

## INTRODUCTION TO RIGHT TO INFORMATION ACT, 2005

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**Anchit Goyal\***

The Right to information act 2005 guarantees the information seeker access to information if it must not infringe on the privacy of any individual. This Act was introduced to give the person access to government records without running from pillar to post as it was a traditional practice that to get a copy of government records, one had to pay a bribe and must wait for a long time. But now one can spend a nominal fee of 10 rupees and get the required information. It is now recognised in international laws like the universal declaration of human rights, the<sup>1</sup> European Commission on human rights and the International Covenant on Civil and political rights.

The Shourie committee was made to prepare a draft for the Right to information. Subsequently, the bill became known as the Freedom of information bill, but it was never enacted. After many amendments, the Act became known as the Right to information act 2005, which came into force on October 12, 2005.

Article 19(1)(a) of the Indian Constitution protects the right to freedom of expression, which includes the right to access information. The following examples illustrate this point: A Case of Equal Protection Under the Law: Bennet Colman v. Union of India<sup>2</sup>, S.P Gupta v. U.O.I.<sup>3</sup> and Secretary, Ministry of Informatics and Broadcasting v. Cricket Association of Bengal. In the Bennet Coleman case, it was found that the restrictions put on the newspaper violated both the publication's right to free speech and the viewers' right to information. It was noted by the Supreme Court in the case of S.P. Gupta and in the case of Secretary, Ministry of Information and Broadcasting v. cricket association of Bengal that the public has a right to know about the specifics of every public transaction.<sup>4</sup> Since the right to seek and receive information includes the right to use electronic channels, the Supreme Court has ruled that airwaves are public property that must be distributed fairly among the government, the media, and commercial channels.

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\*LLB, CAMPUS LAW CENTRE.

<sup>1</sup>NEW0004 • Page 1 • Impact Iran. <https://impactiran.uwazi.io/en/entity/jlv7jwofm28>

<sup>2</sup>AIR 1973 SC 106

<sup>3</sup>AIR 1982 SC 149

<sup>4</sup> Sorry Mark, no "Free Basics" here – says India - Lex Counsel. <https://lexcounsel.in/articles/sorry-mark-no-free-basics-here-says-india/>

Indian Federation v. Colman, S.P Gupta v. UOI and secretary, ministry of Informatics and Broadcasting v. Cricket Association of Bengal<sup>5</sup>. A restriction on a newspaper's capacity to publish would be a violation of both the newspaper's and its readers' right to free speech, as was pointed out in the Bennet Coleman case. Because the Supreme Court ruled in Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal that the First Amendment guarantees the right to free speech, including the right to exchange and receive information from the government and the media, there must be an equitable distribution of airwaves between the government, the media, and the private channels.

It is in the greater public interest to know what is occurring within the system, yet government documents are often withheld from individuals on the basis of preserving secrecy, which is a violation of the freedom to know.

## **INTERNATIONAL STAND ON THE RIGHT TO INFORMATION**

### **1.) EUROPEAN UNION**

The Amsterdam<sup>6</sup>Convention established the right to information as a universally recognised human right. All European nations' parliamentary, council, and commission papers are now publicly available. All European nations have the freedom to have their own parliaments, councils, and commissions.

### **2.) European Convention on human rights, 1950<sup>7</sup>,**

The European Convention on Human Rights protects individuals' rights to access information as well as their freedom of thought and expression.

### **3.) UDHR 1948<sup>8</sup>**

The "Right to Information" is a component of the Universal Declaration of Human Rights. It specifies that not only public but also private sources may be tapped for data.

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<sup>5</sup>(1995) 2 SCC 161

<sup>6</sup> Amsterdam treaty, european access to information, (1997)

<sup>7</sup> European convention on human rights, ETS no 5, adopted 4<sup>th</sup> november 1950.

<sup>8</sup> Universal declaration of human rights, resolution, 217A (III)

#### 4.) ICCPR 1966

The international covenant on Civil and political life also safeguards the free exchange of any and all ideas, information, and knowledge.

### **STATUTORY PROVISIONS DEALING WITH THE RIGHT TO INFORMATION ACT 2005**

The Act has five chapters, and they are as follows -

Chapter I – it is mainly the introduction part

Chapter II – It talks about the right to Information and Obligations placed on public authorities.

Chapter III – the role of the CIC (central information commission) is depicted here.

Chapter IV – the role of the SIC (state information commission) is described here.

Chapter V – powers and functions of the information<sup>9</sup> commission, appeal are talked about and penalties are also discussed.

Chapter VI – Miscellaneous

#### **CHAPTER I: PRELIMINARY**

Section 1 talks about how this Act is applied to every part of India.

Section 2 defines the several terms in the Act. Some of the essential sub-sections of section 2 are

2(e) talks about the competent authority. It says that the following persons are the competent authority according to the meaning of the Act –

- (i) Speaker of the People's House or the state legislative assembly or a U.T.
- (ii) The Chief Justice of India if it is Supreme Court
- (iii) The High Court Chief Justice if it is High Court
- (iv) President can be a competent authority or governor in case if it is other authorities

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<sup>9</sup> ODISHA INFORMATION COMMISSION. [http://oic.nic.in/\(S\(jmrmpx3zhhwjw255asv5yb45\)\)/sitemap.html](http://oic.nic.in/(S(jmrmpx3zhhwjw255asv5yb45))/sitemap.html)

- (v) The administrator is designated by the Indian government under Article 239.

Section 2(f) defines "information," whereas section 2(h) defines "public authority" to encompass any head or body, or institution of self-government formed or constituted.<sup>10</sup>

- (a) Constitution made it or it was there in itself written there.  
(b) Parliament made any other law under which this public authority was constituted  
(c) The law made by the state legislature made this public authority.  
(d) The appropriate government issued an order or notification<sup>11</sup>

Section 2 (n) defines a third party as a person who is not the one who makes the request for getting information.<sup>12</sup> Inspection reports and documents obtained by the reserve bank of India from private bodies fall under the purview of 'information.'<sup>13</sup> Bodies fall under the purview of 'information' Suppose the information sought is not a part of the public record also it is not required to be maintained for public scrutiny then in that scenario it does not create a burden on the public authority to<sup>14</sup> furnish the information to the applicant.<sup>15</sup>

## CHAPTER II

### Right to information and obligation of public authorities

Section 3 states that all citizens are entitled to the Right to information, but it must be in line with the provisions of this Act. Section 3 will not be applied in cases of preventive detention, so even the provisions of the R.T.I. act cannot make the state obligated to tell the grounds of detention before his arrest and detention.<sup>16</sup>

Section 4 talks about the duties of public authorities, i.e. - They need to maintain all the records duly maintained in a manner and form which makes it easy to provide the Right to

<sup>10</sup> News: 'Public Authority' & 'Public Information Officer' Under RTI Act, 2005: Jharkhand High Court Explains Difference | SoOLEGAL. <https://www.soolegal.com/news/-public-authority-public-information-officer-under-rti-act-2005-jharkhand-high-court-explains-difference>

<sup>11</sup> RIGHT TO INFORMATION ACT, 2005 – R. <https://www.rna-cs.com/right-to-information-act-2005/>

<sup>12</sup> RTI Act. <https://dmrsolan.icar.gov.in/html/rtiact.html>

<sup>13</sup> Reserve bank of india v. Jayantilal N. Mistry, AIR 2016 SC 1

<sup>14</sup>- Information about opium Crop which were declared as inferior - CIC: Information pertains to 17 different divisions having separate PIOs which requires compilation from extensive records of each division; The CPIO could not be asked to compile such data | RTI Foundation of India. <https://rtifoundationofindia.com/information-about-opium-crop-which-were-declared-i>

<sup>15</sup>Central board of secondary education v. Aditya bandopadhyay, (2011) 8 SCC 497: JT 2011 (9) SC 212 : (2011) 8 SCALE 645

<sup>16</sup>Subash popatlal dave v. Union of india , AIR 2012 SC 3370

information under this Act and<sup>17</sup> to make sure that all documents, if possible, be digitalised so that they can be available across all the systems of the country. Also, it must have the details of the documents under its control, the budget for the different agencies and the plans as well as the expenditures which are to be done shall be done must be mentioned in the record as well.<sup>18</sup>

The Public authority must make ensure that they make the information available online so that the public is not forced to use the RTI every time for obtaining the information.<sup>19</sup>

**Section 5:** Within one hundred days of the act's passage, every public authority must appoint as many CPIOs and SPIOs in all public offices as are required by subsection (1) of section 5 of the act. Section 5(2) of the Act mandates that within one hundred days of the Act's enactment, each public authority appoints a central assistant information officer and a state assistant information officer. As per section 5 (3), every officer receiving the request will render the necessary assistance to the applicant as required. According to subsection (5) of this section, any law enforcement official who aids another in the performance of his or her duties will be considered the central public information officer or the state general information officer, as appropriate.

