

Right to Information (RTI): Concept, Scope and Features

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Pre-requisites: Understanding of the concept of information, its value and need in the society,

Objectives:

- To develop conceptual background of Right to Information (RTI)
- To discuss the importance and need of RTI in the society.
- To envisage the role of MIL in Cultural and Linguistic diversity
- To envisage the scope, limitations and exclusions of RTI
- To elucidate the role of Public authorities (PIO and APIO)
- To present a brief account of CIC
- To explain the important clause/ sections of RTI Act
- To explain the procedure for RTI Application

Keywords: Right to Information, RTI, Public Information Officer (PIO and APIO), RTI application, Central Information Commission (CIC)

1. Restricted Flow of Information:

Regardless of the constitutional provisions, the system of governance in India has traditionally been opaque, with the State retaining the colonial Official Secrets Act (OSA) and continuing to operate in secrecy at the administrative level. The Central Civil Service Conduct Rules, 1964 also strengthened the OSA by prohibiting government servants from communicating any official document to anyone without authorization. The major factors which influence the free flow of information are bureaucratic culture, illiteracy and absence of effective communication tools.

No doubt, there is need for administrative secrecy in certain cases. No one wants classified documents concerning national defence and foreign policy to be made public till after the usual period is over. But, at the same time, every citizen has a right to know how the Government is functioning. Right to Information empowers every citizen to seek any information from the Government, inspect any Government documents and seek certified photocopies thereof. Some laws on Right to Information also empower citizens to official inspect any Government work or to take sample of material used in any work.

2. Right to Information (RTI):

RTI stands for Right to Information and has been given the status of a fundamental right under Article 19(1) of the Constitution. Article 19(1) says that every citizen has freedom of speech and expression. As early as in 1976, the Supreme Court said in the case of Rajnarayan Vs State of U.P., that people can not speak or express themselves unless they know. Therefore, Right to Information is embedded in Article 19 and is a fundamental right. In the same case, Supreme Court further said that India is a democracy. People are the masters. Therefore, the master's have a right to know how the governments, meant to serve them, are functioning. Further, every citizen pays taxes. The citizens therefore, have a right to know how their money was being spent. These three principles were laid down by the Supreme Court while saying that RTI is a fundamental right of the people of India. As an Act, RTI came into force on 12th October, 2005. The objective of the Act was revolutionary when seen in the Indian context, as it opened all official departments across the country to public scrutiny.

It mandates timely response to citizen requests for government information. The RTI Act 2005 provides effective access to information for citizens of India, which is under the control of the public authorities. It promotes transparency and accountability in the working of every public authority. It extends to the whole of India except the state of Jammu and Kashmir. In order to ensure greater and more effective access to information, it was decided to repeal the Freedom



of Information Act, 2002 and enact another law for providing an effective framework. To achieve this object, the Right to Information Bill was introduced in the Parliament and was passed by the Lok Sabha on 11th May, 2005 and by the Rajya Sabha on 12th May, 2005 and it received the assent on 15th June, 2005. It comes into force on the 12th October, 2005 (120th day of its enactment on 15th June, 2005). It came on the Statute Book as THE RIGHT TO INFORMATION ACT, 2005. The Act extends to the whole of India except the State of Jammu and Kashmir.

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

Right to Information includes the **right** to:

- Inspect works, documents, and records.
- Take notes, extracts or certified copies of documents or records.
- Take certified samples of material.
- Obtain information in form of printouts, diskettes, floppies, tapes, video, cassettes or in any other electronic mode or through printouts.

"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.

"record" 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); and
- d) Any other material produced by a computer or any other device;

- e) The Second Schedule of the RTI Act exempts certain Public Authorities under the Central Government from disclosure of information under the RTI Act 2005.

In CIC Decision No. ICPB/A-1/CIC/2006 dt.31.01.2006, the CIC held that “file notings are not, as a matter of law, exempt from disclosure”. Thus, file notings can be disclosed under the Act.

3. Exclusions:

Central Intelligence and Security agencies specified in the Second Schedule like:

1. Assam Rifles
2. Aviation Research Centre
3. Border Road Development Board.
4. Border Security Force (BSF)
5. Central Economic Intelligence Bureau (CEIB)
6. Central Industrial Security Force (CISF)
7. Central Reserve Police Force (CRPF)
8. Dadra and Nagar Haveli and Special Branch,
9. Defence Research and Development Organisation (DRDO)
10. Directorate General of Income-tax (Investigation)
11. Directorate of Enforcement
12. Directorate of Revenue Intelligence
13. Financial Intelligence Unit, India.
14. R&AW,
15. Indo-Tibetan Border Police (ITBP)
16. Intelligence Bureau (IB)
17. Lakshadweep Police
18. Narcotics Control Bureau
19. National Security Council Secretariat

20. National Security Guards (NSG)
21. National Technical Research Organisation.
22. Research and Analysis Wing of the Cabinet Secretariat
23. Sashastra Seema Bal
24. Special Branch (CID)
25. Special Frontier Force
26. Special Protection Group (SPG)
27. Special Service Bureau
28. The Crime Branch-CID-CB

However, these Public Authorities have to respond to RTI Applications which pertain to subjects of **Human Rights and Corruption** as per Section 5(1) of the RTI Act. Agencies specified by the State Governments through a Notification will also be excluded. Similarly, some States within the union has also exempted certain Public Authorities in the respective states, from the purview of the Act.

