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STUDY MATERIAL

for

RIGHT TO INFORMATION

Prepared as per the syllabus prescribed by Karnataka State Law University (KSLU), Hubballi

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TABLE OF CONTENTS

1.1. Significance of RTI in a Democracy 4

RTI in International Legal Instruments *4*

Sweden *6*

The United States of America *6*

New Zealand *6*

United Kingdom *7*

Canada *7*

1.2. Constitutional Basis of RTI 8

1.3. Supreme Court on Right to Information 10

Romesh Thappar v. State of Madras (1950) *10*

State of UP vs Raj Narain (1975) *10*

Dinesh Trivedi v. Union of India (1977) *11*

SP Gupta & others vs The President of India and others (1982) *11*

Indian Express Newspapers Pvt. Ltd. v. Union of India (1984) *12*

Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd. (1988) ... *13*

Tata Press Ltd. v. MTNL (1995) *13*

Secy., Ministry of Information and Broadcasting v. Cricket Assn. of Bengal (1995) *14*

Union of India v. Association for Democratic Reforms (2002) *15*

PUCL v. Union of India (2004) *16*

2.1. RTI Act 17

Background *17*

Intention and Purpose of the Act *17*

2.2. Definitions 22

Appropriate Government *22*

Central Information Commission *23*

Central Public Information Officer *24*

Chief Information Commissioner *24*

Competent Authority *25*

Information *26*

Public Authority *32*

Right to Information *37*

2.3. Right to Information and Obligations of Public Authorities 40

Right to Information *40*

Obligations of Public Authorities *42*

Public Information Officers *49*

Obtaining Information Under the RTI Act *54*

Exemption from Disclosure *59*

Disposal of a Request *60*

3.1. Information Commissions 62

Central Information Commission *63*

State Information Commission *69*

3.2. A Note on the 2019 RTI Amendment 73

3.3. Power and Functions of the Information Commissions 75

1. Power to Receive Appeals *75*

2. Power to Receive Complaints *78*

3. Power to Conduct Inquiry *82*

4. Powers of a Civil Court *82*

5. Overriding Power *83*

6. Power to Ensure Compliance with the Right to Information Act, 2005 ..... *83*

7. Compensation for Loss or Detriment Suffered *84*

8. Impose Penalties *84*

Requests for Information about Human Rights Violation Allegations *85*

Public Interest Override *86*

Monitoring Implementation of the Act *86*

Promoting the Act *88*

4. A Practical Guide to RTI Act 89

Obtaining Information Under the RTI Act *89*

Disposal of a Request *92*

Making an Appeal *93*

Making a Complaint *96*

Appeal to the courts *99*

5. Critical evaluation of Right to Information Act, 2005 101

1. Right given to citizens only *101*

2. Appointment of members of the CIC *102*

3. Constitution of two parallel independent bodies *102*

4. Lack of adequate protection to the information seeker *103*

5. Lack of internal machinery to enforce the penalty imposed by CIC and SIC *103*

6. Unsatisfactory voluntary disclosure *104*

7. Practical Problems *105*

8. Mindset of the Bureaucracy *106*

6. Compendium of Cases on Right to Information Act, 2005 107

1.1. Significance of RTI in a Democracy

The term Democracy refers to a government by the people, whether it is direct or representative. Democracy is a Greek word (etymologically - *demo* means 'people' and *crates* means 'rule'). Accountability and transparency are the two main pillars of democracy. People are central in any democracy and they have the right to know how they are being governed. The veil of secrecy restricts this vision of democracy; hence, the ready availability of information is vital for the functioning of any democracy. The right to information, when vested in people, can act as a deterrent against corruption and abuse of power. The right to information is a means to ensure open government and to empower the people.

RTI in International Legal Instruments

The right to access information is firmly set in the body of international human rights law.

United Nation Principle on the Freedom of Information

These are the following principles propounded by the UNO to ensure the freedom of information: 1. Maximum disclosure 2. Obligation to publish 3. Promotion of open government 4. Limited scope of exceptions 5. Processes to facilitate access 6. Costs 7. Open meetings 8. Disclosure takes precedence 9. Protection for whistleblowers.

Universal Declaration of Human Rights, 1948

The right to information is a human right under Article 19 of the Universal Declaration of Human Rights. Article 19 of the Universal Declaration of Human Rights of 1948 states that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The International Covenant on Civil and Political Rights, 1968

Article 19 of the Covenant states as following:- "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The Commonwealth

The Commonwealth association of 54 countries affirmed the existence of RTI by emphasizing the participation of people in the government processes. The law ministers of the Commonwealth at their meeting held in Barbados in the year 1980 stated that 'public participation in the democratic and government process would be most meaningful when citizens had adequate access to official information'.

Organization of American States (OAS)

American Convention on Human Rights was adopted by the Organization of American States (OAS) in 1969. This international treaty is legally binding. Article 13 of the convention reads, “everyone has the right to freedom of thought and expression. This right shall include freedom to work, receive and impart information and ideas, of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.” Clause 2 states that exercise of such right may sometimes be subject to liabilities or restrictions if it compromises the national security or contravenes the right available to others.

European Convention on Human Rights

Clause 1 of Article 10 of the Convention states that “everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and irrespective of frontiers.

Most of the above discussed international instruments do not deal with RTI directly. Their role however is not diminished at all by this fact. As a first step, they showed the world community a direction to be explored to materialize the democratic value of RTI, thereby making the systems transparent and the world more amicable for the people.

Constitutional Provisions Relating to RTI in Various Countries Constitutional recognition stands paramount, especially when relating to fundamental human rights such as RTI.

Statutory Provisions Relating to RTI in Various Countries Apart from the constitutional recognition, specific statutes are sometimes necessary to be formulated to effectuate proper exercise of rights. This is so because mere recognition sometimes is not sufficient to provide

results. Statutes here come to the rescue by providing an optimal output through an elaborate mechanism,

Sweden enacted the first legislation in this regard. The Freedom of Information Act is now part of the Constitution of Sweden. Therefore, let us now see some of the important statutes across the world providing RTI to the people.

Sweden

Swedish Freedom of Information Law (a literal translation of the native term indicates the Freedom of Printing Act) passed in the year 1766 is considered to be the oldest and earliest legislative recognition of RTI. Many countries have followed the same line and have enacted access laws after it. For example, Finland in 1950, Denmark in 1950, Norway in 1970, and the United States of America in 1966 enacted such laws to facilitate information access.

The United States of America

James Madison, the fourth president of the United States and a co-author of the First Amendment to the American Constitution, explained the right's salience as early as 1822:

> *"A popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."*

In the United States of America, the Freedom of Information Act (FOIA) was enacted in 1966. Its purpose was: "To establish a general philosophy of full agency disclosure unless the information is exempted under clearly delineated statutory language." The Act exempted classified material, business proprietary material, information whose release would invade personal privacy and other material whose disclosure would compromise the public interest.

New Zealand

New Zealand passed the Official Information Act in 1982. The Act starts with the basic principle that all official information should be available to the people. The Act gives right a to any

resident or citizen or company in New Zealand to demand official information held by public bodies, State-owned enterprises such as Air New Zealand, the Post Office, and bodies which carry out public functions. The bank of New Zealand is the only notable exception. One of the purposes of the Act is to increase progressively the availability of official information. The Ombudsman has used this provision to interpret the exceptions more narrowly. All requests must be responded within two days. The Act gives very wide rights of access to official information including access to documents and undisclosed information.

United Kingdom

England enacted the Freedom of Information Act, 2005. The importance of freedom of expression in English law can be ascertained by the observation of Lord Steyn in the case of R. v. Secretary of State for the Home Department Ex P. Simms, (2000)[1]:

> *"Freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country...."*

Canada

Canada's federal statute, the Access to Information Act was adopted in 1982. The Act provides Canadian citizens, other individuals, and Corporations in Canada have a right to apply for and obtain copies of records held by government institutions. "Records" include letters, memos, reports, photographs, films, microfilms, plans, drawings, diagrams, sound and video recordings, and machine-readable or computer files. The requests for access must be responded within 15 days. The Access to Information Act says that the Act applies to records "under the control of" any government institution listed in the schedule of the Act. Courts have interpreted the phrase

[1] (2000) 2 LR 115(AC)

"under the control" very broadly. Thus, any record in physical possession of a government institution, no matter how that record was obtained, no matter how that record was obtained, no matter what promise of confidentiality was made to obtain the record, is subject to the Act.2 The Act covers all government departments and most agencies including Police and Security Intelligence Services. Commercial Crown Corporations, institutions of Parliament, and the Courts are not within its scope.

Various other countries have given place to RTI in their respective constitutions. Some of them are as follows:

- Article 20 of the 1987 Constitution of Austria
- Article 32 of the Constitution of Belgium as amended in 1993
- Article 41 of the Constitution of Bulgaria
- Article 23 of the Constitution of Albania
- Article 38 of the Constitution of Croatia
- Article 44 of the Constitution of Estonia
- Article 10 (3) of the Constitution of Greece
- S. 32 (1) of the Constitution of the Republic of South Africa under the Constitution Act 106 of 1996.

1.2. Constitutional Basis of RTI

The Preamble to the Constitution describes India as a Sovereign Democratic Republic. The interpretation of the rights conferred by the Constitution thus has to take its colour from the Democratic Republic character of our body politic.

Article 19 (1) (a) of the Constitution, guarantees the fundamental rights to free speech and expression, which, by implication, includes within it the right of access to information. The prerequisite for enjoying this right is knowledge and information. Therefore, the Right to Information becomes a Constitution right, being an aspect of the right to free speech and expression, which includes the right to receive and collect information. However, Article 19 (2)

permits the state to make any law insofar as such law imposes reasonable restrictions on the exercise of the rights conferred by Article 19 (1) (a) of the Constitution.

The right to information also seems to flow from Article 21 of the Constitution on the right to life and liberty, which includes the right to know about things that affect our lives. The expression "right to life and personal liberty" is broad which includes within itself a variety of rights and attributes. For sustaining and nurturing that opinion it becomes necessary to receive information. Thus Article 21 confers on all persons a right to know which includes a right to receive information.

The ambit and scope of Article 21 is much wider as compared to Article 19 (1) (a). Article 32 and 226 of the Constitution guarantee 'right to constitutional remedies' whereby a citizen is entitled to seek a remedy in the Supreme Court and High Courts if his or her fundamental rights are violated. Under Article 253, the Parliament has the power to make law for giving effect to international agreements, and under Article 51, the State is duty-bound to foster respect for international law and treaty obligations in the dealings of organized people with one another. The Constitution sets out the duties owed by every citizen under Article 51 A. A fully informed citizen is better equipped for the performance of these duties. Access to information would assist citizens in fulfilling these obligations. Further, Article 361A which deals with 'Protection of publication and proceedings of Parliament and State Legislatures, creates protection against actions for defamation arising from lawful and accurate parliamentary reporting. This implies that the media can inform the people about what is happening in the legislatures without fear of being sued.

As a result of the prolonged Indian national movement against the British imperialist colonial rule, the liberal democratic political system with a written Constitution includes rule of law, social justice, development, adult franchise, periodic elections, multiparty system, has come into existence. For the transparent functioning of the democratic political system, the founding fathers of the Constitution include the provisions of the right to expression in part three of the Constitution in the fundamental rights.

While there is no specific right to information or even right to freedom of the press in the Constitution of India, the right to information has been read into the Constitutional guarantees

which are a part of the chapter on Fundamental Rights. The Indian Constitution has an impressive array of basic and inalienable rights contained in Chapter three of the Constitution. These include the Right to Equal Protection of the Laws and the Right to Equality before the Law, the Right to Freedom of Speech and Expression, and the Right to Life and Personal Liberty. The Right to Constitution Remedies in Article 32, backs these that is, the Right to approach the Supreme Court in case of infringement of any of these rights.

The development of the right to information as a part of the Constitution Law of the country started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging governmental orders for control of newsprint bans on the distribution of papers, etc. It was these cases that the concept of the public's right to know developed.

1.4. Supreme Court on Right to Information

Romesh Thappar v. State of Madras (1950)

One of the earliest cases where the Supreme Court emphasized the people's right to know.

In this case, the petitioner challenged an order issued by the then Government of Madras under Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the circulation of the petitioner's journal 'Cross Roads'. The order was struck down by the SC as violative of the right to freedom of speech and expression under Article 19(1)(a).

State of UP vs Raj Narain (1975)

One of the prominent instances, when the Supreme Court took cognizance of the public demand for the right to information, was in State of UP vs Raj Narain (1975). The SC ruled that:

> *In a government of responsibility like ours where the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the*

particulars of every public transaction in all its bearings (State of UP vs Raj Narain Supreme Court of India, 1975).

Dinesh Trivedi v. Union of India (1977)

This case concerned the questions of the disclosure of the Vohra Committee Report, the Supreme Court once again acknowledged the importance of open Government in a participative democracy. The Court observed that:

"In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare." It went on to observe that "democracy expects openness and openness is concomitant of a free society and the sunlight is a disinfectant".

SP Gupta & others vs The President of India and others (1982)

In the year 1982, the Supreme Court in the case of SP Gupta & others vs The President of India and others held that the right to information was a fundamental right under the Indian Constitution.

In this case, the petitioners questioned the validity of Central Government orders on the non-appointment of two judges. To support their claim, the petitioners sought the disclosure of correspondence between the Law Minister, the Chief Justice of Delhi, and the Chief Justice of India.

The state claimed privilege against disclosure of these documents under article 74(2) of the Indian Constitution[2] and section 123 of the Indian Evidence Act.[3]

[2] Article 74(2) provides that the advice tendered by the Council of Ministers to the President cannot be inquired into in any court

Justice Bhagwati rejected the government's claim for protection against disclosure and directed the Union of India to disclose the documents containing the correspondence.

> *An open and effective participatory democracy requires accountability and access to information by the public about the functioning of the government. Exposure to the public gaze in an open government will ensure a clean and healthy administration and is a powerful check against oppression, corruption, and misuse or abuse of authority. The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest" (Supreme Court of India in SP Gupta & others vs The President of India and others, 1982).*

Indian Express Newspapers Pvt. Ltd. v. Union of India (1984)

In this case, the SC directed the central government to re-examine its taxation policy by evaluating whether it constituted an excessive burden on newspapers. The petitioners, including newspaper companies and employees, argued that an import duty led to an increased cost of newspapers and a drop in circulation, thereby adversely affecting freedom of speech and expression. The Court reasoned that a government can levy taxes on the publication of newspapers, however within reasonable limits to not encroach upon freedom of expression.

[3] S. 123 of Evidence Act provides that evidence derived from unpublished official records on state affairs cannot be given without the permission of the head of the concerned department.

> *Freedom of expression, as learned writers have observed, has four broad social purposes to serve: (i) it helps an individual to attain self-fulfillment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-making, and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration.*

Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd. (1988)

Justice Mukharji recognized the right to know as emanating from the right to life. The question which arose was whether Reliance Petrochemicals Ltd. was entitled to an injunction against Indian Express which had published an article questioning the reliability of the former's debenture issue. The learned Judge observed:

> *"We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age on our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform."*

Tata Press Ltd. v. MTNL (1995)

The Supreme Court, while considering the scope of Article 19(1)(a) in the context of advertising or commercial speech, held that the public has a right to receive information. The question which

arose, in that case, was whether advertisements being for commercial gain could avail of the protection guaranteed under Article 19(1)(a). The Supreme Court observed:

> *"Advertising as a 'commercial speech' has two facets. Advertising, which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisements. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of 'commercial speech'. Examined from another angle, the public at large has a right to receive the 'commercial speech'. Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of 'commercial speech' may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life-saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration."*

Secy., Ministry of Information and Broadcasting v. Cricket Assn. of Bengal (1995)

The Supreme Court, while considering the rights of a person to telecast a sports event on television through the use of air waves held that the right under Article 19(1)(a) includes the right to receive and acquire information and that viewers have the right to be informed adequately and truthfully. In support of this right, the Court quoted from Article 10 of the European Commission on Human Rights. The Court held that although a person seeking to

telecast a sports event when he himself is not participating in the game is not exercising his right to self-expression, he is seeking to educate and entertain the public which is part of the freedom of expression. The Court held that the right of the viewer to be entertained and informed is also, likewise, integral to the freedom of expression. The Court observed:

> *"True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs to the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic organizations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 1/2 per cent of the population has an access to the print media which is not subject to pre-censorship."*

Union of India v. Association for Democratic Reforms (2002)

The Court in dealing with the question of criminalization of politics held that under the Indian Constitution, electors had a fundamental right to know the antecedents of candidates contesting elections to hold public office. The court read in 'right to be informed' as a right flowing from freedom of speech and expression.

Election Commission was directed to secure affidavits by candidates recording all particulars relating to past or pending criminal charges or cases against them. This included information as to whether the candidate was convicted/acquitted/discharged of any criminal offence in the past. Additionally, if convicted, the quantum of punishment that was awarded; and whether prior to six months of the filing of nomination, the candidate was accused of an offence punishable with minimum two years of imprisonment.

PUCL v. Union of India (2004)

The Peoples Union for Civil Liberties approached the Supreme Court challenging Section 33B of the Representation of People (Third Amendment) Act which nullified the decision in Association for Democratic Reforms (2002) by providing that candidates contesting elections need not file an affidavit of criminal antecedents and particulars as directed by the Court.

This provision was held unconstitutional and void as it infringed the “right of electors' to know”, a constituent of the fundamental right to free speech and expression and hindered free and fair elections, which is part of the basic structure of the Constitution. Subsequently, all criminal records and antecedents of candidates contesting elections are now mandated to be matters of public record.

2.1. RTI Act

Background

The campaign for the Right to Information Grassroots organisations and civil society groups have campaigned for an effective national right to information law since the 1990s. However, it was only in 2002 that the Central Government finally took a step forward, passing the Freedom of Information Act 2002 (FOI Act). Unfortunately, the Act was never brought into force and people were never able to exercise their rights under the new law. In 2004, however, the newly elected United Progressive Alliance (UPA) Government promised to make the right to information more "progressive, participatory and meaningful". The National Advisory Council (NAC) was set up to oversee the UPA Government's promise and included key figures in the National Campaign for People's Right to Information (NCPRI). In August 2004, based on submissions made by the NCPRI, CHRI, and other civil society groups, the NAC submitted a set of recommendations to the Government for amending the FOI Act. Drawing heavily on the NAC's recommendations, in December 2004, the Right to Information Bill 2004 was tabled by the Government in Parliament. The Bill was finally passed by the Lok Sabha on 11 May 2005 and moved successfully through the Rajya Sabha on 12 May 2005. The Right to Information Act 2005 received Presidential assent on 15 June 2005. Some provisions requiring the setting up of a country-wide system to give citizens access to information came into force immediately. The RTI Act became fully operational on 12 October 2005.

Intention and Purpose of the Act

It must be borne in mind by those connected with the administration of the law as to what is the intention and purpose of the legislation as understood by the mover of the law. The Statement of Objects and Reasons to the Right to Information Bill reads as under:

> *"In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and*

suggested certain important changes 10 be incorporated in the existing Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law. 'The important changes proposed 10 be incorporated, inter alia, include establishment of an appellate machinery with investigating powers 10 review decisions of the Public Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions; and effective mechanism for access to information and disclosure by authorities, etc.

In view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act, 2002. The proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India."

Excerpts from the address of the then Prime Minister, Dr. Manmohan Singh in the Lok Sabha, on the Right to Information Bill on 10th May 2005.

"In the modern world, we are dealing with very complex societies, and these complex societies require extensive interference of Governments in day-to-day activities. In our own country total Government expenditure — Centre, States and Local Bodies combined — accounts for nearly 33 per cent of our gross national product. In addition, because of various compulsions of the situation, Governments have to interfere by way of regulatory bodies in the normal processes of how an economy functions. Now, it is, therefore, of utmost importance that when Governments account of such a large proportion of total national expenditure, when Governments interfere extensively with the way ordinary citizens of the country go by doing their business, these powers should be exercised with utmost caution and utmost concern for public welfare in the widest sense of the term. Civilized Governments everywhere have been

searching for ways and means to deal with problems of corruption, problems of ineffectiveness of Governments at various levels. We have the judiciary; we have the representative institutions of parliamentary system of Government to check both corruption and to ensure that money that is voted for truly sub-serve the public purpose.

But it has been found that it is not enough that Governments should go to the people once in five years. It is necessary to find other means of empowering our citizens to feel that processes of governance truly serve the public purpose. The right to information is a quest for that sort of mechanism, which will empower our citizens with information, which enables them to judge for themselves whether or not Governments are functioning in accordance with what can be considered as 'public interest' in the widest possible sense of the term.

It goes without saying that all information can be misused also. Therefore, much will depend upon how information seekers approach their tasks. People should recognize the dangers that are inherent in such a situation because in our society information is power. But one way of ensuring that this power is as widely distributed as possible is to ensure that access to information is not a monopoly of the few.

The Bill lays down architecture for accessing information, which is simple, easy, time-bound, and, in my view, inexpensive. It has stringent penalties for failing to provide information or affecting information flow in any way. In fact, it imposes obligation on agencies to disclose information thus reducing the cost. We all know that in development and their re-linkages. We all know that the benefit meant for the poorer Sections of the people do not reach them. We all know that the public funds meant for serving the causes of the poor and the downtrodden are, in fact, eaten up by more influential sets of people. The Right to Information Bill, hope, give our public-spirited people another instrument through which they will be able to prevent this patent misuse of public find or

public patronage. Therefore, this Bill is a historic Bill. What it seeks to do is to strength the foundations or our democracy. It seeks to promote the cause of a transparent human administration. It seeks to make our administration more accountable than ever before.

Therefore, the passage of this Bill, we see the dawn of a new era in governance processes — an era of performance and efficiency, an era which will ensure that benefits of growth flow of all Sections or society, an era which will eliminate the scourge of corruption, an ear which will bring the common man's concerns to the heart of all the process of governance, an era which will truly fulfill the hopes of the founding fathers of our republic. Great responsibility will rest on the shoulders of those who seek information, and also those who will administer this Act. It is hoped that we have, in this country, men and women who know how to draw a right balance. We need a strong and purposeful Government. We need Government processes, which rise to the challenges of our time, which would enable us to ensure that this country moves forward to realize its chosen destiny. At the same time, one can also be convinced that the future of this country is to strengthen the foundations of democracy and the Bill is an important step forward in promoting a culture of transparency, a culture of accountability, and to ensure that Governments do work to promote the public good in the widest possible sense of the term. That was the ambition of the foundation fathers of our republic."

The object of the Act is to promote transparency and accountability in the working of every 'public authority' and democracy requires an informed citizenry and transparency of information have been considered vital to the functioning of democracy and also to contain corruption. The long title of the Act reads as under:

"An Act to provide for setting 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 constitution of a Central information Commission and State Information commissions and for matters connected therewith or incidental thereto.

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 Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information; AND

WHEREAS it is necessary to harmonize 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."

As the preamble notes, the Act is to provide for setting out a practical regime of right to information for citizens, to secure access to information under the control of public authorities as also to promote transparency and accountability in the working of every public authority. These objects of the legislature are to make out society more open and public authorities more accountable.[4]

[4] Sarupsingh Naik v State of Maharashtra (Mumbai High Court) (2008)

The Preamble starts with the statement that the Act is intended to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, to promote transparency and accountability in the working of every public authority. The Act is intended to harmonise the conflict between the right of the citizens to secure access to information and the necessity to preserve the confidentiality of sensitive information. The Kerala High Court was not satisfied that the preamble would not in any way have the effect of indicating that the purpose of the Act is to confine its applicability to Government and instrumentalities of Government.[5]

The preamble does not indicate that purpose of Act is to confine its applicability to Government and instrumentalities of Government and applicability of Act is to be determined based on provisions of the statute also. Applicability of Act is not confined to bodies answering the definition of 'State' under Article 12 of the Constitution of India.[6]

2.2. Definitions[7]

Appropriate Government

> S.2 (a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—
>
> (i) by the Central Government or the Union territory administration, the Central Government;
>
> (ii) by the State Government, the State Government.

In relation to a public authority established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the Central Government or the Union territory administration, the Central Government shall be the "appropriate Government".

[5] M.P. Varghese v Mahatma Gandhi University AIR 2007 Ker 230.
[6] M.P. Varghese v Mahatma Gandhi University AIR 2007 Ker 230.
[7] Only important definitions are explained. Refer the bare act for the rest of definitions.

Similarly, in relation to the public authority established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the State Government, the State Government shall be the appropriate Government".

Examples of Public Authorities are

- All Ministries of the Central Government
- Lok Sabha Secretariat
- Rajya Sabha Secretariat
- All civil authorities and defence authorities
- Educational, social and cultural institutions of self-Government
- National and central Universities
- Reserve Bank of India
- Nationalised and other public sector banks,
- Government Companies,
- National cooperative institutions; and all bodies, authorities and institutions of Government published/constituted by any law made by the State Legislatures like ministries/departments of the State Government, civil and police authorities, border security force, educational, social or cultural institutions of self-government
- State Universities
- Cooperative societies
- Bodies of Local Self-Government within State, namely; Panchayat, Municipal body, Municipal; Corporation, Urban Government, Trust, development authority, Government companies, registered societies including institutions,
- Colleges and schools financed by the State
- Other non-governmental organisations substantially financed by any Government (Central or State or Union Territory Administration).

