



Overview on Right to Information Act 2005 Public Authority/Regulators Perspective & Implementation Aspects

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Agenda

1. Freedom of information/Right to information international & India history.
2. Right to information Act 2005 various provisions.
3. Role, Power and authority of PIO, FAA, Information Commission & Public Authority.
4. Rights of Indian Citizen. Can other country citizen ask information from public Authority of India.
5. Mandatory and voluntary publications.
6. Penalties to PIO , deemed PIO & FAA.
7. What is mean by Third party ? and their rights.
8. Landmark Judgements of Supreme court , High court and Information commission.
9. Q & A

Democracy/Swaraj

- Real 'Swaraj' will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused.

- Mahatma Gandhi

- Democracy must be extended beyond the ballot box and it must be deepened through social citizenship and citizen governance.

RTI International history

1946 to 2003 UN General Assembly Resolutions

- Freedom of information & freedom of expression is a fundamental human right.
- Public bodies hold information as custodians. Voluntarily Publish information.
- Simplify administrative procedures. Participation of society in governance.
- No tolerance to corruption.
- Protection of privacy and personal data.

Countries enacted FIO/ RTI

Sweden, USA, Finland, Netherlands, Australia, Canada, United Kingdom, Japan, South Korea, Jamaica, Israel, South Africa, Thailand, India etc...

Indian Constitution & RTI

- Article 19(1) Freedom of Speech and Expression.
- The freedom of speech and expression includes right to acquire information and to disseminate it.

Supreme Court . GOI/Cricket Association of Bengal, 1995, 2 SCC 161 & Bennett Coleman vs Union of India, AIR 1973 SC 60.

- The people of this country have a right to know every public act by their public functionaries.

Supreme Court. State of UP vs Raj Narain, (1975) 4 SCC 428)

RTI IN INDIA

Movement for Freedom of Information

- Mazdoor Kisan Shakti Sangathan. Rajasthan.
- Loksatta NGO in A.P. post card campaign.
- Jan.1997. Shouri committee. Draft Bill FOI
- May,1997 C. M. Conference.
- July, 2000. Freedom of Information Bill 2000 passed by the Parliament as Act, 2000. But not notified.
- Freedom of Information Act 2002.
- Govt. 2004, - National Advisory Council.
- Right to Information Act, 2005.

RIGHT TO INFORMATION ACT 2005

- Published in gazette:-- 21/06/2005
- Effective dates :—
 - ✓ immediate effect (with in 100 days) Sec.4(1), 5(1),5(2), 12,13,15,16,24,27 & 28.
 - ✓ Other provisions:- After 120 day (12/10/2005)
- It extents to whole of India. Except J&K, deleted w.e.f. 31/10/2019.

RIGHT TO INFORMATION ACT 2005

Overview

- There are VI chapter.31 sections & two Schedules.
- This law is substantive & procedural.

RIGHT TO INFORMATION ACT

2005 OVERVIEW

Chapter	Contents
Chapter-I	Title & definitions
Chapter-II	Obligations of Public Authority
Chapter-III & IV	The Central & State Information Commission
Chapter-V	Power & Functions of the Information commissions ,appeal & penalties
Chapter-VI	Miscellaneous
First & second Schedules	CIC & SIC Oath format & List of organisations. To whom Act is not applicable

Preamble and Objective of the Act

- Promote transparency , Contain corruption, accountability of Public Authority & access to information.
- Responsible Public Authority. Informed citizen.
- Act is Practical regime. Harmonies conflicting interests.
- ✓ Efficient operations of the Governments,
- ✓ Optimum use of limited fiscal resources,
- ✓ Preservation of confidentiality of sensitive information of state and person.

Important definitions (Sec. 2)

- 2(e)Competent authority:--Speaker of the Legislative Assembly, Chief Justice of Supreme Court & High Courts; President & the Governor, the administrator appointed under article 239 of the Constitution.
- 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.**

Important definitions (Sec. 2)

- 2(h) Public authority (PA) :-- Any authority or body or institution of Self- government established or constituted—

By or under the Constitution; by Parliament; by State Legislature; by the appropriate Government, and includes any—

- i) body owned, controlled or substantially financed by the Government.
- ii) NGO substantially financed, directly or indirectly by the Government.