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 valuations could be given but only with the approval of the Central or State Information Commission, as the case may be.

4. **Public Authority:**

It means any authority or body or institution of self-government established or constituted:

- by or under the Constitution;
- by any other law made by Parliament;
- by any other law made by State Legislature;
- by notification issued or order made by the appropriate Government and includes any-
 - body owned, controlled or substantially financed
 - non-Government organization substantially financed directly or indirectly by the appropriate Government.

4.1 Obligations of Public Authority:

It shall publish within *120 Days* of the enactment:-

- the particulars of its organization, functions and duties;
- the powers and duties of its officers and employees;
- the procedure followed in its decision making process, including channels of supervision and accountability;
- the norms set by it for the discharge of its functions;
- the rules, regulations, instructions, manuals and records used by its employees for discharging its functions;
- a statement of the categories of the documents held by it or under its control;
- the particulars of any arrangement that exists for consultation with, or representation by the members of the public, in relation to the formulation of policy or implementation thereof;
- a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meetings of these are open to the public, or the minutes' of such meetings are accessible to the public;
- a directory of its officers and employees;
- the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- the manner of execution of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
- particulars of recipients of concessions, permits or authorizations granted by it;
- details of the information available to, or held by it, reduced in an electronic form;
- the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- the names, designations and other particulars of the Public Information Officers.

5. Public Information Officers (PIOs)

PIOs are officers designated by the public authorities in all administrative units or offices under it to provide information to the citizens requesting for information under the Act. Any officer, whose assistance has been sought by the PIO for the proper discharge of his or her duties, shall render all assistance and for the purpose of contraventions of the provisions of this Act, such other officer shall be treated as a PIO. Every public authority shall have to appoint a PIO, irrespective of the size of its office / administrative unit. This includes Panchayats/Municipalities (or any local authority). It is pertinent here to note that the Assistant (APIO) is not an assistant to the PIO.

5.1 Duties of a PIO:

- PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing.
- If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately.
- PIO may seek the assistance of any other officer for the proper discharge of his/her duties.
- PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in S.8 or S.9.
- Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.
- If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request.
- Where a request has been rejected, the PIO shall communicate to the requester - (i) the reasons for such rejection, (ii) the period within which an appeal against such rejection may be preferred, and (iii) the particulars of the Appellate Authority.
- PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question.

6. Partial Access:

If allowing partial access, the PIO shall give a notice to the applicant, informing:

- that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
- the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;
- the name and designation of the person giving the decision;
- the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
- his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.
- If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request and take its representation into consideration.
- Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.

7. **Exemption from Disclosure:**

The following is exempt from disclosure [S.8]

- 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 the 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 would 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.

8. **Partial Disclosure:**

Only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information, may be provided. [S.10]

Section 10(2)(b) of the RTI Act makes it clear that the PIO is the deciding authority for granting partial access to records that may contain exempted information. However, when partial information is disclosed the PIO needs to provide valid reasons for the decision. He/ She also needs to mention his name and designation as the decision maker and the applicant's right with respect to the review of the decision, including the particulars of the AO, time limit, process etc. Only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information, may be provided.

9. **Application Procedure for requesting information:**

Mode	Writing or through electronic means
Format of Application	There is no prescribed format of application for seeking information. The application can be made on plain paper. The application should, however, have the name and complete postal

	address of the applicant.
Language	English or Hindi or in the official language of the area
Reason for seeking Information	Not to be given.
Assistance available to the Applicant for filing RTI application	If a person is unable to make a request in writing, the PIO should render him reasonable assistance. Where a decision is taken to give access to a sensorily disabled person to any document, the PIO, shall provide such assistance to the person as may be appropriate for inspection.
Fees	<ul style="list-style-type: none"> ✓ As prescribed. ✓ Reasonable. ✓ If further fees are required, then the same must be intimated in writing with calculation details of how the figure was arrived at ✓ Not applicable for citizens below poverty line (BPL) category. ✓ Applicant must be provided information free of cost if the PIO fails to comply with the prescribed time limit.
Time Limit	Normal: 30 days from the date of application
	Life and Liberty: For matters involving "Life and Liberty", the time limit for the Public Information Officer to provide information is 48 Hours.
	<ul style="list-style-type: none"> ✓ 5 days shall be added to the above response time, in case the application for information is given to Assistant Public Information Officer. ✓ 4. If the interests of a third party are involved then time limit will be 40 days (maximum period + time given to the party to make representation). ✓ 5. Failure to provide information within the specified period is a deemed refusal.
Ground for rejection	<ul style="list-style-type: none"> ✓ If it is covered by exemption from disclosure. (S.8) ✓ If it infringes copyright of any person other than the State. (S.9)

