical perspective:**

In India, the right to information has been developed through different strands for almost the entire period of the country's independent history. Only now these strands have come together to form the 'critical mass' needed to crystallize the issue into positive action on the part of the people as well as the Government <sup>1</sup>.

Until 2005, a common citizen had no access to information held by a public authority. Even in matters affecting legal entitlements for such subsidized services as food for work, wage employment, basic education and health care, it was not easy to seek the details of decision-making process that affected or harmed the person. Without access to relevant information, it is not possible for a common person to participate in a meaningful debate on political

and economic options or choices available to him for realizing socio-economic aspirations <sup>2</sup> Although the Constitution of India has guaranteed the freedom of speech and expression under Article 19(1), Even then a citizen had no legal right to know about the details of public policies and expenditures. Therefore, it was not possible for a common person to observe and inspect public actions with a view to providing reaction for rectifying the deficiencies in policy planning and the execution of programmes.

### **The Right to Information Act, 2002**

This Act provides freedom to every citizen to safe access to information that is under the control of the public authorities. The Act deals with the security of freedom of information. It provides security of freedom of information to

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all citizens of the country subject only to the other provisions of the Act. Under this Act the 'freedom of information' has been defined as 'the right to obtain information from any public authority by means of inspection, taking of extracts and notes, by certified copies of the records of the public authority'. It can be taken by way of floppies and diskettes in cases where this information is kept in computer and in any other electronic media<sup>3</sup> The term 'information' has also been defined as any material in any form relating to the administration, operation and the decisions of the public authority<sup>4</sup>.

The obligations of the authorities in respect of the protection of this right are mentioned in Section 4 of the Act. The Act imposed a duty on the public authorities to maintain the records which is consistent with the operational requirements of such authorities. The public authorities were required to give reasons for any decisions taken by them, whether it is administrative or quasi judicial to those persons who were affected by such decisions<sup>5</sup>.

The public information officer is necessary to dispose of the application as expeditiously as possible. In any case this period shall not exceed more than 30 days. Within this period if he does not provide information or reject the application or request, he should specify reason for such rejection. The Act also provides for the protection of certain information, which the State can do under the heads of privileges. The public information officer can refuse access to information, if the information sought for is too general, if it involves the disproportionate diversions of the resources of a public authority or if it is interfering with the functions of such authority<sup>6</sup>. If on a request made by a party, the authority intends to give information, which is relating to or has been supplied by a third party, a public information officer is required to give notice to the party concerned. He should also invite representation from him against such disclosure. However, in such cases if the

information is not concerned with the trade or commercial secret protected by law the disclosure may be allowed. Here the public interest involved in such disclosure should over-Weigh the possible harm or injury to the interest of the third party<sup>7</sup>. The Act also bars the jurisdiction of courts. This is an express prohibition on the courts not to entertain any suit, applications or other proceedings in respect of any order made under this Act<sup>8</sup>. In order to carry out the provisions of this Act, power has been given to the Central Government, the State Government and also to the competent authority to make rules<sup>9</sup>.

### **The Passage of Right to Information Act, 2005**

#### **Meaning of Information under the Right to information Act of 2005**

All citizens have the Right to Information subject to the provision of this Act. This provision has been interpreted by the central Information Commission to include organizations within the meaning of the citizen for seeking information.

In **Mr. Keval Prasad vs Allahabad Bank**<sup>10</sup> the Central Information Commission, held that the technical interpretation of the provision should not be adopted by the Public information officers and the Public Authorities While dealing with applications filed by either the President or the members of any organization under the Right to information Act. The Commission has taken the stand of accepting all applications received from bodies like Unions, Associations, Welfare Bodies, companies etc. because the Commission felt that these bodies should also be entitled to benefit from the provisions of the Right to Information Act which should not be lost sight of in the narrow interpretation of the Act. The Commission had therefore directed the Central Public information Officers, in all such cases, to entertain and process all such applications as per the provisions of the Act.