Central Information Commission

S.2 (b) "Central Information Commission" means the Central Information Commission constituted under sub-section (1) of section 12.

Central Information Commission' means the Information Commission set up by the Central Government. It has overall control and superintendence of all public authorities including all departments of the Central and State Governments and also watches over the progress of their work under the Act.

It has also the power to issue certain directions in the matter of implementation of this Act. The Central Information Commission is the backbone of the Right to Information Act. It is an impartial and independent statutory body constituted under section 12 of the Act to discharge its duties without being subjected to directions by any other authority. The Central Information Commission exercises all such powers and does all such acts and things as provided under sections 18 to 20 of the Act.

Central Public Information Officer

> S.2 (c) "Central Public Information Officer" means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5.

"Central Public Information Officer" means the person designated as Public Information Officer by the public authorities or the competent authorities under which they function. The appointment by designation means that a person already in Central service may be designated as a Central Public Information Officer. The objective of their appointment is to provide information to the citizens requesting the same under section 6 of the Act.

Chief Information Commissioner

> S.2 (d) "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12.

Chief Information Commissioner and Information Commissioners are appointed by the Government. They constitute the members of the Central Information Commission. Their appointment is statutory, not constitutional. Their appointment is made by the President in the case of the Central Information Commission and by Governor in the case of State Information Commission. Their duties and functions are set out in section 13 and the reliefs the Central

Information Commission can grant are specified in section 18. The Chief Information Commissioner shall be the head of the Chief Information Commission and will be assisted by the Central Information Commissioners who shall be appointed by the President of India on the recommendations of a committee chaired by the Prime Minister. The other members shall be the Leader of the Opposition and one Union Cabinet Minister nominated by the Prime Minister. These Commissioners shall exercise all such powers and shall perform all such functions mentioned under section 18-20 of this Act without any direction from any outside authority.

Competent Authority

> S.2 (e) "competent authority" means—
>
> (i) the 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) the Chief Justice of India in the case of the Supreme Court;
>
> (iii) the Chief Justice of the High Court in the case of a High Court;
>
> (iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
>
> (v) the administrator appointed under article 239 of the Constitution.

The need to define the expression 'competent authority' arises because some of the institutions such as the Supreme Court, the High Courts, the Parliament, the State Legislature, the Administrator appointed under Article 239 of the Indian Constitution have some autonomous status apart from the Central and State Governments. Therefore, it is the Chief Justice of India for the Supreme Court, the Chief Justices of the High Courts in case of High Courts, the Administrator appointed under section 239 in the case of the administration under him who are declared as Competent Authorities to make rules in respect of those institutions.

The Speaker in the case of the House of the People or the Legislative Assembly of a State or Union Territory, Chairman in the case of the Council of States or Legislative Council of the State is the Competent Authority.

In addition to the Appropriate Government, the Competent Authority has also been empowered with the power of delegated legislation to frame rules to carry out the provisions of the Act under section 28 of the Right to Information Act, 2005. The respective competent authorities are defined, namely; for House of the People (Speaker), Legislative Assembly (Speakers) Union Territory having Assembly (Speaker), Legislative Council of State (Chairman), Supreme Court (Chief Justice of India), and High Court (Chief Justice).

Similarly, the President or the Governor, as the case may be, shall be the competent authority in case of other authorities established or constituted by or under the Constitution. The Administrator appointed under Article 239 of the Constitution shall be the competent authority in respect of the Union Territory for which he/she is appointed by the President. Under provisions of Section 28 of the Act, 'Competent Authority' has been given the power to make Rules to carry out the provisions of the Act.

The term 'Public Authority' is wider than the term 'Competent Authority' and thus the term 'Public Authority' includes 'Competent Authority', whereas the term 'Competent Authority' may not include 'Public Authority'.

Information

> S.2 (f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Information means and includes any material in any form held by a public authority or relating to any private body which can be accessed by public authority. Information does not mean every information. It means only such information, which is recorded and stored and disseminated by the public authority. The news itself is not information, but the statements and newsletters released by the Public Relations Officers are information. Information, which is otherwise open and available, is not information. For example, one cannot ask the Information Officer about the railway or airway timings. The public is, however, entitled to know them if the matter involved is one that relates to the administration. To be precise, it is only that information which relates to

administration and which the authorities under the Act are obliged to publish or which is obliged to be kept in record is the information for purposes of this Act to be made available to any citizen who asks for it.

The word 'information' includes any information about private bodies or individuals recorded by a public authority in pursuance of any law. Any citizen subject to the rules of confidentiality can seek information about the accounts of any private body procured by the Income Tax Officer in accordance with the provisions of law. Information not recorded under provisions of the Act and remained unpublished is also information subject to the condition that such information can be released only if the Public Information Officer decides that the release of information serves the larger public interest.

To "inform" means to impart knowledge and detail available. The expression "information" in the context in which it occurs must, as stated in the case of C.I.T. Gujarat v A. Raman & Co.[8] in the context in which it occurs must mean, instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment. [The decision related to the Income-tax Act].

"Document"

The word "document" has not been defined under this act, but it has been defined under various statutes.

- **Section 3 of the Indian Evidence Act. 1872 -** "document" is defined to mean any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter. Under the illustration to the said section: (a) A writing is a document; (b) words printed. lithographed or photographed are documents; (c) A map or plan is a document; (d) An inscription on a metal plate or stone is a document; (e) A caricature is a document.
- **Section 50 of the Registration Act -** a document which is legally enforceable. Under the Official Secrets Act, a "document" includes a part of a document.

[8] AIR 1968 SC 49

- **General Clauses Act** - a "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter [Section 3(18)]. The expression referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form. (Section 3(65) of the General Clauses Act).

- **Section 29 of the Indian Penal Cod**e - the word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter. Under section 29 of the Indian Penal Code, the word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter. In a number of cases, the judiciary has permitted inspection of documents under the Act.

"Information relating to any private body which can be accessed by a public authority under any other law for the time being in force"

Can information be sought from a private body?

It is important to note that private body as such is not covered under public authority, hence, not bound to give information under this Act. However, where information relating to a private body is accessible by a public authority under any other law for time being in force, such information relating is covered under the definition of information under section 2(f) and hence could be disclosed.

In Jarnail Singh v Registrar, Co-operative Societies Delhi,[9] it was opined by Chief Information Commission that information from a non-public authority can be obtained indirectly. A cooperative society is not a public authority, but because the information sought is available to

[9] Complaint No. CIC/WB/C/2006/00302 decided on 09-04-2007.

the Registrar Cooperative Society, Delhi, under the Delhi, Co-operative Societies Act, therefore, such information can be disclosed under this Act.

In Thalapalam Service Co-operative Bank Ltd. v Union of India 2009[10] It was opined by the Court that the definition of "information" contained in Section 2(f) includes information relating to any private body, which can be accessed by a public authority under any other law for the time being in force. The Registrar of Co-operative Societies and the officers exercising the powers of the Registrar have deep, pervasive, and effective control over the co-operative societies. The Registrar or any other officer exercising the powers of the Registrar can access any information from any co-operative society. Therefore, even if a cooperative society is a private body, information can be accessed by the information officer of the cooperative societies concerned and furnish the same to any person.

The disclosure of the information is the rule and denial, an exception.[11]

The information which is not accessible to officers of public authority cannot be furnished.[12]

What Does Not Constitute "Information"

- An advice or opinion means an opinion obtained by the public authority from an outside agency and it may form a part of its record or file. It does not mean that a citizen can solicit opinion from the PIO of a public authority, as decided by the CIC in a case.[13]
- Section 2(j) provided only information held by or under the control of any public authority. Opinions are not recorded and cannot be deemed to have been 'held' by the public authority under section 2(j).[14]
- No queries like why, what, how, etc. can be answered by a public authority. In the guise of Information seeking, explanations and queries about nature and quality of actions of public authority need not be raised for answer.[15]

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[10] (83) AIC 506 at 510 (Ker)
[11] K.R.S. Narayanan v Dr. R.K. Mitra, F. No. CIC/AT/A/2007/00245, decided on 7.6.2007 (CIC); Cdr. Mukesh Saini (Retd.) v D.C.R. Appeal No. CIC/WB/A/2008/01059, decided on 30.10.2008 (CIC).
[12] Bangeswar Dalta v Howrah Municipal Corporation, No. 1811 (4) (Order)— WBIC/RTI/515/09, decided on 26.8.2009 (WBIC).
[13] Aakash Agrawal v Debts Recovery Tribunal-I, New Delhi, on 18.12.2006.
[14] As decided by CIC in a case O. P. Kapoor v Commissioner of Industries, GNCTD on 12.12.2006.

- Views for the correctness or otherwise of any circular or notification or order of the Government cannot be sought under the RTI Act as per decision of the Supreme Court.[16]

- The information seeker should clearly indicate the information being sought and period where applicable, without any ambiguity therein. PIO is not expected to answer vague terms.

- As held by the court, the intention of legislation under clause (f) is to provide right to information to a citizen pertaining to public affairs of public authority and not personal information of officials of public authority.[17]

- Laws & Rules are 'Information' - It is inappropriate to invoke the provisions of the RTI Act to seek interpretation of laws and rules. The laws and rules themselves are 'information' and accessible to citizens.[18]

- Seeking interpretation of Law is not information.[19]

- The definition of "information" does not include within its fold answers to question "why" which would amount to asking reasons for justification of a particular thing.[20]

- Information relating to future course of action which is not in any material form is not "information" within the definition of "information" in section 2(f).[21]

- Grievance or claim is not "information".

FIR and Postmortem Report are information under S.2 (f)

FIR and postmortem report are information as defined under section 2(f) of RTI Act as they are material in the form of record, documents, or reports which are held by the public authority.

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[15] [As decided by CIC in K. Anand Kini v Canara Bunk on 10.5.2007].
[16] . [As decided by CIC in Satish Mehra v Supreme Court on 11.5.2007].
[17] [H.E. Rajashekarappa v SPIO (2009) 25CLA-BL Supp (Snr.) 16 (Kar)]
[18] Rakesh Kumar Gupta v Income Tax Appellate Tribunal, New Delhi, F. No, CIC/AT/A/2006/00185, dated 18.9.2006
[19] Ajay Bansal v Lt. Bharat Singh, CP10 & Dy. Director Mining Environment & Forests, Supply No. CIC/54/A/ 2011/002918, decided on 26-12-2011 (CIC).
[20] Celsa Pinto v Goa State Information Commission 2008 (70) AIC 442 (Bom) (Panaji Bench) (Goa): AIR 2008 Bom 120 (Goa Bench) at 122
[21] Ravi Kumar v Coffee Board, Bangalore ICPB/A-15/CIC/2006

There are judicial decisions in which FIR has been held to be a public document under the Evidence Act. Under sections 74 and 76 of Act, 1872 a person who has a right to inspect public documents also has a right to demand a copy of the same. Right to Inspect a public document is not an absolute right but subject to Section 123 of Evidence Act. Inspection can be refused for reasons of the state or on account of injury to the public interest.[22]

Information can be supplied only in the form available

If the information is not available in the particular form requested, it does not have to be created in the form sought by the applicant, and information under section 2(f) includes information in any form available with a Public Authority and accessible.[23]

Advice & Opinion of PIO - Misconceived

The words "advices" and "opinions", referred in Section 2(f) direct the PIO to make available to any applicant the public authority's advice and opinion in respect of any law, or event, etc., is misconceived; these words only mean opinion and advice obtained by a public authority in a given matter from any agency, etc. and forming part of the record.[24]

Information does not extend to an enquiry

The scope of the definition of information given in Section 2 (f) of the Act does not extend to an enquiry demanded by an applicant in his application [in this case, to be completed in thirty days].[25] An enquiry is required to be made as per law, and it may not be possible to complete the enquiry/investigation within a period of thirty days for the purpose of providing information under the Act.[26]

Generating/creating Information

CPIO of any Public Authority is not expected to create and generate a fresh, an information because it has been sought by an appellant. The appellant is, therefore, advised to specify the

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[22] Union of India v CIC and another, 2010(1) ID 113 (Delhi High Court)
[23] Sarabjit Roy v Delhi Development Authority 10/1/2005-CIC
[24] Aakash Aggarwal v DRT—I, New Delhi, F. No. CIC/AT/A/2006/00446, dated 18.12.2006
[25] Ramlal Parmar v P.I.O., D.C.P., Ahmedabad City, Complaint No. 378/08 [09, decided on 19.12.2009 (Guj. IC)
[26] Ramlal Parmar v P.I.O., D.C.P., Ahmedabad City, Complaint No. 378/08 [09, decided on 19.12.2009 (Guj. IC).

required information, which may be provided, if it exists, in the form in which it is sought by him.[27]

Public Authority

> S.2 (h) "public authority" means any authority or body or institution of self-government established or constituted—
>
> (a) by or under the Constitution;
>
> (b) by any other law made by Parliament;
>
> (c) by any other law made by State Legislature;
>
> (d) by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

Interpretation of "Public Authority"

Definition of "Public Authority" has a much wider meaning than the word "State" under Article 12 of the Constitution. In M.P. Varghese v Mahatma Gandhi University (2007) it was held that the meaning of public authority cannot be restricted to 'state' as defined in Article 12 of the Constitution.[28] Aided colleges are public authority, which are directly or indirectly financed by the funds provided by the appropriate Government.[29] Further when the Act makes the same applicable to 'public authorities' as defined therein there is no need to give a restricted meaning to the expression 'public authorities' straitjacketing the same within the four corners of 'State' as defined in Article 12. Further, the definition of 'State' under Article 12 is primarily in relation to the enforcement of fundamental rights through Court, whereas the Act is intended at achieving the object of providing an effective framework for effectuating the right to information recognised under Article 19 of the Constitution of India.[30]

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[27] Ujjwal Kumar Choudhary v Indian Oil Corporation Limited 278/IC/(a)2006.
[28] M.P. Varghese v Mahatma Gandhi University AIR 2007 Ker 230: (2008) 1 ID 251.
[29] M.P. Varghese v Mahatma Gandhi University AIR 2007 Ker 230: (2008) 1 ID 251.
[30] M.P. Varghese v Mahatma Gandhi University AIR 2007 Ker 230: (2008) 1 ID 251.

There could be different views on what is meant by "substantial financing" and many such organisations may try to argue that the RTI Act does not cover them. In cases of dispute, Central Information Commissions/State Information Commissions would be the competent authority to decide.

The use of the expression 'includes' in clause (d) of section 2(h) of the Act clearly indicates that the definition is illustrative and not exhaustive. According to the well-known principles of judicial interpretation, where the word 'defined' is declared to include certain other things, the definition is to be taken as prima facie extensive.[31]

Pervasive Control Test

The provision of Section 2 (h)(d) stipulates that even if a body is controlled by the Government, the said body comes under the purview of the Public authority. Now, the question comes whether the appropriate government has substantial control in the management, operation and functioning of the body. If such control does exist, then the Government should have the authority to override the decision of the said body or supersede its management. In that, even the control is considered to be pervasive and such body comes under the definition of Public Authority.[32]

"Substantially financed"

The second part of section 2(h)(d)(i) requires a body to be "substantially financed by the appropriate government" to be considered as a “public authority”. It is important to note that the word "financed" is qualified by the word "substantially" indicating a degree of financing. Therefore, it is not enough for such bodies to merely be financed by the government. They must be "substantially financed". In simple terms, it must be shown that the financing of the body by the government is not insubstantial. The word "substantial" does not necessarily connote "majority" financing.

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[31] See CIT v Taj Mahal Hotel (1971) 3 SCC 550. Observed, *"...the word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute". When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word "include" is also susceptible of other constructions which it is unnecessary to go into."*

[32] Shaktipada Das v Cotri Co-operative Agriculture & Rural Department Bank Ltd., No. 113 (4) (Order) WBIC/RTI/252/09, decided on 1.6.2009 (WBIC).

This has been brought out well in a 2010 judgment of Delhi High Court in Indian Olympic Association v Veeresh Malik.[33] The question before the learned Single Judge was whether the Indian Olympic Association, the Sanskriti School and Organising Committee Commonwealth Games 2010, Delhi were "public authorities" under the RTI Act. While answering that question in the affirmative, it was held as under (para 58):

> *"This court, therefore, concludes that what amounts to "substantial" financing cannot be straight-jacketed into rigid formulae, of universal application. Of necessity, each case would have to be examined on its own facts. That the percentage of funding is not "majority" financing, or that the body is an impermanent one, are not material. Equally, that the institution or organization is not controlled, and is autonomous is irrelevant; indeed, the concept of non-government organization means that it is independent of any manner of government control in its establishment, or management. That the organization does not perform – or predominantly perform – "public" duties too, may not be material, as long as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed, the organization may be a tool, or vehicle for the executive government's policy fulfillment plan."*

The approach of other High Courts in interpreting section 2(h)(d) of the RTI Act is instructive. They have adopted a contextual and liberal interpretation keeping in view the purpose and object of the RTI Act.[34]

Bodies Held to be "Public Authorities" (read in the context of the case)

- A Company, which performs governmental functions of public importance and receives financial assistance from the Government is a public authority.[35]

[33] Judgment dated 7th January 2010 in W.P. (C) No. 876 of 2007.
[34]

- Private educational institution is public authority if it is substantially financed directly or indirectly by the State Government such as by grant-in-aid for payment of salary of the teachers.[36]

- Co-operative society can be treated as a public authority when it is substantially financed directly or indirectly by funds provided by the State Government.[37]

- According to section 2(h)(d)(ii) of the RTI Act, Non-Government Organisations substantially financed directly or indirectly by funds provided by appropriate Governments fall within the definition of "public authority." Accordingly, all NGOs, societies, professional institutions, educational institutions, co-operatives, etc. which draw grant-in-aid, subsidy or any other form of financial support from the Central or State Government are required to abide by the RTI Act.

- A deemed University may come within the definition of "public authority" because Deemed Universities are declared to be so by notification in the Official Gazette by the Central Government. The "public authority" does include any authority or body established or constituted by a notification issued by the appropriate Government. "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the U.G.C. in accordance with the regulations made in this behalf under the U.G.C. Act.[38]

- In Shri Shailesh Gandhi v Prime Minister's Office (PMO)[39], the Chief Information Commissioner, on the question of whether Prime Minister's National Relief Fund (PMNRF) is a “public authority” under RTI Act, held that PMNRF is not an organisation

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[35] Tamil Nadu Road Development Co. Ltd. v Tamil Nadu Information Commission, Chennai AIR 2009 (NOC) 255 (Mad): (2009) 1 ID 85.
[36] Dhara Singh Girls High School, Ghaziabad v State of Uttar Pradesh AIR 2008 All 92: 2008 (2) ALJ 477: (2008) 2 ID 179. Similarly held in number of other cases Pritam Rooj v University of Calcutta 2008 (4) ALJ (NOC) 911 (Cal): (2008) 2 ID 267, Committee of Management, Shanti Niketan Inter College v State of U.P. AIR 2009 All 7: (2008) 2 ID 225,
[37] Thalapalam Service Co-operative Bank Ltd, v Union of India AIR 2010 Ker 6.
[38] Manipal University by virtue of being a deemed University is a public authority as defined under the Act. [S. K. Dogra v P.I.O., Manipal University, No. CIC/SG/C/2009/000629, decided on 24.9.2009 (CIC)] followed Mahavir Chopda v PIO, NMIMS University, No. CIC/OK/A/2008/01098/SG, decided on 31.3. 2009 (CIC)].
[39] Appn. No. CICAA/B/C/2006/00230, dated 15.3.2007

or a legal entity and as such, it cannot be categorised as an independent public authority. The fund is a discretionary fund with the Prime Minister. But since the information is held by the PMO as the public authority, they are obliged to make it accessible to a citizen under the RTI Act unless such disclosure is exempted under section 8.[40]

Bodies Held not "Public Authority"

- Co-operative Bank - Mere supervisory control exercised by the Registrar of Cooperative Societies cannot make the Bank a public authority.[41] Co-operative Bank is not public authority and information about cooperative banks cannot be furnished.[42] Co-operative Bank is not public authority because it is not substantially financed by the Government.[43]

- Hindu public religious institutions and endowments to which the H.R. and C.E. Act[44] apply are not public authorities as defined in the 2005 Act. Provisions of that Act do not apply to those institutions and their officers, officers and employees and executive officer if any appointed by the Commissioner of M. D. B. under Sections 66 of the H. R. and C. E. Act, 1951.[45]

- Medical Council of India is not a public authority since it is not owned nor substantially financed by the Government.[46]

- Schools or institutions privately funded, and which was not owned or controlled by Government, could not come within the definition of 'public authority'. Public Information Officer could not compel such schools to furnish information under the Act.[47]

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[40] Shri Shailesh Gandhi v Prime Minister's Office (PMO) Appn. No. CICAA/B/C/2006/00230, dated 15.3.2007.
[41] [Bidar District Central Coop. Bank Ltd., Bidar v Karnataka Information Commission, Banglore 2009 (73)] AIC 451 (Kant)].
[42] [P.D. Urban Co-op. Bank Ltd. v State Information Commissioner AIR 2009 Bom 75.
[43] [Bidar District Central Co-op. Bank Ltd. v Karnataka Information Commission AIR 2009 (NOC)] 1049 (Kar)].
[44] Hindu Religious and Charitable Endowments
[45] A.C. Bhanuhni v Commissioner 2011 (103) AIC 656 (Ker.)
[46] Manoj Kumar v Medical Council of India, Appeal No. CIC/AD/A/09/00041/AD, decided on 29.1.2009 (CIC).
[47] Asian Education Charitable Society v State of Uttarakhand AIR 2010 Utr. 72.

Right to Information

> S.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.

Under this Act, the citizen has been given the Right to Information, which means the right to obtain information from all public authorities. The right to information has been defined quite elaborately; it includes the right to: (a) inspect works, documents and records. (b) take notes, extracts or certified copies of documents/records/samples. (c) obtain information in printed or electronic form, e.g., printouts, diskettes, floppies, tapes, etc.

However, two conditions must be satisfied for obtaining any information under the Act by a citizen: Firstly, the information should be held by the public authority or should be under the control of a public authority, and Secondly, the information must not be exempt from disclosure as per the Act. Any citizen can exercise this right by making a request in writing under the Act. A combined reading of Section 2(f), 2(j) and 2(i) would show that a citizen is entitled for disclosure of information which is in a material form with a public authority and "information and right to seek does not include opinions, explanations, etc.

“Accessible”

The term "accessible" means the information which is readily available or reachable or obtainable in any file or record or document.

"held by or under the control of any public authority"

The phrase "held by or under the control of any public authority" means the information in the possession or available under the control of the public authority. Each public authority must give information to the citizens except where the information being of sensitive nature as prescribed is exempt under provisions of Section 8(1) of the Act. However, a public authority may allow access to every information if the public interest in disclosure outweighs the harm to the protected interest, irrespective of the provisions under section 8(1).

Right to information includes following rights under clause (j)

- *Inspection of work, documents, records* - Every citizen is eligible to make an application to inspect any work carried out or being carried out and demand any documents and records for inspection. An inspection shall be made within 30 days from the date of receipt of the request. In case of information required concerns the life or liberty of a person, the same shall be provided within 48 hours of receipt of the request as provided under section 7(1). In the case of Nanak Chand Arora v Bank of India (2006),[48] the applicant requested an inspection of records but CPIO informed that there is no provision of inspection of records under the Act. On appeal, the Central Information Commissioner held that the decision of CPIO and Appellate Authority was contrary to Section 2(j)(i) which contains the definition of "right to information". The CPIO was directed to furnish a certified copy of information sought within 15 days of issuance of the decision and provide access to the relevant file for inspection to the appellant.

- *Taking notes, extracts or certified copies of documents or records* - During the inspection or before and after inspection, an applicant has every right to take notes and extracts from the documents or records, He can further ask for certified copies of any such document or record (which includes manuscript, file, microfilm, microfiche or facsimile copy of a document, any reproduction of image embodied in such microfilm, or any other material

[48] No. 80/IC/A/2006 CIC/MA/A/2006/00018 dated 22.5.2006; also see Rajeev Gupta v New India Insurance Co. No. 63/IC/A/2006 CIC/MA/A/2006/000151 dated 14.6.2006)

produced by a computer or any other device as per Section 2(i). Copies of unsigned documents shall be provided duly certified that these are unsigned documents.[49]

[49] Surya Prakash v Land and Building Deptt. DDA, Appeal No. CIC/ WB/(A)/2006/270 dated 29.5.2006) 16. Right to receive information

2.3. Right to Information and Obligations of Public Authorities

Right to Information

> S.3 Subject to the provisions of this Act, all citizens shall have the right to information.

