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Review Document
Right to Information Act, 2005

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RIGHT TO INFORMATION ACT¹, 2005

ACT NO. 22 OF 2005

[JUNE 21, 2005]

SIGNIFICANCE

In 1987, after a few laborers in Rajasthan were refused their wages on charges of inconsistent performance, a few activists demanded that the Government produce necessary proofs to verify the worker's performance. This led to a national protest and to passing of Freedom of Information Act 2002, which later came to be known as the Right to Information Act, when it received the formal recognition of a legal Right to Information in India after the Supreme Court's ruling in the case **State of U.P. v Raj Narain²**, which held that the Right to Information is implicit in the right to freedom of speech and expression explicitly guaranteed in Article 19 of the Indian Constitution and in subsequent judgements and was linked with the right to life enshrined in Article 21 of the Constitution. This pushed the legislature to enact the Act.

OBJECTIVE

The purpose of enacting this Act was to set out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The Act also calls for constitution of a Central Information Commission and State Information Commissions.

IMPORTANT PROVISIONS

Section-2(f): "Information" means any material in any form, including records, documents, memos, e-mails, opinions, advises, 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.

¹ Right to Information Act, 2005 (Act No. 22 of 2005), accessed on <https://rti.gov.in/rti-act.pdf>

² *State of U.P v. Raj Narain*, 1975 AIR 865

Section- 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 or records;
- (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.

Section 3 of the Act provides that all citizens have the right to information.

Section 4 lays down responsibilities of public authority and imposes an obligation on public authorities to maintain its records duly catalogued and indexed in a manner and form which facilitates the right to information under the Act.

Section 6 empowers a person desirous of obtaining any information under the Act to make a request in writing to the Central or State Public Information Officer specifying the particulars of the information sought by him. As per Section 6(2), the applicant is not required to give any reason as to why he is requesting for the information.

Section 7 imposes responsibility on the Public Information Officer to either provide the information or reject the request for any reasons specified in Section 8 and 9 of the Act within 30 days of receipt of the request. In case a decision is not given within 30 days, then the request is considered to be cancelled and an appeal can be preferred under Section 19 (1) to an officer senior in rank to the Public Information Officer in that Public Authority. A second appeal is also provided under Section 19 (3) against the order passed in the first appeal before the Central Information Commission or the State Information Commission as the case may be.

The RTI Act, under Section 8 of the Act, lists special instances where the authorities are exempt from disclosing information. There are certain kinds of information mentioned under Section 8, which government departments have the power not to disclose. This includes information that would threaten national integrity, security or economic interests; would amount to contempt of court; would hamper police investigations; would affect commercial

interests like trade secrets; would affect 'fiduciary' relationships; would harm the person physically. This Section also protects information pertaining to deliberations of the Council of Ministers and Secretaries while the process is underway. However, the Court in the case *Reserve Bank of India v. Jayantilal Mistry*³ held that in the case the RBI does not place itself in a fiduciary relationship with the Financial institutions because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economy.

The Court in another case of *Girish Ramchandra Deshpande v. Central Information Commission & Ors*⁴ held that the details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

The Information Commission can impose a penalty on the Public Information Officer under Section 20 if he is of the opinion that the Officer without any reasonable cause refused to receive an application for information or has not furnished the information sought for within the specified time under Sec. 7(1) or with a mala fide intention, denied the request for information or knowingly has given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information.

Section 23 states that no court shall entertain any suit, application or any other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

Section 24 of the RTI Act provides that the provisions of this Act shall not apply to the

³*Reserve Bank of India v. Jayantilal Mistry*, AIR 1 SC 2016

⁴*Girish Ramchandra Deshpande v. Central Information Commission & Ors*, (2013) 1 SCC 212

intelligence and security organizations established by the Central Government as specified in Second Schedule. Any information furnished by such organizations to Government shall be outside the ambit of this Act. Thus, the right to information can be restricted on grounds of national security.

Delhi High Court has rendered an in-depth analysis of RTI applications against any decision passed by the Supreme Court and held that no RTI Query can lie with regard to judicial decisions. The Court has also ruled that RTI Act does not prevail over the Supreme Court Rules (SCR).⁵

In *Harinder Dhingra v. Bar Associations, Rewari, Faridabad, Punchkula*⁶, the CIC held that the Bar Council is a statutory body constituted under Advocates Act, 1961 to protect the ethical standards of Advocates and admonish the members for misconduct. The information about this core function of Bar Council cannot be denied to the appellant as it does not attract any exemption under the RTI Act.

Under Section 25, the Information Commission is required after the end of each year to prepare a report on the implementation of the provisions of the Act during that year and forward a copy thereof to the appropriate Government.

The Court in *Shahzad Singh v. Department of Posts*⁷ held that ‘missing files’ as an excuse to deny the information is a major threat to transparency, accountability and also major reason for violation of Right to Information Act, 2005. With “missing files excuse” being around, it will be futile to talk about implementation of Right to Information Act, 2005. The claim of ‘missing files’ indicates possibility of deliberate destruction of records to hide the corruption, fraud or immoral practices of public servants, which is a crime under Indian Penal Code.

AMENDMENT

The RTI Act was amended by the Parliament in July 2019. The amendment bill was passed by both the houses of the Parliament of India. RTI amendment bill ⁸was introduced in the Lok

⁵*The Registrar, Supreme Court of India v. R S Misra*, CIVIL APPEAL NO(S).1966-1967 OF 2020 (Arising out of SLP(C) No.5840 of 2015)

⁶*Harinder Dhingra v. Bar Associations, Rewari, Faridabad, Punchkula*, 2016 SCC OnLine CIC 2207

⁷ *Shahzad Singh v. Department of Posts*, CIC/POSTS/A/2016/299355

⁸The Right to Information (Amendment) Bill, 2019, <http://164.100.47.4/billstexts/lbills/PassedLokSabha/181->

Sabha by the Minister of State for Personnel Public Grievances and Pensions on July 19, 2019 and passed on July 22, 2019. It was passed by the Rajya Sabha on July 25, 2019.

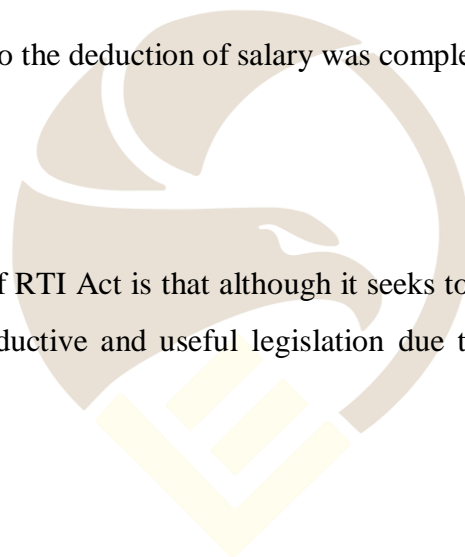
⇒ Empowered the Central Government to make rules regarding the tenure, salaries, allowances and other terms of service of the chief and other Information Commissioners of the Central Information Commission and All State Information Commissions and their tenure is reduced from 5 years to 3 years.

⇒ Further, the rules state that the dearness allowance, entitlement of leave, entitlement of medical facilities, accommodation, travel allowance and daily allowance shall be the same as those available to an officer holding a post carrying the same pay in the Central government and state government for commissioners of the CIC and SICs respectively.

⇒ The provision related to the deduction of salary was completely removed in the amendment Act.

LOOPHOLES

One of the major loopholes of RTI Act is that although it seeks to provide transparency, it has not proven to be a very productive and useful legislation due to improper implementation.



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The Government has created many public information offices which led to duplication of effort as the applicant is made to run from one office to another, which further causes delay and makes the process tedious. The scope and ambit of the expression of public authority is restricted by a statutory definition under Section 2(h) limiting it. The information under this Act is accessible only by the citizens of India. If the information is not statutorily accessible by a public authority, that information will not be under the control of the public authority. The Right to Information Act provides access only to that information which is existent and available in records of the public authorities and therefore, it does not cast an obligation on the public authority to collect and collate any non-available information and then furnish it to the applicant who has requested for it.

CONCLUSION

The Act can be safely categorized as one of the most powerful legislations in the hands of the Indian citizens. Over the years, the Supreme Court of India has consistently held the right to information to be a fundamental right flowing from Art. 19(1)(a) of the Constitution and this has now become a well-settled proposition. This judicial interpretation of Article 19 (1) (a) led to the enactment of the RTI Act with a purpose to ensure transparency and accountability of public authority. The intention of the legislation was to move from an arbitrary system to a system where there is full accountability and transparency to all the Indian citizens. But one of the major drawbacks which has been keeping the legislation away from fulfilling its objective is that the statute requires the information to be demanded by citizen which leads to a many procedural inconsistencies.

About the Author



Ria Garg is a final year law student at Alliance University, Bangalore, pursuing BBA LL.B with honors in Finance and International Law. Her interest in law peaked at a very young age. Always been eager to learn new tasks, she has interned at a few law firms and with different practicing Advocates in the Bombay High Court where she was mainly engaged in legal research and drafting. She has developed reasonable skills in this position and aspires to develop her research experience and enhance knowledge. She believes that life is a learning journey and is always looking for more opportunities to take in.