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UNDERSTANDING THE RIGHT TO INFORMATION (RTI) ACT

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INTRODUCTION

The Right to Information Act, 2005 (the Act or RTI Act)¹ is one of the most revolutionary laws of post-independence India. The Act was passed with the twin goals of transparency and accountability in governance and a complete transformation of the relationship between the State and the citizen. Citizens were not able to access information that the government kept, and the bureaucracy had complete discretion to who would have access to it and when before the law was passed. The RTI Act changed the culture of official secrecy and mandated that public authorities make information available on request.

The right to information is rooted in Article 19(1)(a) of the Constitution of India, which provides every citizen with the freedom of speech and expression.² The RTI Act, therefore, is a legislative re-expression of an existing fundamental right and offers a practical solution to its implementation.

This article highlights the highlights of the RTI Act, 2005, its institutional mechanism, rights and duties provided by the Act, exemptions and enforcement mechanism. The discussion is intended to give the concept and operation of the statute.

LEGISLATIVE HISTORY AND BACKGROUND

India's journey to a formal right to information statute was a long one. The first attempt at the central level was the Freedom of Information Act, 2002³, passed on 4th December, 2002. The UPA government, which took office in 2004, set up a National Advisory Council (NAC), which gave several recommendations for amendments to the 2002 Act. The Lok Sabha passed the

¹ The Right to Information Act, 2005 (Act 22 of 2005).

² The Constitution of India, art. 19(1)(a).

³ The Freedom of Information Act, 2002 (Act 5 of 2003).

revised bill, the Right to Information Act, 2005, on May 11, 2005 and the Rajya Sabha on May 12, 2005. The President of India signed the Bill on 15th June, 2005, and it was enacted on 12th October, 2005.⁴

Another form of civil society activism that helped bring the RTI Act into being was the work of the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan, which had been campaigning for public audits and access to government records since the early 1990s. This grassroots experience gave a lot of momentum to the legislative effort.

OBJECTIVES OF THE ACT

The Statement of Objects and Reasons of the RTI Act clearly outlines the purpose of the statute. The purpose of the Act is to provide citizens with a mechanism for accessing information from public offices, promote transparency and accountability in public processes, establish state and central level Information Commissions, foster an informed citizenry, prevent corruption and provide exemptions that strike a balance between openness and other legitimate public interests.

It is a measure to enhance democracy from a broader perspective. It makes the idea of an informed citizenry a reality in a working democratic republic. The Act empowers citizens to have access to information about government schemes, spending and decisions, so civic engagement in governance is an ongoing and active process, not just limited to voting.

KEY DEFINITIONS UNDER SECTION 2

The definitions in Section 2 of the RTI Act are essential to the scope and operation of the statute. The meaning of "public authority" in Section 2(h) is broad and covers any authority or body established or constituted by the Constitution, an Act of Parliament, a State Legislature or a notification given by the appropriate government.⁵ It also includes non-governmental organizations that are substantially financed, directly or indirectly, from government funds, and bodies owned, controlled or substantially financed by the government.

The scope of the definition of "information" in Section 2(f) is broad enough to cover everything from records and documents to memos, emails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, and electronically held data.

⁴ The Right to Information Act, 2005 (Act 22 of 2005), Preamble.

⁵ Ibid., s. 2(h).

Moreover, the multi-dimensional nature of the “right to information” as defined under Section 2(j) recognizes that the right to information may manifest itself in several different ways as per the nature of the information sought.

RESPONSIBILITIES OF PUBLIC AUTHORITIES

The RTI Act (Chapter II, Section 4) specifies in detail the disclosure obligations of public authorities in advance. Section 4(1)(b) also requires that all public authorities make a number of records public, including details of the organisation's structure, the functions and duties of its officers, the procedures used to make decisions, the budget and expenditure of the organisation, particulars of subsidy programs and the names of designated Public Information Officers.