Each unit of Govt. Office is a separate Public authority

- District branch is separate Public authority.

CIC ISL/ICPB/2006 09.11.2006

- A public Authority which **does not hold** or is not related to **an information sought** by the petitioner, will not be obliged to provide an answer to the petitioner only for the reason that public authority was the Apex body or the nodal office of other **sub-ordinate public authorities**.

CIC/AT/A/2008/01280dated 29.09.2008 Appellants :Shri Ketan Kantilal Modi
Public Authority : Central Board of Excise & Customs

Important definitions (Sec. 2)

- **2(j) 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 .
 - (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;
- **2(n) Third party :-** means a person other than the citizen making a request for information and includes a public authority.

Important Judgments

- File noting's. Disclose. Subject to sec.8 & 9.

36/ICPB/2006 26.06.2006

- Info. need not be created. If not available.

CIC/MA/A/2006/0002 Dt.- 27/06/2006,10/01/2005-CIC Dt. 25/02/2006

- PIO not to create info. Provide in the form exists or if it exists. 285/IC(A)2006 DT.20.09.2006 225/IC(A)2006 Dt. 31.08.2006

- Weeded record cannot be provided as it is not exists.

CIC/AT/A/2006/00379 Dt:23.03.2006 00380, 00381 Dt. 21.12.2006

- No obligation to answer questions or give opinion.

CIC/MA/A/2006/00150 Dt. 19.06.2006 CIC/OK/A/2006/00049 Dt.02.05.2006

CIC/ATA/2006/00296 Dt. 20.11.2006

Important Judgments

- The information under the control of a Public Authority (PA) means when such PA holds that information authoritatively and legitimately.

CIC/AT/A/2007/00327 Dt. 30/05/2007 Sh. Priyavadan H Nanavati Vs Institute of the Chartered Accounts of India.

- The information sought does not relate to the functioning of the PA.

CIC. 45/ICPB/2006 Dt. 10/06/2006 Sh. Gaurav Kisan, New Delhi Vs. National institute of Health & Family Welfare

The Right To Information (Sec.3)

- All citizens shall have the right to information.
Subject to the provisions of this Act.

Obligations of public authorities Sec.4(1)

- **(a) Preparation time --100 days** (W.e.f. 21/06/2005) for, records cataloging ,indexing ,Computerization & Connecting it through a network, subject to availability of resources.
- **(b)Further 20 days time for mandatory publication (120 days)**
Functions and duties;
 - ✓ Particulars of organisation, functions and duties;
 - ✓ Powers and duties of officers and employees;
 - ✓ decision making process,
 - ✓ the norms for discharge of functions;
 - ✓ the rules for discharging functions;
 - ✓ categories of documents held
 - ✓ arrangement for consultation, policy or implementation.

Obligations of public authorities Sec.4(1)

- ✓ boards, councils, committees. Whether meetings are open to the public. Are the minutes of such meetings accessible.
- ✓ directory of officers and employees;
- ✓ monthly remuneration;
- ✓ Budget allocated;
- ✓ Subsidy programs;
- ✓ Recipients of concessions,
- ✓ Information held in an electronic form;
- ✓ facilities available to citizens for obtaining information, working hours of a library or reading room, if maintained for public use;
- ✓ particulars of the PIO,FAA.
- ✓ Such other information.
- Update these publications every year.

Obligations of public authorities Sec.4(1)

- (c) Publish –Important policies or decisions which affect the public;
- (d) Give reasons --for administrative/ quasi-judicial decisions to the affected persons.
- 4(2) Suomotu - Wide publication of Maximum information to the public through various means of communications, including internet.
- 4(3) Disseminated information- form and manner shall be accessible to the public.

Obligations of public authorities Sec.4

- (4) Disseminate information—
 - ✓ in local language.
 - ✓ Consider cost effectiveness.
 - ✓ Easily available with PIO. Available for inspection.
 - ✓ To the Extent possible in electronic format.
- Disseminated means —
 - ✓ notice boards, newspapers, public announcements, media broadcasts, internet or any other means.

