

CHAPTER 8**LAW RELATING TO RIGHT TO INFORMATION**

Q: What are short note on Right to Information Act, 2005?

The right to impart and receive information is a species of the right to freedom of speech and expression. Article 19(1)(a) of our Constitution guarantees to all citizens freedom of speech and expression. Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1)(a). The State is not only under an obligation to respect the Fundamental Rights of the citizens, but it is equally under an obligation to ensure conditions under which these rights can meaningfully and effectively be enjoyed by one and all.

The Government enacted Right to Information (RTI) Act, 2005 which came into force on October 12, 2005. The RTI Act provides an effective framework for effectuating the right to information recognized under Article 19 of the Constitution. The RTI Act provides for setting out the practical regime of right to information for citizens to secure access to information held by public authorities to promote transparency and accountability in the working of every public authority.

Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a). The State is not only under an obligation to respect the Fundamental Rights of the citizens, but it is equally under an obligation to ensure conditions under which these rights can meaningfully and effectively be enjoyed by one and all.

Every public authority under the Act has been entrusted with a duty to maintain records and publish manuals, rules, regulations, instructions, etc. in its possession as prescribed under the Act. Further, it is obligatory on every public authority to publish the information about various particulars prescribed under the Act within 120 (one hundred and twenty days) of the enactment of this Act.

THE RIGHT TO INFORMATION (RTI) ACT, 2005

The Right to Information Act, 2005 provides an effective framework for effectuating the right to information recognized under Article 19 of the Constitution. It may be pointed out that the Right to Information Bill was passed by the Lok Sabha on May 11, 2005 and by the Rajya Sabha on May 12, 2005 and received the assent of the President on June 15, 2005. The Act considered as watershed legislation, is the most significant milestone in the history of Right to Information movement in India allowing transparency and autonomy and access to accountability.

Q: Explain the salient features of the Right to Information Act, 2005

Salient features of Right to Information Act, 2005 (RTI Act) are hereunder:

- The RTI Act extends to the whole of India except Jammu & Kashmir.

- It provides a very definite day for its commencement i.e. 120 days from enactment.
- It shall apply to Public Authorities.
- All citizens shall have the right to information, subject to provisions of the RTI Act.
- The Public Information Officer (PIO) / Assistant PIO will be responsible to deal with the requests for information and also to assist persons seeking information.
- Fee will be payable by the applicant depending on the nature of information sought.
- Certain categories of information have been exempted from disclosure under Section 8 and 9 of the RTI Act.
- Intelligence and security agencies specified in Schedule II to the Act have been exempted from the ambit of the RTI Act, subject to certain conditions.

Q: The Right to Information Act, 2005 confers on all citizens of India a right to information. [June 2010 – Q. 6(iii)]

The Right to Information Act, 2005 confers on all citizens a right to information. The Act provides for setting out the practical regime of right to information for citizens to secure access to information held by public authorities to promote transparency and accountability in the working of every public authority.

Q: Explain the meaning of 'Public Authority', 'Record', 'Right to Information' and 'Third party' under Right to Information Act, 2005

Public authority:

"Public authority" 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 and other law made by State Legislature;
- By notification issued or order made by the appropriate Govt. [Section 2(h)]

Record:

"Record" includes:

- any document, manuscript and file;
- any microfilm, microfiche and facsimile copy of a document;
- any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- any other material produced by a computer or any other device; [Section 2(l)]

Right to information

"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:

- taking notes, extracts, or certified copies of documents or records;
- inspection of work, documents, records;

- taking certified samples of material;
- obtaining information in the form of disk, 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; [Section 2(j)]

Third party

"Third party" means a **person other than the citizen** making a request for information and includes a public authority. [Section 2(n)]

Q: Write a short note on Obligation of Public Authority under Right to Information Act, 2005

Every public authority under the Act has been entrusted with a duty to maintain records and publish manuals, rules, regulations, instructions, etc. in its possession as prescribed under the Act. [Section 4(1)(a)]

As per Section 4(1)(b), every public authority has to publish *inter alia* within 120 (one hundred and twenty) days of the enactment of this Act:

- 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.
- Such other information as may be prescribed; and thereafter update the publications every year.

Q: Specify the manner in which requests may be made by a citizen to the authority for obtaining information under the Right to Information Act, 2005. [Dec 2008 – Q. 5(a)(i)]

The Right to Information Act, 2005 specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.

- Application is to be submitted in writing or electronically, with prescribed fee, to Public Information Officer (PIO).
- Information to be provided:
 - Within **30 days** of the receipt of the request
 - **48 hours** where life or liberty is involved.
 - **35 days** where request is given to Asst. PIO.
- Time taken for calculation and intimation of fees excluded from the time frame.
- No action on application for 30 days is a deemed refusal.
- 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).
- No fee for delayed response. (*Section 6&7*)

Q: Explain the duties of Public Information Officer under the Right to Information Act, 2005?

Every public authority has to designate in all administrative units or offices Central or State Public Information Officers to provide information to persons who have made a request for the information.

The duties of Public Information Officer (PIO) under the Right to Information Act, 2005 are:

- 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 **48 (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 –
 - the reasons for such rejection,
 - the period within which an appeal against such rejection may be preferred, and
 - 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.
- If allowing partial access, the PIO shall give a notice to the applicant, informing:
 - that only part of the record requested is being provided;
 - the reasons for the decision;
 - 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.
- 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.