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In **ST -CMS Electric Company Pvt. Ltd vs Railway Board New Delh** <sup>11</sup> the Commission observed that Right to Information application had been made on behalf of a company and therefore was not covered under Section 3 of the Right to Information Act. What Kind of information one can ask for? A person can ask for any information related to the Government functioning like copies of contracts of various Government works, copies of bills and vouchers, status of any application filed with the Government, status of various grievances or corruption cases pending, attendance registers of gardeners or sweepers in an area, log book of vehicles used by various Government functionaries, list of works carried out by Members of legislative assembly and Members of Parliament, obtain sample of material of any Government work, documents related to various policies and budgets of the Governments etc.

The central Chief Information Commissioner on 1st January, 2010 in **Patanjali Sharma vs. Central Public Information Officer of the Rajya Sabha Secretariat** <sup>12</sup> has ruled that the records with a parliamentary committee can be provided under the Right to Information Act, once the report has been tabled on the floor of the House.

In **Union Public Service Commission vs. Central Information Commission**, it was plea of the Union Public Service Commission (UPSC) that if cut-off marks are revealed, then the scaling methodology would become known to public at large and that would undermine the entire examination system. The court held that as per the sealed cover containing the scheme for examination and scaling methodology, the scaling methodology indicated this is already known to public (because of the disclosure of the UPSC itself) in the counter affidavit tiled before the Supreme Court . It was further held that there is nothing new that is mentioned in the contents of the sealed cover with regard to the methodology which is not mentioned in the

said counter affidavit tiled before the Supreme Court. The information that is sought by respondents does not fall within the expression of 'Intellectual Property' and is not exempted. The data collected by the Union Public Service Commission (UPSC) is of an event which has already taken place and its disclosure would have no bearing whatsoever on the next year's examination. Therefore, even if it is assumed that it is information within the meaning of Section 8(1)(d) of the Right to Information Act, its disclosure would not harm the competitive position of any third party.

In any event the Union Public Service Commission (UPSC) being a public body is required to act and conduct itself in a fair and transparent manner in any event. It would also be in public interest that this fairness and transparency is displayed by the revealing of the information sought. The disclosure of information as directed by the Central Information Commission does not, in any way, in court view, harm the protected interests of UPSC or any third party <sup>13</sup>.

In **A.K Gupta vs Chief Public Information Officer**<sup>14</sup> the Central Information Commission held that the details of disciplinary proceedings against an employee cannot be withheld from disclosure by invoking section 8(1)(h), Which bars the disclosure of information which could impede the process of information. The decision of the Central Information Commission panel was on the plea of an applicant, who demanded records relating to an inquiry into the alleged misconduct by an officer of State Bank of Mysore. The bank refused to disclose any information by invoking section 8(1)(h) saying the Central Bureau of Investigation (CBI) had been investigating this matter. All Disciplinary proceedings regarding the public conduct or misconduct of an employee of public authority, all the records and files in this regard are public records and have to be disclosed subject to other exemptions of the Act. There is nothing in the

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Act which exempts the disclosure of any information merely because of a related matter is pending in a court of law.

**Information on Phone Tapping can't be withheld** - The Himachal Pradesh State Information Commission on March 25, 2010 ruled that the record pertaining to tapping of phones by Government agencies cannot be withheld.

The State Information Commission rejected the plea of the Public Information Officer that such information was exempted under Section 8 (1) (h). The commission observed that the Public Information officer (PIO) had miserably failed to provide even an iota of justification or reasons to substantiate his findings that it would "impede the investigation of criminal case lodged against the complainant." The procedure under Section 5 (2) of the Indian Telegraph Act was a result of the directions of the Apex Court in the interest of transparency and accountability, and as such denial of information by the Public Information officer (PIO) may tantamount to flouting of the mandatory directions of the court. Disclosure under the Right to Information Act is the rule and denial the exception.<sup>15</sup>