10. Public Sector Unit (PSU):

PSUs fall within the category of public authorities. Even if the law constituting a PSU does not allow disclosure of certain categories of information, the RTI Act, 2005 overrides any such law in existence. Hence the designated PIO for the organisation under question has to provide the information.

However, if an applicant seeks information, that includes commercial confidence, trade secrets or Intellectual Property Rights (IPRs) etc. the disclosure of which will affect the competitive position of that PSU, such information may not be given unless there is a larger public interest involved.

11. Traditional Practices: Verbal Communication

Government offices have been providing information to people on the basis of their oral requests in the past. The RTI Act does require such informal practices to end as there is no need to discontinue the conventional and informal practice of giving information upon oral request. The RTI Act does not put an end to such practices. If information can be given without delay upon oral request *it is better to give such information* to the requester rather than require him/her to put in a formal application. This helps reduce paper work for the public authority.

12. Annual Confidential Reports (ACRs):

As per the Central Information Commission (CIC) “the assessment reports by the superior officers are personal and confidential information and therefore exempted under Section 8 (1) (j) of the RTI Act”. The CIC maintains the ‘Annual Performance Appraisal Reports’ cannot be shared as they are confidential in nature.

13. Answer Scripts:

Students cannot have access to answer scripts / supplements and cannot ask for copies or inspection of their answer scripts if they are unhappy with the marks awarded by the examiner in public examinations.

14. Multiple Public Authorities:

In several states more than one public authority are notified within every department from the secretariat level to the district and sub-district levels. Every such public authority will have to develop its own proactive disclosure documents or Information Handbooks unique to its powers, functions, area of operation etc.

15. Voluntary Disclosure: Workload Reduction

If Public authorities disclose certain information which is important to the public voluntarily at every level of operation systematically it will reduce the workload of officials and public authorities with regard to the requirement of providing information on request. This is because the information which is regularly needed by the public can be accessed by them without the need of going through a process of making specific request.

16. 17 manuals:

There are 17 categories of information that a public authority is required to prepare and disseminate proactively through handbooks, notice boards, print and electronic media etc.

The CIC has, in one of its letters (dt. 10.05.2006) to all Ministries / Departments, stated that “it is in the interest of the public authorities to make available all the 17 manuals to the citizens, which is likely to reduce the volume of requests for information under the RTI Act”. If appropriate management information systems (MIS) are developed and maintained by departments using information and communication technologies, the preparation of the information to be published at different levels annually can be a simple affair. Information shall be disseminated through notice boards, news papers, public announcements, media broadcasts, the Internet or any other means.

17. Updates:

The Act requires that every public authority has to update its publications under Section 4(1)(b) every year as is it not enough to publish information only once at the time of the commencement of the RTI Act. The Central/State Government/ Departments will have to come out with general instructions for time-bound updating of all categories of information, including formats for publication. Every public authority may in turn publish updated information that is specific to its functions following the guidelines.

18. Penalty:

It is advisable to publish as much information as possible under Section 4(1) (b) within the deadline and give it wide media publicity so that people know that the public authority/department is earnest about implementing the law. Any person can make complaint to the relevant Information Commission under Section 18 (1) (f) of the Act and the

Commission may even require the public authority to compensate the complainant for any loss or other detriment suffered.

The Information Commission has the power under Section 19(8) (a)(vi) to receive from a public authority an annual compliance report in relation to Section 4 (1) (b). This reporting mechanism will technically make the public authority answerable to the Information Commission for all acts of commission and omission in relation to proactive disclosure.

19. Scope and Limitation on Information Sought:

The Act does not permit rejection of an application simply because it relates to a large number of documents. An applicant can ask for 20 to 30 different kinds of information in the same application and cannot be asked to apply afresh. If the information published under Section 4 (1) (b) of the Act is comprehensive and proper information systems are maintained to enable such publication, even if an applicant requests for many pieces of information, the same can be provided to the applicant without much difficulty. Appropriate record management systems need also to be instituted. A PIO can request the applicant to visit his/her office personally on a notified date and time to inspect the required documents or files.

Under Section 7 (9), information shall be provided in the form in which it is sought unless it would 'disproportionately' divert the resources of the public authority. The PIO has to determine and justify what constitutes 'disproportionately divert resources'.

