
UNIT 14 INFORMATION POLICY: RIGHT TO INFORMATION ACT 2005

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14.0 LEARNING OUTCOMES

After studying the Unit, you should be able to:

- explain the need to have a right to information;
- describe the brief history of the efforts made in the direction of right to information in the country;
- discuss the Right to Information Act 2005;
- describe the duties and responsibilities of the officials concerned;
- explain the powers and functions of the Information Commission; and
- analyse the critical success gaps in the implementation of the Act and suggest ways towards its effective implementation.

14.1 INTRODUCTION

The time that we live in is also known as the information age. The technological revolution has brought us to an era where information is easily transmitted from one corner of the world to another. But, the functioning of the government is still marred by the hangover of the permit licence raj and there is an inherent unwillingness amongst government servants to part with information regarding the working of the government. However, over the last few years, there has been an increasing demand for greater accessibility to information, mostly in order to curb corruption and promote greater accountability of government agencies towards the citizens.

In India, the Constitution has established a government that is of the people, for the people and by the people. Thus, the people have a right to know how the government is functioning. A series of Supreme Court verdicts has also recognised that the right to know is an intrinsic part of the right to freedom of speech and expression. The court has opined that the citizen has a fundamental right to information, that is, to 'know', in order to formulate and express his or her views. The fundamental right to know is also further strengthened by the right to life and personal liberty, and also by the right to equality, both of which are provided for by the Constitution of India, since this implies that all stakeholders must have an access to the facts that affect their lives.

The right to information has been a subject of discussion not only in India, but also at the international level. Article 19 of The International Covenant on Civil and Political Rights (ICCPR), signed among others by India, defines the parameters of people's right to information. It lays down that every citizen shall have the right to freedom of opinion and expression, which shall include 'freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.' The Covenant has at the same time placed 'reasonable restrictions' on this right only to the extent of safeguarding 'rights or reputation of others' and 'protecting national security or of public order, or of public health and morals.'

Thus, it is quite clear that right to information lies at the root of all fundamental rights. Failure of the state to provide access to information or state suppression of information can lead to any number of human rights violations. The right to information is fundamental to the realisation of rights as well as effective democracy, which requires informed participation by all.

This Unit seeks to familiarise the learners with the need for a right to information law and the background in which the Right to Information Act 2005 has been brought into force. It will also familiarise the learners with the key provisions of the Act and some of the important state initiatives that have been taken to ensure its effective implementation

14.2 NEED FOR THE RIGHT TO INFORMATION

Every citizen has a right to know how the government is functioning. Right to information empowers every citizen to seek any information from the government, inspect any government documents and seek certified photocopies thereof. Some laws on right to information also empower citizens to inspect any government work or to take sample of

material. In a democratic set up, the governments are by the people, of the people and for the people. The taxes collected by the government from the people are used to finance the functioning of the government. Hence, the people have a right to know how they are being governed and how the public money is being used.

In recent years, there has been an increasing concern about transparency in the working of government in the context of responsive administration and accountability. Transparency implies that a decision is taken on announced norms and criteria, based on principles of fairness and equity and such decision making is made visible to those concerned. It has been pointed out that while even routine information is not available as freely as it was some years ago and enquiry reports and study reports in the preparation of which large sums of money have been spent are seldom published in time for public information, the citizen has absolutely no means of knowing how a government decision is arrived at.

The preamble to the Right to Information Act 2005 very succinctly sums up the need to have a law for right to information.

'Whereas the Constitution of India has established Democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.'

Therefore, right to information is essential for citizens of a truly democratic state for the following reasons:

- **To ensure a transparent government which is accountable to the people-** the right to information ensures that the people have access to the information regarding the working of the government, which in turn leads to transparency, uniformity and accountability in decision making. It forces the government to adopt the same set of rules and procedures for all people and any deviations from the norms can be brought into the public domain.
- **To establish a two-way dialogue between the citizens and the government-** openness and information sharing establishes a two-way dialogue between citizens and the state, reducing distance between government and people and thereby combating feelings of alienation. It enables people to be a part of the decision-making processes and scrutinise it. It also reduces the citizens' feelings of powerlessness. Also, access to information and the ability to scrutinise the processes also lead to reduced incidence of public perception of exclusion from opportunity or unfair advantage of one group over another.

