

RIGHT TO INFORMATION AND FOREIGNER'S RIGHT

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ABSTRACT

Despite the fact that Section 3 of the RTI Act, the right of all citizens to access information is statutorily recognized in the RTI Act, although Section 6 of the same act delegates the aforementioned right to any person and preamble of the statute mentioned the word 'public'. It would be intrinsically inconsistent to hold that only citizens have the right to information, given that the RTI Act gives information relating to life or liberty a vital and special place. While Section 3 must be interpreted as a positive affirmation of the right in favor of citizens, it cannot be interpreted as a prohibition against non-citizens. Creating an absolute ban would be contradictory to the RTI Act's aim and object; such an absolute prohibition cannot be read within the RTI Act. This article elucidates the above-mentioned provisions and responds delicately to the inquiry whether an individual who is not a citizen can avail of the Right to Information Act, 2005 to obtain information.

INTRODUCTION

The introduction of the Right to Information Act in 2005 marked a significant turning point for democracy in India as it significantly enhanced citizens' ability to access information, thereby holding the government more accountable to the needs of society. After 82 years of operating under the opaque governance system sanctioned by the colonial Official Secrets Act, India finally transitioned towards a more transparent regime where citizens can exercise their right to demand information. In this context, the primary objective of the Right to Information Act of 2005 is to facilitate the acquisition of information from authorities, thereby enabling citizens to expose malpractices or resist policies that are detrimental to their interests on reasonable grounds.

Lord Steyn's statement in a particular case demonstrates the importance of freedom of expression in English law:

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"Freedom of speech is the lifeblood of democracy." Political discourse is informed by the free movement of information and ideas. It serves as a safety valve; individuals are more willing to accept choices that go against them if they may, in theory, try to alter them. It functions as a check on public officials' misuse of authority. It allows the uncovering of flaws in the country's administration and the delivery of justice...."¹

EVOLUTION

The Mazdoor Kisan Shakti Sangthan, a grassroots organization in India, initiated the Right to Information (RTI) movement in the 1990s. The effort started with the intention of improving openness in village accounting. It arose in response to the demand for minimum wages in rural areas. Despite being a poor rural struggle, Mazdoor Kisan Shakti Sangthan drew the attention and support of the country's media, attorneys and judges, academics, and even bureaucrats and ostensibly makers of the law, many of whom banded together to join the National Campaign for the People's Right to Information (NCPRI). After that, the government of India framed a working committee under the chairmanship of then-consumer rights activist H.D. Shourie to look out for the matter and provide recommendations.

As a result, the Shourie committee's draft was revised with significant modifications and presented as the Freedom of Information Bill in July 2000. Later in 2002, the Freedom of Information Act was introduced. The Right to Information (RTI) Act is now a law passed by the Indian Parliament that establishes the current framework for citizens' access to information and replaces the earlier Freedom of Information Act of 2002. Under the provisions of this Act, all citizens have the right to access information, and public authorities are required to disclose the relevant information, subject to the terms specified in the Act.

CAN FOREIGNERS OBTAIN INFORMATION FROM AUTHORITIES IN INDIA UNDER RTI ACT 2005?

Section 3 of the RTI Act² stipulates that all 'citizens' have the right to information. There has definitely been a debate over whether the Right to Information should be granted solely to

¹ Ayush Tiwari, 'Right to Information Act, 2005' (*Ipleaders*, 5 November 2022) < [² Right To Information Act 2005, s 3](https://blog.ipleaders.in/right-to-information-act-2005/#:~:text=This%20law%20was%20enacted%20by,are%20required%20to%20disclose%20information.> accessed 18 April 2023</p></div><div data-bbox=)

citizens or to non-citizens as well when it is clearly stipulated in section 3 of the RTI act³ that information is to be conferred to the citizens. An analysis of the provisions of the RTI Act shows that while the term "citizen" is used in some sections, the term "person" is used in the majority of them. The legislative history of the RTI Bill, which led to the enactment of the RTI Act, reveals that there was a discussion about replacing the term "citizen" with "person." However, in relation to Clause 3, which pertains to the granting of the Right to Information, the term "citizen" remained unchanged.

In addition to that, although the RTI Act Section 3 explicitly grants the right to information to all citizens, it does not prohibit the provision of information to non-citizens.

