

## STRENGTHENING OF THE RTI ACT 2005

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### Abstract

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The Right to Information Act is one of the key legislations in seeking to empower the citizens of the country and in the process promote Transparency and Accountability in the Governance of the country. A period of nearly two decades has seen the RTI Act playing out its part in a significant manner. The Act has witnessed a good number of frivolous applications and also an equally strenuous efforts on the part of public authorities to take shelter under the exemptions clause and frustrate such applications. Both these are not healthy sign in a democratic country of our size and magnitude. The Article takes a look at current position of the law and notes the important judgements given by courts. The courts have largely tended to be progressive in their decisions and have given effect to the provisions in a very constructive manner. These judgements have paved the way in general for the implementation of the Act in line with the objectives of the Act. Finally certain suggestions have been made for making the Act to be more Citizen focused.

Keywords: Information, Right to Information, Public Authority, Third party information and Exempted information

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## Introduction

Indian lawmakers have come out with a very significant and powerful legislation in the year 2005 known as the right to information act 2005. This Act is vastly different from other kinds of legislation that the country has seen ever since its Independence.

Empowerment of citizens has attracted the attention of our policy makers and law makers for a very long time. A country as diverse as India with a huge population must address itself with providing different needs to its people. The early phase immediately following Independence rightly required focus on economic and industrial development. After focusing its efforts in the first phase, India embarked upon the other phases with the aim of establishing itself as a nation which can compete and progress with other advanced nations of the world. The measures to secure its rightful place in the international community `has meant that India has to follow the rich virtues in the governance of its population. The Right to Information Act passed in the year 2005 is more for facilitating the flow of information from the government authorities to its citizens. In a country where the literacy levels are to considerably improve and the aspirations of its people are to be met, the

providing, furnishing or sharing of information has become very important. With the active efforts of public-spirited individuals, non-government organisations and other such institutions, the Right to information Act has become a reality. Though there can be views and counter views as to whether it has been delayed or not the fact remains that legislation exists today to give the information to its citizens in a structured manner as per the framework of the Act.

### Structure of the Act:

The Act Contains 31 Sections in Six Chapters and with two Schedules

**Objectives of the Act:** The Honourable Supreme Court of India at para 26 of its Judgement in Chief Information Commissioner Vs High Court of Gujarat and Another <sup>1</sup>has held that

The preamble to the RTI Act suggests that the Act was enacted “to promote transparency and accountability in the working of every public authority.” The Act was enacted by keeping in view the right of “an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold

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<sup>1</sup> CIVIL APPEAL NO(S).1966-1967 OF 2020

Governments and their instrumentalities accountable to the governed”

The preamble opens with reference to the Constitution having established a democratic republic and the need therefore, for an informed citizenry. The preamble reveals that legislature was conscious of the likely conflict with other public interest including efficient operations of the Governments and optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and the necessity to harmonise these conflicting interests. A citizen of India has every right to ask for any information subject to the limitation prescribed under the Act. The right to seek information is only to fulfill the objectives of the Act laid down in the preamble, that is, to promote transparency of information.

**Important Definitions:** The Act in its application revolves around a few important definitions contained in the Act. The final determination as to whether the information sought by the Citizen is to be furnished or not hinges on these definitions. Hence to get a fair view as to the working of the Act it is necessary to understand the terms in the manner they were defined in the Act. The definitions given in the Act have been

elucidated and interpreted by the courts from time to time.:

An important aspect in the consideration of the Right to information Act is to understand the term information as defined in the Act.

**Information:** As contained in 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.

### **Public authority as per R.T.I Act**

Section 2(h) of the RTI Act 2005 defines.

“Public authority” 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 notification issued or order made by the appropriate Government, and includes any—
  - (i) body owned, controlled or substantially financed.