Designation of P.I.O. (Sec. 5)

- (1) Designate PIO, in all administrative units or offices with in 100 days.
- (2) Designate APIO at each sub-division or sub-district level to receive applications/appeals.
- ✓ IF application or appeal given to APIO 35 days period for response.

Designation of P.I.O. (Sec. 5)

- (3) Only PIO to deal with application.
- PIO shall give Reasonable assistance to applicant.
- (4) PIO may seek the assistance of any other officer/s.
- (5) Any such other officer is deemed PIO including for contravention & action.

Request for obtaining information (Sec.6)

- **1) Information request-** Writing or through electronic means or verbal before PIO.
- ✓ With fee. Rs.10.,
- ✓ Application to PIO of the concerned public authority;
- ✓ APIO.
- (2) No reason or personal details of applicant be asked.
- (3) Application transfer within 5 day .Part or complete.
- ✓ (i) If information is held by another public authority; or
- (ii) connected with the functions of another PA
- Inform the applicant immediately.

The Maharashtra RTI rules, 2005 (WEF-12/10/2005)

- All state rule are same.
- Rule 3-
- Application to the concerned PIO
- Annexure A format.
- Application fee of rupees ten.
- Fee in any form.
- **ONE SUBJECT 150 WORDS.**

Disposal of Request / application (Sec.7)

- 1) Provide the information on payment of prescribed fee or reject application.
- ✓ Within 30 days / Information concerns with life or liberty of a person 48 hours.
- ✓ Rejection reasons --- As specified in sections 8 & 9.
- 2) If PIO fails to give decision deemed refusal.
- 3) For further fee send intimation with detail calculation , particulars of FAA , time limit for appeal.

Disposal of Request / application (Sec.7)

- Right of PIO to review amount of fees charged or the form of access provided.
- Period intervening between the dispatch of the said fee intimation and payment of fees shall be excluded form 30/35 days.
- NO fee from the BPL persons .Ask proof.
- If PA /PIO fails to comply with the time limits provide information free of charge.

Disposal of Request / application. Sec.7

- Consider representation of 3rd party under section 11.
- If request of 3rd party rejected, PIO shall communicate
 - ✓ (i) the reasons for such rejection;
 - ✓ (ii) appeal period.
 - ✓ (iii) particulars of the appellate authority.
- Provide information in requested form.
- Huge information- If disproportionately divert the resources or detrimental to the safety or preservation of the record Inform inability. Public interest shall be Visible in denial.

The Maharashtra RTI Rules, 2005

- Rule 4 – Fee for information Plus postal charges.
- ✓ Actual cost or price for samples, models or document (such as map).
- ✓ Rs 2/- for A4 or A3 page, created or copied.
- ✓ Inspection - No fees for first hour; Rs 5 for each hour (or fraction thereof) thereafter.
- ✓ Diskette or floppy Rs 50.
- Mode of payment - DD or Cheque or IPO payable to the Accounts Officer of the concerned PA.

GOI-OM-N0.F. 10/2/2008-IR Dt. Sept. 24,2010

- Q. IF Part info available with PA and the rest of the information is scattered with more than one PAs.
- Ans: Give information relating your PA and advise the applicant to make separate applications to all other concerned public authorities.
- Q. If no part of the information is available with you but scattered with more than one other public authorities.
- Ans: Inform to make separate application to the all concerned public authorities.

GOI.OM-N0.F.10/2/2008-IR Dt.. Sept. 24,2010

- The PIO is not supposed to create information; interpret information; solve the problems raised by the applicants; or replies to hypothetical questions.
- Supply only such information which is already exists or held under the control of the public authority.
- Supply information in available form.