Section 3 of the Act extends the right to information to all citizens of the country. This has not been bestowed upon the non-citizens. It could be on the analogy of the democratic set up of the country. The citizens are the participants in the democratic process and therefore they have a right to know everything about the functioning of the Government machinery. Secondly, the non-citizens could not be given such a sweeping right to know the inner functioning of the Government. It could be hazardous in many ways. Therefore, the right to information is restricted to citizens only.

Citizen's right to know emanates from citizen's right to freedom of speech and expression, which is a fundamental right under Article 19(1)(a) of the Constitution. The right to information caters to the dignity of the individual and his contribution to the process of nation-building. The individual has been recognized as the source of power being exercised by the Government. It is an individual vote of the citizen that decides the destiny of the Government and therefore whatever the Government does the power is drawn from the individual. Thus, the individual citizen has been imparted this right to know and right to be informed about the functioning of the public authorities working under the Government. In other words, an individual has been made a partner in ensuring transparency and containing corruption in the functioning of the Government. Therefore, the right to information has been imparted to the individual citizen and not to the organisations and institutions.

Only Natural Person Entitled for Information

As per Section 3, only 'citizens' have the right to information which means every person who is a citizen can apply for information. It is to be noted here that Citizenship, as defined in Part II of the Constitution of India, includes natural persons and not juristic persons like Corporation. Bank of Baroda is a Nationalised Bank and therefore, cannot claim information under the Act. It is also

not the case of Bank before the Commission that the Manager sought information not as a Manager of the Bank but as a citizen. Again Section 6(1) used the word "Person" who desires to obtain any information under the Act. Reading Section 3 and 6(1) together one will find that since the 'citizens' alone are entitled to obtain the information under provisions of Section 13 of the Act a 'person' desiring to have the information should necessarily be a 'citizen of India'. Therefore, a company, corporation, or anybody of individuals whether incorporated or not incorporated is not entitled to seek information.[50] Persons applying for information under the Act should apply as natural and individual persons (citizens). Corporate bodies and juristic persons cannot apply for information under this Act. If a person applies for information to a public authority as a representative of a corporate body, then he is not entitled to information under the Act.[51] A natural-born person can only be a citizen of India under the provisions of Part II of the Constitution. Thus, it is quite clear that a person who is not a citizen cannot claim this right.[52]A legal practitioner being a citizen can very well take a report to the provisions of the Act in getting the information from the public.[53] A piece of information which is due to the public actions, and, if available with the office of CPIO should be given provided that the information seeker is a citizen.[54]

The applicant had applied for some information to the PIO of the Railways Ministry in the capacity as the Managing Director of a company. The CIC interpreted Section 3 of the RTI Act to hold that persons applying for information under the Act should apply as natural and individual persons (citizens). Corporate bodies and juristic persons cannot apply for information under the Act. It was accordingly ruled that if a person applies for information to a Public Authority as a representative of a corporate body, then he/she is not entitled to information under the Act.[55]

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[50] Prabhakar S. Yende v P.I.O., Mapusa Municipal Council, Mapusa, Goa, Complaint No. 66/2009, decided on 22.12.2009 (Goa IC).

[51] Inder Grover v Ministry of Railways, No. CIC/OK/A/2006/00121, decided on 27.06.2006 (CIC); D.C. Dhareva & Co. v Institute of Chartered Accountants of India decision No. 560/IC/2007, decided on 22.2.2007 (CIC).

[52] D. N. Sahu v Land & Development Office, Ministry of Urban Development Nirman Bhawan, New Delhi, CIC/WB/A/2006/00336, decided on 9.8.2006 (CIC).

[53] authority - Tushar Kanti Chatterjee v S. P. I. O., P & RD Directorate, No. 1785 (3) - (Order), decided on 25.8.2009 (WBIC).

[54] Shashi Kumar Nanda v Industrial Dev. Bank of India Ltd. Appeal No. 54/IC(A)/2006, decided on 6.6.2006 (CIC).

[55] Inder Grover v Ministry of Railways CIC/OK/A/2006/121

In addition, a citizen need not give reasons for asking for a particular information from any public authority and the public information officer (PIO), or the public authority cannot question the applicant under the Act as to why he/she needs the particular information. Even if more than one person seeks the same kind of information it should be made available to all the requesters by the PIOs. The citizen has also been given the right to ask for information, which has been already, disclosed as per the self-disclosure requirements of the Act. It has to be provided to a citizen who applies for such information from a public authority.

Remember the Basics

What is the difference between constitutional a right and a statutory right?

A constitutional right can be enforced through the Constitutional Courts such as the High Courts and Supreme Court. These Courts can rectify and/or correct the breaches in constitutional rights. A statutory right can be enforced through the mechanism the concerned statute provides. It is only where these institutions overstep their jurisdiction in protecting and enforcing statutory rights; the Constitutional Courts may step in to correct the errors. Therefore, it is incumbent on all persons to follow primarily the procedures prescribed for enforcing the right conferred under the Right to Information Act.

Obligations of Public Authorities

S.4 Obligations of public authorities

(1) Every public authority shall—

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

(b) publish within one hundred and twenty days from the enactment of this Act, —

(i) the particulars of its organisation, functions and duties; Sec. 4 Obligations of public authorities 1.315

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision-making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorisations granted by it;

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) the names, designations and other particulars of the Public Information Officers;

(xvii) such other information as may be prescribed; and thereafter update these publications every year;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Section 4 of the RTI Act requires all public authorities to routinely publish 17 categories of information, which should be updated regularly. This ensures that citizens always have access to authentic, useful, and relevant information.

The information to be published falls under the following general areas:

Structure of the organisation - Its functions and duties, powers and duties of its officers, a directory of its employees, monthly remuneration received by each employee.

Example: the organisational chart of the organisation, names of the officers in charge of departments, the functions and powers of each officer employed, and the salary they receive.

Process of functioning - The procedures followed in decision-making, norms, rules and regulations, categories of documents held by the public authority.

Example: Government Regulations on how ration cards are issued, old age pensions schemes are administered or visas are provided. The laws, rules, internal orders, memos, and circulars that guide the day-to-day functioning of public authorities.

Financial details and schemes relating to the organisation - The budget for all authorities (including the schemes and activities they manage and any reports regarding implementation) the manner of execution of subsidy programmes (including funds allocated and the details of beneficiaries of such programmes) plus particulars of recipients of all concessions, permits or authorisations granted by the office.

Example: Expenditure estimates, details of grants and funds received by the public authorities, lists of people below the poverty line (BPL), regular updates on the administration of rural development schemes, details of the beneficiaries under the Employment Guarantee Scheme, recipients of industrial licences, and budget documents for panchayats.

Details of consultative arrangements - Opportunities for people to get involved in the formulation of policies or their implementation, as well as a statement of government boards, committees, councils, and advisory groups.

Example: Committees of Panchayats and municipalities to deal with specific issues, parliamentary committees, boards of inquiry, departmental purchase committees, departmental promotion committees or technical advisory bodies.

Details related to accessing information - A list of all the categories of documents available in an office, details of the information available/held in electronic form, facilities available to citizens to access information, and the names and designations of Public Information Officers.

Example: Days and timings of public dealings, timings of libraries and reading rooms, and contact names for all officials working to administer the RTI Act.

Already, several public authorities at the Central and State Government levels have published Section 4 information on their websites and through various other means. One can access the proactive disclosure statements of ministries/departments under the Central or state governments by logging on to the RTI Portal developed by the Government of India at http://www.rti.gov.in.

Public authorities need to make sure that all Section 4 information gets widely disseminated. It is not enough to just collect it all and keep it on file. It needs to be published widely and in forms which make it accessible to ordinary people - for example, by posting the information on office notice boards, publishing it in newspapers, uploading it onto government websites, making public announcements and making sure that it is published in the local language of the area.[56] At a minimum, every PIO has to have the information available in the form of a document or on a computer where it can be produced for ready inspection or given out immediately if requested as a printout or photocopy instantly.[57]

Section 4 of the Act sets out a practical regime of transparency in the working of the public authorities by way of disclosure of as much information to the public as possible, suo motu so that the public may not have to resort in Section 6. It is an important part of the Act observance of which is essential for its effective implementation.

This section is preparatory to the actual enforcement of the Act. It enjoins all the public authorities to collect, maintain, and computerise all the information available with them and publish the same in all media, electronic media, and also through notice boards, public announcements.

Since the Right to Information includes a right to inspect, all public authorities have to permit the citizens to inspect the records, make copies of them, and also samples of goods inspected. This does not mean that the right to information is limited to the published material. The citizen is entitled to know the unpublished material and unpublished records.

This section obligates all the public authorities to collect, maintain, and computerize all the information available with them and publish the same in all media including electronic media and also through notice boards, public announcements. All this must be done within 120 days from the date of commencement of this act. An obligation is cast on the public authorities to disseminate widely in such form and manner that is easily accessible to the public. The right to information includes the right to inspect, make copies, take samples, etc. The right is also extended to unpublished material and unpublished records.

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[56] Sections 4(2), (3) and (4).
[57] Section 4(4).

It is to be noted that Public Records Act of 1993 is not repealed. Under the aforesaid act the Govt. shall maintain records while classifying them as top secret, secret, confidential and restricted.

Under this Act, the Public Information Officer is vested with the power to decide whether any such information sought by any citizen is to be provided are not, even though the public authority claims the same to be confidential or secret.

Further, this section also contemplates that it shall be a constant endeavour of every public authority to take steps in accordance with the provisions of the Act to provide as much information suo motu to the public at regular intervals through various means of communications.

These communication means to include Internet and Web also so that the public have minimum resort to the use of this Act to obtain information. All information shall be disseminated widely and in such form and manner which is easily accessible to the public.

Also, all materials shall be disseminated taking into consideration the cost-effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central/State Public Information Officer as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Maintenance of Records

Clause (a) of sub-section (1) of the section makes it obligatory for every public authority to maintain all its records duly catalogued and indexed. Record management in accordance with this provision is an important step to enable the Public Information Officers to furnish the information sought under the Act. The clause also requires the public authority to have its records computerized and connected through a network all over the country. The public authorities are expected to complete the requirements of this clause on top priority.

Publication of Records

Clause (b) of sub-section (1) mandates the public authorities to publish the information mentioned therein within one hundred and twenty days from the date of enactment of the Act. It

is expected that all public authorities would have complied with this requirement already. If it has been done, its compliance may be ensured without any further delay. Information so published should also be updated every year as provided in the Act.

It is obligatory for all the public authorities under clause (c) of sub-section (1) of Section 4 of the Act to publish all relevant facts while formulating important policies and announcing decisions affecting the public. Under clause (d), they are also obliged to provide reasons for their administrative or quasi-judicial decisions to the affected parties.

Section 4 of the Act requires wide dissemination of every information required to be disclosed suo motu in such form and manner which is accessible to the public. Dissemination may be done through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means. While disseminating the information, the public authority should take into consideration the cost-effectiveness, local language, and the most effective method of communication in the concerned local area.

Section 4(1)(d) enjoins public authorities to record reasons for the decisions they take in administrative and quasi-judicial matters.[58]

Public Authority must take proactive disclosure of information under section 4(1), so that information seekers do not have to resort to the provisions of the Act.[59] Every public authority is required to make pro-active disclosures of all the information required to be given as per the provisions of section 4(1)(b) unless the same is exempt under the provisions of section 8(1). The information detailed in this section has to compulsorily published by the public authority on its own without any requests from anybody.[60]

The information mentioned in Section 2 (f) is not circumscribed by Section 4 at all. Section 4 only lays down certain obligations the public authorities are required to perform in addition to the duty to furnish information to citizens when requested for. These obligations are to be compulsorily performed apart from the other liability on the part of the public authority to supply

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[58] [R. K. Singh v D. G. (Vigilance), Customs and Central Excise CIC/AT/A/2008/222 (CIC); Virchand A. Shah v Central Excise CIC/AT/2007/1298 (CIC); Arthur Monterio v Registrar of Co-operative Societies CIC/AT/C/2008/30 (CIC)]

[59] . [Avinash Dattatray Thakur v Employees Provident Fund Organisation CIC/MA/C/2008/237 (CIC)]

[60] [Canara Bank v Central Information Commission, Delhi, 2008 (1) ID 241: AIR 2007 Ker 225]

information available with them as defined under the Act subject of course to the exceptions laid down in the Act. There is no indication anywhere in the Act to the effect that the 'information' as defined in section 2(f) is confined to those mentioned in section 4 of the Act.

Public Information Officers

S.5 (1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, 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.

(2) Without prejudice to the provisions of sub-section (1), 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 Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be: Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any

contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

Section 5 deals with provisions relating to the designation of "Public Information Officers" in particular the Central Public Information Officers or State Public Relations Officers under sub-section (1). Such officers are designated. The number of such officers can be more than one since the words used are "as many officers".[61]

The expression "Central Public Information Officer" is defined in Section 2(c) of the Act to mean as designated under sub-section (1) of section 5 and includes a Central Assistant Public Information Officer as designated under sub-section (2) of section 5. The expression "State Public Information Officer" is defined in Section 2(m) of the Act to mean as designated under sub-section (1) of section 5 and includes a State Assistant Public Information Officer designated as such under sub-section (2) of Section 5.

The word used in sub-section (2) is "shall". Such information Officers make take assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties. Such assistance can be sought from "any officer" at the discretion of such information officers and such assistance can be taken from "any officer". The nature of assistance to be sought is also left to the information officers, depending on the facts and circumstances of each case, but the "duty" as such had to be discharged. Such officers, as provided under sub-section (5) of Section 5 "shall" have to render such "assistance" to the information officers. The use of the word "shall"

[61] The Second Administrative Reforms Commission in its First Report (June, 2006) has observed that where a public authority designates more than one Public Information Officer (PIO), an applicant is likely to face difficulty in approaching the appropriate Public Information Officer, and the applicants would also face problem in identifying the officer senior in rank to the PIO to whom an appeal under sub-section (1) of Section 19 of the Act can be made. (For convenience such an officer is termed as the First Appellate Authority). The Commission has, inter-alia, recommended that all Ministries/Departments/Agencies/Offices, with more than one PIO, should designate a Nodal Officer with the authority to receive requests for information on behalf of all PIOs. The Commission has also recommended that all the public authorities should designate the First Appellate Authorities. All public authorities with more than one PIO should create a central point within the organization where all the RTI applications and the appeals addressed to the First Appellate Authorities may be received. An officer should be made responsible to ensure that all the RTI applications/appeals received at the central point are sent to the concerned Public Information Officers/Appellate Authorities, on the same day. For instance, the RTI applications/appeals may be received in the Receipt and Issue Section/Central Registry Section of the Ministry/Department/ Organization/Agency and distributed to the concerned PIOs/Appellate Authorities. The R&I/CR Section may maintain a separate register for the purpose. The Officer-in-Charge/Branch Officer of the Section may ensure that the applications/appeals received are distributed the same day.

Is also significant. It is also made it clear that for the purposes of contravention of the provisions of the Act, such "officer", shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be. This provision imposes a duty on the officer concerned also from whom the information officers are seeking assistance. The "requests" of the information officers cannot be treated casually.

Sub-sections (4) and (5) of Section 5 of the Right to Information Act, 2005 provide that a Public Information Officer (PIO) may seek the assistance of any other officer for the proper discharge of his/her duties. The officer, whose assistance is so sought, shall render all assistance to the PIO and shall be treated as a PIO for the purpose of contravention of the provisions of the Act. The import of sub-section (5) of Section 5 is that, if the officer whose assistance is sought by the PIO, does not render necessary help to him, the Information Commission may impose a penalty on such officer or recommend disciplinary action against him the same way as the Commission may impose a penalty on or recommend disciplinary action against the PIO.[62]

Duty of Public Information Officers

The Right to Information Act, 2005 empowers citizens to get information from any 'public authority'. The Central/State Public Information Officer (CPIO/SPIO) of a public authority plays a very important role in making the right of a citizen to information a reality. The Act imposes a specific duty on him and makes him liable for a penalty in case of default.

It is, therefore, essential for the Central/State Public Information Officer to study the Act carefully and understand its provisions correctly. Significantly, the CIC while explaining the duty of PIO in the case of Ravi Vasudevan v Central Board of Excise and Customs[63] decided in 2009 held that the CPIO/SPIO is expected to be an aide (assistant) and a guide to an information seeker. He is expected to assist an applicant to properly formulate his queries if he considers that queries did not lead to identifiable information. The CPIO should refrain from seeking shelter in legal provisions with no better reason than to somehow prevent information reaching the hands of the applicant. Such action shall be incongruent with (contrary to) the assigned role of the CPIO under the Act.

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[62] O. M. No. 1/14/2008-IR, dated 28.7.2009, DOPT, Govt. of India
[63] F. No. CIC/AT/C/2009/000385 decided on 1-7-2009(CIC)

Once a citizen applies to a CPIO/SPIO of a public authority, irrespective of where and with whom the information is available within the same public authority, it is the duty of CPIO/SPIO to furnish the information sought for in relation to that public authority, if necessary by obtaining the same from the concerned CPIO/SPIO with whom the information sought may be available.

In 2008, the CIC opined that under section 5(5) any officer whose assistance has been sought is deemed to be CPIO/SPIO for this purpose. Therefore, if any complaint is to be made for violating the provisions of this Act then it can be considered against such deemed to be CPIO/SPIO.[64]

Where the Central Information Commission at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified or mala fidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed any manner in furnishing the information, it may recommend for disciplinary action against the Central Public Information Officer.

Do PIOs have any specific jurisdiction?

Under the Act, every public authority has to designate PIOs & APIOs to receive application but no specific jurisdiction of PIO has been mentioned. It is observed by the CIC while deciding an appeal of S. K. Khan v Deptt. of Posts[65] that even though, a public authority could designate as many CPIOs or ACPIOs, the Act does not confer any specific jurisdiction i.e., geographical or subject wise or pecuniary, in respect of each such officer. Also, the Act does not prescribe that each CPIO is a separate public authority by himself. He is only a part of public authority which has been designated by such authority. The object of the designation of many CPIOs/ACPIOs is to enable citizens to exercise their rights under this Act and to make this Act a reality. Once a citizen applies to a CPIO of a public authority, irrespective of where and with whom the information is available within the same public authority, it is the duty of that CPIO to furnish the information sought for.

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[64] Dr. G. John v O.N.G.C., Appeal No. CIC/MA/A/2008/01264, decided on 5-12-2008
[65] Appeal No. 71/ICBP/2006, decided on 18-8-2006 (CIC)

PIO must be designated - no vacuum is allowed

In Helie Rupreo v Department of School Education,[66] on the question of there being no designated PIO, the State Commission observed that the RTI Act 2005 does not prescribe that only Deputy Secretary or Under Secretary or for that matter any particular Officer only should be designated as PIO. If Deputy Secretary/Under Secretary were not posted, there were other officers like the Superintendent or the Secretary who could be designated as PIO instead of leaving a vacuum. The Department was directed to take necessary steps to ensure that the number of PIOs as deemed necessary are designated and no vacuum is allowed.

PIOs cannot hear appeals

All the Information Officers designated under the Act in the State are State Public Information Officers. They are officers who are to receive the RTI applications and furnish the information to the requesters. They are not empowered by law to hear appeals. Any appeal against the decisions of the State Public Information Officer should be preferred before the First Appellate Authority.[67]

[66] No. NIC/Complaint.-8/2007, decided on 10.10.2007 (3 Member Bench) (Nagaland IC)
[67] Benzee Laitmon, Shilong v The Conservator of Forests, No. MIC/Appeal. /51/2009/32, decided on 05.08.2009 (Megh IC)

Obtaining Information Under the RTI Act

S.6 Request for obtaining information.—(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her: Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

To access specific information not proactively disclosed by the government (as required by S.4), the RTI Act gives citizens the right to make a specific written request for information to a public authority.[68]

Below are indicative steps to be followed to obtain information under RTI Act:

Step 1: Identification of the Public Authority which holds the information

The first step is to identify which public authority holds the information. The RTI Act requires that even if the office to which the application is submitted does not have the information, they should not return the application, but instead are under a duty to transfer the application to the relevant public authority within five days.[69] If the application is transferred, the first public authority must inform the requestor of the transfer in writing. The second public authority then becomes responsible for providing the information within the original 30-day period.

For example: If you want to know how much money was allocated to construct a by-lane in your colony/neighborhood, you would need to submit an application to the local municipal corporation responsible for roads and public works in your area. Or if you want to know about the progress of your application for a new electricity connection then you need to apply to the electricity department. Or if you want to know details of the kinds of free health services available free at primary health care centers, then you would need to submit an application to the health department.

Step 2: Identification of the Public Information Officer (PIO) within the public authority

Once the public authority that holds the information has been identified, it must then be addressed to the PIO of the authority. Public authorities are required to publish a list of Public Information Officers (PIOs) and Assistant Public Information Officers (APIOs) appointed in each department from the relevant department. This information can be found either on their website or by contacting the department directly and asking them for guidance.[70] If the application is submitted to an APIO, then the time limits for a response to the application increases from 30 days to 35 days.

[68] Section 6 (1).
[69] Section 6 (3).
[70] Alternatively, log on to the official RTI Portal developed by the Government of India for links to the lists of PIOs and APIOs appointed at the Centre and in the States: http://www.rti.gov.in.

The RTI Act requires that every department must maintain a list of its PIOs and APIOs in electronic or in printed form. Although it is the duty of every public authority covered under the RTI Act to designate PIOs to receive and process applications, in practice it has been reported that some public authorities have yet to designate PIOs and are refusing applications for information on that basis. If this happens, one can directly complain to the Central Information Commission or State Information Commission as the case may be and demand the appointment of PIOs. According to Section 19 (8) (a) (ii) of the Act, the Information Commissions have the power to require the appointment of Central or State Public Information Officers.

Step 3: Drafting the RTI application

Application can be hand-written or electronic application, in English, Hindi or in the official language of the area.[71] It is important that the application is drafted in a clear and concise way. Request must be as specific as possible to get the required information only and avoid getting loads of unnecessary documents. It is important for the application to be in specific terms so that the PIO cannot return it on the grounds that it was too vague or difficult to understand.

The Central Government has fixed a limit of 500 words for each RTI application. The name and contact details of the applicant and the PIO and any annexure attached to the application will be excluded from this word limit. States have their own word limits and guidelines on RTI applications.

The applicant need not explain why the information is sought. The Act makes it very clear that there is no need to give reasons for why a particular piece of information is requested.[72]

Step 4: Submission of application

After completing the application, it must be sent to:

- The PIO in the public authority which has the information; or
- The APIO located at the sub-district or sub-divisional level nearby, who is then under a duty to forward the application to the relevant PIO.

[71] Section 6 (1).
[72] Section 6 (2).

The application can be submitted in person or by post, fax, or email. It is advisable to send the application by registered post or under a certificate of posting (UCP) so that there is a proof of postage and the PIO cannot claim that he/she never received the application. If submitting the application in person, always make sure to ask for a receipt for the application. The acknowledgement should indicate the time and date when the application was received, where it was received and who received it.

The Act requires that an application fee must be paid before an application will be processed. Different fees have been prescribed by the Centre and the States. The RTI Act does not specify any mode for paying application fees (or additional fees for accessing information). The modes of payment are specified in the Fee Rules issued by the Central and State Governments.

People who are "Below the Poverty Line" are not required to pay fees

According to Section 7 (5) of the Act, applicants who are below the poverty line (BPL) do not have to have to pay any fees under the RTI Act. When applying for information, BPL cardholders need to attach a copy of their BPL card as proof or an extract from the BPL list containing their name or some other such proof signed by a competent officer. Alternatively, when submitting an application in person, BPL Applicants have a right to get the PIO to put on acknowledgement of their BPL status on their application as proof.