**Information Pertaining to Transfer of Employee - n Canara Bank Vs. The Central Information Commission, Delhi & Anr**<sup>16</sup> the Kerala High Court held that the disclosure of employees of bank would not cause unwarranted invasion of privacy of other employees in any manner in so far as that information is not one which those employees can keep to themselves. Without the information as requested by the employee, he would not be in a position to effectively pursue his claim for transfer in preference to others. If the employee 80

Seeking information feels that the transfer made is in violation of his rights for preferential transfer, he necessarily should have the information which cannot be withheld from him by resort to section 8(1)(j). The Court further held that the proviso to the section qualifies the

section by stating that information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. By no stretch of imagination can it be held that the information requested for by relating to transfer of employees of bank is

**Partial disclosure of information (section 10 of RTI Act)**<sup>17</sup> Citizen can have partial access to that information which is covered under exemptions from disclosure [section 8(1) of RTI Act]. If the request for information has been rejected by a PIO on the ground that it relates to information, which is exempt from disclosure [under section 8(1) of the RTI Act], then some part of the information, which is not covered in the exemption list, can be disclosed. Such information should be reasonably severed from the information, which falls in the exemption list. This means if a document or record contains information, part of which is exempted from disclosure under the RTI Act while the other part is not exempted from disclosure, then the PIO of a public authority can sever (separate) the parts and provide information which is not exempted to the applicant. Where partial access to information is provided to an applicant, the pio must inform the applicant: A. Only part of the information after separating it from the record, which falls under the exemption list [section 8(1)]. B. The reasons for providing only part of the requested information. C. The name and designation of the person (PIO) giving this decision. D. The details of additional fees, which the applicant has to pay to obtain the partial information. E. The details of the appellate authority and the time limits for filing such an appeal in case the applicant is not satisfied with the partial information and he wants full information.

**Section 10(1)** of the act emphasizes the fact that an applicant can have access to partial access to even those records and information on documents under exemption list [section 29 8(1)]. It is the responsibility of the PIO to

reasonably separate that part of information from the main part, which falls in the exemption list.

**Information can be severed and supplied (section 10(1) of the RTI Act)**

In the case of **Paramveer Singh vs. Punjab University** <sup>18</sup>, the applicant had applied for information regarding the merit list for selection of candidates to a particular post in the university. However, the information regarding this was contained in some document, which also contained some information, which was exempted from disclosure, as per the RTI Act. But no proper information was supplied to the applicant, due to negligence of the university's PIO in identifying and collecting the proper information.

Section 10(1) - Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

In the above case, the commission held that the university should streamline its university record management system in such a manner that information, which is to be disclosed, could be easily provided after separating those that is exempted as per **sec.10 (1)** of the RTI Act. <sup>52</sup> The commission held that every public authority, particularly after the implementation of the right to information act must take all measures in pursuance of pro-active disclosure requirements, to implement efficient record management systems in their offices so that the requests for information can be dealt with promptly and efficiently.

**Third party information (section 11 of RTI Act, 2005)** The right to information act also covers individuals/firms/organisations which directly do not fall within the scope of the act but they have submitted some of their information

related to contracts, business deals or financial details to government agencies (public authorities). Such information can be accessed under the right to information act by the citizens. These individuals/firms/organizations are covered under the definition of third-party under the RTI Act. The definition of a third-party under **section 11** of the RTI Act covers anyone other than the public authority dealing with the application and the requester (applicant) for information as shown below: First-party (the person submitting an application or appeal) Second-party (the public authority responsible for processing the application) Third-party (any other person or body including another public authority) The records supplied by a third party but held by a public authority are included within the definition of "information" under the RTI Act, and can be the subject matter of request for information. Section 11 of the RTI Act requires that if the information asked by a citizen relates to a record that has been supplied by a third party, and is not treated as confidential by that party, the PIO of a public authority is at liberty to provide such information to an applicant .if the information is treated as 'confidential' by a third party, then the following steps will have to be taken by the PIOs:

- The PIO has to give a written notice to the third party within five days of the receipt of an application for information seeking his opinion, whether the information should be disclosed to the applicant or not.