Section 4(2) also requires public authorities to take "voluntary" measures to publish information from time to time through various means of communication. According to Sections 4(3) and 4(4), the dissemination of this information shall be done in a cost-effective manner and in the local language and by the most effective means of communication in the given area. The proactive disclosure provisions are extremely important as they reduce the need for citizens to make a formal application for information and ensure it is readily available.

THE PROCESS OF MAKING AN RTI APPLICATION

Section 5 of the Act⁶ Provides for the appointment of a Central Public Information Officer (CPIO) or State Public Information Officer (SPIO) by each public authority within 100 days of the coming into force of the Act. In addition, at the sub-divisional level, Central Assistant Public Information Officers (CAPIOs) or State Assistant Public Information Officers (SAPIOs) must be appointed to receive and forward applications and appeals.

A request for information will be made to the CPIO/SPIO or the CAPIO/SAPIO in writing in English, Hindi, or the official language of the area as per Section 6. This is important because the RTI mechanism must not be used to profile citizens or to deter them from seeking information; the applicant need not give any justification for the request, or provide any personal detail other than what is strictly necessary to contact them. The application fee should be paid along with the application, except for citizens who live below the poverty line, who are not required to pay any fee.

⁶ Ibid., s. 5.

The CPIO/SPIO shall respond to the request within 30 days of the request under Section 7.⁷ An additional five days will be given if the application is made to an Assistant PIO or transferred from another department. Importantly, if the information requested concerns the life or the liberty of a person, it must be provided within 48 hours; otherwise, it is considered a refusal and the applicant has the right to appeal.

EXEMPTIONS FROM DISCLOSURE

The RTI Act does not guarantee a right of access. Specific information exempt from disclosure is listed in section 8(1). These include information which is prejudicial to the sovereignty and integrity of India, or security or strategic interest of the State, or expressly prohibited from publication by any court or tribunal, or constitutes contempt of court, or breaches parliamentary privilege, or involves trade secrets, commercial confidence or intellectual property whose disclosure would prejudice a third party's competitive position.

There are also exemptions for information received in confidence from a foreign government, information which would reveal the identity of confidential sources of information for the police or security services, information which would hinder the investigation or prosecution of offenders and cabinet papers and records of the deliberations of the Council of Ministers.

The exemption in Section 8(1)(j) has been a complete change in the legislation in the modern era. The original Section 8(1)(j) exempted personal data where there was no public activity or public interest, or where it would be an unwarranted intrusion into private life, where there was no overriding public interest exception. But Section 44(3) of the Digital Personal Data Protection Act, 2023 (DPDP Act)⁸ has completely replaced the earlier criteria of public activity, unwarranted invasion or public interest override in the specific sub-clause (8(1)(j)). This amendment changes the nature of the exemption from a balancing test to a categorical one. Now, a PIO doesn't have to decide whether the information is related to a public activity or whether disclosure of it serves a greater public interest; it can be refused as a matter of course. The change has wide-ranging consequences for transparency in asset declarations of government officials, lists of beneficiaries of welfare programs, and records of official misconduct.

⁷ Ibid., s. 7.

⁸ The Digital Personal Data Protection Act, 2023 (Act 20 of 2023), s. 44(3).

In particular, Section 8(2) establishes an overriding principle: that information which is otherwise exempt may also be made available if the public interest in disclosure outweighs the harm to the protected interest.⁹ This balancing test is based on the common law tradition and is designed to ensure that exemptions do not become a blanket defence against transparency by government, with the public interest always paramount. Further, Section 9 says that the CPIO/SPIO may refuse to grant a request if granting it would lead to infringement of a copyright of a person other than the State.¹⁰

Lastly, Section 10 discusses the doctrine of severability. This means that if an RTI request is refused because part of the record contains exempt information, the other parts of the record which do not contain the exempt information must be released, if reasonably separable. This means that public bodies are not allowed to withhold permission to publish a whole document because of exemptions in parts of it.

THE CENTRAL AND STATE INFORMATION COMMISSIONS

Under the RTI Act, the highest decision-making body at the national level is the Central Information Commission (CIC), and at the state level, the State Information Commissions (SICs) are quasi-judicial bodies. The CIC is governed by Sections 12-14, and the SICs are governed by Sections 15-17.