Step 5: Wait for a decision

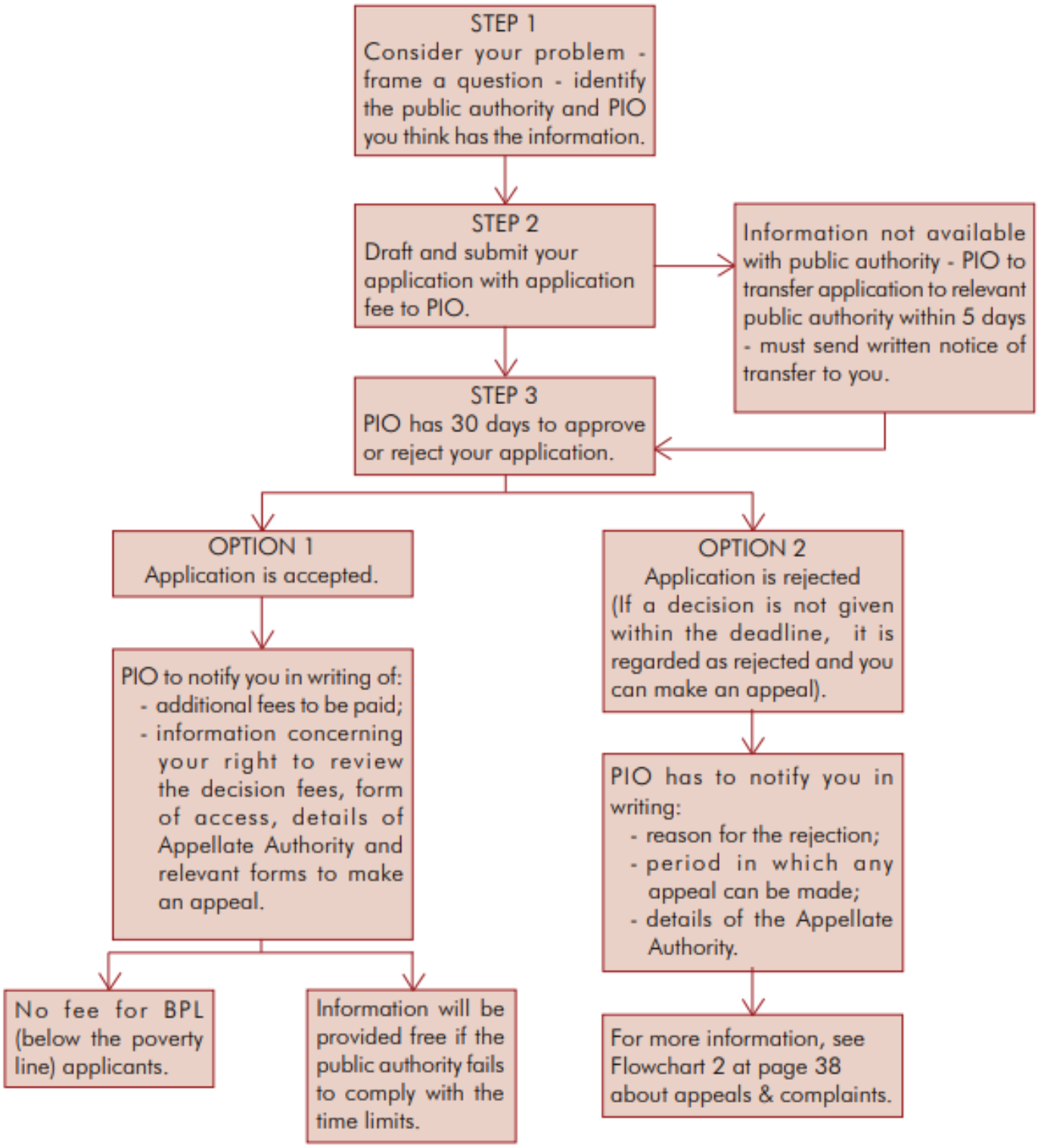
Once the PIO receives the application, complete with the application fee, he/she is required to process it as fast as possible but no later than 30 days from the date on which he/she receives the application.[73] If an APIO passed the application on, another 5 days gets added to this timeline.[74]

However, where the information requested is vital to ensuring the life or liberty of a person, a decision must be made within 48 hours.[75]

For example, if a person is picked up by the police without an arrest warrant or an arrest memo, his family, friends or even a concerned third person can ask for his whereabouts from the PIO of the police department and a response must be made within 2 days.

[73] Section 7(1).
[74] Section 5(2).
[75] Section 7(1).

Flow Chart Showing RTI Application Process (Source: CHRI)



Exemption from Disclosure

Though the RTI Act gives the right to access a very broad range of information, there are some categories of information which are "exempt" from disclosure, on the basis that making it public would cause more harm than good to the public. The RTI Act, under Section 8(1) and Section 9 spells out specific cases where information can legitimately be denied, namely if:

a. disclosure would harm national security, scientific or economic interests of India or relations with a foreign State or lead to the incitement of an offence;
b. any court of law or tribunal has forbidden the information from being published or the release would constitute a contempt of court;
c. disclosure would cause a breach of privilege of Parliament or the State Legislature;
d. the information is confidential commercial information, trade secrets or intellectual property or giving it out would harm the competitive position of a third party (such as the company that provided it to the public authority);
e. the information is available to a person because he has a fiduciary relationship with another person (such as a doctor/patient or lawyer/client relationship);
f. the information has been given by a foreign government in confidence;
g. disclosure would endanger the life or physical safety of a person;
h. disclosure would impede the process of criminal investigation or apprehension or prosecution of offenders;
i. cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers, although information should be released after a decision is made;
j. the information requested is personal information, the giving out of which has nothing to do with any public activity, or which would cause an unwarranted invasion of the privacy of the individual;
k. disclosure would infringe the copyright of a body other than the State.

Exemptions not absolute - Public Interest Override

According to Section 8 (2) of the Act, even where the information requested is covered by an exemption, if the public interest in disclosure outweighs the harm against which the exemptions are protecting, then it should still be released. This is known as the "public interest override" and it applies to all categories of exempt information.

For example, in the past, access to copies of defence contracts between the Government of India and foreign companies was denied under the pretext of protecting the national and security interests of the country. However, if there are allegations of payment of kickbacks and undue influence exerted by middlemen to secure these contracts, there is a greater public interest in knowing the details of the contract. Taxpayers have a right to know whether the country got value for money spent, whether the best quality equipment was selected or not, and whether bribes were paid to crucial people in the decision-making process. This information cannot be denied using the exemption for security and strategic interests provided in the Act because there is a greater public interest in disclosing it.

Exempt information will not be exempt forever. Sometimes, once a bit of time has passed, releasing the information will no longer cause any kind of harm. For example, national economic information which could affect India's international financial standing today may not be sensitive after 10 or 20 years. Section 8 (3) of the Act allows one to request information about any event, occurrence, or matter after 20 years, even though at one time or another it may have been covered by one or more exemptions.

Disposal of a Request

When processing the request, the PIO will need to determine immediately whether the information requested: (a) Is available in the office, and if not, transfer it to another public authority and provide the requestor with written notice of the transfer; (b) Relates to confidential third party information and therefore requires consultation with the third party before a decision can be made, and (c) Is covered by an exemption and whether there is a public interest in disclosing it.

If the application is approved

If the PIO decides to give the information, the PIO will send a decision notice within 30 days. The notice will include advice regarding any additional fees payable to access the information that has been requested and inform the requestor of his right to appeal the decision about the

amount of fee charged or the form in which the information is required, including details of the Appellate Authority, time limit, and any other forms.[76]

Note that if the PIO fails to meet the time limits prescribed under the RTI Act, then the information has to be provided free of cost to the requestor.[77] The notice sent by the PIO needs to include an explanation of how any additional fees were calculated.[78] The PIO does not have the power to charge additional fees for searching, collecting or processing the information. The RTI Act specifically provides that information has to be provided in the form that is requested, UNLESS it would disproportionately divert the resources of the public authority or is likely to damage the record.[79] Unfortunately, some departments have been using this provision to deny citizens access to information. This issue was the subject of a complaint filed with the Central Information Commission (CIC).

No bar on voluminous requests for information

Mr Sarbajit Roy applied to the Delhi Development Authority (DDA) for information relating to the modification of the Master Plan of Delhi. In particular, he requested access to the responses the Board of Enquiry and Hearing had received from the public on the draft Master Plan. The DDA refused to part with the information on several grounds, including that giving the information would disproportionately divert the resources of the DDA. After hearing from both Mr Roy and the DDA, the CIC stated that the Act does not authorise a public authority to deny information if it is voluminous. It simply allows the authority to provide the information in a form which is easy to access. The CIC has directed the DDA to provide Mr Roy with an opportunity to examine the responses and give him certified copies of those identified by him.[80]

Partial Disclosure of Information (Rule of Severability)

Sometimes one document will contain both some sensitive information which falls under an exemption, and some information which could be disclosed without causing any harm. According to S.10 of the Act, in such cases, access to the information which is not sensitive can still be provided. This is known as "partial disclosure" or the rule of severability. If a PIO decides to partially disclose information, he/she has to notify the requestor that he/she (requestor) will only be getting partial disclosure of the information, the reasons for the decision, the details of who made the decision, the fees to be paid, and requestor's right to get the decision reviewed.

[76] Section 7(3).
[77] Section 7(6).
[78] Section 7(3)(a).
[79] Section 7(9).
[80] Central Information Commission (2006) Appeal No. 10/1/2005-CIC, 25 February: www.cic.gov.in as on 20 March 2006.

3.1. Information Commissions

At the Central and State Government levels, independent and autonomous Information Commissions are required to be set up under the RTI Act. These Commissions comprising of one or more numbers have been set up at the Centre and in all the States. The Commissions have a number of key roles to play in ensuring that the RTI Act is an effective tool in assisting the public to access information. Specifically, every Information Commission is responsible for:

Handling complaints and appeals

All citizens have the right to appeal or complain to the Information Commission if their information needs under the Act have not been fulfilled. In reviewing decisions, the Information Commissions have broad investigation powers - including the right to see any document, even if an exemption has been claimed. They also have strong and binding powers to require public authorities to comply with the Act; these include ordering release of information, appointment of PIOs, improvement of records systems, provision of compensation and the imposition of fines.[81]

Monitoring implementation

At the end of each year, the Central and State Information Commissions have to produce an annual report which is tabled in Parliament/State Legislature, as the case may be. Each report has to include basic application and appeal statistics as well as comment on implementation efforts and recommendations for improvements. The Commission's annual reports are based on monitoring information submitted by each public authority under the Commission's jurisdiction.[82]

[81] Section 19(8) and Section 20.
[82] Section 25.

Special human rights oversight

Some intelligence and security agencies have been exempted from the Act, except where they are requested for information in respect of an allegation of corruption or a human rights violation. Information Commissions must deal with all such requests related to human rights violations.

The Commissions that have been set up so far are still working out their mandate. They have a crucial role to play in ensuring the RTI Act is implemented effectively and as such, the public needs to be vigilant to ensure that they are working effectively.

Central Information Commission

S.12. Constitution of Central Information Commission.—(1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Central Information Commission shall consist of— (a) the Chief Information Commissioner; and (b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of— (i) the Prime Minister, who shall be the Chairperson of the committee; (ii) the Leader of Opposition in the Lok Sabha; and (iii) a Union Cabinet Minister to be nominated by the Prime Minister. Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central

Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The Chief Information Commissioner and Information Commissioners shall 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.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

The pivotal organisation which controls and monitors all authorities created under the Act to make service of supplying information to the citizens is the Central Information Commission at the Union level and the State Information Commission at the State level.

Constitution of CIC

The Central Information Commission shall consist of Chief Information Commissioner and such other Information Commissioners not exceeding ten in number. The Commissioners to be appointed shall be persons of eminence in diverse fields such as law, science and technology, social service or management, mass media and administration and governance. These items of professional eminence almost cover all fields of human activities. Yet, it is possible that the one who is eminent in fields other than those specified may not be entitled to be considered for appointment as Information Commissioner. For e.g. the person who is eminent in the art of painting or music only may not be considered for appointment. In substance, what all the above qualifications seem to state is that the person to be appointed as Chief Information Commissioner or Information Commissioner shall be an administrator. And this appointment cannot be granted as a gift to any politician. That is why; it is specifically provided that the person to be appointed shall not be connected with any political party. It means, that the social service referred to above does not include political work.

S.13. Term of office and conditions of service.—(1) The Chief Information Commissioner shall hold office [for such term as may be prescribed by the Central Government][83] and shall not be eligible for reappointment: Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every Information Commissioner shall hold office [for such term as may be prescribed by the Central Government][84] or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

(3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

[(5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government: Provided that the salaries, allowances and other conditions of service of the Chief Information Commissioner or

[83] Substituted by Right to Information (Amendment) Act, 2019
[84] Substituted by Right to Information (Amendment) Act, 2019

the Information Commissioners shall not be varied to their disadvantage after their appointment: Provided further that the Chief Information Commissioner and the Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force.][85]

(6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

The term of office of the Chief Information Commissioner and the Information Commissioner shall be five years or up to the completion of 65 years. The term of the Chief Information Commissioner shall not be extended, even where he has not completed the age of 65. If the Information Commissioner is appointed as Chief Information Commissioner, then also the five-year term ends when he completes 5 years of office reckoned from his first appointment as Information Commissioner.

Sub-sections (1) and (2) have been amended by the Right to Information (Amendment) Act, 2019, to provide that the term of office of the Chief Information Commissioner and the Information Commissioner shall be for such term as may be prescribed by the Central Government. The salary and allowances payable to Chief Information Commissioner shall be on par with Chief Election Commissioner and the salary and allowances payable to the Information Commissioner shall be on par with the Election Commissioner, subject of course to the general rules as regards the payment of salaries and allowances when the concerned officers are reappointed earning salaries, allowances and pensions.

The salaries and allowances payable to them shall not be varied to their disadvantage after they are appointed and continuing in service. The Central Government shall make all necessary

[85] Substituted by Right to Information (Amendment) Act, 2019

arrangements for the office of the Central Information Commission and for the staff appointed therein. The above provisions relating to the salaries and allowances payable to the Chief Information Commissioner and the Information Commissioners have been modified by the substitution of sub-section (5) by the Right to Information (Amendment) Act, 2019.

S.14. Removal of Chief Information Commissioner or Information Commissioner.— (1) Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by 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.

(2) 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 of 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.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be,— (a) is adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or (c) engages during his term of office in any paid employment outside the duties of his office; or (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

(4) If the Chief Information Commissioner or a Information Commissioner in any way, 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 therefrom 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 procedure evolved in this section for removal of Chief Information Commissioner and other Commissioners, speaks that the legislature firmly intended to give independent status to the Information Commission. They can be removed from office only by an order of president that too on the ground of proved misbehaviour or incapacity. In this regard the President of India, has to refer the matter to Supreme Court of India for enquiry and basing on the report of the Supreme Court, the President of India will take a decision.

Removal from posts here means, two things; (1) removal which amounts to dismissal and (2) removal which amounts to termination of service. The Chief Information Commissioner or any Information Commissioner can be removed from his position on grounds of proved misbehaviour or incapacity after an enquiry is held and report submitted by the Supreme Court on the reference made to it by President. If the report of the Supreme Court is adverse to the delinquent, the President shall remove the Chief Information Commissioner or Information Commissioner forthwith.

The President may terminate the services of the Chief Information Commissioner or any Information Commissioner if he finds him

a. as an adjudged insolvent;
b. as having been convicted of an offence involving moral turpitude;
c. as engaged in any paid employment outside the service;
d. as unfit to hold office by reason of any infirmity of mind or body; or
e. has acquired any financial or other interest which prejudicially affects its function as Chief Information Commissioner or Information Commissioner.

The distinction between dismissal from service and termination of service is well known; in the former the person punished is not entitled to any re-appointment in Government service, in the latter the person whose service is terminated may be considered for re-appointment after the disability is removed. Here, the objectionable behaviour warranting removable from service is either conditioned or restricted.

The expression removal shall carry the same meaning as it possesses in service jurisprudence. It is only in the circumstances where the Chief Information Commissioner or the Information Commissioner is found to have acquired an interest in the contract; he should be shown to have received money beyond what is normally due as his genuine share. If not, he should be treated as one suffering from the detriment of misbehaviour.

The President may suspend the Chief Information Commissioner or the Information Commissioner during the pendency of any reference made by him to the Supreme Court. There is no question therefore of the President suspending the Chief Information Commissioner or the Information Commissioner even before any reference is made. The safeguards in removing the Chief Information Commissioner and other Commissioners empower the Commission to pursue their duties without any fear or favour from the executive. It acts as an independent organization like the Election Commission.

State Information Commission

S.15 Constitution of State Information Commission.—(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the..... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of— (a) the State Chief Information Commissioner, and (b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of— (i) the Chief Minister, who shall be the Chairperson of the committee; (ii) the Leader of Opposition in the Legislative Assembly; and (iii) a Cabinet Minister to be nominated by the Chief Minister Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) 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, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

The general superintendence, direction, and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act. The State Chief Information Commissioner is the main officer in the State Information Commission. His functions are general superintendence, giving direction and management of the affair of the State Information Commission. While performing these functions, he will be assisted by the State Information Commissioners. Further, he will perform these functions and exercise all powers of the State Information Commission conferred under the Act without any directions from any other authority. As this commission works independently without any direction or interference from outside therefore, it is clear that it is an autonomous body.

Qualification

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, science, and technology, social service, management, journalism, mass media or administration and governance. It is significant to mention here that the State Chief Information Commissioner and the State Information Commissioner are backbones of Right to Information Act, 2005 in the State. Therefore, they are required to be persons of honesty and integrity.

No Office of Profit

The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. Therefore, when an individual is appointed as the State Chief Information Commissioner or a State Information Commissioner then he cannot hold any other office of profit otherwise he could be removed from the office in accordance with section 17(3) of this Act.

Functions to be Discharged by the Chief Information Commissioner

The Bombay High Court, in Lokesh Chandra v State of Maharashtra[86], explained that the functions to be discharged by the Chief Information Commissioner are administrative functions. These are:

1. General superintendence
2. Issuance of directions
3. Management of the affairs of the State Information Commission.

These powers are vested in the Chief Commissioner. The law only expects the other Commissioners to assist the Chief. It means if the Chief Commissioner so demands, the other commissioners are supposed to render the assistance. The assistance can never be foisted for it may not be required. The word assistance itself means to render help or a helping hand and

[86] AIR 2009 Bom 147 at 149-150 (Nagpur Bench).

helping hand is, required only when the person discharging the functions finds that he may alone be not able to discharge the functions effectively and efficiently. Nobody is supposed to render assistance unless sought. It would, therefore, be exclusively within the right of the Chief commissioner if he should or should not seek assistance with regard to the matters mentioned in Section 15 (4). If other Commissioner says that his powers with regard to Section 15 (4) are co-extensive then perhaps there would be chaos. The general superintendence has to be by the head alone and the right to issue directions must vest in the head. The law does not require the Chief Commissioner to even consult the other commissioner with regard to the management of the affairs of the Commission. The words used are assistance and not consultation. The Legislature in its wisdom has used the word assistance and assistance, as already said, means helping hand alone and not the exercise of power unilaterally.[87]

Term of Office and Condition of Service

According to Section 16 of the Act, the State Chief Information Commissioner and State Information Commissioners shall hold their respective offices for a period of five years or up to the time when they attain the age of 65. While the Chief Information Commissioner is not entitled to re-appointment after he retires, State Information Commissioner may be appointed as Chief Information Commissioner, in which case also he has to retire if he attains the age of 65 or completes his term of five years calculated from his original first appointment as Commissioner. It is difficult to envisage a situation where State Information Commissioner is appointed as Chief Information Commissioner on vacating his office as State Information Commissioner unless such vacating occurs by resignation for there is no provision in the Act to promote the State Information Commissioner as Chief Information Commissioner.

Sub-sections (1) and (2) have been amended by the Right to Information (Amendment) Act, 2019 to provide that the term of office of the State Chief Information Commissioner and the State Information Commissioners shall be for such term as may be prescribed by the Central Government. The salaries and allowances payable to the Chief Information Commissioner shall be on par with the Election Commissioner of the Central Election Commission and the salaries and allowances payable to the State Information Commissioner shall be on par with Chief

[87] Lokesh Chandra v State of Maharashtra AIR 2009 Bom 147 at 149-150 (Nagpur Bench).

Secretary of the State Government. The salaries and allowances payable to the State Chief Information Commissioner and State Information Commissioners shall not be varied to their disadvantage after their appointment. The State Government can vary them if the variation is to their advantage. The above provisions relating to the salaries and allowances payable to the State Chief Information Commissioner and the State Information Commissioners have been modified by the substitution of sub-section (5) by the Right to Information (Amendment) Act, 2019.

3.2. A Note on the 2019 RTI Amendment

The RTI Amendment of 2019 amended, inter alia, Section 13 and Section 16 of the Act which provide for the term of office and conditions of service of the Chief Information Commissioner and Information Commissioners.

Before the amendment

Section 13 and Section 16 provided, inter alia, that the Chief Information Commissioner and every Information Commissioner shall hold office for a term of five years or till they attain the age of sixty-five years, whichever is earlier and shall not be eligible for reappointment. Further, the salaries and allowances and other terms and conditions of service of the Chief Information Commissioner and Information Commissioners shall be the same as that of the Chief Election Commissioner and Election Commissioner, respectively.

Similarly, section 16 of the Act provided for the term of office and conditions of service of the State Chief Information Commissioner and State Information Commissioners. It provided, inter alia, that the State Chief Information Commissioner and every State Information Commissioner shall hold office for a term of five years or till they attain the age of sixty-five years, whichever is earlier and shall not be eligible for reappointment. It provided that the salaries and allowances and other terms and conditions of service of the State Chief Information Commissioner and State Information Commissioners shall be the same as that of the Election Commissioner and the Chief Secretary to the State Government, respectively.

Reason for Amendment (As per statement of object and reasons)

The salaries and allowances and other terms and conditions of service of the Chief Election Commissioner and Election Commissioner are equal to a Judge of the Supreme Court, therefore, the Chief Information Commissioner, Information Commissioner and the State Chief Information Commissioner becomes equivalent to a Judge of the Supreme Court in terms of their salaries and allowances and other terms and conditions of service.

The functions being carried out by the Election Commission of India and the Central and State Information Commissions are totally different. The Election Commission is a constitutional body established by clause (1) of article 324 of the Constitution and is responsible for the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under the Constitution. On the other hand, the Central Information Commission and State Information Commissions are statutory bodies established under the provisions of the Right to Information Act, 2005.

Therefore, the mandate of Election Commission of India and Central and State Information Commissions are different. Hence, their status and service conditions need to be rationalised accordingly.

In view of the above, it is proposed to amend the Right to Information Act, 2005 so as to provide that the term of office of, and the salaries, allowances and other terms and conditions of service of, the Chief Information Commissioner and Information Commissioners and the State Chief Information Commissioner and the State Information Commissioners, shall be such as may be prescribed by the Central Government.

3.3. Power and Functions of the Information Commissions

For the successful implementation of the RTI Act, it is very important that due care should be taken to maintain the integrity, autonomy and independence of the Information Commissions and that they are provided adequate powers.

The powers of the Information Commissions:

1. Power to Receive Appeals

Appeals and Complaints

In anticipation of non-compliance, the RTI Act sets in place appeals and complaints procedures which provide requesters with cheap, simple options for taking issue with decisions or poor performance of public authorities and government officials under the Act. Requesters can make appeals to a senior officer within the concerned department (referred to as the Appellate Authority) or they can complain to one of the new Information Commissions, which are to be set up at the Centre and in all the States.

The appeals process falls under section 19 of the Act and envisages a two-step process: firstly, an appeal to the Appellate Authority and secondly, an appeal to one of the Information Commissions. The appeals process is supposed to be a quicker, cheaper way of enabling requesters to get a decision reviewed, as opposed to going to the courts.

A. First appeal to the Appellate Authority

In every public authority, an officer who is senior in rank to the PIO has been designated to hear appeals. He/she is referred to as the Appellate Authority. The requestor can make an appeal to the Appellate Authority if: (a) he/she is aggrieved by the decision made; (b) no decision was made within the proper time limits; (c) he/she is a third party consulted during the application process and is unhappy with the decision made by the PIO.

Appeal must be sent to the Appellate Authority within 30 days from the date of receipt of the decision from the PIO. However, if that deadline is missed and the Appellate Authority feels that the requestor has been prevented from making an appeal within this time limit for justifiable

reasons, he/she may allow the requestor to submit an appeal even after the 30 days have expired.[88]

The requestor needs to send the appeal to the concerned Appellate Authority in writing. Some state governments have prescribed forms for filing appeals. The RTI Act does not permit any fee being levied on an applicant for filing an appeal to an Appellate Authority (or the Information Commissions).

Ordinarily after receiving the appeal, the Appellate Authority is required to give his/her decision within 30 days. This time limit is extendable, but the maximum time limit for a decision from the Appellate Authority is 45 days. If additional time is taken over and above the 30-day time limit, the Appellate Authority has to record the reasons for the extension in writing and provide those reasons when issuing his/her final order.[89]

If the Appellate Authority accepts the appeal and decides that the information should be given to the appellant, then he/she should inform the appellant and the public authority of the decision in writing. If the Appellate Authority rejects the appeal, the notice of the decision to the appellant must include details of the appellant's right to appeal to either the Central or State Information Commission.

Notably, the RTI Act does not give Appellate Authorities the power to impose penalties on officials, even where non-compliance with the RTI Act has been proven. Only Information Commissions have the power to impose penalties. This means that even if the Appellate Authority decides in the favour of the appellant, he/she still may ask the Appellate Authority to refer the case to the Information Commission on the issue of penalties. Alternatively, he/she may make a complaint to the Information Commission.

B. Second appeal to the Information Commission

If the appellant is dissatisfied with the decision of the Appellate Authority, the RTI Act provides the option of filing a second appeal before the relevant Information Commission within 90 days of receiving that decision. Appeals against public authorities under the Central Government must

[88] Section 19 (1).
[89] Section 19 (6).

be filed before the Central Information Commission. Appeals against public authorities under a State Government must be filed before the Information Commission of that State. A second appeal may be filed before the relevant Information Commission even if the Appellate Authority does not pass an order on the first appeal within the time limit of 45 days. The second appeal must be filed within 90 days of lapse of that time limit. The Information Commission has the discretion to admit appeals received after the 90-day period if there is reasonable cause for delay.