A case was being heard before the Delhi High Court wherein a plea moved by the Public Information Officer (PIO) of the Central Tibetan Schools Administration, which had denied information as sought by a Postgraduate Teacher (Tibetan) posted at the Central School for Tibetans in Darjeeling named as Dawa Tashi, a teacher at Darjeeling's Central School for Tibetans, requested information about his service in 2014, but the Central Tibetan Schools Administration (CTSA) declined his request on the reasoning that information could not be disclosed to him as his nationality is Tibetan and wherein, he cited Section 3 of the RTI Act⁴ to substantiate. For better appreciation, the said section is extracted hereunder:

“3. Right to Information:- Subject to the provisions of this Act, all citizens shall have the right to information.”

Thereby, in 2016, the Central Information Commission (CIC) directed the CTSA to provide information to applicants and observed that the CTSA had disregarded the fundamental principle that a person born in India acquires Indian citizenship, regardless of their parent's origin. The CIC imposed a penalty of Rs 25,000 on the CPIO for violating section 20 (1) of the RTI Act by denying the information. In 2017, Officer A S Rawat contested the imposition of the penalty, and the Delhi High Court granted a stay order in April of that year.

According to Justice Pratibha M. Singh, the presiding judge in the case, “It would be intrinsically inconsistent to hold that only citizens have the right to information, given that the RTI Act gives information relating to life or liberty a vital and special place. While Section 3

³ Ibid

⁴ Ibid

must be interpreted as a positive affirmation of the right in favor of citizens, it cannot be interpreted as a prohibition against non-citizens,” according to Justice Singh. Nevertheless, the court emphasized that regarding non-citizens, the decision to disclose information rests solely with the authorities, who may choose to disclose such information or not.

Upon examination of the Right to Information Bill of 2004, which preceded the 2005 enactment, it is evident that there was no consistency regarding who could exercise the right to information. While the Preamble of the Act referred to "people," Section 3 utilized the phrase "all citizens." Although the declaration of objects and reasons was impartial towards the individual exercising the right, the annotations on provisions specifically stated that the right was reserved for citizens, and only a citizen could make a request.

Justice Pratibha M. Singh reviewed the parliamentary debates on the Right to Information bill and noted that the terms "people" and "citizen" were used interchangeably. Additionally, it was suggested that the right to information should extend to all individuals, irrespective of their citizenship. The issue of whether the Right to Information should be limited to citizens or extended to non-citizens has been a topic of debate.

It is worth mentioning that the Constitution of India provides various rights exclusively to citizens, but some rights are also granted to non-citizens. As per the court, non-citizens inevitably come in contact with public authorities in various circumstances, and imposing an absolute ban on the disclosure of the information would be in contradiction to the fundamental principles of the Indian Constitution, which acknowledges certain rights of non-citizens as well.

MAJOR EVALUATION

It is important to highlight that Article 21⁵ of the Constitution is available to all people, not just citizens. Justice Singh also noted the proviso to Section 7(1) of the RTI Act, which specifies that information relevant to a person's life or liberty must be provided within 48 hours. Furthermore, life or liberty may refer to non-citizens like foreigners, NRIs, etc.

It would be up to the authority in question to decide whether the information deserves to be given or not based on the facts, situation, and surrounding circumstances. Creating an absolute

⁵ Constitution of India, 1950, Art 21

ban would be contradictory to the RTI Act's aim and object, and such an absolute ban cannot be read within the RTI Act.

In the debate and discussion that happened when the bill was under scrutiny in the parliament, the favored retention of the right only to citizens was apparently on the basis of a misconception that fundamental rights in India are only available to citizens. Nonetheless, we do confer the right to life and personal liberty⁶ to every person irrespective of their citizenship, as the Constitution of India confers a large gamut of rights upon Indian citizens, but there also exists a more limited set of rights that are granted to and accepted in regard to non-citizens.

There exists a contrary view on this discussion prior to the observations of Delhi High Court that, on 31 January 2023, Madras High Court observed a similar case in which it refused to meddle with a communication requesting that an RTI petitioner first verify his citizenship in India. The court ruled that "citizens of India alone are entitled to seek information since the right under Article 19(1)(a)⁷ of the Constitution of India is only available to a citizen of India."

Considering that a foreigner cannot invoke the provisions of the Act, Justice K. Kumaresh Babu said, "The reason I come to this conclusion is elucidated in the Preamble of the Act, which postulates that the democracy requires informed citizenries and the Act was only to provide for the furnishing of certain information to the citizen, who desires to have it."⁸

Journal of Legal Research and Juridical Sciences

However, the author disagreed with the Madurai bench judgment on the reasoning that " Even non-citizens, like the Tibetans in this instance who were working as a teacher at a Tibetan school in India, can seek information in certain situations." It cannot be argued that such individuals are denied access to such information. Hence, the decision of the CIC to allow authorities to disclose information when they deem it appropriate was justified, as there is no absolute prohibition on the disclosure of information under such circumstances.