**Section 6:** The steps involved in collecting the data are discussed below. It states that any request for information can be made to the concerned officer either in writing or in electronic mode, it can be in English or Hindi or any official language of that region, and the prescribed fee must accompany it. If the person has a problem filing the R.T.I., the officer will assist the person to the extent necessary to file the R.T.I. Also, this section makes it clear that the applicant is not obligated to furnish the information as to why he is pointing the R.T.I., but he needs to mention the contact details. Also, if the R.T.I. is for any other department, it must be transferred within five days of receiving the application.

The petitioner is not entitled to know the basis for any ruling, opinion, advice, circular, etc., notably in court affairs.<sup>20</sup>

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<sup>17</sup> Availability and Accessibility of Government Information in Public Domain — The Centre for Internet and Society. <https://editors.cis-india.org/accessibility/blog/availability-and-accessibility-of-government-information-in-public-domain>

<sup>18</sup> The Right To Information Act, 2005. <https://www.myrights.in/2020/05/right-to-information-rti-act-2005.html?m=1>

<sup>19</sup> Right to Information | nbair. <https://itmu.nbair.res.in/hi/node/68>

**Section 7:** Any request for R.T.I. must be processed and decided upon within 30 days after receipt of the application, or it may be denied for one of the reasons listed in Sections 8 and 9 of this Act, as described in this section. If further payments are necessary to get the requested data, the 30-day period beginning on the date of notice and ending on the date of payment will be disregarded. The Below poverty-line citizen cannot be asked for the prices to be made, and if the information cannot be provided within 30 days, the fees shall be exempted. If an application is denied, the officer is responsible for informing the applicant of his appeal rights and providing contact information for the appropriate appellate body.

**Section 8:** It prohibits the following disclosure -

- Data that poses a threat to India's independence, territorial integrity, national security, strategic or economic interests, or diplomatic ties with other countries, or that might encourage violence.
- Information that the court has ordered kept secret or that, if made public, would constitute contempt of court.
- It might cause someone to violate parliament or state legislative privilege by disclosing its contents.
- Information, such as trade secrets or intellectual property rights, the disclosure of which would have a catastrophic effect on the market were it not for the fact that its disclosure would be against a far stronger public interest.
- Fiduciary relationship information is prohibited from being disclosed.
- Information received in a confidential manner from the government of foreign.
- The information can make the life and safety of any person in danger.
- The information which can make investigation disturbed
- The information which can infringe on the privacy of an individual

This section also says that if public interest outweighs privacy, it can be breached even in the case of the official secrets act 1923. Also, this section talks about how a person can ask for information even 20 years before the application's filing date. Information related to the date of birth and the residential address associated with personal information and exempted from disclosure<sup>21</sup>. Also, the income tax returns of a person are exempted from disclosure<sup>22</sup> until

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<sup>20</sup> Khanapuram gandaiah v. Administrative officer, AIR 2010 SC 615

<sup>21</sup> Union of india v. Anita singh, AIR 2014 Del 23.

<sup>22</sup> Girish ramchandra deshpande v. Central information commissioner, 2012 (9) SCALE 700: 2012 (7) SLT 451

and unless it relates to a more significant public interest until and unless it relates to the larger public interest.

**Section 9:** Grounds for rejection in some instances - This section tells that if the information disclosure can infringe the copyright of a person other than the state, such disclosure shall be exempted.

**Section 10:** Partial disclosure of information - If the information sought contains some information barred under sections 8 and 9, then such information cannot be provided. Still, if such an application also has such other information which is not closed, then it must be provided for, i.e., partial disclosure must be practised in these cases. The applicant must be informed of the reasons for such severability and be given the right to review the decision.

**Section 11:** This section contains sensitive information about a third party and is not intended for public consumption. If a third party makes a request for information, the officers involved in the case are required to notify them five days in advance, during which time they may decide whether or not to comply with the request and take the prior permission of the third party in writing or oral statement as to whether the information seeker should be<sup>23</sup> informed. Such third-party input should be considered in determining the release of information.

### CHAPTER III - THE CENTRAL INFORMATION COMMISSION

#### Section 12

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12 (1): the central government must constitute a central information commission to do the functions and use all the powers given by this Act. The Central Information Commission is established under Article 12 (2) and will consist of either ten major Information Commissioners or a maximum of 10 Commissioners.

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<sup>23</sup> Respondent: PIO had to take consent of the third parties in accordance with the procedure prescribed in section 11(1) and this process took some more time leading to unintentional delay - CIC: penal proceedings dropped in the case | RTI Foundation of India. <https://rtifoundationofindia.com/respondent-pio-had-take-consent-third-parties-acco>



12 (3) discusses how the president of India appoints the officers on the advice of the prime minister, the Lok Sabha opposition leader, and a federal cabinet minister<sup>24</sup> recommended by the prime minister.

12 (4) gives the chief information commissioner the superpower; the commission and the central information commissioners shall assist him.

12 (5) talks about the qualification of the officers who will know the law and other fields of expertise.

12 (6) it tells that officers will not be serving any office of profit or doing any kind of business or work which is prohibited.

12 (7) states that the commission has headquarters in Delhi and in other parts of the country other offices to be established with the government's approval.

### Section 13

13 (1) The text says that the chief information commissioner may only hold his position for a maximum of five years or until he is 65.<sup>25</sup>, and he shall not be eligible for reappointment.

13 (2) states that the central information commissioner can be in office for a maximum period of five years or till he becomes such information commissioner, provided that<sup>26</sup> he can be appointed as the chief information commissioner. Still, the aggregating term must not exceed five years of both offices.

13 (3) states that the president of India shall appoint these officers according to the first schedule.

13 (4) states that if the officer wants to resign, he can do so by giving in writing by himself informing his intention to leave.

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<sup>24</sup> Who is the present state information commissioner of AP? – [Somme2016.org](http://Somme2016.org).  
<https://somme2016.org/blog/who-is-the-present-state-information-commissioner-of-ap/>

<sup>25</sup> What is District Consumer Forum Describe the process followed by it for redressal of consumer complaints. | SMART STUDY TRICS. <https://smartstudytrics.com/what-is-district-consumer-forum-describe-the-process-followed-by-it-for-redressal-of-consumer-complaints/>

<sup>26</sup> The Right To Information Act, 2005. <https://www.myrights.in/2020/05/right-to-information-rti-act-2005.html?m=1>



According to Section 13.5(5), the central information commissioner will get the same compensation as the election commissioner, and the chief information commissioner will receive the same compensation as the chief election commissioner. It also provides that any benefits or allowances except the disability pension received by the officers on account of their previous service under the government shall be deducted equivalently from the officer's salary.

Section 13(6) requires the government to give officers and personnel to the chief information commissioner and central information commissioner, whose salaries are to be determined by the central government.

## **Section 14**

### **Removal of chief information commissioners and information commissioners**

Only the president can remove the chief information commissioner and central information commissioner for proven misbehaviour or incapacity, as stated in Article 14 (1), and the president must then refer to the supreme court of the inquiry for a confirmation that the officer in question should be removed for these reasons.

14 (2) states that the president can suspend or prohibit the officer from going to the office during the pendency of the inquiry to which the Supreme Court has been referred.

14 (3) apart from grounds 14 (1), the president can remove the officer on the following grounds insolvency, an earlier conviction which, in the opinion of the president, is moral turpitude, doing any paid employment, also is unfit to be in office due to the weakness of mind or body and has a financial interest which can affect his functioning as a public servant.

14 (4) If the concerned officer makes any profit or is interested in the contract of agreement of the government and of which he is not a member, then he shall be liable to be removed on the grounds of misbehaviour.

## **CHAPTER IV**

### **THE STATE INFORMATION COMMISSION**

**Section 15:** The governor will appoint the state chief information commissioner and up to nine other state information commissioners based on recommendations from the state's chief

minister, the leader of the opposition in the legislature and a member of the state cabinet nominated by the chief minister. All nominated officials will have advanced degrees in law and other relevant subjects, and they will be prohibited from holding lucrative public positions.

**Section 16:** Terms of Office and Conditions of Service - The state chief information commissioner shall be in office till he turns 65 or has served 5 years in service whichever is first to take place, and his reappointment shall be terminated. The state information commissioner can be in office till he turns 65 or has served 5 years in service, which of the two is earlier and he also becomes not eligible for reappointment, but if he vacates the office, he can be appointed as the state chief information commissioner. Still, the aggregating years of both offices must not exceed five years.

Pay for the state's top information official will be on par with that of the state's top elections official, and that of the state's information commissioner will be on par with that of the state's top civil servant. And if these officers accept any retirement benefits or allowances except the disability or wound pension, then that shall be deducted equivalently from the salary received by the concerned officer. The state government must provide these officers with the employees and other officers required for efficient service.