Appeal must be sent to the relevant Information Commission in writing. The RTI Act does not prescribe a time limit for Information Commissions to decide second appeals. If an Information Commission decides that the appeal is justified, the Commission will need to give the appellant a written decision. The Information Commission has broad and binding powers to: (a) order the public authority to take concrete steps towards meeting its duties under the RTI Act, for example, by providing access to the information requested or by reducing the amount of fees needed to be paid;[90] (b) order the public authority to compensate the appellant for any loss that he/she may have suffered in the process;[91] (c) impose penalties on the PIO or any other official who failed in their duties under the Act.[92]

Burden of proof[93]

In any appeals proceeding, the burden of proof that the denial of a request was justified lies on the person who wants to keep the information secret - the PIO or a third party. In practice, this means that one should only need to interact with the Commission after the person who wants to withhold the information has first been questioned, because they are the ones who have to show the Commission that they are right. If a hearing is then organised, the PIO or third party arguing for secrecy needs to be called on to make their case first. Appellant need to make a case if the Commission thinks the PIO or third party has a point worth considering. At that stage, appellant then need to argue in favour of disclosure.

[90] Section 19(8)(a)(i),(ii),(iii).
[91] Section 19(8)(b).
[92] Section 20.
[93] Section 19(5).

2. Power to Receive Complaints

Difference between appeal and complaint

Appeal - If a PIO rejects an RTI application entirely or provides access only to a part of the information sought, the requestor may file an APPEAL to the Appellate Authority designated in that public authority. The Appellate Authority is an officer senior in rank to the PIO. After hearing from the appellant and the PIO, the Appellate Authority has to determine whether the PIO made a correct decision on the application. If the Appellate Authority's order does not satisfy the appellant, he/she can file a second appeal before the relevant Information Commission.

Complaint - A COMPLAINT may be made to the Information Commission if there is a grievance is about any other matter, for example, non-appointment of a PIO in a public authority, refusal of the APIO to receive the RTI application and forward it to the PIO, charging unreasonable fees, providing incomplete, false or misleading information, destroying a record which was the subject of the request or any other matter relating to seeking and receiving information under the RTI Act. In all such instances one may directly file a complaint before the relevant Information Commission. After inquiring into the complaint, the Information Commission may give appropriate directions to the public authority and impose a fine on the PIO or the APIO who deserves to be penalised.

The Central Information Commission or State Information Commissions cannot receive applications for information directly from the citizens. Application for any information shall be filed before the Public Information Officer or the Assistant Public Information Officer. It is only when the citizen finds that there is any deficiency of service or refusal on the part of the latter to render the service that the applicant can file a complaint before the Information Commission. The Central Information Commission and State Information Commissions are the second and the final appellate authorities under the RTI Act for the purposes of the public authorities under the Central Government or the State Governments as the case may be.

Petitions can be filed before the Information Commissions in two ways, one as a complaint and another by way of an appeal. Complaints are filed under section 18 and appeals under section 19(3) of the Act respectively.

Section 18 provides for the duty of the Information Commissions to inquire into the complaints made to it. There is no prescribed format for filing complaints. A single letter addressed to Information Commission, Central or State as the case may be, narrating the circumstances leading to the grievance is sufficient. If there are any documentary evidences, these should be attached to establish the reasonableness of the complaint. There is no fee for filing any complaint. A complaint is a kind of grievance filed before the Information Commission by the person, who had requested information under the RTI Act but has not been able to get it because of one or the other reason.

Section 18 of the Act provides that the complaint can be filed by any person who has been unable to send a request to the Public Information Officer. This inability may be by the reason of:

(i) Non-Appointment of Public Information Officers

A Public Information Officer has to be appointed by every public authority. As per Section 5(1) of the RTI Act, every public authority has to designate as many officers as may be necessary to provide information to the persons requesting for information under the Act. As per Section 5(2), each public authority must designate an officer at each sub-divisional or sub-district level as the Central Assistant Public Information Officer or a State Assistant Public Information Officer. Although it is mandatory to designate such Public Information Officer within one hundred days of the enactment of the RTI Act, many public authorities have not designated Public Information Officer within the prescribed time-frame. No penalty has been prescribed for such a lapse. For this lapse, a lot of inconvenience has to be suffered by the information seekers. To save them from this harassment, they have been given another alternative, that is, to apply to the Information Commission. However, the complaint procedure does not relieve the public authorities from their duties. While deciding the complaint cases, the Central Information Commission or the State Information Commission, under section 19(a), has the power to require the public authority to appoint the Public Information Officer (PIO) or the Assistant Public Information Officer (APIO) where none exists. This power to the Information Commissions to order the public authorities to appoint PIOs can help in the effective implementation of the Act.

(ii) Refusal to Accept Application

If the Central Assistant Public Information Officer or the State Assistant Public Information Officer, as the case may be, has refused to accept the application for information for forwarding the same to the Public Information Officer, one can approach the Commissions concerned. Therefore, this provision stresses that the Public Information Officer should not refuse to accept the application. A Public Information Officer cannot refuse even if multiple Public Information Officers are appointed by the same public authority. There is no scope either to ask the information seeker to approach another Public Information Officer within the same public authority. It has been held by the Central Information Commission that 'if Public Information Officer receives the request regarding the information which lies in the domain of any other public authority even then the Public Information Officer can, instead of returning the application, transfer the request to that public authority for furnishing the information to the applicant directly'.[94] It shall be the duty of the public authority to which such application is made, to transfer that application or part of it to that public authority as soon as practical and in no case later than five days from the date of receipt of that application and the information of such transfer should be given to the information seeker.[95] Public Information Officer may, later on, refuse to give the information if reasonable grounds to do so exist. It has also been provided under the Act that the Central Public Information Officer can take the assistance of any other officer from his department in order to exercise his duties effectively. The Central Information Commission has also held that where the request is received by one Public Information Officer but the information is with another Public Information Officer then the Public Information Officer who had received the request is under the obligation to seek information from his colleague and provide it to the information seeker. His colleague who has to provide the information would become the deemed Public Information Officer and shall be expected to provide the Public Information Officer, who received the original request, the required information.[96]

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[94] ICPB / C1 / CIC / 2006 dated 6 March 2006.
[95] Section 6(3) of the Right to Information Act, 2005.
[96] CIC / AT / A / 2006 / 00015 dated 1 March 2006.

(iii) Refusal to Accept Appeal

If the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept an appeal of the information seeker under this Act for forwarding the same to the senior officer specified in the subsection (1) of Section 19, a complaint may be filed with the Central Information Commission or the State Information Commission, as the case may be.

(iv) Denied access to any information under this Act

Another ground on which a complaint can be filed is provided under section 18(1) (b) of the Act. As per this section, a complaint can be filed where the complainant has been refused access to any information under this Act.

(v) Received no response to the information request

As per section 18(1)(c), the applicant can also file the complaint where he has not received a response to a request for information or access to the information within the time limit specified under this Act.

(vi) Asking unreasonable amount of fee

Section 18(1)(d) of the RTI Act provides the right to file the complaint if the information seeker has been required to pay an amount of fee which he or she considers unreasonable.

According to section 6(1) of the RTI Act, an application for information must be accompanied by the prescribed fee. The fixation of the amount of fee has been left to the discretion of the states.

(vii) Any other matter relating to requesting or obtaining access to records under the Act

The last ground on which a complaint can be filed before the Information Commission is provided under section 18(1)(f) of the Right to Information Act, 2005. This section provides that the complainant may also submit a complaint in respect of any other matter relating to requesting or obtaining access to records under the Act. This is a residuary clause and, therefore, makes a provision for all those situations which have not been either covered in the proceeding sections or which may arise in the future. Thus, we may say that section 18(1) ends with a catch-all clause

included in section 18(1)(f) which broadly gives the Commissions the power to handle a complaint "in respect of any other matter relating to requesting or obtaining access to records under this Act". This means that Commissions have the necessary power to inquire into any matter at all, even if it is not specifically mentioned in section 18(1). For example, where a public authority has failed to meet its obligations to proactively publish information in accordance with section 4 of the Act, or where a public authority has failed to appoint public information officers, a person could bring a complaint to the Information Commission demanding that the public authority be ordered to comply with the law.

3. Power to Conduct Inquiry

Under section 18(2) of the RTI Act, the Information Commission has been empowered to initiate inquiry where it is satisfied that there are reasonable grounds to inquire into the matter. For the purposes of inquiry, if the Information Commission requires any documents or records, then the Public Authority must provide to the Information Commissioner, for examination, any record requested by the Commission. This overriding power of the Information Commission is irrespective of anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be. This section makes it further clear that no material shall be withheld from the Information Commission on any ground, whatsoever. This is necessary to conduct an inquiry under section 18(2) of the Act.

4. Powers of a Civil Court

Section 18(3) of the RTI Act, 2005 sets out the Central and State Information Commissions' powers of investigation. While dealing with the complaints, appeals, or conducting inquires, certain other ancillary powers are also necessary which would help the Commissions to exercise their powers more efficiently. These powers are the same as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 while inquiring into any matter in respect of the following matters:

a. Summoning and enforcing the attendance of persons and compel to give oral or written evidence on oath and to produce documents or things;
b. Requiring the discovery and inspection of documents;
c. Receiving evidence on affidavit;

d. Requisitioning any public record or copies thereof from any court or office;
e. Issuing summons for examination of witnesses or documents and
f. Any other matter which may be prescribed.

5. Overriding Power of Information Commission to Examine Any Record Under the Control of Public Authority

The Central Information Commission or the State Information Commission, as the case may be, may during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the Public Authority. This overriding power of the Information Commission is irrespective of anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be. This Section makes it further clear that no material shall be withheld from the Information Commission on any ground. This is necessary to conduct an inquiry under Section 18(2) of the Act.

Hence, we see that in any appeal, the first step for an Information Commissioner handling the case will be to requisition the information which is being disputed so that he/she can examine it and make a preliminary decision as to whether the PIO and/or Departmental Appellate Authority was correct in rejecting the requester's application.

Importantly, section 18(4) of the RTI Act specifically states that Information Commissions have the right to look at every piece of information subject to an appeal, whether or not an exemption has been claimed. This makes it clear the Commissioners have the right, and in fact, the duty to look at all the information requested and to then reconsider from first principles whether the correct decision was made. Equally, those officials in possession of the information in dispute are under a legal duty to provide it to the Information Commission. If officials do not provide information to Information Commissions when requested, they could leave themselves liable to a penalty under section 20(1) for "obstructing in any manner the furnishing of information".

6. Power to Ensure Compliance with the Right to Information Act, 2005

Maximum powers have been given under the RTI Act in order to ensure the successful and efficient working of the information commissions. However, all these provisions will become futile if the decisions taken by the Information Commissions by using these powers are not implemented in the full spirit by the Public Authority. Section 19(8) gives sweeping powers to

the Central Information Commission or the State Information Commission to require the Public Authority to take any such steps as may be necessary to secure compliance with the provisions of this Act. Hence, as per this section, the Commissions can:

a. Require a public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act
b. Require the public authority to compensate the complainant for any loss/detriment suffered;
c. Impose any of the penalties provided under the Act; or
d. Reject the application.

Most importantly, section 19(8) includes a catch-all phrase that enables Information Commissions to "require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act".

7. Compensation for Loss or Detriment Suffered

In the process of deciding complaints or appeals, the Information Commissions have the power to direct the concerned authority or officer to compensate the aggrieved complainant.33 However, there must be an established nexus between the loss suffered by the complainant and the action of the public authority or PIO, for claiming such compensation

8. Impose Penalties

Although the Information Commission can ask the public authority to compensate the complainant, however, it can also impose penalties on the erring officials. Section 20 of the RTI Act specifically gives Information Commissions the power to recommend disciplinary action, as well as to impose monetary penalties on PIOs (and officials they have asked for assistance) who are found, without any reasonable cause, to have:

a. refused to receive an application or failed to furnish information within the time limits;
b. malafidely denied a request for information;
c. knowingly give incorrect, incomplete or misleading information;
d. destroyed information which was the subject of a request; or
e. obstructed in any matter the furnishing of information.

Before a penalty is imposed, an official must be given a reasonable opportunity of being heard. He/she is responsible for that proving he/she acted reasonably and diligently. However, this power to impose penalties lies only with Information Commissions. Appellate Authorities are not given the power to impose penalties under section 20.

Requests for Information about Human Rights Violation Allegations

Section 24(1) of the RTI Act states that this Act will not apply to certain "intelligence and security agencies" established by the Central Government which are listed in the Second Schedule of the Act nor to any information that those organisations supply to other public authorities, At the time the law was passed, 18 organisations were listed in the Second Schedule. Section 24(4) applies similarly at the state level, empowering state governments to nominate intelligence and security agencies that they have established which will be exempt from the Act.

However, both the sections, that is, section 24(1) and section 24(4), respectively, provide an exception, requiring that information pertaining to allegations of corruption or human rights violations will not be excluded. Importantly, both sections go further and require that where information is sought in respect of human rights allegations, the information shall only be provided with the approval of the relevant information Commission. Commissions are given forty-five days to decide on the request, as opposed to the standard thirty days within which Public Information Officers have to deal with ordinary requests.

However, it would be useful for Information Commissions to publish guidelines for the benefit of the public about how they intend to approach their duties under these sections.

The Commissions have been given a very important duty. Allegations of human rights violations against government bodies are extremely serious and need to be handled sensitively and with due care. The Commissions have been placed in the role of human rights protectors – and will, therefore, need to be clear on the parameters of what constitutes a human rights violation. In this respect, it may be advisable for Commissioners and their staff who do not have a human rights background to be given training on human rights law, in particular, the rights contained in the Indian Constitution.

Public Interest Override

Section 8(2) of the RTI Act makes all of the exemptions contained in section 8(1) of the Act subject to a "Public Interest Override". The notion of public interest is the unifying principle in the RTI Act. Government information is not the property of the organization that holds it. It is not 'owned' by any department or by the government of the day. Information is generated for public purposes and is held for the community. Information can only be retained if it can be shown to be in the greater interest of the community to withhold the information. In practice, this means that even where information requested is covered by an exemption, an official or the Information Commission (when considering an appeal), should still order disclosure if the public interest in the specific case warrants release of the information. The term 'public interest' is not defined anywhere in the RTI Act. This makes sense because what is in the public interest will change over time and will also depend on the particular circumstances of each case. Because of this, public authorities - more specifically, PIOs and Departmental Appellate Authorities - as well as Information Commissioners will need to consider each case on its merits, taking in to account the specific facts. They need to decide whether any exemption applies and if so, whether it is overridden by more important public interest considerations, such as the need to promote public accountability, the imperative to protect human rights, or the fact that disclosure will expose an environmental or health and safety risk.

Monitoring Implementation of the Act

Another important function of Information Commissions is to monitor and promote the implementation of the Act, as well as raise public awareness about using the law. Monitoring is imposed - to evaluate how efficiently public bodies are discharging their obligations and to gather the information that can be used to support calls for improvements to the law and implementation activities. Ongoing monitoring and evaluation will enable implementation efforts to be continuously assessed, reviewed, and strengthened so that the weaker areas be identified and addressed.

Both Central, as well as the State Information Commissions, have been given specific responsibilities to monitor the Act by virtue of section 25 which makes the Commissions

responsible for producing annual reports. The power for Information Commissions under section 19(8) to require public authorities to take action to comply with 'any part of the Act' and under section 25(3)(g) to make recommendations for reform also clearly demonstrate that the Information Commissions need to be constantly monitoring implementation to ensure that the Act is being implemented in letter as well as in spirit.

To ensure that Information Commissions have sufficient information to report meaningfully on whether the implementation is effective, it is essential that all public authorities immediately put in place proper monitoring systems to ensure regular collection of the necessary statistics. In this context, section 25(1) specifically requires that every Ministry or Department is under a duty to provide the Information commission with whatever information they need to produce their Annual Reports. Section 25(3) specifically requires that Information Commissions produce Annual Reports which will include, at a minimum, information on:

a. The number of requests made to each public authority;
b. The number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which the decisions were made and the number of times such provisions were invoked;
c. The number of appeals referred to the Information Commission for review, the nature of the appeals and the outcome of the appeals;
d. Particulars of any disciplinary action taken against any officer in respect of the administration of this Act; and
e. The amount of charges collected by each public authority under this Act;
f. Any facts which indicate an effort by public authorities to implement the spirit/intention of the Act;
g. Recommendations for reform, including recommendations in respect of particular public authorities, for the development, improvement, modernization, reform or amendment to the Act, other legislation or the common law, or any other matter relevant for operationalising the right to access information.

Through their Annual Reports, Information Commissions can provide a holistic picture of the status of compliance with the Act. They can highlight areas of good and bad practice, lessons learned, and innovations that could be replicated. They can also pinpoint areas for reform.

Promoting the Act

Although section 26 of the Act, which deals with the promotion of the right to information, places the primary duties for awareness-raising and bureaucratic training on governments, nonetheless, Information Commissions - as champions of openness - have the power to undertake activities that will ensure compliance and improve implementation. Whether alone or collaboratively, Information Commissions could be proactive in carving out a role for themselves to ensure that promotional and training activities are undertaken in the proper spirit of open government and maximum disclosure.

Even if Information commissions do not get involved in the training and awareness-raising programmed which are mandatory by the Act, nonetheless, Commissions have the power under section 19(8) to require any public authority to take any such steps necessary to secure compliance with the Act, which includes the power to order training to be undertaken in accordance with section 26. Commissions will need to be alert to monitor whether Governments are meeting their training and public education obligations under the Act and they can be proactive in issuing orders to address non-compliance.

4. A Practical Guide to RTI Act

Relevant paragraphs from the previous chapters have been reproduced here to provide an easier flow of information.

Obtaining Information Under the RTI Act

To access specific information not proactively disclosed by the government, the RTI Act gives citizens the right to make a specific written request for information to a public authority.[97]

Below are indicative steps to be followed to obtain information under RTI Act:

Step 1: Identification of the Public Authority which holds the information

The first step is to identify which public authority holds the information. The RTI Act requires that even if the office to which the application is submitted does not have the information, they should not return the application, but instead are under a duty to transfer the application to the relevant public authority within five days.[98] If the application is transferred, the first public authority must inform the requestor of the transfer in writing. The second public authority then becomes responsible for providing the information within the original 30-day period.

Step 2: Identification of the Public Information Officer (PIO) within the public authority

Once the public authority that holds the information has been identified, it must then be addressed to the PIO of the authority. Public authorities are required to publish a list of Public Information Officers (PIOs) and Assistant Public Information Officers (APIOs) appointed in each department from the relevant department. This information can be found either on their website or by contacting the department directly and asking them for guidance.[99] If the application is submitted to an APIO, then the time limits for a response to the application increases from 30 days to 35 days.

[97] Section 6 (1).
[98] Section 6 (3).
[99] Alternatively, log on to the official RTI Portal developed by the Government of India for links to the lists of PIOs and APIOs appointed at the Centre and in the States: http://www.rti.gov.in.

Step 3: Drafting the RTI application

The application can be hand-written or electronic, in English, Hindi, or the official language of the area.[100] The Central Government has fixed a limit of 500 words for each RTI application. The name and contact details of the applicant and the PIO and any annexure attached to the application will be excluded from this word limit. States have their word limits and guidelines on RTI applications. The applicant need not explain why the information is sought. The Act makes it very clear that there is no need to give reasons for why a particular piece of information is requested.[101]

Step 4: Submission of application

After completing the application, it must be sent to:

- The PIO in the public authority which has the information; or
- The APIO located at the sub-district or sub-divisional level nearby, who is then under a duty to forward the application to the relevant PIO.

The application can be submitted in person or by post, fax, or email. It is advisable to send the application by registered post or under a certificate of posting (UCP) so that there is a proof of postage and the PIO cannot claim that he/she never received the application. If submitting the application in person, always make sure to ask for a receipt for the application.

Step 5: Wait for a decision

Once the PIO receives the application, complete with the application fee, he/she is required to process it as fast as possible but no later than 30 days from the date on which he/she receives the application.[102] If an APIO passed the application on, another 5 days gets added to this timeline.[103] However, where the information requested is vital to ensuring the life or liberty of a person, a decision must be made within 48 hours.[104]

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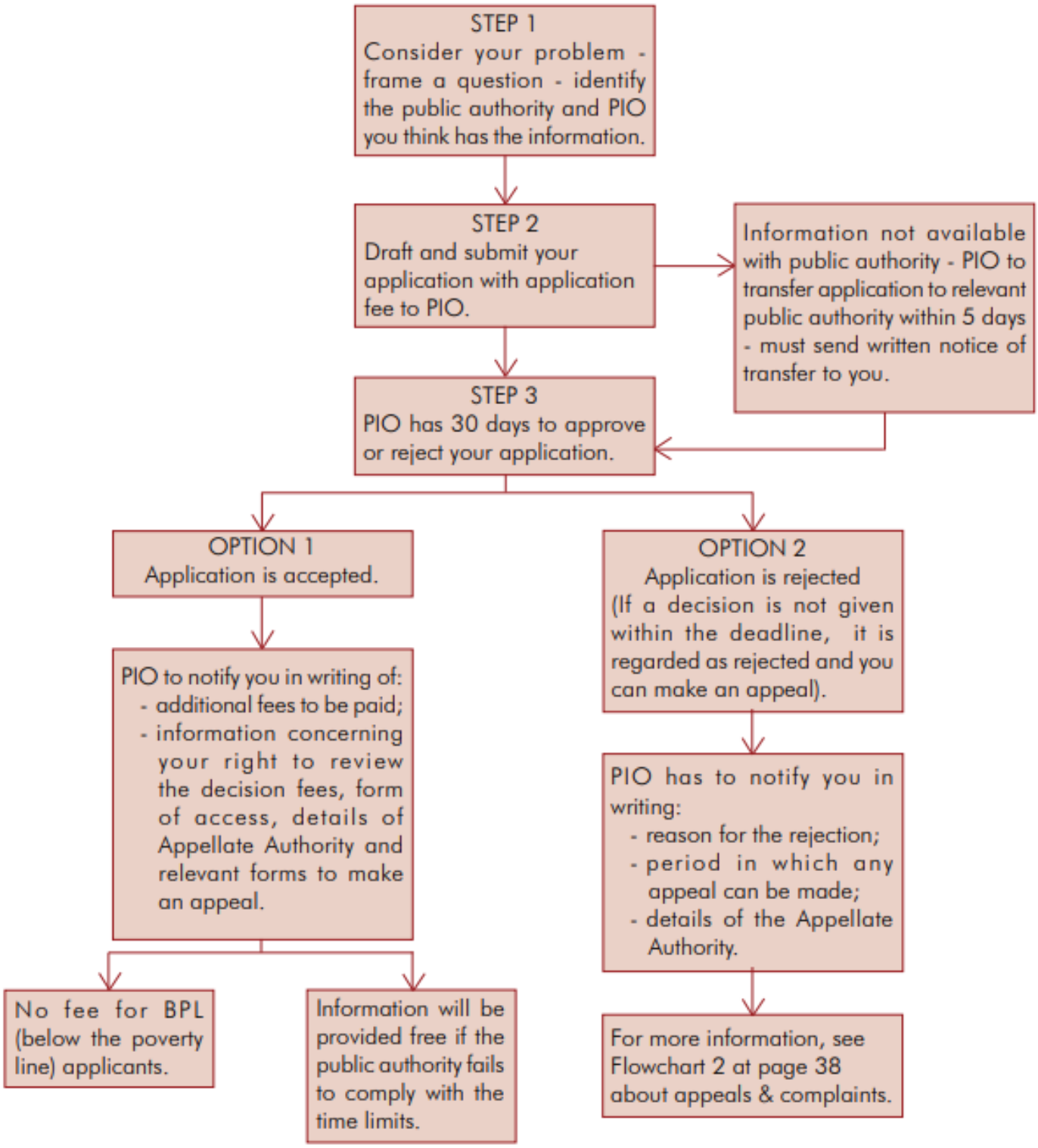
[100] Section 6 (1).
[101] Section 6 (2).
[102] Section 7(1).
[103] Section 5(2).
[104] Section 7(1).

Flow Chart Showing RTI Application Process (Source: CHRI)



Disposal of a Request

When processing the request, the PIO will need to determine immediately whether the information requested: (a) Is available in the office, and if not, transfer it to another public authority and provide the requestor a written notice of the transfer; (b) Relates to confidential third party information and therefore requires consultation with the third party before a decision can be made, and (c) Is covered by an exemption and whether there is a public interest in disclosing it.