Q: Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005? [June 2010]

Certain categories of information have been exempted from disclosure under the Act. These are *inter alia* as under:

- Where disclosure prejudicially affects 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 by any court or tribunal or the disclosure of which may constitute contempt of court;
- Where disclosure would cause a breach of privilege of Parliament or the State Legislature;

- Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position of a third party, unless larger public interest so warrants;
- Information received in confidence from a foreign government;
- Information the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance;
- Information that 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 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;
- Personal information which would affect privacy unless larger public interest justifies it. (Section 8)

Q: Write a short note on agencies excluded from the perview of Right to Information Act, 2005?

The Act excludes *inter alia* following agencies from its perview:

- Central Intelligence and Security agencies like IB, R&AW,
- Directorate of Revenue Intelligence,
- Central Economic Intelligence Bureau,
- Directorate of Enforcement,
- Narcotics Control Bureau,
- Aviation Research Centre,
- Special Frontier Force, BSF, CRPF,
- Crime Branch-CID-CB,
- Agencies specified by the State Governments through a Notification.

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 violation shall be given only with the approval of the Central Information Commission **within 45 days** from the date of the receipt of request.

Q: Explain the constitution and power of Information Commissions under Right to Information Act, 2005?

The Right to Information Act, 2005 envisages constitution of:

- ❖ Central Information Commission and
- ❖ State information Commissions.

Central Information Commission (CIC):

- The CIC is to be constituted by the Central Government through a Gazette Notification.
- The CIC consists of the Chief Information Commissioner and Central Information Commissioners not exceeding 10.
- These shall be **appointed by the President of India** on the recommendations of a committee consisting of:
 - Prime Minister who is the Chairman of the Committee;
 - leader of Opposition in the Lok Sabha; and
 - a Union Cabinet Minister to be nominated by the Prime Minister.
- The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- CIC/IC shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory.
- He shall not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.
- The general superintendence, direction and management of the affairs of the CIC vests with the Chief Information Commissioner who shall be assisted by the Information Commissioners.
- Commission shall have its Headquarters in Delhi.
- Other offices may be established in other parts of the country with the approval of the Central Government.
- The CIC will exercise its powers without being subjected to any other authority.
- CIC shall be appointed for a term of 5 years from date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier.
- CIC is not eligible for reappointment.
- Salary will be the same as that of the Chief Election Commissioner.

State Information Commission (SIC):

- The SIC will be constituted by the State Government through a Gazette notification.
- The SIC consists of one State Chief Information Commissioner and not more than 10 State Information Commissioners.
- These shall be **appointed by the Governor** on the recommendations of a committee consisting of:
 - Chief Minister who is the Chairman of the committee.
 - Leader of the Opposition in the Legislative Assembly and
 - one Cabinet Minister nominated by the Chief Minister.
- The qualifications for appointment as State Chief Information Commissioner / State Information Commissioners shall be the same as that for Central Commissioners.
- The salary of:

- State Chief Information Commissioner - Same as that of an Election Commissioner.
- State Information Commissioner - Same as that of the Chief Secretary of the State Government.
- The SIC will exercise its powers without being subjected to any other authority.
- The headquarters of the SIC shall be at such place as the State Government may specify.
- Other offices may be established in other parts of the State with the approval of the State Government.

Powers of Information Commissions:

The CIC / SIC has a duty to receive complaints from any person:

- who has not been able to submit an information request because a PIO has not been appointed;
- who has been refused information that was requested;
- who has received no response to his/her information request within the specified time limits;
- who thinks the fees charged are unreasonable;
- who thinks information given is incomplete or false or misleading; and
- any other matter relating to obtaining information under this Act.

If the Commission feels satisfied, an enquiry may be initiated and while initiating an enquiry the Commission has same powers as vested in a Civil Court. The CIC or the SIC during the inquiry of any complaint under this Act may examine any record which is under the control of the public authority.

Q: What are the remedies available to a person who do not receive decision within the specified time or is aggrieved by a decision of PIO under Right to Information Act, 2005

Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file **an appeal** under the Act.

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).

Second Appeal: Second appeal to the **CIC or SIC** 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).

Third Party appeal: Third Party appeal against PIO's decision must be filed within:

- **30 days** before **first Appellate Authority**; and,
- **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 or within such extended period **not exceeding a total of 45 days** from the date of filing thereof, for reasons to be recorded in writing. Time period could be extended by 15 days if necessary. (Section 19)

Q: What are the penalties levied on PIO under Right to Information Act, 2005

Section 20 of the Act imposes stringent penalty on a Public Information Officer (PIO) for failing to provide information. Every PIO will be liable for fine of **Rs. 250 per day, up to a maximum of Rs. 25,000/-**, for -

- not accepting an application;
- delaying information release without reasonable cause;
- malafidely denying information;
- knowingly giving incomplete, incorrect, misleading information;
- destroying information that has been requested; and
- obstructing furnishing of information in any manner.

The Information Commission (IC) at the Centre and at the State levels will have the power to impose this penalty. They can also recommend disciplinary action for violation of the law against the PIO for persistently failing to provide information without any reasonable cause within the specified period.

JURISDICTION OF COURTS

As per Section 23, lower Courts are barred from entertaining suits or applications against any order made under this Act.

Role of Central/State Governments

Section 26 contemplates the Role of Central/State Governments. It authorizes the Central/State Governments to:

Develop and organize educational programmes for the public especially disadvantaged communities on RTI.

Encourage public authorities to participate in the development and organization of such programmes.

Promote timely and effective dissemination of accurate information by the public authorities.

Train officers and develop training materials.

Compile and disseminate a User Guide for the public in the respective official language.

Publish names, designation, postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc.