

# HOW PRACTICABLE IS RIGHT TO INFORMATION ACT 2005

*DR. RAJNI BALA*

*PRINCIPAL*

*JAGATSEWAKKHALSACOLLEGEFORWOMEN*

*AMARGARHPARAO*

*MEHNA (MOGA)*

*EMAIL ID; [seemabhatia1972@gmail.com](mailto:seemabhatia1972@gmail.com)*

*Contact no.97813-42143*

## **ABSTRACT**

Like other acts, the right to information act is very crucial to maintain our freedom of speech. The act covers all states and union territories except Jammu and Kashmir. It is applicable to all constitutional authorities including legislature, executive and judiciary. Private bodies are not within the ambit of this act directly. The central information commission has held that the political parties are public authorities and answerable to citizens under RTI act. On August 12, 2013, the congress party tabled RTI Amendment bill 2013 in Lok Sabha to keep political parties out of RTI ambit. But the bill is in process, not passed. Any person may submit a written request to the public relation officer (PIO) so it is obligatory for PIO to provide information if not possible, it is the responsibility of PIO to transfer /forward the concerned portions of the request to a PIO of the other authority within 5 working days. APIO's can be appointed to receive RTI requests. The act has time limit. 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. The information related to corruption and human rights violation by scheduled security agencies is to be provided within 45 days but with the prior approval of the central information commission. If life or liberty of any person is involved, the PIO is expected to reply within 48 hours. If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reason may be ground for appeal or complaint. Further, information not provided in the times prescribed is to be provided free of charge. Appeal processes are also defined

## **HOW PRACTICABLE IS RIGHT TO INFORMATION ACT 2005**

Transparency and cleanliness in working are the essential elements to strengthen a democratic system. Keeping in view this perspective the government of India introduced right to information act 2005. In modern times, there is a growing tendency towards recognition of the RIT by countries, inter governmental organizations, civil society and the people. This RIT has been considered as a fundamental human right which justifies the inherent dignity of all human rights. The recent enactment of the right to information act 2005 marks a drastic shift for Indian democracy. The government will become more responsive if citizens have great access to this act. When people have no information on how government and public institutions function. One cannot express any informed opinion on it. Democracy is a government of the people, for the people and by the people. As described by Abraham Lincoln. The voice of the people is considered as voice of God. So democracy pinpoints those citizens are at the centre of governance. Thus, it shows that the citizen must have right to know. RIT is derived from our fundamental right to freedom of speech and expression under Article 19(1) (a) of the constitution. The RTI is an act of the parliament of India "to provide for setting out the practical regime of right to information for citizens" and replaces the right to freedom of information act, 2002. The act applies to all states and union territories of India except Jammu and Kashmir. Under this 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 30 days. This law was passed by parliament on 15 June, 2005 and came into force on 13 October 2005.

Many national laws have been already framed and RTI laws were successfully enacted by the government of Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002), and J&K (2004). It was supposed to be a difficult task to frame a national level law. The union government appointed a working group under H.D. Shourie and assigned it the task of drafting legislation. The Shourie draft was the basis for the freedom of information bill 2002. This act was severely criticized for permitting too many exemptions not only under the standard grounds of national security and sovereignty but also the requests that would involve disproportionate diversion of the resources of a public authority. There was no provision for penalty for not complying with a request for information.

This act consequently never came into effective force. The failure of freedom of information act led to sustained pressure for a better national right to information enactment. The first draft of the right to information bill was presented to parliament on 22 December, 2004. As a result, more than a hundred amendments to the draft bill were made before the bill was finally passed.

The RTI act is a law enacted by the Indian parliament to provide for setting out the practical regime of right to information for citizens. The act relaxes the official secrets act of 1889 which was amended in 1923 and various other special laws that restricted information disclosure in India. It was passed by parliament on 15 June, 2005 and came fully into force on 13 October 2005. The act provides for freedom to every citizen to secure access to information under the control of public authorities consistent with public interest, in order to promote openness, transparency and accountabilities, in administration and in relation to matters connected therewith or incidental thereto. The act is in accord with both articles 19 of the constitution as well as Article 19 of the declaration of Human Rights, 1948. The act will enable the citizens to have an access to information on a statutory basis.

**APPLICATION OF THE LAW;** the RTI act mandates timely response to citizen requests for government's information. It applies to all states and union territories of India, except the state of Jammu and Kashmir. Under the provision of the act, any citizen (excluding the citizen within J&K) may request to reply expeditiously. The act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information formally. While private bodies are not within the act's ambit directly, in a landmark decision of 30 November 2006 (Sarbjit Roy versus DERC) Sarbjit Roy versus Delhi Electricity Regulatory Commission, the central information commission reaffirmed that privatized public utility companies continue to be within the RTI act their privatization notwithstanding. 2

A public authority, as defined under 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 (1) body owned, controlled or substantially financed (11) non- government organizations substantially financed which in clauses (a) to (d) are all directly or indirectly funded by the appropriate government.

The act defines information in sec.2 (F) as any material in any form, including the records, documents, memos, e-mails, opinions, advices, and 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 (!) 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.