If the application is approved

If the PIO decides to give the information, the PIO will send a decision notice within 30 days. The notice will include advice regarding any additional fees payable to access the information that has been requested and inform the requestor of his right to appeal the decision about the amount of fee charged or the form in which the information is required, including details of the Appellate Authority, time limit, and any other forms.[105]

Note that if the PIO fails to meet the time limits prescribed under the RTI Act, then the information has to be provided free of cost to the requestor.[106] The notice sent by the PIO needs to include an explanation of how any additional fees were calculated.[107] The PIO does not have the power to charge additional fees for searching, collecting, or processing the information. The RTI Act specifically provides that information has to be provided in the form that is requested UNLESS it would disproportionately divert the resources of the public authority or is likely to damage the record.[108] Unfortunately, some departments have been using this provision to deny citizens access to information. This issue was the subject of a complaint filed with the Central Information Commission (CIC).

If Application is rejected

The PIO can only reject RTI application if the information if the request falls under one of the exemptions in the Act (mentioned in Section 8 of the Act) and the PIO additionally decides that

[105] Section 7(3).
[106] Section 7(6).
[107] Section 7(3)(a).
[108] Section 7(9).

there is no overriding public interest in releasing the information. No other reason is valid under the RTI Act for justifying why an information request was refused. For example, it is not enough that the information might embarrass the government or an official or that a good enough reason has not been provided for wanting the information.

Section 8(2) of the Act requires that even where an exemption applies to an application for information, a public body may release the information if the public interest in disclosure outweighs the interest protected by the exemption. The term "public interest" is not defined anywhere in the Act. This makes sense because what is in the public interest will change over time and will also depend on the particular circumstances of each case. Because of this, public authorities - more specifically, PIOs and departmental Appellate Authorities - as well as Information Commissions will need to consider each case on its merits. They need to decide whether any exemption applies and if so, whether it is overridden by more important public interest considerations, such as the need to promote public accountability, the imperative to protect human rights or the fact that disclosure will expose an environmental or health and safety risk.

The PIO has to give written notice of his/her decision to reject the request within the 30-day time limit.[109] The decision notice must state: (a) The reasons for the rejection, which should include information regarding the exemption being relied upon and any relevant facts considered by the PIO in arriving at the decision; (b) The period within which one can appeal the decision; (c) The name and contact details of the Appellate Authority to whom one can appeal. If the PIO fails to give a decision notice, then this is regarded as a "deemed refusal".[110]

Making an Appeal

In anticipation of non-compliance, the RTI Act sets in place appeals and complaints procedures which provide requesters with cheap, simple options for taking issue with decisions or poor performance of public authorities and government officials under the Act. Requesters can make appeals to a senior officer within the concerned department (referred to as the Appellate

[109] Section 7 (8).
[110] Section 7 (2).

Authority) or they can complain to one of the new Information Commissions, which are to be set up at the Centre and in all the States.

The appeals process falls under section 19 of the Act and envisages a two-step process: firstly, an appeal to the Appellate Authority and secondly, an appeal to one of the Information Commissions. The appeals process is supposed to be a quicker, cheaper way of enabling requesters to get a decision reviewed, as opposed to going to the courts.

A. First appeal to the Appellate Authority

In every public authority, an officer who is senior in rank to the PIO has been designated to hear appeals. He/she is referred to as the Appellate Authority. The requestor can appeal to the Appellate Authority if: (a) he/she is aggrieved by the decision made; (b) no decision was made within the proper time limits; (c) he/she is a third party consulted during the application process and is unhappy with the decision made by the PIO.

The appeal must be sent to the Appellate Authority within 30 days from the date of receipt of the decision from the PIO. However, if that deadline is missed and the Appellate Authority feels that the requestor has been prevented from appealing within this time limit for justifiable reasons, he/she may allow the requestor to submit an appeal even after the 30 days have expired.[111]

The requestor needs to send the appeal to the concerned Appellate Authority in writing. Some state governments have prescribed forms for filing appeals. The RTI Act does not permit any fee being levied on an applicant for filing an appeal to an Appellate Authority (or the Information Commissions).

Ordinarily, after receiving the appeal, the Appellate Authority is required to give his/her decision within 30 days. This time limit is extendable, but the maximum time limit for a decision from the Appellate Authority is 45 days. If additional time is taken over and above the 30-day time limit, the Appellate Authority has to record the reasons for the extension in writing and provide those reasons when issuing his/her final order.[112]

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[111] Section 19 (1).
[112] Section 19 (6).

If the Appellate Authority accepts the appeal and decides that the information should be given to the appellant, then he/she should inform the appellant and the public authority of the decision in writing. If the Appellate Authority rejects the appeal, the notice of the decision to the appellant must include details of the right to appeal to either the Central or State Information Commission.

Notably, the RTI Act does not give Appellate Authorities the power to impose penalties on officials, even where non-compliance with the RTI Act has been proven. Only Information Commissions have the power to impose penalties. This means that even if the Appellate Authority decides in the favour of the appellant, he/she still may ask the Appellate Authority to refer the case to the Information Commission on the issue of penalties. Alternatively, he/she may make a complaint to the Information Commission.

B. Second appeal to the Information Commission

If the appellant is dissatisfied with the decision of the Appellate Authority, the RTI Act provides the option of filing a second appeal before the relevant Information Commission within 90 days of receiving that decision. Appeals against public authorities under the Central Government must be filed before the Central Information Commission. Appeals against public authorities under a State Government must be filed before the Information Commission of that State. A second appeal may be filed before the relevant Information Commission even if the Appellate Authority does not pass an order on the first appeal within the time limit of 45 days. The second appeal must be filed within 90 days of the lapse of that time limit. The Information Commission has the discretion to admit appeals received after 90 days if there is reasonable cause for delay.

The appeal must be sent to the relevant Information Commission in writing. The RTI Act does not prescribe a time limit for Information Commissions to decide second appeals. If an Information Commission decides that the appeal is justified, the Commission will need to give the appellant a written decision. The Information Commission has broad and binding powers to: (a) order the public authority to take concrete steps towards meeting its duties under the RTI Act, for example, by providing access to the information requested or by reducing the amount of fees needed to be paid;[113] (b) order the public authority to compensate the appellant for any loss

[113] Section 19(8)(a)(i),(ii),(iii).

he/she may have suffered in the process;[114] (c) impose penalties on the PIO or any other official who failed in their duties under the Act.[115]

Burden of proof[116]

In any appeals proceeding, the burden of proof that the denial of a request was justified lies on the person who wants to keep the information secret - the PIO or a third party. In practice, this means that one should only need to interact with the Commission after the person who wants to withhold the information has first been questioned because they are the ones who have to show the Commission that they are right. If a hearing is then organised, the PIO or third party arguing for secrecy needs to be called on to make their case first. The Appellant needs to make a case if the Commission thinks the PIO or third party has a point worth considering. At that stage, the appellant then needs to argue in favor of disclosure.

Making a Complaint

Difference between appeal and complaint

Appeal - If a PIO rejects an RTI application entirely or provides access only to a part of the information sought, the requestor may file an APPEAL to the Appellate Authority designated in that public authority. The Appellate Authority is an officer senior in rank to the PIO. After hearing from the appellant and the PIO, the Appellate Authority has to determine whether the PIO made a correct decision on the application. If the Appellate Authority's order does not satisfy the appellant, he/she can file a second appeal before the relevant Information Commission.

Complaint - A COMPLAINT may be made to the Information Commission if there is a grievance is about any other matter, for example, non-appointment of a PIO in a public authority, refusal of the APIO to receive the RTI application and forward it to the PIO, charging unreasonable fees, providing incomplete, false or misleading information, destroying a record which was the subject of the request or any other matter relating to seeking and receiving information under the RTI Act. In all such instances, one may directly file a complaint before the

[114] Section 19(8)(b).
[115] Section 20.
[116] Section 19(5).

relevant Information Commission. After inquiring into the complaint, the Information Commission may give appropriate directions to the public authority and impose a fine on the PIO or the APIO who deserves to be penalised.

In addition to the appeals route one has the option of sending a complaint to the Information Commission directly under Section 18(1) of the Act, if he/she is not satisfied with the decision of the PIO or if a public authority is failing to comply with its duties under the Act. This is a particularly useful route to seek a penalty for the PIO who violated the provisions of the Act while dealing with an RTI application. So even after the information is received on the orders of the Appellate Authority, one may demand that the PIO be penalized for contravening the law. One can do this by sending a complaint to the concerned Information Commission. The Appellate Authority cannot penalize a PIO; only Information Commissions have the power to impose penalties.

Grounds for filing a complaint

(a) a PIO has not been appointed in a particular department or an APIO has refused to accept application;

(b) applicant was refused access to any information requested;

(c) no response to request or access to the information within the specified time limit;

(d) requestor asked to pay unreasonable fees

(e) the information provided is incomplete, misleading or false;

(f) any other problem related to accessing information under the RTI Act.

This last provision is purposely broad to allow complaints to the Information Commission in relation to ANY problems that prevent one from effectively accessing information, even those not mentioned specifically under the RTI Act. These include, for example, failure by a public authority to - implement proactive disclosure requirements properly, appoint PIOs, provide proper training to officials or failure by the government to produce the User's Guide required under the Act. Apart from imposing penalties or recommending disciplinary action against a PIO, the Information Commissions can give recommendations to public authorities to improve compliance with the provisions of the Act.

In a 2011 decision the Supreme Court of India has held that under the complaints procedure, an Information Commission does not have the power to order a public authority to disclose information.[117] An order for disclosure of information may be made only under the appeals procedure explained in Section 19 of the Act. So, if a PIO has rejected an application, it is advisable to file a first appeal before the Appellate Authority. If the Appellate Authority upholds the PIO's decision of rejection, or if one is not satisfied with that Authority's decision for any other reason, he/she may file a second appeal before the relevant Information Commission. In such cases it is not advisable to rush to the Information Commission with a complaint bypassing the appeals procedure.

Whether the Information Commissions are hearing an appeal or a complaint, they have the same investigative and decision-making powers. In summary, the Information Commissions have broad investigative powers because they have the same powers as a civil court. The RTI Act currently contains no time limit for disposal of appeals by the Information Commission. If after inquiring into the second appeal, the Information Commission decides that the plea is justified, it may issue binding orders requiring the public authority to take necessary steps to redress the grievance.

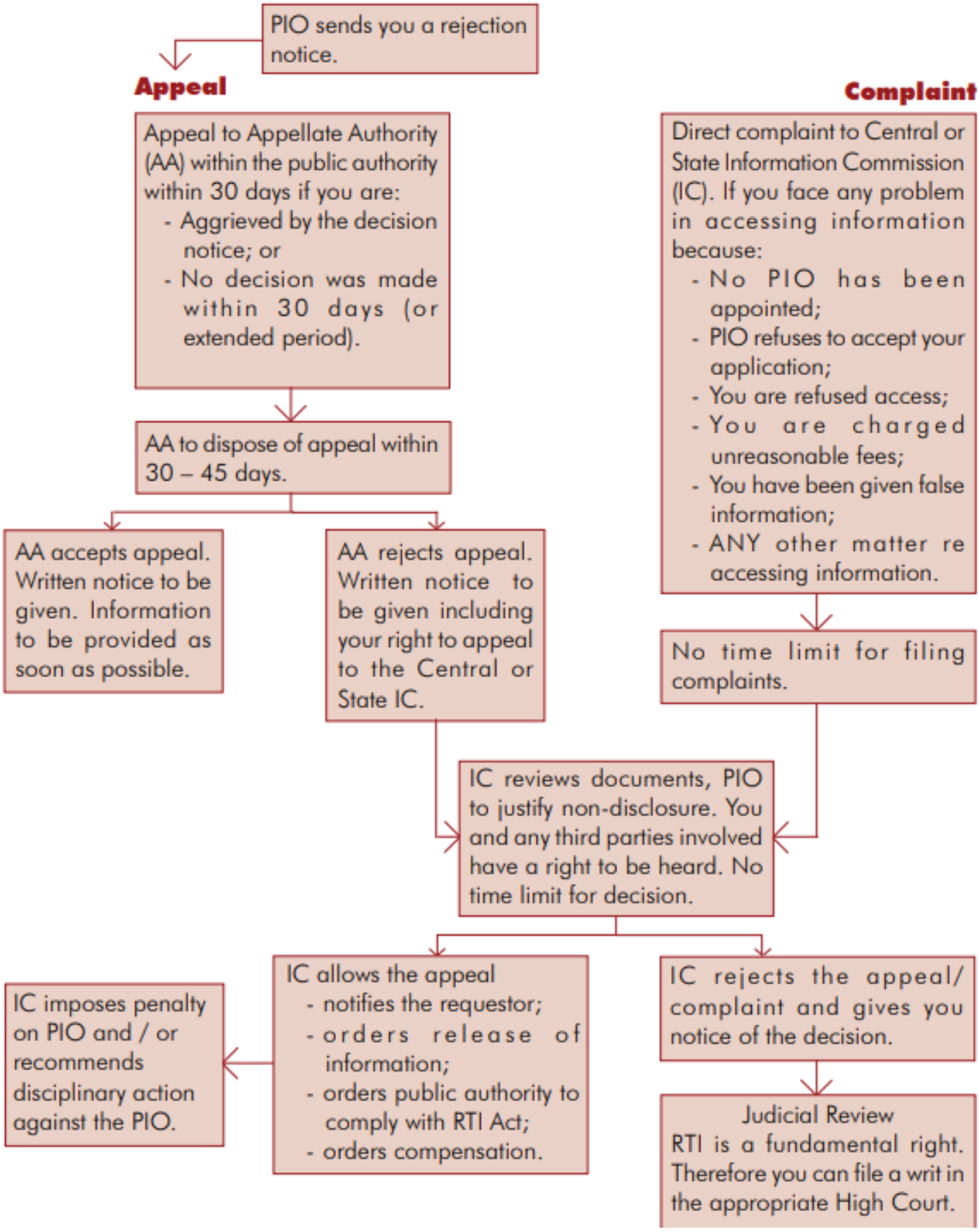
The Information Commission has very broad powers to compel the public authority to comply with the provisions of the Act, for example, by ordering release of the information requested, appointing PIOs to receive and process RTI applications or directing that more categories of information be disclosed proactively. The Information Commission can also require the public authority to provide compensation for any loss or detriment suffered because of rejection of the request for information and can impose a penalty on non-compliant officials.[118] Alternatively, if the Information Commission finds that the second appeal or complaint is not justified it can reject it. In such a case one may file a writ petition before the concerned High Court seeking judicial review of that decision.

[117] Chief Information Commissioner and Anr. V State of Manipur and Anr. AIR 2012 SC864.
[118] Section 19(8) and Section 20.

Appeal to the courts

The RTI Act specifically bars courts from entertaining any suit or proceeding before a petitioner exhausts all remedies (appeals and complaint procedures) available under the RTI Act. Ordinarily, no court can interfere in any appeal or complaint proceeding pending before the Information Commission. If one is not satisfied with the decision of the Information Commission, he/she may file a writ petition before a High Court. Under Article 226 of the Constitution of India, High Courts have the power to undertake a judicial review of decisions made by any statutory authority including Information Commissions. Theoretically, one may also move the Supreme Court against a decision of an Information Commission because RTI is a fundamental right. Under Article 32 of the Constitution, any person may move the Supreme Court of India to entertain a petition about the violation of a fundamental right. However, in practice, it is advisable to approach the Supreme Court after exhausting the option of moving the relevant High Court. Decisions of Information Commissions cannot be challenged before lower courts.

Flow Chart Showing Appeals and Complaints Process (Source: CHRI)



5. Critical evaluation of Right to Information Act, 2005[119]

The Right to Information Act (hereinafter referred to as "the Act") was expected to bring revolutionary changes in the working culture of the Government - from secrecy to transparency, but the Act has neither totally succeeded nor miserably failed. It still has to cover a long distance to achieve its desired result. In the last fifteen years of its implementation, certain deficiencies have been noticed in the provisions of law and some practical hurdles are cropped up.

1. Right given to citizens only

Section 3 of the RTI Act empowers only citizens to seek information and non-citizens are denied the same privilege such discrimination is untenable. In the US, even non-citizens are allowed to acquire information. No doubt, the Right to Information is enumerated from the fundamental right of freedom of speech and expression that is guaranteed to citizens of India. The classification between citizen and non-citizen in respect of freedom of speech and expression is based on intangible difference and having nexus with the object of freedom of speech and expression. Citizens of India are entitled to exercise the freedom of speech and expression against their government because the government is, of the people by the people and for the people of India. We cannot say the same thing in respect of the non-citizens. Obliviously, the framers of the Constitution have expressly denied the freedom of speech and expression to a non-citizen. However, Right to Information is means to end but not an end itself. Non-citizens of India are also entitled to have the protection of certain fundamental rights under the Constitution. Those are rights of accused under Article 20, lifer and liberty under 21, preventive detention laws of 22, rights of religion under 25, and right to seek justice from SC under Article 32. Naturally, non-citizens also require some information from the government to have the meaningful protection of these rights. Therefore, denying the same right to non-citizen amounts to arbitrary. Moreover, non-citizens are not be prevented from getting the information under the Act. Section 6 (2) of the Act says that a citizen need not furnish a motive or reason for seeking the information. That information can then be given to a non-citizen, which is not an offence

[119] This is an edited version of an article titled "*Critical Evaluation of the Right to Information Act, 2005*", written by Dr. S.G. Goudappanavar, Associate Professor, KLE Society's Law College.

under the Act. When the Act has allowed the non-citizen to acquire information indirectly, there is no justification of such direct prohibition apparently which amounts contradictory.

2. Appointment of members of the CIC

Transparency in the appointment of members of the Central Information Commission by the selection committee consisting of the Prime Minister, a nominated Cabinet Minister, and Opposition Party Leader in the Lok Sabha is the hallmark of the legislation. The crucial question is - whether the selection of members should be the norm of majority or unanimous? If the decision has to be taken by the majority, then participation and consultation of the Opposition Party Leader is a mere formality because the Prime Minister and his nominated Cabinet Minster are always on one side and Opposition Party Leader's voice would never be heard. This is what had happened in the case of the appointment of P.J. Thomas as Central Vigilance Commissioner, which was struck down by the Supreme Court as ultra virus.[120] In that appointment, the (then) Prime Minister Dr. Manmohan Singh and the Home Minister P. Chidambaram had overruled what in final analysis turned out to be a valid objection by the third member, Sushma Swaraj, the Leader of the Opposition.[121] If at all due weightage is to be given to the Leader of the Opposition in the appointment of the members, then obviously decision should be unanimous rather than a majority. The Act should be amended to add the specific provision for the unanimous decision for the appointment of members.

3. Constitution of two parallel independent bodies

RTI Act has constituted two parallel independent authorities which has its strengths but also weaknesses. Central and State Government public authorities come under the jurisdiction of CIC and SIC respectively. Section 15 of the Act says that SIC is an autonomous body, which is not subject to any other authority under the Act. This means that the doctrine of *stare decisis* is not applicable because SIC is not subordinate to the CIC. SIC may interpret the provisions of the Act independently without taking into consideration of CIC's interpretations and it may even give contrary decisions to the decisions of CIC. The rationale for making these bodies independent would have been to avoid too many appeals. Under these circumstances, either High Court under

[120] "Supreme Court strikes down Thomas appointment as CVC", The Hindu, Hubli [Ed.], 4 March 2011.p.1.
[121] "A serve indictment" Editorial, The Hindu, Hubli [Ed.], 4 March 2011.p.10.

Article 226 or Supreme Court under Article 32 or 136 has to resolve the confusion and controversy. This problem could have been resolved by making the SIC subordinate to the CIC. Establishment of a single hierarchy of quasi-judicial bodies under any law is always preferable for the overall coherent existence of authorities and the efficient functioning of law.

4. Lack of adequate protection to the information seeker

RTI Act is effective because the citizens are not hesitating to exercise the powerful right of seeking information. It provides vital information or means to fight against mafia or corruption in any spectrum of the society. The people who expose corruption or scandals would always face danger to their life. According to CHRI, 86 RTI activists have been killed since the implementation of the Act and 449 RTI activists have been attacked.[122] It is mandatory for every applicant to reveal their identity and address in their RTI application otherwise their application could be rejected. Naturally, the mafia or the corrupt would know the identity of the person who has exposed them.

A whistleblower is a person who discloses information on any kind of misconduct.[123] The Law Commission of India has observed, "the evil of corruption among public servants and maladministration and the adverse effect on the country would be eradicated by means of right to information, then the protection of whistleblowers must."[124] The US has enacted the Whistle Blowers Protection Act in 1989 and the UK enacted Public Interest Disclosure Act in 1998 to keep the name of the whistleblowers confidential. They may seek information and make complaints under secrecy which encourages the eradication of corruption. There is no such protection to the whistleblowers under the RTI Act or general law[125], which is a serious deficiency in the promotion of justice in the Indian legal system.

5. Lack of internal machinery to enforce the penalty imposed by CIC and SIC

The CIC and SIC have the power to receive the complaint and appeal from the aggrieved persons against the decisions of the PIO under section 18 and 19 of the RTI Act. Both the CIC and the SIC are empowered to give divergent relief under section 19 (8) of the Act including penalty

[122] http://attacksonrtiusers.org/, retrieved on 26 June 2020.
[123] The Law Commission of India's 179th Report on "The Public interest disclosure and protection of informers."p.5.
[124] The Law Commission of India's 179th Report on "The Public interest disclosure and protection of informers."p.5.
[125] Whistleblower Protection Act in India is yet to be implemented.

under section 20. The authorities have the power to give relief and impose the penalty but do not have the power to execute their own decision. Goa and Kerala SIC have pointed out that there is no provision for contempt proceedings for non-compliance of the directions of SIC. In case of default in payment of the fine, there is no provision to realize the penalty, and no provision to enforce recommendation for disciplinary action under section 20 (2) of the Act.[126] Further, actions for the recovery of fine or enforcement of decisions of the CIC and SIC have to be initiated under other laws. The Consumer Protection Act had the same defect initially and consumer who had a decree in his favour was forced to file execution suit in civil court for the enforcement of forums decisions. The cumbersome proceedings of a civil suit discouraged the consumer to make an application under the Consumer Protection Act. The fatal defect of CPA not having the power to enforce its own decision was cured by empowering the authorities under section 27 of CPA to impose the punishment for the contempt of its decisions.[127] Without the sanction for contempt of its order, the RTI Act would only be a paper tiger lacking teeth altogether. Therefore, the RTI Act needs to be amended and power should be given to the authorities to punish the persons for contempt of its own decisions.

6. Unsatisfactory voluntary disclosure

Section 4 (1) (b) of the RTI Act says that public authority shall publish certain categories of information *suo motu* at regular intervals by various means including the internet, pamphlets, news in local papers, and display of notice in the office in their local language. However, most of the public authorities have never cared to publish these matters; and even if published, they are not updated at regular intervals. This section is honored more in breaches than compliance. PRIA, an international centre for learning and promotion of participative and democratic government, conducted empirical research on the implementation of the RTI Act in eight states. It has reported that the status of self-disclosures in various public authorities at the district level is very poor, which results in applications pilling up in the PIO offices.[128] Section 4 is the most important provision of the RTI Act, but it is grossly disrespected by the authorities because of

[126] "Tracking Rights to information in Eight States", www. pria.org/project/governance.projects. Accessed on 14 December 2011.
[127] The word 'complaint' is added to section 27 by 1993 amendment. Further, it was made more stringent in 2002 amendment of CPA.
[128] Tracking Rights to information in Eight States", www. pria.org/project/governance.projects. Accessed on 14 December 2011.

the simple fact that it is non-penal hence lacks any deterrence for non-compliance. Non-compliance of this rule should be made liable to fine every day until the publication of the information.

7. Practical Problems

(i) Data Infrastructure

Apart from these deficiencies in the provisions of the Act, there are certain practical problems in its enforcement. Implementation of the Act is a very costly affair because it needs a huge infrastructure. The data and documents have to be properly maintained, preferably by computerization, which requires a trained workforce. The ground reality of storing documents and information in the government departments is well below the satisfactory level. The documents are damaged, destroyed, misplaced, or sometimes simply not available. Successful implementation of the RTI Act much depends on the availability of the infrastructure of computer networks and trained skill workers, which requires huge budgetary support by the governments. The financial support by the State governments is disheartening unless the State governments substantially hike the budgetary support, the RTI Act would not make much headway.

(ii) Identification of PIO

Another major problem is that the person who wants to file an application for information faces the momentous task of tracing and identifying the PIO. He wastes much of the time in running from one place to another to trace the PIO. The public authority should take adequate measures in notifying and publishing the name of the PIO.

(iii) Payment of application fee

The next hurdle for the applicant is - in whose name the fee of information has to be made? Different authorities have named different dignitaries to whom the payment is to be made. It would be better if the State and Central government prescribe a common head for the payment of fees. Unless these practical problems are sorted out effectively, it would be impossible for an illiterate person to seek information.

8. Mindset of the Bureaucracy

Our Bureaucracy still living in the era of secrecy. For them, the disclosure of the information is the exception - a legacy of the colonial rule. Even the top bureaucracy is not free from this axiom. The executive must change their mindset and give up the resistant attitude in disclosing the information. Still, the RTI Act has to cover a long distance to make the right to information a real and meaningful empowerment of the people.

COMPENDIUM

OF

SUPREME COURT/HIGH COURT

DECISIONS ON RTI ACT, 2005.

INDEX

S.NO	SECTION	PAGE NO.
1.	Section 2: Definitions.	1-4
2.	Section3: Right to Information.	5-7
3.	Section 4: Obligation of Public Authorities.	8-9
4.	Section 5: Designation of Public Information Officer.	10-11
5.	Section 6: Request for obtaining Information.	12-14
6.	Section 7: Disposal of Request.	15
7.	Section 8: Exemption from disclosure of Information.	16-24
8.	Section 8(a): Information disclosure of which would prejudicially affect the sovereignty and integrity of India.	17-18
9.	Section 8(d):Information including commercial confidence, trade Secrets or intellectual property.	18-19
10.	Section 8(e): Information available to a person in his fiduciary capacity.	19-20
11.	Section 8(g): Information, the disclosure of which would endanger the life or physical safety of any person.	21
12	Section 8(h): Information which would impede the process of investigation.	21
13.	Section 8(j): Information which relates to personal information the disclosure of which has no relationship to any public activity, or interest.	22-24
14.	Section 9: Grounds for rejection to access in certain cases.	25
15.	Section 10: Severability.	26-27
16.	Section11: Third Party Information.	28-29
17.	Section 12: Constitution of Central Information Commission.	30
18.	Section 15: Constitution of State Information Commission.	31-32
19.	Section 18: Power and Functions of Information Commission.	33-36
20.	Section 19: Appeals.	37-39
21.	Section 20: Penalties.	40-42
22.	Section 22: Act to have overriding effect.	43
23.	Section 23: Bar of jurisdiction of Courts.	44
24.	Section 24: Act not to apply to certain organisations.	45
25.	Section 28: Power to make Rules by Competent Authority.	46

SECTION 2: DEFINITIONS

- **Section 2(e) - Public Authority.**

1. Office of Chief Justice of India – A Competent Authority.

Expression "public authority" as used in the Act is of wide amplitude and includes an authority created by or under the Constitution of India, which description holds good for Chief Justice of India who is also a Competent authority for the purposes of RTI Act.(*Secretary General, Supreme Court of IndiaVs.Subhash Chandra Agarwal. High Court of Delhi, LPA No. 501/2009).*

- **Section 2(f) - Information .**

1. All information held by Public Authorities is owned by citizens, who are sovereign.

"Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. The Legislature's intent is to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case where only information related to public authorities was to be provided, the Legislature would not have included the word "private body". The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. *(Reserve Bank Of India and Ors V Jayantilal N. Misty and Ors A.I.R 1982 SC149).*

2. Draft Judgment and personal notes of Judges, not to be an information under RTI.

Notes taken by the Judges while hearing a case cannot be treated as final views expressed by them on the case. They are meant only for the use of the Judges and cannot be held to be a part of a record "held" by the public

authority**.**(*Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal. High Court of Delhi, LPA No. 501/200).*

3. **Information regarding personal assets of Judges of High Courts, an information under section 2(f) of the RTI Act.**

Judges have to declare their assets is a requirement that is not being introduced for the first time as far as subordinate Judges are concerned. They have for long been required to do that year after year in terms of the Rules governing their conditions of service. As regards accountability and independence, it cannot possibly be contended that a Judicial Magistrate at the entry level in the judicial hierarchy is any less accountable or independent than the Judge of the High Court or the Supreme Court. If declaration of assets by a subordinate judicial officer is seen as essential to enforce accountability at that level, then the need for such declaration by Judges of the constitutional courts is even greater. While it is obvious that the degree of accountability and answerability of a High Court Judge or a Supreme Court Judge can be no different from that of a Magistrate, it can well be argued that the higher the Judge is placed in the judicial hierarchy, the greater the standard of accountability and the stricter the scrutiny of accountability of such mechanism. All the Judges functioning at various levels in the judicial hierarchy form part of the same institution and are independent of undue interference by the Executive or the Legislature. The introduction of the stipulation of declaring personal assets, is to be seen as an essential ingredient of contemporary accepted behaviour and established convention. So, Asset declaration by Judges - In absence of any specific exclusion, asset declarations by the Judges held by the CJI or the CJs of the High Courts as the case may be, are "information" under Section 2(f).**(***Secretary General, Supreme Court of IndiaVs.Subhash Chandra Agarwal, High Court of Delhi, LPA No. 501/2009).*

- **Section 2(h): Public Authority.**

***1*. Commission, A Public Authority.**

The, 'public authority' is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories Under Section 2(h) of the Act. In terms of Section 2(h)(a), a body or an institution which is established or constituted by or under the Constitution would be a public authority. Since Public Service Commission is established under Article 315 of the Constitution of India and as such there cannot be any escape from the conclusion that the Commission shall be a public

authority within the scope of this section.*[Bihar Public Service Commission V Saiyed Hussain Abbas Rizwi and Anr (2012)13 SCC 61.*

- **Section 2(J): Information which relates to personal information.**

1. The confidentiality required to be maintained of the medical records of a patient including a convict considering the Regulations framed by the Medical Council of India can not override the provisions of the Right to Information Act.

Information that cannot be denied to Parliament or a State Legislature should not be denied to any person - Test in such matter is always between the private rights of a citizen and of the third person to be informed - Object of the Act leans in favour of making available the records in the custody or control of the public authorities - Regulations cannot override the provisions of the Information Act - Incase of inconsistency between the Regulations and the Information Act, the later would prevail and the information will have to be made available as per the Act - Act however, carves out exceptions, including the release of personal information, disclosure of which has no relationship to any public activity or interest - In such cases a discretion has been conferred on the concerned Public Information Officer to make available such information, which to be exercised according to the facts of each case - Records of a person sentenced or convicted and admitted in hospital during such period should be made available to the person seeking information provided such hospital is maintained by the State or Public Authority - Information can be denied only in rare and in exceptional cases with valid reasons recorded in writing .(*Mr. Surupsingh Hrya NaikVs.State of Maharashtra through Additional Secretary, General Administration Deptt. and Ors. Writ Petition No. 1750 of 2007, Bombay HC).*

2. Significance of word "HELD BY" used Section 2(j).

The expression 'Held by' or 'Under the control of any public authority' in relation to 'information' means that information which is held by the public authority under its control to the exclusion of othes. It cannot mean that information which the public authority has already 'Let go', i.e. shared generally with the citizens, and also that information, in respecvt of wh ich there is statutory mechanism evolved. Which obliges the public authority to share the

same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority 'holds' or 'controls' the same. There is no exclusive right in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not his kind of information, which appers to fall within the meaning of the expression 'right to information' as the information in relation to which the 'right to information' is specifically conferred by the RTI Act is that information which "is held by or under the control of any public authority. [*Registrar of Companies & Os. Vs. Dharmendra Kumar Garg & Anr.(W.P.(C) 11271/2009) High Court Delhi]*.

SECTION 3: RIGHT TO INFORMATION.

1. Authorities shall maintain proper balance so that while achieving transparency, demand for information does not reach unmanageable proportions affecting other public interests.

The RTI Act provides access to all information *that is available and existing.* This is clear from a combined reading of Section 3 and the definitions of 'information' and 'right to information' under Clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.

The right to information is a fundamental right as enshrined in Article 19 of the Constitution of India. The Hon'ble Supreme Court has declared in a plethora of cases that the most important value for the functioning of a healthy and well informed democracy is transparency. However it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Section 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use *(The Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors, A.I.R 2011 SC 3336).*

2**. Right to information not unfettered**.

Rules and regulations governing functioning of public authorities require preservation of information for only a limited period, applicant for information will be entitled to such information only if he seeks information when it was available with public authority. Where information sought was not a part of record of a public authority and where such information was not required to be maintained under any law or rules or regulations of public authority, Act does

not cast an obligation upon public authority to collect or collate such non-available information and then furnish it to an applicant**.[** *Central Board of Secondary Education and Anr V Aditya Bandopadhyay and Ors(2011) 8 SCC* 497].

3. **Right to information …… A way to preserve the democracy.**

the Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. And keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption and making the Government and its instrumentalities accountable. The Act is meant to harmonise the conflicting interests of Government to preserve the confidentiality of sensitive information with the right of citizens to know the functioning of the governmental process in such a way as to preserve the paramountcy of the democratic ideal.*(Central Information Commission V state of Manipur and Ors).*

4. **Application of mind.**

Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act and secondly the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case.[*Bihar Public Service Commission Vs Saiyed Hussain Abbas Rizwi and Anr(2012) 13 SCC 61.*

5. Right to Information not to have an Over-riding effect on Section 13 and 14 of SARFAESI Act.

Whether or not secured creditor, which had initiated action for enforcement of its security interest in terms of provisions of SARFAESI Act was entitled to publish photograph(s) of defaulting borrower(s)/guarantor(s) in newspapers/magazines etc. - Held, publication of photograph of borrower was neither allowed by express provision nor by necessary implication - Public might be notified in terms of statutory rules by issuance of notices in newspapers/magazines etc. giving details of borrower, loan account, location of secured asset, its measurement, quantum of secured debt, etc. but there was no provision in SARFAESI Act or rules authorizing secured creditor to publish photographs of defaulting borrowers - If SARFAESI Act barred publishing of photograph of defaulting borrower, it could not be published by aid of RTI Act - Public authority had no power to act in particular manner unless it was authorized by law - Law was well settled that, State or its executive officers could not interfere with rights of its subjects unless they could point to some specific rule of law authorizing act of interference - There was absolute lack of legislative sanction in relation to publication of photographs of defaulting borrower(s)/guarantor(s) - SARFAESI Act and rules not having conferred any power on secured creditors to publish their photographs, they could not resort to such action on ground that publication of photograph was not prohibited - Prohibition had to be inferred in absence of express authorization - Publication of photograph of defaulting borrower/guarantor had potential of exposing him to irreparable loss, injury and prejudice, publication of photograph could not be resorted to in absence of an express power or an agreed term in this behalf. *Ujjal Kumar Das & Anr Vs.State Bank of India & Ors. AND Messrs Allianz Convergence Private Limited &Ors.Vs.The General Manager, State Bank of India & Anr.(High Court of Calcutta W.P. 10315 and 9850 (W) of 2013).*

SECTION 4: OBLIGATIONS OF PUBLIC AUTHORITIES.

1. Central Information Commission is not a court and certainly not a body which exercises plenary jurisdiction under RTI Act.

The flow of information is not to be an unregulated flood. It needs to be controlled just as the flow of water is controlled by a tap. Those empowered to handle this 'tap' of information are imbued with great power. Under the RTI Act, this power is to be exercised by the Information Commissions (State and Central). But, the power is clearly not plenary, unrestricted, limitless or unguided. The Information Commissions are set up under the said Act and they have to perform their functions and duties within the precincts marked out by the legislature. Central Information Commission is a creature of statute and its powers and functions were circumscribed by statute itself. It cannot summon person s to give oral evidence or written evidence or to produce any documents or things in its possession. However, it can direct a person to remain present for other reasons. *(Delhi Development Authority Vs. Central Information Commission and Anr. High court of Delhi.W.P (C) 12714/2009).*

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2. Public authority is having an obligation to provide such information which is recorded and stored, but not the thinking process.

A citizen has a right to receive "information", which is in any form, including records, d**o**cuments, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information in relation to any private body which can be accessed by a public authority under any other law for the time being in force. Information does not mean every information, but it is only such information, which is recorded and stored and circulated by the public authority. A citizen has a right to receive such information, which is held by or under the control of any public authority and the public authorities have an obligation to provide reasons for its administrative or quasi-judicial decisions to the affected persons. *Khanapuram GandaiaS/o Late Balaiah Vs.The Administrative Officer, Ranga Reddy District Courts Cum Assistant State Public Information Officer Under the Right to the Information Act 2005, The Registrar General Cum Appellate Authority under the Right to Information Act 2005, High Court of A.P., The A.P. State Information Commission rep. by its Registrar and M. Seetharama Murthy S/o Chittenna, District Judge and Presently Registrar General, High Court of A.P.(Writ Petition No. 28810 of 2008).*

3. **CIC's jurisdiction do not extend to interpretation of court orders.**

There is no exception of the view taken by the CIC that its jurisdiction did not extend to interpreting court orders. The CIC cannot be asked to interpret such orders as they do not fall within its normal functioning. It is not charged with the duty of implementing such court orders. One could have understood the proceeding and giving an interpretation - right or wrong - which could have been the subject matter of proceedings before this Court. However the limited mandate conferred upon the CIC is to ensure the provisions of the Act for supply of information to concerned applicants are dealt with and wherever required, implemented, according to law. (*Ajay Kumar Goel Vs.Cental Information Comission and Ors,W.P.(C) No. 3464 of 2007, High Court of Delhi).*

SECTION 5: DESIGNATION OF PUBLIC INFORMATION OFFICERS.

1. Public Information Officer cannot act merely as a POST-OFFICE, without himself dealing with the application.

If the contention of an officer appears to be that he as PIO was merely required to forward the application for information to the officer concerned and/or in possession of the said information and to upon receipt of such information from the concerned officer furnish the same to the information seeker and as long as he as PIO had acted with promptitude and forwarded the application to the officer in possession of the information and furnished the same to the information seeker immediately on receipt of such information, he cannot be faulted with and the liability for penalty if any has to be of such other officer from whom he had sought the information and cannot be his, then in such a situation, the office will be reduced into a post office, to receive the RTI query, forward the same to the other officers in the department/administrative unit in possession of the information, and upon receipt thereof furnish the same to the information seeker. It has to be thus seen from a perusal of the Act, whether the Act envisages the role of a PIO to be that of a mere Post Office.

Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the Petitioner would contend. The expression "deal with", in Karen Lambert v. London Borough of Southwark (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he

has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. In this case penalty has been imposed on the Petitioner not for the reason of delay which the Petitioner is attributing to Respondent but for the reason of the Petitioner having acted merely as a Post Office, pushing the application for information received, to the Respondent and forwarding the reply received from the Respondent to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the Respondent and/or his department and/or his administrative unit was not what was sought and that the Petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done.*(J.P. Agrawal Vs. Union of India (UOI) and Ors, W.P. (C) 7232/2009, High Court of Delhi).*

SECTION 6: REQUEST FOR OBTAINING INFORMATION.

1. No request to be entertained asking for reason of opinions in Judicial decisions.

An applicant can get any information which is already in existence and accessible to public authority under law--But cannot ask any information as to why such opinion, advice etc. have been passed especially in matters pertaining to judicial decisions--Answers to those could not have been with the public authority nor could he had access to the said information--Remedy for a party aggrieved there by lies in a challenge by way of appeal, revision or any other legally permissible mode--High Court rightly dismissed writ petition. In the said petition, the direction was sought by the Petitioner to the Respondent No. 1 to provide information as asked by him vide his application dated 15.11.2006 from the Respondent No. 4 - a Judicial Officer as for what reasons, the Respondent No. 4 had decided his Miscellaneous Appeal dishonestly.*(Khanapuram Gandaiah Vs. Administrative Officer and Ors A.I.R 2010 SC 615*).

2. Access to justice can not be allowed to be misused as a license to file misconceived and frivolous petitions.

Transparent functioning of the agencies of a State would go a very long way in providing not only peace and tranquility to its citizens, but also would enable them to lead respectable and meaningful life. Many a time, the citizens feel aggrieved, on account of their not being able to have access to the information, in relation to the matters of their immediate concern. More and more the information is withheld, a citizen would tend to gain an impression, that he is denied what is legitimately due to him, in an arbitrary and capricious manner. Howsoever desirable it may be, to ensure complete openness in state activity, by its very nature, governance requires certain amount of confidentiality, at least in some of its facets. A decent balance needs to be maintained between the two conflicting phenomena. An enlightened citizenry and a responsible Government, with their collective effort, can certainly bring about an ideal situation. It is a continuous process and one cannot expect instant and immediate results. The Domestic Laws and International Conventions emphasize upon the freedom of an individual to hold an opinion for himself, and at the same time, espouse his right to seek furnishing information on any aspect, of his choice.

Whether or not, any orders have been passed, on an application can be sought as an information. In case any order has been passed, the PIO would be

under obligation to furnish the copy of the order. On the other hand, if no order was passed on the application, information can be furnished to the same effect. However, he cannot be required to furnish the reasons as to why the licence was granted or not granted. It is only the authorities conferred with the power under the relevant statutes, to take a decision on the application, that can throw light on it. Further, the basis for the decision of such an authority, can be culled out from the order passed by him and he cannot be compelled to state as to why he passed the order in a particular manner through an application under the Act. It is only by instituting proceedings such as appeal, revision or writ petition that the authority who passed the order can be required to justify it.

However, a typical tendency is growing, viz to be conscious, more and more about rights, and not the corresponding obligation. If every citizen feels that he is endowed with the right to question, but is not under obligation to answer, a stage may reach where the comparatively small number of persons, who are being questioned, may join the team of those who choose, just to question. If that happens, the society may face a situation, where it would become difficult to expect answers.

The RTI Act is an effective device which, if utilized judiciously and properly, would help the citizens to become more informed. It no doubt relieves an applicant from the obligation to disclose the reason as to why he wants the information. However, indiscriminate efforts to secure information just for the sake of it, and without there being any useful purpose to serve, would only put enormous pressure on the limited human resources, that are available. Diversion of such resources, for this task would obviously, be, at the cost of ordinary functioning. Beyond a point, it may even become harassment, for the concerned agencies. Much needs to be done in this direction to impart a sense of responsibility on those, who want to derive benefit under the Act; to be more practical and realistic.*(Divakar S. Natarajan Vs. State Information Commissioner, A.P. State Information Commission and Ors. Writ Petition No. 20182 of 2008,High Court of Andhra pradesh).*

3. **Where an individual is placed under obligation to speak, law could only draw adverse inference from his failure or refused to speak but could not go further to invade his privacy or private life.**

The right to information is treated as a facet of the fundamental rights guaranteed under Articles 19 and 21 of the Constitution of India. That, however, would be in respect of the information which relates to the functioning of the Government and public activity. The information which relates to an individual cannot be compared with, or equated to, the one of public activity. On the other

hand, disclosure of the information in relation to an individual, even where it is available with the Government, may amount to invasion of his privacy or right to life which in turn is also referable to Article 21 of the Constitution of India. It is also possible to treat the privilege of an individual not to be compelled to part with any information available with him, as an essential part of the Article 19(1)(a) of the Constitution of India. Even while exercising his right of freedom of speech and expression, an individual can insist that any information relating to him cannot be furnished to others unless it is in the realm of public activity or is required to be furnished under any law, for the time being in force. Freedom of an individual to have access to information could not be projected to such an extent as to invade rights of others . Section 6(2) of the Act could not be read in isolation nor could be interpreted to mean that an Applicant could seek, every information relating to anyone. Just as he cannot be compelled to divulge the purpose for which he needs the information, he must respects the right of the other man to keep the facts relating to him, close to his chest, unless compelled by law to disclose the same. It is relevant to mention that even where an individual is placed under obligation to speak, the law can only draw adverse inference from his failure or refused to speak but cannot go further to invade his privacy or private life. *(Kunche Durga Prasad and Anr.Vs. Public Information Officer, Oil and Natural Gas Corporation Ltd. and Ors. W.P. No. 443 of 2010, High Court of Andhra Pradesh).*

4. Under Section 6, information can only be supplied or might be denied.

Looking to the provisions of the Act and combined effect of Section 6,19(2),3 & 4 Right to information Act,2005, at the most information may be supplied or might be denied. Further order like removal of encroachment etc cannot be passed by the Chief Information Commissioner while hearing 2nd appeal. Before passing any order against any person, bare minimum requirement ought to be kept in mind that principle of natural justice ought to be followed. *(Nanabhai Patel Vs. chief Information Commissioner & Ors, Spl Civil Appln. No. 16770 of 2007, High Court of Gujarat).*

SECTION 7: DISPOSAL OF REQUEST.

1. REASONS TO BE RECORDED WHILE DISPOSING A REQUEST

The Commission or the public authority, as the case may be, is expected to formulate an opinion that must specifically record the finding as to the application is disposed and also if there is failure to receive an application for information or failure to furnish the information within the stipulated time specified in Section 7(1), it should also record the opinion if such default was persistent and without reasonable cause.[*Manohar S/o Manikrao Anchule Vs. State of Maharashtra and Anr SLP(C) No. 7529of 2009]*.

SECTION 8: EXEMPTION FROM DISCLOSURE OF INFORMATION.

1. **Balance between independence of judiciary and disclosure of information…. A necessary need.**

   A questions of constitutional importance relating to the independence of the Judiciary in the scheme of the Constitution on the one hand and on the other, fundamental right to freedom of speech and expression always comes in the way. Right to information is an integral part of the fundamental right to freedom of speech and expression guaranteed by the Constitution. Right to Information Act merely recognizes the constitutional right of citizens to freedom of speech and expression. Independence of Judiciary forms part of basic structure of the Constitution of India. The independence of Judiciary and the fundamental right to free speech and expression are of a great value and both of them are required to be balanced. **(***Central Public Information Officer, Supreme Court of India Vs Subhash Chandra Agrawal).*

2. **Preventive detention and right to information**.

   State is not under any obligation to provide grounds of detention to a detenu prior to his arrest and detention. As Constitution permitted both punitive and preventive detention, provided it was according to procedure established by law made for purpose and if both law and procedure laid down by it were valid, then the detention is itself valid . Law is never static but dynamic, and to hold otherwise, would prevent growth of law, especially in matters involving right of freedom guaranteed to a citizen under Article 19 of Constitution. Most precious right of a citizen is his right to freedom and if same was to be interfered with, albeit public interest, such powers had to be exercised with extra caution and not as an alternative to ordinary laws of land. **(***Subhash Popatlal Dave Vs. Union of India (UOI) and Anr* **(***2008) 16 SCC 31).*

3. **Section 8 on personal information.**

   Exemption from disclosure of personal information and as such Public authority is not legally obliged to give or provide information even if it is held, or under its control, if that information falls under Section 8(1)(j). *(Thalappalam Ser. Coop. Bank Ltd. and Ors. Vs. State of Kerala and Ors.(1999) 3 SCC 396).*

4. SECTION 8… Mandatory as well as discretionary in nature.

The perusal of the provisions of Section 8 reveals that there are certain informations contained in sub-clause (a),(b),(c),(f),(g) and (h), for which there is no obligation for giving such an information to any citizen, whereas informations protected under sub- clauses(d) ,(e) and( )j are though protected informations, but on the discretion and satisfaction of the competent authority, that it would be in larger public interest to disclose such information, such information can be disclosed. These informations thus are having limited protection, the disclosure of which is dependent upon the satisfaction of the competent authority that it would be in larger public interest as against the protected information interested to disclose such information. *(Public Information Officer, Chief Minsiter's Office, Civil Secretariat, Government of U.P Vs State Information Commission and Others.HC of Allahabad,Lucknow Bench).*

5. No exemption if there is even an Iota of nexus of control and finance of public authority over private institution.

If there is even an iota of nexus of control and finance of public authority over the activity of a private body or institution or an organization etc. The same would fall under the provisions of Section 2(h) of the Act. The provisions of the Act have to be read in consonance and in harmony with it was objects and reasons given in the Act which have to be given widest meaning in order to ensure that unscrupulous persons do not get benefits of concealment of their illegal activities or illegal acts by being exempted under the Act and are able to hide nothing from the public. The working of any such organization or institution of any such private body owned or under control of public authority shall be amenable to the Right to Information Act. Hence, exemption under Section 8 cannot be claimed. *[Dhara Singh Girls High School through its Manager, Virendra Chaudhary Vs. State of Uttar Pradesh through its Secretary (Secondary Education), U.P. Government and Ors High Court of Allahabad]*.