- **To enable a citizen to make well-informed decisions-** the ability to find out about the functioning of government agencies and the performance of elected representatives helps the citizens to make well-informed choices. This is particularly so while casting their votes, since a well-informed citizen can base his choice on the basis of performance, rather than narrow considerations of caste or groupism.
- **To tackle corruption-** this is one of the most important areas which the right to information affects. Once the functioning of the government is open to public scrutiny, it becomes difficult for government functionaries to get away with corrupt practices.
- **To ensure better monitoring of the services provided by the government-** in India, the campaign for right to information has focussed a lot on this aspect and a number of people have actually exercised the right to information to get information about ration shop quotas and how they are distributed, or to scrutinise fake muster rolls and point out the loopholes in execution of development works. Thus, having a right to information ensures better monitoring of government services. It is also useful in setting the parameters for those services that have been privatised or are being provided through the NGOs and private operators.

However, it is not sufficient just to recognise the citizen's right to information. The law also needs to provide machinery for enabling the citizen to exercise this right. Moreover, no right is absolute. Thus, there is also a need to define the parameters within which the citizen can exercise the right to information, without jeopardising the security of the nation and infringing on the privacy of another individual. It is also important to spell out the responsibilities of the government functionaries who have to actually provide the information, so that the citizen is not unduly harassed. A law on right to information sets out, in a systematic manner, all these aspects and provides the machinery for the same. If a citizen goes to a government office and demands an officer to show all his files because it is his fundamental right, the officer is most likely to refuse unless there is a specific provision that binds him to do so. Thus, the right to information laws provide for forms in which one can apply, where one can apply, in how many days one should get the information and what if the information is not provided within the stipulated time frame.

14.3 A BRIEF HISTORY

The formal recognition of a legal right to information in India occurred more than two decades ago, when the Supreme Court of India ruled in the case of State of UP vs. Raj Narain in the year 1975 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. Subsequently, the Court has affirmed this decision in numerous cases and has even linked the right to information with the right to life enshrined in Article 21 of the Constitution.

Prior to the enactment of a comprehensive law on access to information, access via Central legislation was available only in a piece-meal form. For example, the Factories Act 1948 provides for compulsory disclosure of information to factory workers regarding dangers, including health hazards, and the measures to overcome such hazards arising from their exposure to dangerous materials. Further, the Environment (Protection) Act 1986 and the Environmental Impact Assessment Regulations provide for instances of public consultation and allow access to information about the pollution caused by industries covered by the Regulations.

The active campaign for the right to information grew out of the demand for minimum wages in rural India. The Mazdoor Kisan Shakti Sangathan (MKSS) headed by Smt Aruna Roy, spearheaded the campaign against the ghost entries in the muster rolls and rampant corruption in the system, and asked for the information recorded in official files. The movement soon spread across India. From very modest beginning in the villages of Rajasthan, the demand for information regarding development works, copies of muster rolls, taking samples of the material used in construction and inspection of work carried out soon spread to other states in India.

In 1993, the Consumer Education and Research Council, Ahmedabad (CERC) proposed a draft RTI law. In 1996, the Press Council of India headed by Justice P. B. Sawant presented a draft model law on the right to information to the Government of India. The draft model law was later updated and renamed the PCI-NIRD Freedom of Information Bill 1997. Unfortunately, the Government seriously considered none of the draft laws.

Meanwhile, MKSS's advocacy gave rise to the National Campaign on People's Right to Information (NCPRI), which was formed to advocate for the right to information at the national level. Constituted in 1996 in New Delhi, the NCPRI aims to provide active support to grassroots struggles for the right to information and to lobby government to enact and implement the effective access to information legislation.

In 1997, efforts to legislate for the right to information at both the Centre and States gained momentum. A working group under the chairmanship of Mr. H. D. Shourie (the Shourie Committee) was set up by the Central Government and given the mandate to prepare draft legislation on freedom of information. The Shourie Committee's Report and draft law were published in 1997. Notably, the draft law was criticised for not adopting a high enough standard of disclosure.

However, the growing demand for the right to information ultimately led to the formulation of the Right to Information Act by Tamil Nadu in 1997 and Goa in 1998. Thereafter, seven other States have passed legislation - Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003) and Jammu and Kashmir (2003). Campaign efforts in other States have also had some success. Uttar Pradesh framed an executive code on access to information in 2000. Kerala and Orissa also have now prepared draft bills for the same.