Judgments on Section 6&7

- lengthy information -- Intension seem to be designed only to put the public authorities under undue and uncalled for pressure. Mockery of the Act.
CIC/OK/A/2006/00655 DATE 28/03/2007 A.P. Tripathi Vs IIT Delhi.
- Deemed PIO at fault-- Call such person for hearing before commission with PIO.
CIC/SG/A/2010/002215/9876 Shri. Shashikant Sharma vs. PIO Employee Provident Fund Organization.
- Information rejection letter must be speaking .
CIC/OK/C/2006/00010 Dt. 07.07.2006 27/IC/(A)/06 Dt.10.04.2006

Exemption from disclosure of information

Sec.8 ,9

➤ Article 19 (2) of constitution

State can imposes reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

➤ Article 21. Protection of life and **personal** liberty.

Exemption from disclosure of information

(Section.8) Subjective Exemption

- 8(1) No obligation to give any citizen information -
- (a) Sovereignty and integrity of India, security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- ✓ (b) forbidden by any court.
- ✓ (c) breach of privilege of Parliament or the State Legislature;
- ✓ (d) Commercial trade secrets or intellectual property. Unless the competent authority is satisfied larger public interest.
- ✓ (e) information available with PA in fiduciary relationship, unless competent authority is satisfied larger public interest.
- ✓ (f) information received in confidence from foreign Government;

Exemption from disclosure of information (Section. 8 ,9)

- ✓ (g)Endanger life or physical safety of any person or identify the source of information or assistance given in the confidence for law enforcement or security purposes.
- ✓ h)Impede the process of investigation or apprehension or prosecution of offenders;
- ✓ (i)Cabinet papers , records of deliberations of the Council of Ministers, Secretaries and other officers till final decision, subject to exemption regulation.

Exemption from disclosure of information (Sec.8)

- ✓ (j) **Personal information** ,undue invasion of the privacy of the individual . No relationship to any public activity or interest.
- PIO or AA justifies the disclosure of such information.
- Information which cannot be denied to the Parliament or a State Legislature shall not be denied.
- (2)If public interest outweighs the harm to the protected interests. PA/PIO shall allow access to information. No bar of Official Secrets Act, 1923

Exemption from disclosure of information (Section.8)

- (3) Twenty year old information Section 8 exemption no bar, information shall be disclosed.
- Except matter concerned with 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; breach of privilege of Parliament or the State Legislature; personal information shall not be disclosed even after 20 years.
- ✓ Dispute of 20 Year calculation central Government will decide subject to appeals.

Ground for rejection to access in certain cases (Sec. 9)

- Reject request for information which involve an infringement of copyright subsisting in a person other than the State.
- Absolute exemption.

Judgments on section 8 & 9

- Strategic confidential document if possibility of misuse against public interest cannot be disclosed.

CIC/AT/A/2007/00617 Dt. 11.02.2008

- IT return is confidential information of 3rd person. fiduciary reason. Information is exempted. Section 8(1)(J).

174/IC/A/2006 Dt. 17.08.2006

- Copies of memos, SCN, Order of punishment, performance of employee is matter between employee and employer. These are personal Information.IT Return is also a personal information under section 8(1)(g).

S.C.SLP(civil) 27734/2012 . G.R.Deshpande / CIC

- Visitor register of police officer denied. Visitor life may endanger by criminal elements. (Sec. 8(1)(g)).

CIC/AT/A/2006 Dt..12.07.2006

Judgments on section 8 & 9

- Complaint under enquiry, document exempted. Section 8(1)(h). 127/ICPB/2006 Dt. 17.10.2006
- An investigation includes Criminal as well as departmental enquiry. Investigation should be taken as completed only after competent authority make decision.
CIC/80/2006/00039 Dt.01.06.2006
- The term investigation would include inquiries/search/scrutiny which would be either departmental or criminal. Therefore if D.E. is on. Info can be denied. 8(1)(h).121/ICPP/2006 Dt.09.10.2006
- Statement to CBI. fiduciary capacity matter is before court exempted. Sec. 8(1)(h). 250/IC/(A)/2006 Dt.07.09.2006
- Disease, financial status ,Income, liabilities, any info which one is not interested to share with others. Exempted. If public interest outweigh. Circumstance has to be seen.