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

The definition given under the Act has generated lot of debate especially on sub-Clause(d) of Section 2(h). As the definition is an inclusive definition, the courts had to interpret the meanings of owned, controlled or substantially financed in a good number of cases. Making the problem further complicated was the words, owned, controlled or substantially financed have not been defined under the Act. Under the circumstances, the courts have taken the principles laid down in the context of Article 12 of the constitution of India and defined these expressions under the RTI Act. The courts have been cautious enough to state that the principles laid down in cases involving interpretation of Article 12 cannot be applied in a general or blanket manner. An analysis of the terms as interpreted by courts is given below

**Control** How is control by government defined? High Courts have considered entities to be controlled by the government on the basis of (a) the definition of “State” in Article 12 of the Constitution (most courts have however held that the Article 12 test is not relevant for the RTI Act<sup>1</sup> and, (b)

supervision and regulation by the government agencies under laws such as Kerala State Co-operatives Act. Some courts have also taken the opposite point of view arguing that regulation and supervision cannot be equated with control.

**Substantial Funding:** The RTI Act does not define substantial financing. Consequently, courts are often required to decide whether a particular form and quantum of financial aid constitutes substantial finance. Courts have not given a uniform interpretation of what constitutes in some cases, the quantum of financing was considered in arriving at a decision. For example, the Indian Olympic Association was considered a public authority because the central government paid the travel expenses of the players and provided 85% of their living expenses.

#### **Who are Public Authorities: As per Judicial Decisions**

The question as to which Authorities are public authorities or not largely depends on the criteria specified in Section 2 of the Right to Information Act. The Courts have been confronted with questions as to whether a particular authority would become a public authority or not. In many cases decided by courts, the issue basically arose as that

particular organization held the view that it is not a public authority and hence refused to provide the information sought by the citizen. The following judgements rendered by the courts would indicate the trend and the direction in which the Courts are holding the view.

**D.A.V. College Trust and Management Society & Others Vs Director of Public Instructions & Others dated 17/12/2019<sup>2</sup>:**

In this case (Civil Appeal No the Honorable supreme court considered the issue as to whether three DAV Public Schools one at Delhi and at Chandigarh would be a public authority within the meaning of the RTI Act. After taking into consideration that the schools under the Management of the Trust have been receiving substantial funds from the Government and noting that 95% of the salary of the teaching staff is met from, such funding, the SC held the Trust to be a public Authority. Para 33 of the Judgement is worthy of being quoted here.

**Union of India vs Subhash Chandra Aggarwal & Another<sup>3</sup>:**

The question whether the office of the Attorney General of India falls within the definition of "public authority" under section

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<sup>2</sup> SCI Civil Appeal No 9828 of 2013

<sup>3</sup> 2010 6 SCC 331

2(h) of the RTI Act was considered by the Supreme Court. It was contended on behalf of the Union of India/the respondent in the writ petitions that AGI having been appointed under Article 76 of the Constitution of India to give advice to the Government of India upon the legal matters, the relationship between AGI and the Government of India is that of a lawyer and client and therefore, the office of AGI does not fall within the definition of "public authority" under the RTI Act. The learned Single Judge had accepted the plea of the writ petitioners that the office of AGI is covered by the definition of "public authority" under section 2(h) of the RTI Act.

**Thalappalam Cooperative service bank Vs state of Kerala<sup>4</sup>:**

The issue in this case was whether cooperative societies registered under the Kerala cooperative societies were Public Authorities within the meaning of the RTI Act. The Kerala High Court has held that the RTI Act does apply to cooperative societies due to the aspects of control and regulation by the state. The cooperative society challenged this order in the Supreme Court. On consideration of various aspects, the Honourable SC has held that the regulation and control was not the only test

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<sup>4</sup> SCI Civil Appeal No 9017 of 2013

and held that the cooperative societies registered under this Act are not required to implement the RTI Act. The court found that mere control and regulation alone would not make an Authority to be a Public Authority

Central Public Information Officer v. Subhash Chandra Agarwal<sup>5</sup>, 2019 the 5-judge constitution has held that the office of the Chief Justice of India comes under the purview of the Right to Information

### **Who are Not Public Authorities: As per Judicial Decisions**

#### **Paramjit Singh Vs SIC Punjab<sup>6</sup>**

The petitioner contended that 12 acres of land had been leased out by the Punjab Government and there were grants being given by the Government and therefore, respondent No.2-hospital and respondent No.3-Society would come within the definition of 'Public Authority' and therefore, it is liable to provide information, as demanded. Reliance has been placed upon the order under Section 80(G)(5)(vi) of the Income Tax Act, 1961, to submit that benefits have been taken and Society should be treated as a 'Public Authority'.