- The third party has to make a submission to the PIO within 10 days, whether to disclose the information or not.

- Within 40 days of the receipt of the application, the PIO has to make a decision. Should the information related to the third party be provided to the applicant or not, and then convey his decision to the third party.

- The third party can appeal against the decision of the PIO to disclose information relating to him/her to an RTI applicant to appellate authorities.

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- A PIO should use his discretion in dealing with the application seeking information related to a third party. While using his discretion, he should keep in mind trade and commercial secrets protected by law, protection of the violation of privacy of individuals and public interest outweighing the harm to the interests of the third party.

Under **section 11** (third party) of the act, all the private industries, banks or any other firms, which has some kind of business dealings/ contractual relationships with the public authorities, are covered. Citizens can ask for information about these firms from the public authorities, which maintain their records.

**Third party has no absolute right to refuse information disclosure about it [sec. 11(1) of the RTI Act]**

In the case of **K.K. Mahajan Vs. Cantonment Executive Office**<sup>19</sup> the appellant, an employee of a public authority, had applied for some information relating to the prosecution of another employee (third party), because under similar circumstances the appellant was convicted while the other employee was exonerated. The public authority refused to provide him the information he had asked for on the ground that the third party had refused the disclosure of information about it to the applicant.

Section 8(1) (j) 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 unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

The CIC held that the RTI Act does not give a third party an automatic right to order the public

information officer (PIO) of a public authority, not to disclose information pertaining to it. The CIC further held that the public authority is required to evaluate the third party's case in terms of the provisions of **section 8(1)(j)** and **section 11(1)** of the RTI Act, 2005, and find out that the information asked is not barred from disclosure. Even if the information is barred from disclosure then the public authority is to examine if it would be in the public interest to disclose the information sought and its disclosure will outweigh harm if any to the individual third party. The public authority has to arrive at the findings by properly assessing the facts and circumstances of the case. A speaking order should thereafter be passed accordingly<sup>20</sup>.

### **The exclusion of certain organizations**

Under the act central intelligence agencies and security agencies like the intelligence bureau (IB), research analysis wing (Raw), directorate of revenue intelligence (DRI), central economic intelligence bureau (CEIB), directorate of enforcement (DE), narcotics control bureau (NCB), Aviation Research Centre (ARC), Special Frontier Force (SFF), border security force (BSF), Central Reserve Police Force (CRPF), Indo Tibetan Border Force (ITBF), central industrial security force (CISF), national security guard (NSG), Assam Rifles, Special Service Bureau (ARSSB), Criminal Investigation Department (CID) 32 Special Branch Of Andaman And Nicobar Island (SBAN), CID Crime Branch of Dadra Nagar Haveli and special branch, Lakshadweep police are exempted from the purview of right to information act. Similar agencies established by the state governments will also be excluded. Information relating to corruption and human rights 'must be given but only with the approval of the central or state information commission as the case may be'<sup>21</sup>.

Section 24 of the right to information act, 2005, dictates that the intelligence and security organisations cannot fall under the purview of this act. It also makes a statement to the effect

that any information given by such agencies to the government to would be outside the scope of the applicability of this act. These organizations are sought to be mentioned in second schedule of the right to information act, 2005, which has a comprehensive list of 18 different organizations. However, the section also lays down a proviso to prevent the basic aim of the act from being violated by declaring that allegations of corruptions and violations of human rights cannot be excluded under this act. Therefore, this section can be said to be the quintessence of the spirit of democracy as it provides for information to the public, but at the

same time, puts a reasonable limit in place over the same<sup>22</sup>.

Under powers conferred by section 24 (4) of the right to information act 2005, the only notification till date has come from the office of governor of state of Tamil Nadu, dated 14.10.2005, and it reads to exclude many of the correcting agencies of the state like cybercrime cell, idol wing, police radio branch, coastal security group, finger prints bureau, etc. from the Act. There are a number of intelligence and security organizations established by the central government which are not there under the purview of the Act<sup>23</sup>.

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