The Shourie Committee draft law passed through two successive governments, but was never introduced in Parliament. Meanwhile in 1999, Mr Ram Jethmalani then Union Minister for Urban Development, issued an administrative order enabling citizens to inspect and receive photocopies of files in his Ministry. However, this order never came into effect.

Eventually, the Shourie Committee draft law was reworked into the Freedom of Information Bill 2000. The 2000 Bill was sent to the Parliamentary Standing Committee on Home Affairs, which consulted with civil society groups before submitting its Report in July 2001. The Committee recommended that the Government address the flaws in the draft Bill pointed out by civil society groups. Unfortunately, the Government did not implement that recommendation.

The Freedom of Information (FOI) Act 2002 was passed in January 2003. However, a date for the Bill coming into force was never notified, such that it never actually came into operation.

In 2004, a public interest litigation case being pursued by Advocate Prashant Bhushan on behalf of the NCPRI and Centre for Public Interest Litigation, tried to compel the Government to come out with the FOI Act immediately. The Supreme Court heard the case on 20 July 2004. The Supreme Court's Order set a deadline of 15 September 2004 for the Central Government to advise when the Act will be notified and if not, when interim administrative guidelines would be issued. In the meantime, on 12 August 2004, the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions finally released Draft Rules under the Freedom of Information Act 2002.

In May 2004, United Progressive Alliance (UPA) Government came into power at the Centre. The national campaign for right to information received a major boost with UPA Government's Common Minimum Programme promising to make the Right to Information Act more progressive, participatory and meaningful.

The Right to Information Bill 2004 (RTI Bill 2004) was tabled on 23 December 2004 in the Lok Sabha. It was referred by Parliament to the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice for consideration. A range of civil society activists appeared before this Committee and gave their recommendations. The Report of the Committee (including a proposed amended version of the RTI Bill) was tabled in the Lok Sabha on 21 March 2005. The Lok Sabha passed the bill on 11 May 2005 and Rajya Sabha on 12 May 2005. On 15 June 2005, President A.P.J. Abdul Kalam gave his assent to the national Right to Information Act 2005. With Presidential assent, the Central Government and State Governments had 120 days to implement the provisions of the Bill in its entirety. The Act came into force on 12 October 2005.

14.4 RIGHT TO INFORMATION ACT 2005

As per the Right to Information Act 2005 (RTI Act 2005), the right to information includes the right to:

- inspect works, documents, and records;
- take notes, extracts or certified copies of documents or records;
- take certified samples of material; and
- obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.

Important Definitions

Some of the important terms used in the RTI Act 2005 and their definitions as per the Act are as given below:

- **Information:** records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in electronic form and information about private bodies can be accessed under existing laws by a public authority.
- **Public Authority:** any authority or body or institution of self- government established or constituted by or under the Constitution or by any other law made by Parliament

or the State Legislature, and includes any body or a non-government organisation owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government.

- **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.
- **Central Public Information Officer and State Public Information Officer:** the Central Public Information Officer (CPIO) designated under sub-section (1) and includes a Central Assistant Public Information Officer (CAPIO) designated as such under sub-section (2) of Section 5. It is the duty of every public authority to designate as many officers as the CPIOs or SPIOs, as the case may be, in all administrative units or offices under it, as may be necessary to provide information to persons requesting for the information under this Act, within one hundred days of the enactment of this Act. Besides, as per sub-section (2), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a CAPIO or a SAPIO, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the CPIO or the SPIO or senior officer specified under sub-section (1) of Section 19 or the Central Information Commission (CIC) or the State Information Commission (SIC), as the case may be. It is the duty of the Central or State PIO to deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information, and for this purpose he can take assistance of any other officer or official as he deems fit.
- **Appellate Authority:** the officer immediately senior in rank to the PIO, and appointed by the appropriate public authority as such.
- **Central Information Commission:** the CIC is constituted under sub-section (1) of Section 12 of the Act. It consists of a Chief Information Commissioner and such number of Information Commissioners, not more than ten, as deemed necessary. They are to be appointed by the President on recommendation of a Committee consisting of the Prime Minister, the Leader of Opposition in the Lok Sabha and a Union Cabinet Minister nominated by the Prime Minister.
- **Chief Information Commissioner and Information Commissioner:** the Chief Information Commissioner and Information Commissioner are appointed under sub-section (3) of Section 12 of the RTI 2005 by the Central Government. Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment.
- **State Information Commission:** the SIC is constituted under sub-section (1) of Section 15. The Commission shall consist of the State Chief Information Commissioner, and such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. They are to be appointed by the Governor on recommendation of a Committee consisting of the Chief Minister, the Leader of Opposition in the