CIC/AT/A/2007 00490 Dt. 05.03.2008

Judgments on Section 8, 9 & 11

- Personal Info. of own can be asked. 3rd party info. Cannot.
80/ICPB/2006 Dt. 28.08.2006
- Own CR Can be accessed. SC Dev Dutt / GOI Civil appeal 7631/2002.
- Personal information such as service details, family details etc. cannot be disclosed. Third party Info. Procedure section 11 shall be followed. Except over whelming Public interest.
IC/AT/A/2006/00311 DT. 03.11.2006
- Proceeding for prosecution against the person is under progress in the court of law & as such disclosure of the information sought would impede the process of prosecution. Exemption justified . Sec. 8 (1)(h).
298/CIC/IC(A)2006 Dt.21.09.2006

Severability (Sec.10)

- (1) Severe exempted information. Access may be provided to other information.
- (2) Give a notice to the applicant.
- ✓ Only part information is being provided;
- ✓ reasons for the decision,
- ✓ name and designation of the PIO,
- ✓ details of the fees calculated,
- ✓ rights of PIO to review decision of fee ,
- ✓ particulars of 1st AO.

Third party information (Section.11)

- Confidential(treated) Information of third party. Give notice within five days. Third party shall reply within ten days.
- ✓ Except trade or commercial secrets , disclosure allowed if the public or third part interest outweighs.
- (3)PIO, within forty days make a decision. Give notice of his decision to the third party. Third party appeal within 30 days.

Judgments on section 11. Third party information

- Section 11 is Mandatory/substantive requirement of RTI Act.
CIC/AT/A/2006/00306 Dt: 16.10.2006
- IT return & related documents personal information. cannot be disclosed of 3rd Party unless there is overriding public interest.
327/IC(A)2006 Dt: 20.10.2006
- It is to be kept in mind by all the PIO, FAA, as well as Second Appellate Authority under the RTI –

Any information relating to third party or supplied by third party or has been treated as confidential by that third party, always a procedure as laid down under Section 7(7) and 11 of the Act, 2005 should be followed scrupulously.

Hon'ble High Court Gujarat 2008(5) ALL MR (Journal) 10

Complaint to Commission (Sec.18)

➤ **Ground for Complaint: –**

- ✓ Public Authority had not appointment of PIO/ APIO,
- ✓ Refusal to accept application or appeal,
- ✓ Refusal of information requested,
- ✓ No response to a request within the time limit,
- ✓ Unreasonable fee;
- ✓ Incomplete, misleading or false information,
- ✓ Any other matter under this Act.

Complaint to Commission (Sec.18)

- Inquiry powers as civil court.
- Commission can discover and inspect/ examine any record of the public authority.
- No such record may be withheld from it on any grounds.

First Appeal to FAA (Sec.19)

- **FAA shall be senior to PIO and in the same office.**
- **Ground & time for first appeal:— 30 days.**
- Does not receive a decision within the time from PIO,
- ✓ Aggrieved by a decision of PIO ,
- ✓ Concerned third party under Section 11.
- Delay condonation. If sufficient cause revealed.
- **1st appeal disposal within 30 days or within 45 days with reasons.**

Second Appeal to SIC/CIC (Sec.19)

- **Ground & time for first appeal:— 90 days.**
- Does not receive a decision within the time from FAA,
- ✓ Aggrieved by a decision of FAA,
- ✓ Concerned third party under Section 11 can file appeal
- Delay condonation. If sufficient cause revealed
- **Opportunity to heard to PIO, Deemed PIO & third party.**
- Onus to denial on PIO & Deemed PIO
- The decision of the CIC / SIC shall be binding.

CIC /SIC Power to issue direction to PA (Section.19)

1. Secure compliance of Act.
2. Provide access in a particular form;
3. Appoint PIO
4. Publishing certain information.
5. Change practices of maintenance, management and destruction of records;
6. Train all officials on RTI
7. Submit annual report
8. Compensate the complainant
9. impose any of the penalties
10. Reject the application

CIC /SIC Power to issue direction to PA (Sec.19)

- CIC/SIC shall inform of its decision, including any right of appeal, to the complainant and the public authority. (writ Petition)
- The CIC/SIC decide the appeal in accordance with prescribed procedure.