The Hon'ble High Court of Punjab and

<sup>5</sup> SCC OnLine SC 1459,

<sup>6</sup> CWP No 10668 of 2015 dated 24-10-2016

Haryana held that merely because leased land of 12 acres was given by the Government, would not mean that the Society is controlled and financed to such an extent that the State would have a substantial control over the same. The exemption granted under the Income Tax Act is a permissible exemption which can be claimed by certain category of tax-payers and merely because such an exemption has been granted, would not mean that the Government would have such control over the hospital.

**Record:** Record under section 2(i) includes: (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 (whether enlarged or not).

**Right to Information:** S.2(j) of the Act defines.

"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

- (i) Inspection of work, documents, records.
- (ii) Taking notes, extracts or certified copies of documents or records.

- (iii) Taking certified 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.

The definition again has posed several challenges both to the Public Information officers and also to the Judiciary. It will be worthwhile to consider and take note of the Judgements delivered by the courts.

It is now clear with the directions of the Courts that the word Right to information relates only to existing information and which is held or under the control and possession of the Public Authority. It means that a public Authority is not expected either to create the information asked by the applicant if such as information is not in existence.

The Judgment of the Hon'ble Supreme Court in the matter of CBSE vs. Aditya Bandopadhyay & Ors [CIVIL APPEAL NO.6454 OF 2011] wherein it was held as under.

At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI

Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the 3 exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority.

Dr. Celsa Pinto vs. Goa State Information Commission (W.P. No. 419 of 2007, decision dated 03.04.2008)<sup>7</sup> wherein it was held as follows:

"The definition of information cannot include within its fold answers to the question "why" which would be same thing as asking the reason for a justification for a particular thing. The public information authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information."

**Disclosure of Information under S.4(1) (b) by a Public Authority:** A Public authority under S.4(1)(b) of the Act is obliged to disclose certain information on its website. This information has been referred to as mandatory information. The disclosure of the mandatory information goes a long way in reducing the number of applications and hence would be saving time and resources of the Public Authorities

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<sup>7</sup> 2008 (110) Bom LR 1238

**Designation of Public Information officers:** Every Public Authority which falls under the ambit of the Act is required to designate and appoint an official who is designated as the Central Public Information officer. (CPIO). The complete details of the Central Public Information officer are to be displayed on the website of the said Public Authority. The roles, responsibilities, and functions of the CPIO are stated in the Act itself. His primary responsibility is to ensure that the application of an applicant citizen is disposed of within a period of 30 days from the date of receipt of the application.

The CPIO is the official responsible for coordinating with those departments who hold the information under their control or possession. The endeavour of the CPIO is to collect and collate the information so received and then finally dispose of the application.

In case information belongs to a third party, the CPIO is required to comply with the procedure laid down under S.11 of the RTI Act and finally dispose of the application within the timelines.

**First Appellate Authority:** A Public Authority is required to designate an official as First Appellate authority. The F A A is to



handle and dispose of the appeals preferred by the Appellants within a period of 30 days from the date of its receipt. The First Appellate Authority may either confirm, modify or annul the orders of the CPIO. He may also remit the matter back to the CPIO of the Public Authority.

**Process for seeking information:** A citizen desirous of seeking information under the Right to Information is expected to follow a process laid down under S.6 of the Act. It involves attaching the postal order of the requisite value. There is no form prescribed while seeking information under the Act. The Applicant needs to clearly and concisely state the information which he desires the public Authority to provide. The applicant is not expected to give reasons to the Public Authority while seeking information.

**Exempted information:**

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,

(a) 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.

(b) 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.

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature.

(d) 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.

(e) 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.

(f) information received in confidence from foreign Government.

(g) 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.

(h) information which would impede the process of investigation or apprehension or prosecution of offenders

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed.

(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.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section

(1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

The exemptions conferred under this section are generally relied upon and invoked by the public authorities. One of the most often used exemption by Public Authorities is one of commercial confidence. This exemption has been analysed by courts and if the information sought by the Applicant is in the

realm of commercial confidence, the same need not be provided.

Another exemption which has caused lot of controversy and debate is with regard to information held in fiduciary capacity, The Courts again have been very proactive in interpreting the information held in fiduciary capacity.

The issue of disclosure of the details of wilful defaulters is the one which comes to one's mind

**Central Information commission:** The Central information commission is a statutory body established under S.12 of the RTI Act. The main functions of the central information commission are specified under S.18 of the Act. The critical and key functions of the Central Information commission are as under.

The Commission has certain powers and functions mentioned in sections 18, 19, 20 and 25 of the RTI Act, 2005. These broadly relate to adjudication in second appeal for giving information; direction for record keeping, suo motu disclosures receiving and enquiring into a complaint on inability to file RTI etc. imposition of penalties and Monitoring and Reporting including preparation of an

Annual Report. The decisions of the Commission are final and binding.<sup>8</sup>

Appeals lie to the Central information from the orders passed by the First Appellate Authorities. These appeals are to be filed within a period of 90 days as per Clause 3 of Section 19 of the Act. Central Information commission is empowered to condone delay provided reasonable and sufficient cause is shown in filing the appeal with delay. The Commission as per clause 6 of Section 19 is to dispose of the Appeal within 30 days from the date of its filing.

**Suggestions and conclusions:** With the passage of time of more than 18 years since the implementation of the Right to information Act, it is time to review, assess and make such changes as would enhance an improved and smooth implementation of the Act by the flow of information from the Public Authorities to its citizens. Keeping the objectives of the Act sacrosanct and with the experiences gained over the years, the following changes are suggested.

**1. Enlarge the Scope of the objects of the Act:** The Act in its preamble states that a democracy requires informed citizenry and transparency of information which are vital

<sup>8</sup> Source: The central Information Commission's website

to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.

When the Act was passed, one of objective was to make the Government and its instrumentalities accountable. This remains extremely important even today. In addition to the government and its instrumentalities being accountable, time has arrived to extend and enlarge the scope of the Act to others also.

By way of an analogy, with the wide interpretation given by Supreme Court and High courts, the scope of the Prevention of corruption Act is now made applicable to acts of corruption involving private entities and its officials. Similarly, the Courts have given wide interpretation to Article 12 of the Constitution of India by which many entities are now amenable to the writ jurisdiction.

Another fact which cannot be lost sight of is that in an age where privatisation is gaining further momentum, the Citizenry will have to avail many services from non-government entities. It can be observed that in addition to Government and its instrumentalities providing financial services, lot of private entities are also in the financial service

space. Similarly in health, education, housing and many other critical sectors of the economy, participation of private entities has increased considerably. Hence to meet the goal of transparency in the sphere of diverse economic activities, it is time to consider extending and enlarging the applicability of the Act.

To begin with the Act may be extended partially in its scope by making the Private organisations to voluntarily disclose certain kinds of information on their web sites akin to Section 4(1) (b) in its present form.

## **2. Dispensation of the First Appellate**

**Authority:** As per the existing law the orders passed by CPIO of a Public Authority are appellable orders and the First Appellate Authority in the Public Authority itself has to dispose of the appeal. A study of the orders passed by the First Appellate Authority of public Authority would reveal that except in a very few cases, the First Appellate Authority normally confirms the orders of the CPIO of the Public Authority Though this is not to suggest or attribute motives to First Appellate Authority, the procedure of having an appeal mechanism within the Public Authority itself looks superfluous. This would also save the precious time of the F.A.A of Public Authorities.

It is therefore suggested that the orders of CPIO of a Public Authority be brought before the Central Information commissioners by way of First appeal. The high court in writ Jurisdiction and the Supreme Court as the Apex can always exercise their jurisdiction in such matters.

Hence, suitable amendments are suggested to the RTI Act 2005 whereby the First Appellate Authority is dispensed with.

**3. Dispensation of providing the Personal Details of the Applicant:** The current system requires the applicant to provide his personal details such as his address, mobile number, email id. While furnishing of mobile and email id is still very relevant, the furnishing of the address of the applicant may have to be revisited since in the past there were instances of threats and other unlawful acts being resorted against the applicants seeking information.

In an age where technology has permeated almost all the essential activities of life, the Right to information Act can be suitably modified to make the submission of the address of applicant optional. By way of an analogy, it is to be noted that the investments in the mutual funds can be transacted with just the mobile number and email id. In

respect of existing clients, the mobile numbers and the email id are the basis on which the transactions are made.

**3. Reducing the time period required for submission of information to the Applicant:** The Act under section 7(1) stipulates that the response to the application submitted by the applicant be made within 30 days. This period of 30 days was stipulated nearly two decades back, and considerable progress has been made on various fronts. Now with digitisation and faster means of communication, it is appropriate to consider reduction of time for disposal of applications say from 30 days to 21 days or so.

**4. Standardisation of information:** Public authorities display Suo motu the information under S.4(1) (b) of the RTI Act on their websites. The Act defines with clarity and purpose all that information that is needed to be disclosed. While there is compliance of law with regard to the display of information by the public authorities, however there are lot of variances in the presentation and display of such information on the websites of different public Authorities. The variation is observed even in respect of Public Authorities which are in the same line of business activity.

To cite a few instances, the Public Authority one of large public sector bank has displayed the information relating to various regulations like service regulations, pension regulations, gratuity regulations etc. while another public sector bank has not done so. These variances in an information technological age can be addressed and the Public Authorities may display their information in a uniform and symmetrical manner to the extent it is practicable to do so.

Similarly, the website of one financial institution discloses the pension regulations whereas it does not disclose any information in respect of NPS Subscribers and other categories of pensioners.

5. Progression of S.4(2) of the Act: It has been stated under s.4(b)(2) that every public Authority shall endeavour to disclose as much information as possible Suo motu at regular intervals under this section. Though the spirit of the Act is to be lauded which is to make disclosure of information a dynamic issue, in reality most of the Public authorities tend to comply with law and do not go that extra mile in disseminating any further information that this subsection envisages. It is suggested that in order to have a better compliance of this provision, a monitoring

mechanism may be devised by which it can be ascertained whether the Public Authorities are really making efforts in this direction or are satisfied with compliance of law in letter and not in spirit. A periodicity may be prescribed instead of the current expression of Regular intervals.

6. Penalties under S.20: As per section 20 (1) the Act, the Central information commission or the state Information commission is empowered to levy a penalty of Rs 250 every day and not exceeding Rs 25000 for the various kinds of acts committed by the CPIO. A close look at the acts specified include some very serious whereas some may not be very serious. For instance, destroying of information which is serious is also one of the acts for which penalty is leviable. However, in the existing Act as there is no differentiation on the basis of the kinds of acts committed, a uniform penalty may be levied irrespective of the act committed.

It is suggested that penalties may be imposed by bifurcating the various acts into Non serious and Serious. A different set of penalties may be prescribed under the Act for the serious and non-serious acts. This will make the CPIOs to be more vigilant and

responsible in dealing with RTI Applications.

provisions for submitting the application directly to the Public Authority.

7. RTI Act to be made more citizen centric and focused: Though lot of progress has been made and achieved in the implementation of this Transparency Act, still the disposition of public authorities tends to take RTI Applicant as an adversary. Every possible effort is attempted by the CPIOs of Public Authorities to deny the information on one or other grounds. Admitting that an appeal mechanism is envisaged under the Act, it would still be fruitful to reduce the appeals with proper disposal of RTI applications with application of mind rather than disposing of them in a mechanical manner. It would be useful to organise more awareness programmes and celebrations just like vigilance awareness week is observed to make RTI Act more popular and citizen friendly.

8. The RTI Portal presently permits obtaining information through an online process. The portal is designed in such a way that the applicant has to lodge his application on the portal and thereafter the application gets transmitted to the concerned public Authority. It is suggested that in addition to the existing arrangements, the websites of the Public Authorities should also have