State Legislative Assembly and a State Cabinet Minister nominated by the Chief Minister.

- **State Chief Information Commissioner and State Information Commissioner:** the State Chief Information Commissioner and the State Information Commissioner are appointed under sub-section (3) of Section 15. The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, social service, management, journalism, science and technology, mass media or administration and governance.
- **Competent Authority**
 - (i) Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly; and the Chairman in the case of the Council of States or Legislative Council of a State;
 - (ii) Chief Justice of India in the case of the Supreme Court;
 - (iii) Chief Justice of the High Court in the case of a High Court;
 - (iv) President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution; and
 - (v) Administrator appointed under Article 239 of the Constitution.
- **Third Party**

A person other than the citizen making a request for information and includes a public authority. If information is given by third party and treated as confidential by the third party then PIO must give it written notice inviting objections, if any. Third party must be given notice within 5 days of receiving information request. It may give verbal or written submissions to PIO within 10 days of receiving notice, and may approach the appellate authority within 30 days and the Information Commission within 90 days.

Procedure for Obtaining Information

The detailed procedure for applying for obtaining information under this Act has also been laid down by the Government. The applicant can apply in writing or through electronic means in English or Hindi or in the official language of the area, to the PIO, specifying the particulars of the information sought for. The applicant is not obliged to give the reasons for asking for the information. The applicant has to make the application along with the prescribed fee. However, no fee is to be paid by a person living below the poverty line.

Information has to be provided to the applicant within 30 days of making application to the PIO. In case the application has been made to the APIO, 5 more days are added. However, in cases involving life and liberty of an individual, information has to be made available within 48 hours. In case information sought involves the interests of a third party, the maximum time limit will be 40 days, that is, 30 days plus 10 days given to the third party to make its representation.

However as per Section 8 and 9 of the Act, the PIO can reject the application if the information asked falls under the category of information not to be disclosed, or if it

infringes the copyright of any other body than the state. If the PIO fails to provide the information within 30 days, it would be deemed to be a refusal, and the applicant will have a right to go into appeal to the Appellate Authority or the Information Commission. The Act also provides for a fine on the PIO at the rate of Rs. 250 per day, subject to a maximum of Rs. 25,000, if there is a delay beyond 30 days in providing information.

The first appeal is an internal appeal to the Appellate Authority within the organisation who has to decide the appeal within 30 days. The second appeal is external, and is made to the Central or State Information Commission, as the case may be, within 90 days of the rejection by the Appellate Authority. However, the delay in filing appeal beyond 90 days may be condoned if sufficient cause is shown. There is no time limit for the Information Commission to decide the appeal. The burden of proof for rejecting the application lies on the PIO. An appeal can be made against the order of the Information Commission only before the High Court and not to any lower courts.

Information that cannot be Disclosed

The Act lays down the information that cannot be disclosed. As per Section 8 of the Act, the following information is not open to disclosure:

- information, disclosure of which would prejudicially affect the sovereignty and integrity of the nation; the security and strategic, scientific or economic interests of the State; and relation with foreign state;
- information disclosure of which may lead to incitement of an offence;
- information, which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- information received in confidence from foreign government;
- information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- information, which 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; and

- information, which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual.

However, notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. Partial disclosure of the information is also allowed. If the record asked for contains any information, which cannot be disclosed under the Act, that part, which is exempt from disclosure, will be removed and the remaining information is provided to the applicant.