The CIC is formed by the Central Government and comprises one Chief Information Commissioner and not more than ten Central Information Commissioners. The SIC too is formed by the State Government with members appointed by the Governor on the recommendations of a committee headed by the Chief Minister and comprising the Leader of the Opposition in the Legislative Assembly and a Cabinet Minister nominated by the Chief Minister.

The members of the Commissions should be persons of eminence in public life, with a wide knowledge and experience in law, science, technology, social service, management, journalism, mass media and administration and governance. The eligibility and disqualification criteria are designed to ensure the Commissions are not influenced by politics and remain independent.

⁹ The Right to Information Act, 2005 (Act 22 of 2005), s. 8(2).

¹⁰ Ibid., s. 9.

The President may remove the Chief Information Commissioner or any Information Commissioner from office based on an investigation by the Supreme Court in instances of proven misconduct or incompetence, in accordance with Section 14. The Governor has the same power under Section 17 for the members of the SIC. This removal process is comparable to that of superior court judges, which guarantees the security of tenure of Information Commissioners and enhances the institutional independence of the Commissions.

APPEAL MECHANISM AND PENALTIES

The RTI Act offers two levels of appeal. Section 19(1) provides for a first appeal to an officer of the public authority senior in rank to the CPIO/SPIO (the First Appellate Authority) against the decision of the CPIO/SPIO or failure to decide within the specified period.¹¹ An appeal must be made within 30 days of the end of the response period or from the date of the decision (which can be extended on good cause).

There is a second appeal to the CIC/SIC against the order of the First Appellate Authority under Section 19(3) [25]. This must be submitted within 90 days of the date the decision should be made or when it is received. Notably, Section 19(5) places the burden of proof on the CPIO/SPIO, the opposite of the usual burden of proof. The decisions of the CIC/SIC are final, and the Commissions have the authority to grant access, appoint PIOs, recommend publication of information and provide compensation to complainants under Section 19(7).

Section 20 is about the consequences for any intentional violation of the Act by a CPIO/SPIO. If a CPIO/SPIO refuses to receive an application, fails to provide information within the specified time, denies an application in bad faith, provides incorrect or misleading information, destroys the information sought, or otherwise obstructs the furnishing of information, the Commission may impose a penalty of Rs. 250 per day, up to a maximum of Rs. 25,000. The Commission may recommend disciplinary action against the officer for the default or mala fide intent under the applicable service rules if it occurs repeatedly, pursuant to Section 20(2).¹²

CONCLUSION

The Right to Information Act, 2005 has marked a significant milestone in the democratic journey of India. The Act has established a legally enforceable right for citizens to access information held by the State. It also includes institutional oversight, appeals, and sanctions,

¹¹ Ibid., s. 19(1).

¹² Ibid., s. 20(2).

providing citizens with a powerful tool to hold the government accountable. Over the past twenty years, the Act has unravelled corrupt practices, kept a check on the misuse of administrative resources by officials, and empowered citizens to enforce their rights in different spheres, including land records, public works, welfare schemes and judicial appointments.

In the meantime, the Act has suffered from systemic issues that have increasingly rendered it ineffective. Applications languish for years, information commissions are extremely overworked, and cases of harassment of RTI activists have made it difficult to use in practice. In recent years, Section 44(3) of the Digital Personal Data Protection Act, 2023 has, in effect, rewritten Section 8(1)(j) of the RTI Act, which has raised concerns about the structural impact on transparency. The DPDP amendment has been broadly interpreted as a step backwards, which has effectively prevented citizens from accessing vast quantities of information, such as information on asset declarations by public servants, lists of recipients of welfare schemes and records of official misconduct.

The democratic potential of the underlying structure of the RTI Act is, however, not affected, and the effectiveness of its implementation will depend largely on the active involvement of civil society, judicious interpretation of the provisions that are left unamended and future legislative efforts to rebalance privacy and transparency.