If the same kind of information is sought by more than one person it should be made available to all such requesters. However it is advisable that such records be digitized as far as possible and uploaded on the Internet to facilitate easy access.

If the information requested by a citizen has already been proactively disclosed a PIO cannot refuse to accept the request and it should be provided to a citizen on request in the available formats upon payment of fees/charges at rates prescribed by the Government.

20. Transfer an Application or Parts:

The RTI Act makes it clear that the PIO, in case a single application the applicant requests information that relates to a public authority and also information held by another public authority other public authority/authorities, the PIO will transfer the application to the other PIO concerned within 5 days and the same has to be informed to the applicant in writing.

21. Misuse and Abuse of RTI: Myths and Realities

It is inaccurate to assume that some elements may misuse RTI and use the information to blackmail/threaten officers. On the contrary, the Act actually prevents blackmail to honest and sincere officers as it requires making as much information as possible available with the public authorities in the public domain may. Thus, the question of blackmail or threatening may not arise. As far as possible, information must be made public so as to reduce any possibility of blackmail. An honest and sincere officer need not fear blackmail at all. The strict adherence to the law would facilitate smooth functioning of such officers as they will be protected by law.

If disclosure of building plans and designs would prejudicially affect the economic or security interests of the State or if they relate to commercial confidence, or trade secrets or intellectual property rights, the disclosure of which would harm the competitive position of a third party, then such information would attract exemption under the Act. However, if the concerned authority is satisfied that larger public interest warrants the disclosure of such information, the same can be disclosed.

21.1 Protection of Records:

<u>Issue</u>	<u>Suggested Measure</u>
Numerous RTI applications	designate as many PIOs as may be required
Mutilation or destruction of records during inspection	PIOs may fix one or two particular days in a week for inspection of records with adequate precautions for the safety of such records. If attempted, lodge a criminal complaint immediately.

22. Public Interest:

The term “public interest” encompasses “Redressing public injury, enforcing public duty, protecting social, collective, ‘diffused’ rights and interests vindicate public interest... [in the enforcement of which] the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

23. Appellate Authorities:

1. First Appeal: First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).

2. Second Appeal: Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority (delay may be condoned by the Commission if sufficient cause is shown).
3. Third Party Appeal: Third Party appeal against PIO's decision must be filed within 30 days before first Appellate Authority; and, within 90 days of the decision on the first appeal, before the appropriate Information Commission which is the second appellate authority.

Burden of proving that denial of Information was justified lies with the PIO. First Appeal shall be disposed of within 30 days from the date of its receipt. Period extendable by 15 days for reasons to be recorded in writing. [Section 19 (6)] There is no time limit prescribed under the Act for deciding second appeals.

24. Court Jurisdiction:

Lower Courts are barred from entertaining suits, applications or other proceeding against any order made under this Act [Section 23]. However, the writ jurisdiction of the Supreme Court and High Courts under Articles 32 and 226 of the Constitution respectively remains unaffected.

25. Online Certificate Course on Right To Information (RTIOCC):

The Department of Personnel and Training (DoPT), Ministry of Personnel, Public Grievances and Pensions, Government of India (GoI) has launched an 'Online Certificate Course on Right To Information' (RTIOCC) for various stakeholders. This Online Certificate Course on RTI is launched in association with the Centre for Good Governance, Hyderabad.

It also provide a– RTI Portal Gateway (<http://rti.gov.in/>) to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments. Users can also take up RTI quiz online to test their knowledge on RTI.

<u>Duration</u>	<u>Scope</u>
7-Day Online Course (English)	Introductory in nature
15-Day Online Certificate Course (English)	Extensive and with a practical orientation whereby candidates will have to apply an RTI application during the Course period.

The 15-day course will be based on the principle of "learning while doing". Therefore, it is requested that those who take the 7-day course follow it up with the 15-day course for in depth understanding and utility of the RTI Act.

26. Summary:

RTI paves the way for the information society wherein people enjoy information democracy. RTI strives for right information to the right person at right time, in right spirit, at right cost and in right format with adherence to minimal exceptions, duty to inform (Suo moto disclosures), accountability provisions, provisions for setting-up systems to maintain records and store information for easy retrieval, reasonable fee structure to obtain information, time limits for providing information. RTI can lead to a corruption free society where the governments (local, regional and national) are more accountable and transparent with protection of privacy and protection of whistle blowers (an informant who exposes wrong doing within an organization in the hope of stopping it). However, the wider acceptance to RTI will come through wider publicity and training at different levels.

The Right to Information Act is one of the biggest achievements of Indian democracy. The Act, which is one of the most powerful legislations of its kind in the world, is also to the closest to the citizen's heart. The basic "mantra" of its success lies in its simplicity. It has empowered the citizenry in an unprecedented manner to participate in nation building by promoting transparency and accountability in the working of every public authority.

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