As per Section 24 of the Act, central intelligence and security agencies specified in the Second Schedule-Intelligence Bureau, Research and Analysis Wing, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, Border Security Force, Central Reserve Police Force, Indian Tibetan Border Police, Central Industrial Security Force, National Security Guard, Assam Rifles, Special Service Bureau, Special Branch (CID), Crime Branch-CID, Lakshadweep Police- and agencies specified by the state governments through a notification will be excluded from providing information. The exclusion, however, is not absolute and these organisations have an obligation to provide information pertaining to allegations of corruption and human rights violation. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission, as the case may be.

14.5 DUTIES AND RESPONSIBILITIES

The various authorities and officers constituted and appointed under the RTI Act 2005 have been assigned specific duties under the Act. The Act is quite unambiguous in this regard, and specific time frame has been laid down to fulfil these responsibilities.

Public Authority

A public authority has been defined as any authority or body or institution of self-government established or constituted by or under the Constitution or by any other law made by Parliament or the State Legislature, and includes any body or a non-government organisation owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government.

The obligations of the public authority are to proactively disclose the following details about itself:

- particulars of its organisation, functions and duties;
- powers and duties of its officers and employees;
- procedure followed in its decision-making process, including channels of supervision and accountability;
- norms set by it for the discharge of its functions;
- rules, regulations, instructions, manuals and records used by its employees for discharging the functions;

- statement of the categories of the documents held by it or under its control;
- 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;
- 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;
- directory of its officers and employees;
- monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- 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 authorisations granted by it;
- details of the information available to or held by it, reduced in an electronic form;
- particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- names, designations and other particulars of the public information officers; and
- any other information.

Also, it is the duty of each public authority to appoint PIOs in each and every office under its jurisdiction and also to appoint Assistant PIOs at sub-divisional level. The public authority is also obliged to appoint appellate authorities within the organisation.

Public Information Officers

PIOs are officers designated by the public authorities in all administrative units or offices under it to provide information to the citizens requesting for information under the Act.

The duties of a PIO are as follows:

- 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 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 - (i) the reasons for such rejection, (ii) the period within which an appeal against such rejection may be preferred, and (iii) the particulars of the appellate authority;
- if allowing partial access, the PIO shall give a notice to the applicant, informing
 - (i) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
 - (ii) the reasons for the decision;
 - (iii) the name and designation of the person giving the decision;
 - (iv) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
 - (v) 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 and take its representation into consideration; and
- 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.

14.6 INFORMATION COMMISSIONS- CENTRAL AND STATE

The Central Information Commission (CIC) is constituted by the Central Government through a Gazette notification. It shall consist of a Chief Information Commissioner and Information Commissioners, not exceeding ten in number, who will be appointed by the President of India on recommendation of a Committee consisting of the Prime Minister, the Leader of Opposition in the Lok Sabha and a Union Cabinet Minister nominated by the Prime Minister. The President of India according to the form set out in the First Schedule will administer oath of office. The 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. Commission will exercise its powers without being subjected to directions by any other authority.

Similarly, the state government through a Gazette notification shall constitute the State Information Commission. It will have one State Chief Information Commissioner and not more than 10 State Information Commissioners to be appointed by the Governor on

recommendation of an Appointments Committee headed by the Chief Minister. Other members include the Leader of the Opposition in the Legislative Assembly and one Cabinet Minister nominated by the Chief Minister. The Governor according to the form set out in the First Schedule will administer oath of office. The headquarters of the State Information Commission 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.

Eligibility Criteria

Candidates for Chief Information Commissioner/Information Commissioners must 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. Chief Information Commissioner/Information Commissioner 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 qualifications for appointment as State Chief Information Commissioners/State Information Commissioners shall be the same as that for Central Commissioners.

Terms and Conditions of Appointment

The Chief Information Commissioner 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. Chief Information Commissioner is not eligible for reappointment. Salary will be the same as that of the Chief Election Commissioner. This will not be varied to the disadvantage of the Chief Information Commissioner during service. (S.13)

The Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier and shall not be eligible for reappointment as Information Commissioner. His salary will be the same as that of the Election Commissioner. This will not be varied to the disadvantage of the Information Commissioner during service. Information Commissioner is eligible for appointment as Chief Information Commissioner but will not hold office for more than a total of five years including his/her term as Information Commissioner.

The salary of the State Chief Information Commissioner will be the same as that of an Election Commissioner. The salary of the State Information Commissioner will be the same as that of the Chief Secretary of the state government.