**Section 17:** State Information Commissioner or Chief Commissioner Sacking - After informing the Supreme Court of the need to remove the official, the governor is the only one who may do so on the basis of demonstrated misconduct or incompetence. While considering the Supreme Court, the governor can remove the officer from attending office during the inquiry. Apart from the above grounds, the governor can also remove the officer on grounds mentioned in section 14 (3).

## **CHAPTER V**

### **POWERS AND FUNCTIONS OF THE INFORMATION COMMISSION, APPEAL AND PENALTIES**

**Section 18:** Powers and functions of the information commission - Complaints can be filed with the commission by those who were denied access to information, whose requests were ignored for an extended period of time, or who reasonably believed that the information they were given was either incomplete or inaccurate.

The commission has the powers to conduct the inquiry, and it has the powers of the civil court, i.e., it can compel the attendance by way of summons and record the evidence on oath in writing or orally. Also, it has powers to request access to any government record which is not subjected to any law made by the center or state.

**Section 19:** Appeals before the commission - It states that the persons who do not receive the information from the concerned officer or are aggrieved with the decision of the concerned officer, then he can prefer an appeal within 30 days from the receipt of such information to the authority superior in rank to the concerned officer.

**Third-party information:** Suppose the information requested is of a third party. In that case, the appeal must be preferred by that third party within 30 days or more, if he has sufficient reasons for the same, to select an appeal against the decision of the concerned officer and a reasonable opportunity must be given to the third party to hear it.

**Second appeal:** The period for filing a second appeal is 90 days, or it can be extended subject to the satisfaction of the concerned authority if the person has sufficient reasons for the same. While the commission has the authority to direct public authorities to follow the requirements of the law, it cannot require them to store data for longer than is required by the act or the regulations promulgated under it.<sup>27</sup> So the commission cannot direct to keep information for an indefinite period.<sup>28</sup>

**Section 20:** It provides for the fines and penalties. Suppose the commission is satisfied that the grounds alleged mentioned under section 18 (1) of the Act are committed. In that case, it can impose a penalty of 250 rupees till the date of application is accepted or it is received, and the penalty cannot be more than 25000 rupees. It can also take strict action against the concerned officer if the commission deems it fit.

## CHAPTER VI MISCELLANEOUS (SECTION 21-31) (BRIEF OVERVIEW)

**Section 21:** It gives immunity to all those in power against all types of legal proceedings, i.e., if they provide accurate information to the applicant which can disclose the malafide nature of government, he should not fear anymore as he has immunity under section 21.

<sup>27</sup> Institute of Secretariat Training & Management, Govt. of India. [https://www.istm.gov.in/rti\\_portal/cms/105](https://www.istm.gov.in/rti_portal/cms/105)

<sup>28</sup> Central board of secondary education v. Aditya bandopadhyay, (2011) 8 SCC 497 : JT 2011 (9) SC 212: (2011) 8 SCALE 645

**Section 22:** Since the Right to information is acknowledged by Article 19 of the constitution under Freedom of speech, it supersedes other laws such as the Official Secrets Act of 1923, i.e., it demands providing information to the information seeker. According to this principle, secrecy should be the exception rather than the rule<sup>29</sup>; i.e. Article 19, which guarantees the right to free speech, obligates the government to give any citizen with access to government records upon request. According to this principle, secrecy should be the exception rather than the rule.

**Section 23:** This section is the most controversial as it excludes the courts from interfering in the orders passed under this Act. Thus, it cannot call in a court of law and order passed under this act; the aggrieved has the only option to file an appeal, so the decision of the government authorities has the final say.

**Section 24:** This section excludes specific organisations, and none of the provisions of this Act will apply to any intelligence and security organisations set out in the second schedule. Still, if the allegations pertain to human rights violations and corruption, then only they can be entertained with prior approval of the respective commission, and the information has to be given within 45 days of receiving the request.

**Section 25 (monitoring and reporting):** This section states that the central and state information commission prepare a report on the implementation of the provisions of the Act, and this information can be collected from the respective ministry and department.

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## CONCLUSION

The Right to information act is very helpful if one wants to seek information then he can use the procedure laid under the act and it is a cost-effective and user-friendly process targeted especially for the welfare of the public, there is still a road to lead where the judges must also be covered under the ambit of this act to disclose their assets which at the present moment has immunity against the act.

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<sup>29</sup> Report of the national commission to review the working of the constitution, a background paper on “some ideas on governance”