On the facts of the case, which is dealt with by Delhi High Court, Justice Singh observed that the petitioner's approach of thinking that the RTI Act does not grant non-citizens the right to information cannot be called malevolent and should be seen as a "circumspect approach," at

⁶ Ibid

⁷ Constitution of India, 1950, art 19(1)(a)

⁸ Sofi Ahsan, 'Can Foreigners Seek Information From Authorities In India Under RTI Act? Explained' (*Live law*, 15 March 2023) <<https://www.livelaw.in/know-the-law/explained-foreigners-information-rti-act-223827>> accessed 19 April 2023

most especially in view of the wording used in section 3⁹. However, it ruled that “the petitioner did not consider the applicability of section 3(1)(a) of the Citizenship Act, 1955¹⁰ whereby the teacher was entitled to citizenship by birth.” Other than that, the court held that “the finding of the CIC that the PIO's conduct is mala fide and the imposition of penalty in these facts is not sustainable.” Accordingly, the imposition of a penalty that is of 25,000 was set aside based on the above observations.

CONCLUSION

The RTI Act's established purpose through all the averments of both the courts' orders which the author evaluated hereupon from which it is explicitly clear that the Act is meant to provide information as required by law, with provisions to ensure maximum disclosure, minimum exemptions commensurate with constitutional obligations, and an effective method for access to information. The preamble of the statute would imply that democracy requires citizens to be educated and informed to be transparent, both of which are critical to the functioning of the government and the prevention of corruption. The prologue also expressly indicates that it is necessary to provide specific information to citizens who request it.

It is worth noting that, despite the fact that Section 3¹¹, the right of all citizens to access information is statutorily recognized in the RTI Act, Section 6¹² delegates the aforementioned right to any person. As a result, Section 6¹³ has a broader scope than Section 3¹⁴. Furthermore, it is well known that the legislature does not waste words or say anything in vain or for no purpose. Thus, a construction that leads to redundancy of a portion of the statute must not be accepted in the absence of any compelling reasons.

Additionally, according to the RTI Act, governmental agencies in India deal with both citizens and non-citizens. While it is true that all citizens have the right to information in general, there is no strict rule against sharing information with non-citizens. It cannot be argued that a non-citizen who is interacting with such public entities for non-citizen matters is prohibited from receiving the aforementioned information under the RTI Act if there is inaction or lack of transparency in their dealings, and it would be up to the relevant authority to determine whether

⁹ Right To Information Act 2005, s 3

¹⁰ Citizenship Act 1955, s 3(1)(a)

¹¹ Right To Information Act 2005, s 3

¹² Right To Information Act 2005, s 6

¹³ Ibid

¹⁴ Right To Information Act 2005, s 3

the information deserves to be given or not based on the facts, situation, and surrounding circumstances. Creating an absolute ban would be contradictory to the RTI Act's aim and object; such an absolute prohibition cannot be read within the RTI Act.

To elucidate it further, the author would like to mention that when the bill was debated in the Rajya Sabha, it was seen that terms such as 'citizen,' 'people,' 'persons,' etc., have been used synonymously. It explicitly suggests that the applicability of the RTI Act should not be restricted to citizens but should cover non-citizens as well. In addition to that, Article 21¹⁵ of the Constitution of India, encompasses the right to life guaranteed to all people, not just citizens.

Also, in the case mentioned above of Delhi High Court, it was duly observed that the CIC was of the opinion that the RTI Applicant was entitled to the information on two counts –

- “First, that the RTI Applicant was a citizen of India owing to the provisions described above of the Citizenship Act, 1955¹⁶;
- Secondly, either way, even if the RTI Applicant is considered a Tibetan national, non-citizens cannot be deprived of the information under the RTI Act. The reasoning given by the CIC is that under Section 3¹⁷, all citizens are entitled to information under the RTI Act. However, there is no prohibition to provide the information to non-citizens.”

In conclusion, the author believes that limiting the Right to Information only to citizens would go against the principles of both the Constitution and the RTI Act, as these two terms - citizens and persons - are used without any clear differentiation. Hence, it would be inappropriate to restrict access to information only to citizens.

Section 3 of the RTI Act should be interpreted as an acknowledgment of the right of citizens to access information rather than a restriction on non-citizens from accessing such information.

¹⁵ Constitution of India, 1950, Art 21

¹⁶ Citizenship Act 1955, s 3(1)(a)

¹⁷ Right To Information Act 2005, s 3