Removal

The Chief Information Commissioner or any Information Commissioner shall be removed from his office only by an order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.

If the Chief Information Commissioner or an Information Commissioner in any way, is found to be concerned or interested in any contract or agreement made by or on behalf

of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect to whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner due to any of the following reasons:

If he/she-

- is adjudged an insolvent; or
- has been convicted of an offence, which in the opinion of the President, involves moral turpitude; or
- engages during his/her term of office in any paid employment outside the duties of his/her office; or
- is in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or Information Commissioner.

Similarly, the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by an order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought to be removed from office on such ground.

14.7 POWERS AND FUNCTIONS OF INFORMATION COMMISSION

The powers and functions of the Central and State Information Commissions are given as below:

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;
- has been refused information that was requested;
- has received no response to his/her information request within the specified time limits;
- thinks the fees charged are unreasonable; and

- thinks information given is incomplete or false or misleading

CIC/SIC also can receive complaints on any other matter relating to obtaining information under this law and has the power to order inquiry if there are reasonable grounds. They will have the powers of Civil Court in such matters, such as:

- summoning and enforcing attendance of persons, compelling them to give oral or written evidence on oath and to produce documents or things;
- requiring the discovery and inspection of documents; and
- receiving evidence on affidavit;
- requisitioning public records or copies from any court or office;
- issuing summons for examination of witnesses or documents; and
- any other matter, which may be prescribed.

All records covered by this law (including those covered by exemptions) have to be given to CIC/SIC during inquiry for examination.

They have the power to secure compliance of their decisions from the public authority. This includes:

- providing access to information in a particular form;
- directing the public authority to appoint a PIO/APIO where none exists;
- publishing information or categories of information;
- making necessary changes to the practices relating to management, maintenance and destruction of records;
- enhancing training provision for officials on RTI;
- seeking an annual report from the public authority on compliance with this law;
- requiring it to compensate for any loss or other detriment suffered by the applicant ;
- imposing penalties under this law; or
- rejecting the application. (S.18 and S.19)

Also, the Information Commission can impose a penalty on the PIO at the rate of Rs. 250/- per day up to a maximum of Rs. 25,000/- for any of the following reasons:

- refusal to receive application;
- not furnishing of information within time limit without reasonable cause;
- male-fide denying of information without reasonable cause;
- knowingly giving incorrect, incomplete, misleading information;
- destroying information which was the subject of request; and
- obstructing furnishing of information in any manner.

For persistent violation of the law the IC can recommend disciplinary action against the errant official.

14.8 ROLE OF GOVERNMENT

The RTI Act 2005 lays down a very comprehensive role for the Central and state governments. As per Section 26 of the Act, the appropriate government may, subject to the availability of physical and financial resources:

- develop educational programmes for the public, especially disadvantaged communities, on RTI;
- encourage public authorities to participate in the development and organisation of such programmes;
- promote timely dissemination of accurate information to the public;
- train officers and develop training materials;
- compile and disseminate a User Guide for the public in the respective local language; and
- 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. (S.26)

As per Sections 27 and 28 of the Act, Central Government, state governments and the Competent Authority as defined in S.2 (e) are vested with powers to make rules to carry out the provisions of the Right to Information Act, 2005.

If any difficulty arises in giving effect to the provisions of the Act, the Central Government may by order published in the Official Gazette make provisions necessary for removing the difficulty. (S.30)

14.9 REPORTING PROCEDURE

The Act prescribes a detailed reporting procedure for all public authorities, Information Commissions and officers under the Act.

Each Ministry has a duty to compile reports from its Public Authorities and send them to the Central Information Commission or State Information Commission, as the case may be.

Each report will contain details of number of requests received by each public authority, number of rejections and appeals, particulars of any disciplinary action taken, amount of fees and charges collected, etc.

Central Information Commission will send an annual report to the Central Government on the implementation of the provisions of this law at the end of the year. The State Information Commission will send a report to the State Government.

Central Government will table the Central Information Commission report before Parliament after the end of each year. The concerned state government will table the report of the

State Information Commission before the Vidhan Sabha (and the Vidhan Parishad wherever applicable).

14.10 IMPORTANT STATE INITIATIVES

The Central Government has appointed retired IAS officer from Jammu and Kashmir Shri Wajahat Habibullah as the first Central Information Commissioner under the RTI Act. With this appointment, the government has set in motion the process of setting up a Commission, a mandatory provision under the RTI Act 2005.