The RTI act specifies that citizens have a right to request any information; take copies of documents; inspect documents, works and records, take certified samples of materials of work; and obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode. The RTI act specifies that a citizen making the request is not obliged to disclose any information except his/her name and contact particulars<sup>3</sup>

#### PROCESS

Under the act, all authorities covered must appoint their public information officer (PIO) when any person submits a request to the PIO for information in writing; it is the PIO's obligation to provide information within 30 days. Further, if the request pertains to another public authority, it is the PIO's responsibility to transfer /forward the concerned portions of the request to APIO of the other authority within 35 days. APIO's (assistant public information officer) can be appointed to receive RTI requests In addition, every public authority is required to designate Assistant Public Information Officer (APIO's) to receive RTI requests and appeals for forwarding to the PIOs of their public authority.

#### **TIME LIMIT**

The act specifies time limit 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. In the case of APIO, the reply is to be given within 305 days of receipt. If the request is transferred by to PIO to another public authority the time allowed to reply is computed from the day on which it is received by the PIO of the transferee authority. If the request pertains to another public authority, it is the PIO's responsibility to transferee /forwards the concerned portions of the request to a PIO of the other authority within 5 working days.

In case of information concerning corruption and human rights violations by scheduled security agencies, the time limit is 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.

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 the time limit, 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.<sup>4</sup>

### **APPEALS**

If an applicant is not supplied information within the prescribed time of 30 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. If still not satisfied the applicant may prefer a second appeal with the central information commission (CIC)/state information commission (SIC) within 90 days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant. The central information commission (CIC) acts upon complaints from those individuals who have not been able to submit information requests to a central Public Information Officer or State Public Information officer due to either the officer not having been appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information officer refused to receive the application for information.

### **EXEMPTIONS**

Considering that providing each and every information asked for under the Act may severely jeopardize national interest, some exemptions to disclosure are provided for under section 8 of the Act.

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;

- 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 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 cause unwarranted invasion of the privacy of the individual.
- 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. However, this does not apply to disclosure of 'trade or commercial secrets protected by law.

The following agencies are also exempted from providing information<sup>5</sup>.

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 government 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 violations could be given but only with the central or state information commission.<sup>6</sup>

### **CONCLUSION**

In India, the act has produced a better impact on the quality of the life of the poor and the marginalized. During the past five years, the act has brought positive changes on the level of corruption and accountability. There are quite a number of cases,

where the commission has ordered for providing the details of the decision making processes including file noting, cabinet papers, records of recruitment, selection and promotion of staff, documents pertaining to tender processes and procurement procedure, lists of beneficiaries of government subsidized schemes, such as food grains supplied through ration shops, water and electricity, domestic gas, educational and health facilities, shelter for poor, muster rolls under employment guarantee schemes etc.

One of the simple and yet very powerful examples of the use of the right to information is of a slum dweller that had learnt the use of the right to information. When he applied for a 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 wanted 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 no justification for delaying his card. Happy carding: The Ration card was given to him immediately. Our RTI-empowered Citizen had been able to enforce the majesty of the repaired, getting an electricity connection, admissions in educational institutions and so on.<sup>7</sup>

RTI is a powerful tool that can deliver significant social benefits. It can provide a strong support to democracy and promote good governance, by empowering the citizen's ability to participate efficiently and hold government officials accountable. Rather than just providing Information, RTI Act in most of the countries has served to be an effective watchdog ensuring all those coming in purview of the Act to work in accordance with rules and regulations, without any irregularities. However, stricter implementation of this law requires not only political will but also active civil societies, RTI activists and few key democratic features, such as respect for the rule of law. Currently, the RTI act in India is passing through a decisive phase, much more needs to be done to facilitate its growth and development. Mere protest against the lack of implementation of this law alone is not sufficient, one needs to encourage this initiative taken, for the law to grow and mature. So just law making is not enough their practicability is essential.

### **REFERENCES**

1. A handbook on right to information act 2005 national institute of social defence (ministry of social justice and empowerment govt. of India west block-1, wing-7Ground floor, R.K.Puram, New Delhi
2. [http://en.wikipedia.org/wiki/Right to Information-Act](http://en.wikipedia.org/wiki/Right_to_Information-Act)
3. [http://en.wikipedia.org/wiki/Right to Information](http://en.wikipedia.org/wiki/Right_to_Information)
4. [http://en.wikipedia.org/wiki/Right to Information-Act](http://en.wikipedia.org/wiki/Right_to_Information-Act)
5. [http://en.wikipedia.org/wiki/Right to Information-Act](http://en.wikipedia.org/wiki/Right_to_Information-Act)
6. [http://en.wikipedia.org/wiki/Right to Information-](http://en.wikipedia.org/wiki/Right_to_Information-)
7. [http://en.wikipedia.org/wiki/Right to Information-Act](http://en.wikipedia.org/wiki/Right_to_Information-Act)
8. [http://en.wikipedia.org/wiki/Right to Information-Act](http://en.wikipedia.org/wiki/Right_to_Information-Act)