Appeal (Rule-5)

➤ First Appeal:-

- ✓ To First appellate authority in office.
- ✓ Annexure-B . Fee Rs.20.
- ✓ Appeal period -within 30 days.

➤ Second appeal :-

- ✓ To Information commissioner (CIC/SIC)
- ✓ format (annexure-c) fee Rs. 20 .
- ✓ Appeal period - within 90 days.

Power of CIC/SIC of Penalties (Sec.20)

- Ground for penalty to PIO & deemed PIO :—
 - ✓ Without any reasonable cause & malafidely--
 - ✓ Refuse application,
 - ✓ Not furnished information within the time or **denied** the request for information,
 - ✓ knowingly gave incorrect, incomplete or misleading information.,
 - ✓ **destroyed information,**
 - ✓ Obstruction in furnishing the information.

Penalties (Section. 20)

- Penalties to PIO & deemed PIO. After reasonable opportunity to prove due diligence
- ✓ RS 250/day till information is furnished,. Max. 25000.
- ✓ CIC/SIC can recommend for disciplinary action against PIO, deemed PIO and FAA.

Other Provisions in Act and Schedules

Section/s	Provisions
21	Protection of action taken in good faith.
22	Act to have overriding effect. Over Official Secrets Act, 1923 and other law
23	Bar of jurisdiction of courts.
24	Act not to apply to certain organisations.
25	Monitoring and reporting.
26	Appropriate Government to prepare programmes.
27	Power to make rules by appropriate Government.
28	Power to make rules by competent authority.
29	Laying of rules. House of Parliament State Legislature.
30	Power to remove difficulties.
31	Repeal. The Freedom of Information Act, 2002
First Schedule.	Oath of CIC/SIC
Second Schedule.	List of organisations to <u>whom</u> Act not to apply.

Judgments

- CIC cannot appoint inquiry committee. CIC is not a court and certainly not a body which exercise plenary jurisdiction. Hon' ble High Court Delhi WP (C) 12714/2009 Dt./ 21/05/2010 Delhi development Authority Vs.CIC
- If order in appeal not followed. Complaint under Section 18(1) (b) can be filed.
CIC/WB/A/2006/00548Dt: 13.04.2007.
- Review may lie in cases decided by commission.
Hon' ble Supreme Court AIR/1996SC/742
- Appellate authority can be penalized. Disciplinary action can be taken under service Rule.
CIC/EB/C/2006/00040 Dt: 24.04.2006

Judgments on section 18, 19 & 20

- Dept. to compensate the applicant.

CIC47/ICPB/2006 Dt: 28.12.2006

- Section 18 supervisory. Section 19 appellate authority.

Hon'ble Supreme Court Civil appeal 10787-10788/2011 CIC vs. State of Manipur

- Aggrieved person could be a PIO or a 3rd party or PA.

CIC/AT/A/2008/00291Dt. 05/03/2008 Sh. V.R. Eliza, CPIO Vs .Central Board of Excise & Custom

- VAT return is duly protected under Section 8 (1) (d) of RTI Act. Appellant is stubborn litigant. Harassing respondent 75,000 fine to appellant. High Court Delhi LPA/90/2012 Ashok Kumar Goel vs. PIO-VAT.

Judgement on RTI VS SPECIAL LAWS

- General principle. Earlier Act, must give place to later.
- But if general lex. posterior derogate priori.
- There shall be express repeal provision in latter general law, failing which earlier special law supersedes.
- Maxim generalia specialibus non derogate.
- RTI is general Act of 2005.

Supreme Court AIR 2002 SC 2322 Chandraprakash Tiwari / Shakuntala Shukla

- RTI Act does not repeal/substitute pre-existing special law including IT Act. Special law provisions supersede general law. Therefore Section 138 of IT Act supersedes RTI Act.

CIC/AT/A/2006/00586 Dt: 18.09.2007 & Full Bench CIC/AT/A/2007/00490

Dt: 05.03.2008



JAI HIND

THANK YOU.

Rectangular Snip