The Department for Personnel and Training (DOPT), Government of India in association with the National Informatics Centre has started a Right to Information Portal, which has all the circulars, instructions, notifications, etc. available at one place. A template for the Information Handbook has also been prepared to provide uniformity across departments. All the departments and ministries under the Centre as well as the states and other public authorities have notified their PIOs and APIOs under the Act.

The Government of NCT of Delhi has gone a step further and placed all the information pertaining to PIOs and APIOs of various departments on its websites. The seventeen manuals under which information has to be disclosed proactively have also been placed on this website. There is also a facility to find out the status of an application made under the Act, and to monitor the disposal of such applications by various departments.

14.11 RIGHT TO INFORMATION ACT 2005- CRITICAL GAPS

The RTI Act covers a wide spectrum of bodies and officials from the Central Government, the state governments, Panchayati Raj Institutions, local bodies and significantly all bodies including non-governmental organisations (NGOs) that are established, constituted, owned, controlled or substantially financed by the government. By bringing private bodies within the purview of the law, it will ensure that the government collects information from them.

It may be said that this Act is much more comprehensive than all the previous laws that were proposed under the right to information. It has within its purview a much wider spectrum of public bodies and the scope of information exempted from disclosure is also much limited. Moreover, the exemption from disclosure is also not absolute, since the public authority can decide to disclose the information if it is essential in public interest. An important feature of the legislation is that it overrides the provisions of the Official Secrets Act, 1923, or any other law that could be used to obstruct access to information. For the first time security forces and intelligence agencies will not be completely exempt from the application of such a law. Citizens can seek information from these agencies in matters relating to allegations of corruption or violations of human rights, subject to the approval of the Information Commission.

However, a lot of controversy has been generated around the issue of exempting file notings from the purview of RTI Act 2005. The civil society has raised strong objections against the directive of the DoPT that file notings will not be provided. It has been argued that the note sheet reflects the mind of government, bares the intention of an individual officer and whether his advice and consent were grounded on established rules. It is only

by allowing thorough public scrutiny of the evidence of how the government works at every level that corruption can be fought. However, the government has argued that the notings, opinions, advice of senior government officials on files and the like should be excluded from coverage under the Act, as their opening up is likely to inhibit officials in their decision-making, thus slowing down the processes of government in the long run.

The fact that people would have to pay a fee to obtain information has also been debated. It is the view of some sections of the civil society that this would make the information accessible to only those privileged few who can pay for it. Even though the Act provides that the fee charged should be reasonable and also that persons below poverty line should be exempted from paying the fee, it is felt that this may be a hurdle in making information accessible to all sections of the society.

Another issue that has been raised is regarding the proactive disclosure of information. It is felt that very little information is sought to be disclosed proactively by the public authorities. Some activist groups have argued that public authorities should disclose even that information which is sought by a majority of applicants under the state RTI Acts. For example, the various public authorities should automatically disclose the information regarding their major projects, the cost of construction and the expected date of completion.

An additional weakness concerns the appointment of the Information Commissioners. Information Commissioner will hear appeals from people who believe that government officials have wrongly withheld information from them. Setting up Information Commissioners is a radical new initiative under the new Act and is a very positive step towards transparency. To ensure the independence and autonomy of the Information Commissioners, the original Bill provided that a selection committee for appointing Information Commissioners would consist of the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India. However, the final Act has dropped the Chief Justice and replaced him with a Cabinet Minister nominated by the Prime Minister. Similarly, at the state level, the Chief Minister will nominate a Cabinet Minister to the Committee. This dominance of the Appointment Committee for Information Commissioners/Chief Information Commissioners by government representatives could lead to bias and political intervention in the selection process.

Another concern that is raised is that the structure of penalties imposed may not be enough of a deterrent. Even though the penalties have been strengthened in the new Act, in practice, there may be some confusion about how they will be imposed. The penalties clause imposes daily penalties not only for delays in providing information but also for destruction and falsification of records or the deliberate provision of inaccurate or misleading information. However, it is not clear as to how a daily penalty can be calculated for destroying a record. It is also argued that the penalties are not stringent enough in so far as that only fines can be imposed, and not prison sentences for very serious offences. But what if someone destroys documents revealing major corruption. Hence, severe penalties must be available to fit the crime. Also, there are no penalties if a public authority does not comply with the Act and does not appoint the PIOs under the Act.

It has also been suggested that rather than asking the state governments to frame their

own rules, the Central Government should frame the uniform rules for the entire country so as to ensure uniformity. Also, the Act provides that state governments should set up Information Commissions, but in some cases the state government may not have sufficient resources for the same. The relationship between the Central and the State Information Commissions is also not clearly defined. In some cases, the state governments have already enacted a state Right to Information Act. However, the future of these state Acts is not clear. The RTI Act 2005 does not clearly indicate whether the state Acts will continue, and what happens if there is a conflict between the two.

It has also been argued that as part of globalisation and privatisation, a lot of information is now available with private agencies. Hence, it is important to bring the private sector also under the purview of this Act.

Besides the above, training and awareness of the officials, employees and masses should be undertaken.

14.12 SUGGESTIONS

The RTI Act 2005 lays the framework for one of the most comprehensive and broad based right to information legislation. However, in order to make the Act an effective vehicle for bringing about greater accountability and transparency in the government, there is a need for disseminating greater awareness both amongst the general public and the government officials. There is a need to focus on some of the following issues:

- it would be very helpful for the central government to clarify the position on how to implement the new law in the states, particularly in those states that already have an RTI Act. It is felt that if the Central Act is well implemented, State Acts might eventually fade away;
- the Act contains a number of ambiguities in relation to the practical functioning of the new Information Commissions, which remain in need of urgent clarification. The relationship between the Central and the State Information Commissions also needs to be clearly laid down;
- each public authority must clarify who would be responsible for managing, monitoring and interfacing with the Information Commission and the state's nodal agency for the Right to Information law. Governments must also put in place application and appeals monitoring systems, to ensure that proper information can be collected for the annual reports required to be produced by the Information Commissions;
- the rules should be consistent across the country to minimise confusion in implementation;
- there is an urgent need to develop a training strategy as a matter of immediate priority, which should identify the officials for undertaking training and monitoring of training programmes and preparing training modules and materials. It should be time-bound;
- there is a need to sensitise government employees at all levels the provisions of the RTI Act 2005 and their role in its effective implementation. Also, there is a need to

change the systems of record keeping in government to ensure ready access and formatting in the desired form. This may also need a substantial investment in infrastructure and office automation. The employees will also have to be trained for digitisation of information and the amendment in office procedures that may be required for the same;

- the new RTI law places obligations on all public authorities to raise awareness about the law, its key provisions and how to access it as a right amongst the public. The obligations involve developing, organising and producing educational materials and programmes. However, this involves setting up of a huge infrastructure, which may require a lot of financial support. The Central Government may need to provide financial assistance and guidance to the state governments in this regard; and
- the Act also needs to put in place a mechanism to ensure that all public authorities implement the Act in its true spirit. At present, only the Information Commissions have the power to ensure this. However, there are no specific penal provisions against the non-compliant public authorities. The penal provisions have to be clearly spelt out.

14.13 CONCLUSION

The Right to Information Act 2005 is a landmark piece of legislation. If implemented well, it could be a major step towards more accountable and transparent government. However, given the culture of secrecy in the government sector and the unwillingness of government servants to part with information, the task is certainly not a simple one. It is all the more so because of the lack of awareness on part of the masses who actually stand to benefit from this legislation.

However, if the government is in a position to process requests for information under the Act, it will have to start managing information better. Information will have to be kept in such a form where it is readily accessible and also possible to be easily formatted. This may involve a substantial amount of digitisation and computerisation of information, which will in turn help the government to function better with officials now able to access information easily and quickly. This will lead to greater transparency and effective monitoring.

If the public authorities are indeed able to rise up to this responsibility of effectively implementing the RTI Act 2005, it will indeed bring a sea change in the way the government functions and will lead to a truly vibrant and strong democratic nation.

14.14 ACTIVITY

Most of the states have implemented the Right to Information Act. Let us know about the implementation of the Act in your State.

14.15 REFERENCES AND FURTHER READINGS

<http://persmin.nic.in/RTI/WebActRTI.htm>