- **SECTION 8(1)a: Information, disclosure of which would prejudicially affect the sovereignity and integrity of India.**

1. Immunity enjoyed by the Governor under Article 361 and RTI Act.

Under Article 361 of the Constitution of India, Governor enjoys an immunity and in view of such immunity, no direction can be issued and no order can be passed under the RTI Act, which has an effect of requiring the Governor to disclose any information under the RTI Act. By reason of Article 361 of the Constitution of India, the Governor enjoys complete immunity and is not answerable to any Court in exercise and performance of the powers and duties of his office and any act done or purporting to be done by him in exercise and performance of his duties; but the immunity granted under Article 361(1) of the Constitution of India does not take away the powers of the Court to examine the validity of his actions including on the ground of mala fides. The Governor or the PIO in his office cannot claim immunity from disclosure of any information under the RTI Act, as in respect of non sovereign functions performed by the Governor, he would not be entitled to claim freedom from law on the basis of sovereign immunity. His non-sovereign functions and actions would be subject to law of the land. He would be bound by the RTI Act and would not be able to claim any sovereign immunity from disclosing information in respect of his non-sovereign functions. In this connection, a reference may be made to the exemption provided under Clause (a) of Section 8(1) of the RTI Act which exempts disclosure of an information which would prejudicially affect the sovereignty and integrity of India, amongst other things. The exemption against disclosure of an information under the RTI Act is restricted in respect of sovereign functions of the President or the Governor only to the extent it is protected under Section 8(1)(a) of the RTI Act or under Article 361 of the Constitution and no more. **(***Public Information Officer Joint Secretary to the Governor Raj Bhavan, Donapaula, Goa and Secretary to Governor First Appellate Authority, Raj Bhavan, Donapaula, Goa Vs. Shri. Manohar Parrikar Leader of Opposition, Goa State Assembly Complex, Porvorim, Bardez, Goa and Goa State Information Commissioner, Ground Floor, Shram Shakti Bhavan, Patto Plaza, Panaji, Goa AND Special Secretary to the Government of Goa Vs. State Chief Information Commissioner, State of Goa and Advocate A. Rodrigues, Writ Petition No. 478 of 2008 and Writ Petition No. 237 of 2011, High Court of Bombay at Goa).*

- **Section 8(1)d: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.**

1. **Exemption to apply for Intellectual Property in certain cases only.**

The exemption under Section 8(1)(d) is available only in regard to such intellectual property, the disclosure of which would harm the competitive position of any third party.. The term 'intellectual property' refers to a category of intangible rights protecting commercially valuable products of human intellect comprising primarily trade mark, copyright and patent right, as also trade secret rights, publicity rights, moral rights and rights against unfair competition .Question papers, instructions regarding evaluation and solutions to questions (or model answers) which are furnished to examiners and moderators in connection with evaluation of answer scripts, are literary works which are products of human intellect and therefore subject to a copyright. (*The Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors(A.I.R 2011 SC 3336).*

- **SECTION 8(1)e: Information available to a person in his relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information**.

1. Examing body, not an exception to section 8.

Examining body cannot be in a fiduciary relationship either with reference to examinee who participated in examination and whose answer-books were evaluated by examining body - In furnishing copy of an answer-book, there is no question of breach of confidentiality, privacy, secrecy or trust - Examining body is 'principal' and examiner is an agent entrusted with work of evaluation of answer-books - Examining body does not hold evaluated answer-books in a fiduciary relationship - Therefore, exemption under Section 8(1)(e)of Act is not available to examining bodies with reference to evaluated answer-books - Therefore, examining bodies would have to permit inspection sought by examinees. **(***Central Board of Secondary Education and Anr.Vs. Aditya Bandopadhyay and Ors.2011 (9) SC 212).*

1. **CJI , Not a Fudiciary.**

CJI cannot be a fiduciary vis-a-vis Judges of the Supreme Court . Judges of the Supreme Court hold independent office, and there is no hierarchy, in their judicial functions, which places them at a different plane than the

CJI.Declarations are not furnished to the CJI in a private relationship or as a trust

but in discharge of the constitutional obligation to maintain higher standards and probity of judicial life and are in the larger public interest . It cannot be held that the asset information shared with the CJI, by the Judges of the Supreme Court, are held by him in the capacity of fiduciary, which if directed to be revealed, would result in breach of such duty -.Section 8(e) does not cover asset declarations made by Judges of the Supreme Court and held by the CJI - CJI does not hold such declarations in a fiduciary capacity or relationship.[*Secretary General, Supreme Court of IndiaVs.Subhash Chandra Agarwal. High Court of Delhi, LPA No. 501/2009]*.

2. **Examining body does not hold evaluated answer-books in a fiduciary relationship.**

The court has correctly gone into the status of relation between the exam writer and examinee saying that there is no fiduciary relationship between the two. Hence examining body cannot take the exemption under sec 8(1) of the RTI Act. It also gives the conclusion that if public authority hires an agent then the public authority is liable to disclose the information. The power of the Information Commission under Section 19(8) of the RTI Act to require a public authority to take any such steps as may be necessary to secure compliance with the provision of the Act, does not include a power to direct the public authority to preserve the information, for any period larger than what is provided under the rules and regulations of the public authority. *(Central Board Of Secondary Education and Anr Vs Aditya Bandopadhyay and Ors 2011 8 SCC 497)* .

3. **Exemption available to the Recipient only and not to the author.**

If is is assumed that the report made by the Governor to the president under Article 356 of the constitution , is sent in a fiduciary capacity, the exemption available under section 8(1)e of the RTI Act would be available only to the recipient of the information(report), i.e. the President. The exemption under clause (e) of sub-clause (1) of section 8 of the RTI Act can be claimed only by the recipient and cannot be claimed by the person who is the author of the information or who gives the information. Clause (e) of sub-clause (1) of section 8 of the RTI Act says “information available to the person in fiduciary relationship”. Even if it is assumed that the report is available with the President in a fiduciary relationship, it is he who can claim exemption when a disclosure is sought from him. Clause (e) of sub-clause (1) of section 8 of the RTI Act

does not exempt the giver of an information to claim an exemption. [*Public information Officer Joint Secretary to the Governor Raj Bhavan, Donapaula, Goa and Secretary to Governor First Appellate Authority, Raj Bhavan, Donapaula, Goa Vs. Shri Manohar Parrikar Leader of Opposition, Goa Stae Assembly Complex, Porvorim, Bardez, Goa and Goa State Information Commissioner, Ground Floor, Shram Shakti Bhavan, Patto Plaza, Panaji, Goa AND Special Secretary to the Government of Goa Vs. State Chief Information Commissioner, State of Goa and Advocate A. Rodrigues.(HC of Bombay at Goa , W.P.No. 478 of 2008 anf W.P.No. 237 of 2011)]*.

- **Section 8(1)g: Information, the disclosure of which would endanger the life or personal safety of any person or identify the source of information or assistance given in confidence.**

1. Information not to be disclosed if it endangers physical safety or human life.

The ancillary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. First, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers. Declaration of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. There is no error of jurisdiction or reasoning in this regard. But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act. **[***Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi and Anr.(2012) 13 SCC 61]*

- **Section 8(1)h: Information which would impede the process of investigation or apprehension or prosecution of offenders.**

1. Mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information.

Contextually in Section 8(1)(h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or

prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. *(B.S. Mathur Vs. Public Information Officer of Delhi High Court, W.P. (C) 295 and 608/2011 High Court of Delhi)*

- **Section 8(1)j: Information which relates to personal information the disclosure of which has no relationship to any public activity or interest**.

1. Court shall not allow application for disclosure of personal information of employee, if information sought for was not for larger public interest.

Details given by a person in his income-tax returns Details of his service career are his "personal information" and are exempt from disclosure unless larger public interest justifies disclosure of such information. Facts of the case are that the Petitioner submitted an application before Regional Provident Fund Commissioner (R-2), calling for various details relating to R-3, who was employed as Enforcement Officer in that department. The information were denied on the ground that the information does not relate to any public active and same is not required to be disclosed in view of provision of Section 8(1)(j) of RTI Act. Aggrieved by the said order, Petitioner approached the CIC, who directed disclosure of some information regarding posting details of R-3 and stated that other information regarding his income, gifts, details of property etc. and action taken against him by R-2 earlier did not qualify for disclosure. Petitioner filed a writ petition before High Court against the said order, which was dismissed and hence present Special Leave Petition. Most of the information sought for finds a place in income-tax return of R-3 and hence the question that has come for consideration is whether the said information qualifies to be his personal information, as defined in Clause (j) of Section 8(1) of RTI Act.

The performance of an employee in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules, which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of the same would cause unwarranted invasion on privacy of that individual. However, if 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, appropriate orders could be passed but the

Petitioner cannot claim those details as a matter of right. 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 it 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.**(***Girish Ramchandra Deshpande Vs. Cen. Information Commr. and Ors, 2012 (9) JT 585).*

2. **Declaration of assets to be treated as personal information.**

Contents of asset declarations, pursuant to the 1997 Resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j) - They are not otherwise subject to disclosure - Therefore, as regards contents of the declarations, information applicants would have to, whenever they approach the authorities, under the Act satisfy them under Section 8(1)(j) that such disclosure is warranted in "larger public interest".

It was Edmund Burke who observed that "All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust." Accountability of the Judiciary cannot be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power **,**legislative, executive and judicial - are entrusted to perform their functions on condition that they account for their stewardship to the people who authorize them to exercise such power. Well defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence. Democracy expects openness and openness is concomitant of free society. Sunlight is the best disinfectant. *[Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal. High Court of Delhi, LPA No. 501/2009]*.

3. Institution engaged in public activity not covered under section 8(1)j.

The institution engaged in providing education to the society and is receiving grant in aid from the state for payment of salary to the entire teaching staff, non teaching staff and other employees is not exempted under section 8(J) of the Act in as much as the institution is engaged in public activity and it can not be said that it would be an invasion of privacy of any individual of the committee of management or other. *(Surinder Singh S/O Shri Shankar Singh v/s State of U.p*

through its Secretary, Minister of Education (Madyamik) and Others, High Court of Allahabad).

4. Public authority not to claim any information as personal.

No public authority can claim that any information held by it is personal. There is nothing personal about any information, or thing held by a public authority in relation to itself. The expression personal information used in Section 8(1)j means information personal to any other person, that the public authority may hold. That other person may or may not be an individual. For instance, a public authority may, in connection with its functioning require any other person whether a juristic person or an individual, to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if it satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e, if such information has no relationship to any public activity or imterest vis-à-vis the public authority, or which would cause unwarranted invasion of the privacy of the individual.*(Jamia Millia Islamia Vs. Sh. Ikramuddin. W.P.(C)No. 5677/2011, High Court of Delhi).*

5. Right of privacy and Article 21.

The right to privacy is implicit in the right to life and liberty guaranteed to the citizen under article 21. It is a " Right to be let alone". A citizen's right to safeguard the privacy of his own, his family, marriage, his procreation, mother-hood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent. Whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrust himself into controversy or voluntarily invites or raises a controversy.*(UPSC Vs. R.K. Jain, WP(C)1243/2011 and C.M.No. 2618/2011).*

SECTION 9: GROUNDS FOR REJECTION IN CERTAIN CASES.

1. Universities and examination boards not covered under Section 9.

The examining bodies (Universities, Examination Boards, CBSC etc.) are neither security nor intelligence organizations and therefore the exemption will not apply. The disclosure of information with reference to answer-books does not also involve infringement of any copyright and therefore Section 9 will not apply. Resultantly, unless the examining bodies are able to demonstrate that the evaluated answer-books fall under any of the categories of exempted 'information' enumerated in Clauses (a) to (j) of Sub-section (1) Section 8, they will be bound to provide access to the information and any applicant can either inspect the document/record, take notes, extracts or obtain certified copies thereof.**(***Central Board of Secondary Education and Anr.Vs. Aditya Bandopadhyay and Ors (2011) 8 SCC 497).*

2. Applicability of Section 9 to ICAI.

Providing access to information about instructions and solutions to questions issued by ICAI to examiners and moderators do not involve an infringement of copyright and therefore request for information is not liable to be rejected under Section 9 of RTI Act even if question papers solutions/model answers or other instructions which are prepared by any third party for ICAI copyright therein is assigned in favor of ICAI. Therefore, Providing access to information in respect of which ICAI holds copyright did not involve infringement of copyright subsisting in person other than State - Therefore, ICAI was not entitled to claim protection against disclosure under Section 9 of RTI Act. *(The Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors.AIR 2011 SC 3336).*

SECTION 10: SEVERABILITY

1. Rule of Severability to be used in case of furnishing answer books to the applicants under RTI Act..

When an examining body engages the services of an examiner to evaluate the answer books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer books are evaluated by him. In the event of such information being made known, a disgruntled examinee who is not satisfied with the evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to the scrutiniser, co-ordinator and head examiner who deal with the answer book.

The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure Under Section 8(1)(g) of the RTI Act. Those portions of the answer books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, Under Section 10 of the RTI Act. **(***Bihar Public Service Commission Vs.Saiyed Hussain Abbas Rizwi and Anr. Civil Appeal No. 9052 of 2012 (Arising out of SLP (C) No. 20217 of 2011) Supreme court of India).*

2. Severability and Public examinations.

It is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one was to be propounded. In the above premises, it is to be considered how far the Board has assured a zero-defect system of evaluation, or a system which is almost foolproof.

There is an understandable attempt on the University's part to not so much as protect the self and property of the examiner, but to keep the examiner's identity concealed. The University has not cited the fiduciary duty that it may owe to its examiners or the need to keep answer scripts out of bounds for examinees so that the examiners are not threatened. A ground founded on apprehended lawlessness may not stultify the natural operation of a statute, but in the University's eagerness to not divulge the identity of its examiners there is a desirable and worthy motive--to ensure impartiality in the process. But a procedure may be evolved such that the identity of the examiner is not apparent on the face of the evaluated answer script. The severability could be applied by the coversheet that is left blank by an examinee or later attached by the University to be detached from the answer script made over to the examinee following a request under Section 6 of the Act. It will require an effort on the public authority's part and for a system to be put in place but the lack of effort or the failure in any workable system being devised will not tell upon the impact of the wide words of the Act or its ubiquitous operation. *(President, Board of Secondary Education, Orissa and Anr. v. D. Suvankar and Anr. 2007(1) SCC 603).*

SECTION 11: THIRD PARTY INFORMATION.

1.Public interest and third party information.

Any information sought by the Applicant in which third party information is asked,wherein third party may plead a privacy defence and the proper question would be as to whether divulging of such an information is in the public interest or not. whether the private defence is to prevail or there is an element of overriding public interest which would outweigh the private defence. The authority may take any decision but consideration ios always given to public interest. [*R.K Jain V Union Of India(2009) 8 SCC 273.]*

2. Information provided in certain cases even if denied by the third party.

When an application is made seeking such information, notice would be issued by the CIC or the CPIOs or the State Commission, as the case may be, to such 'third party' and after hearing such third party, a decision will be taken by the CIC or the CPIOs or the State Commission whether or not to order disclosure of such information. The third party may plead a 'privacy' defence. But such defence may, for good reasons, be overruled. In other words, after following the procedure outlined in Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information. . [*R.K Jain V Union Of India(2009) 8 SCC 273.]*

3. **Notice to third party… An essential Requirement of section 11.**

Section 11 of the Act provides that where the State Public Information Officer or the Central Public Information Officer intends to disclose any information or record which relates to a third party and has been treated as confidential by the third party, a written notice would have to be issued to the third party. Similarly, Section 19(4) of the Act provides that if a decision of the Central or the State Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, a reasonable opportunity of being heard has to be afforded to that third party. Before directing disclosure of information to applicant in a case of third party information, State Information Commission has to issue notice to the concerned third party and hear him on his objection. Proceedings before Public Information Officer and before State

Information Commission had to be concluded in manner consistent with principles of natural justice.[*Sangam Transport Vs. State Information*

Commission. High Court of Allahabad Civil Misc. Writ Petition Nos. 45657 and 38933 of 2014].

4. Validity and interpretation of Section 11

Section 11 of Act ensured that principles of natural justice complied with information which was confidential relating to third party or furnished by third party was not furnished to information seeker without notice or without hearing third party's point of view - A third party might had reasons, grounds and explanation as to why information should not be furnished which might not be in knowledge of Public Information Officer/PIO/Appellate Authorities or available in records - Information seeker was not required to give any reason why he had made an application for information - There may be facts, causes or reasons unknown to PIO or Appellant Authority which might justify and require denial of information - Fair and just decision was essence of natural justice - Issuance of notice and giving an opportunity to third party served a salutary purpose and ensured that there was fair and just decision - In fact issue of notice to third party might in cases curtail litigation and complications that might arise if information was furnished without hearing third party concerned - Section 11 of Act prescribes fairly strict time schedule to ensure that proceedings not delayed - Section 11(1) of Act postulates two circumstances when procedure had to be followed - Firstly when information related to a third party and can be prima facie regarded as confidential as it affected right of privacy of third party - Second situation was when information provided and given by third party to public authority and prima facie third party who had provided information had treated and regarded said information as confidential. *(Arvind Kejriwal Vs. Central Public Information Officer and Anr, LPA No. 719/2010 High Court of Delhi.)*

SECTION 12: CONSTITUTION OF CENTRAL INFORMATION COMMISSION.

1. CONSTITUTIONAL VALIDITY

The Constitution of India expressly confers upon the courts the power of judicial review. The courts, as regards the fundamental rights, have been assigned the role of *sentinel on the qui vive* under Article 13 of the Constitution. Our courts have exercised the power of judicial review, beyond legislative competence, but within the specified limitations. While the court gives immense weightage to the legislative judgment, still it cannot deviate from its own duties to determine the constitutionality of an impugned statute. Every law has to pass through the test of constitutionality which is stated to be nothing but a formal test of rationality.

keeping in view the powers, functions and jurisdiction that the Chief/State Information Commissioner and/or the Information Commissioners exercise undisputedly, including the penal jurisdiction, there is a certain requirement of legal acumen and expertise for attaining the ends of justice, particularly, under the provisions of the Act of 2005. So, the provisions of Sections 12(5) and 15(5) of the Right to Information Act, 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the Court to 'read into' these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, it is held and declared that the expression 'knowledge and experience' appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, it is stated that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render the adjudicatory process which involves critical legal questions and nuances of law, more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of the provisions of Act of 2005 and, in fact, is the essence thereof.(*Namit Sharma V Union Of India[(1993)4 SCC 119).*

SECTION 15: CONSTITUTION OF STATE INFORMATION COMMISSION.

1. No need of consultation for appointment of Commissions under Section 15(3).

It is clear that though the Committee can take a unanimous decision while appointment of State Chief Information Commissioner and State Information Commissioner, but in absence of unanimity, it can be decided by majority. As, Section 15(3) of the Act itself provides the procedure of appointment on the basis of recommendation made by the committee consisting of three members, i.e, Chief Minister, Cabinet Minister and the Leader of Opposition. Hence, the question of consultation does not arise.[*V. Madhav, S/o. V.D.S. Prasad,31/IV, Main Sarovar Raaja Apartments, 11-A, Arcot Road, Porur, Chennai 600 116 and Siva Elango, S/o P.R. Sivanathan, Makkal Sakthi Katchi, 41, Bazaar Lane, Saisapet, Chennai 600 014 Vs. The Government of Tamil Nadu, Rep. by its Secretary, Personnel & Administrative Reforms, Fort St. George, Chennai, The Tamil Nadu State Information Commission, Rep. by its Secretary, Chennai, The Tamil Nadu State Information Commission, Rep. by its Secretary, Chennai 600 018. And K.S. Sripathi, I.A.S.,(retd),1085, Anna Nagar, West Extension, Chennai 600 101 AND S. Vijayalakshmi, Advocate,2/1, Ist Main Road, Ashoka Avenue, Periyar Nagar, Chennai 82 Vs. State of Tamil Nadu, Rep. by is Secretary to Government, P & AR Department, Secretarait, Beach Road, Chennai and Ors.(W.P.Nos. 27665, 27666 of 2010 and W.P.No. 12325 of 2011 and connected M.PS.w.p.Nos. 27665& 27666 of 2010)*

2. Section 15(6), A Sine Qua Non for appointment.

If any disqualified person is chosen and appointed as commissioner then he shall be relinquish his position immediately after appointment if he uses to hold such office of profit. Because the requirement is sine qua non before assumption of charge as independent functioning being one of basic object of legislature and is to be followed in letter and spirit. Articles 14 and 16 of the Constitution of India also asserts the same fact. Also, there cannot be any conflict of interest in the appointment of candidates as commissioners.. Any independent discharge of their duties being a test of their suitability post appointment and no instance of deviant conduct is acceptable, having been alleged in regard to discharge of their statutory duties. *(K. Padmanabhaiah and others Vs. Government of Andhra Pradesh, GAD, and others. High Court of Andhra Pradesh, P.I.L. Nos. 28 and 38 of 2013).*

3. Appointment of employee in service shall be made as per procedure of law.

Persons having eminence in public life with wide knowledge and experience, could be appointed as Central Chief Commissioner and Information Commissioner and State Chief Information Commissioner and State Information Commissioners. Appointment of any officer could not be assailed on ground that they were not, in opinion of applicant or court, persons having eminence in public life with wide knowledge and experience. Therefore, any comparison, without knowing intricacies of system and set up, of appointment of other officials with appointment of Commissioner under RTI Act is totally odious. *(Janhit Manch & Ors Vs. Union Of India & Ors, PIL Writ Petition No. 8 of 2006, High Court of Bombay).*

4. Section 15, A fair procedure adopted by Legislation.

Right to Information Act, 2005 is a vital piece of legislation prompted to provide a good & responsible governance to citizens. This act has proved to be an effective means of obtaining governmental information as is evident from scores of applications and requests that are received by different authorities under the Act, thereby ensuring an alert, responsive and responsible government. It is the bounden duty of state to examine whether norms that are being followed today in matter of appointment of State Information Commissioners as well as certain additional norms that state government may consider appropriate should find place in the form of a set of rules or not. Such exercise should be performed by state so as to ensure fairness in procedure and certainity in public life. *(H.C. Arora Vs. State of Punjab & Ors, C.W.P No. 14107 of 2011, High Court of Punjab & Haryana).*

SECTION 18: POWER AND FUNCTIONS OF INFORMATION COMMISSIONS.

1. Application of judicial mind.

The impact of adjudication by the information commissions is very vital in nature. Instead of being titled towards administrative adjudication, it is specifically oriented and akin to judicial determinative process. Application of mind and passing of reasoned orders are inbuilt into the scheme of the Act of 2005. In fact, the provisions of the Act are specific in that regard. While applying its mind, it has to dwell upon the issues of legal essence and effect. Besides resolving and balancing the conflict between the 'right to privacy' and 'right to information' the commission has to specifically determine and return a finding as to whether the case falls under any of the exceptions under section 8 or relates to any of the organisations specified in the Second Schedule, to which the Act does not apply in terms of section 24. Another significant adjudicatory function to be performed by the commission is where interest of a third party is involved. The legislative intent in this regard is demonstrated by the language of Section 11 of the Act of 2005. A third party is not entitled to hearing with a specific right to raise objections in relation to the disclosure of information. Such functions by no stretch of imagination, can be termed as 'administrative decision' but are clearly in the domain of 'judicial determination' in accordance with the rule of law and provisions of the Act. *(Namit Sharma Vs. Union of India. W.P(c) No. 210 of 2012.)*

2. Powers Of Commission.

While enquiring into complaint under Section 18, Commission can issue necessary directions for supply/ disclosure of information asked for, If Commission is satisfied that information is wrongly withheld Or not completely given Or incorrect information is given Which is otherwise liable to be supplied under Act.Any applicant who has not been given a response to a request for information or access to information within the time limit specified under the Act, or who has been required to pay an amount of fee which he or she considers unreasonable, or has been given false information, and in respect of any other matter relating to requesting or obtaining access to records under the

Act, may approach the Commission, who would enquire into the complaint, and while making an enquiry, it has all the powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908).Needless to mention that the Act is not meant for creating a new type of litigation or a new forum of litigation between the information seeker and the information giver, but may be that some of the informations asked for, be Inconvenient to the persons to whom it relates and, therefore, every effort would be made to refuse divulgence of such an Information and for that matter either to refuse the information by delaying the process or passing a specific order of refusal, may be some time by taking shelter under the provisions of Sections 8 and 9 of the Act, which are the exemption clauses.

Our Constitution establishes a democratic republic. 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. The 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, therefore, with a view to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal, the Parliament enacted the Act of 2005 to provide for furnishing certain information to citizens who desire to have it..

The purpose of holding enquiry would be of no meaning if only punishment is given to the erring officer, as it would not serve the purpose of the Act and the power so conferred upon the Commission, requiring requisitioning of any public record or copies thereof from any Court or office, shall also have only a limited purpose to find out as to whether the punishment should be awarded to the erring officer or not. This is not the intention of the Act or the provisions of Section 18.*[Public Information Officer, Chief Minister's Office, CivilSecretariat Govt. of U.P.Vs.State Information Commission and Ors. The High Court of Allahabad (Luckhnow bench).*

Section 18 and Section 20 to be read together.

Section 18 is a substantive provision regarding lodging and enquiring into a complaint, whereas Section 20 is the consequence of such an enquiry.The whole purpose of making an enquiry on a complaint being given by the affected person, shall stand defeated, if the two provisions are read in isolation or they are given a meaning which does not further the object of the Act. From a harmonious construction of the aforesaid provisions keeping in mind the purpose for which they have been enacted, it can be safely concluded that the

powers of the Commission under Section 18 are not restricted only to make enquiry and award punishment, but they also extend for issuing direction for receiving the application or for giving the necessary information under the provisions of the Act. Any other interpretation would not be in consonance with the scheme of the Act and shall also amount to restricting and curtailing the power of the Commission by judicial interpretation. *.[Public Information Officer, Chief Minister's Office, CivilSecretariat Govt. of U.P.Vs.State Information Commission and Ors. THE HIGH COURT OF ALLAHABAD (LUCKNOW BENCH)],*

2. Commissioner shall not direct State Information officer to furnish information in a complaint.

Under Section 18(3) of Act, Central Information Commission or State Information Commission, while inquiring into any matter, had same powers as were vested in Civil Court while trying suit in respect of certain matters specified in Section 18(3)(a) to (f) of Act .Therefore, under Section 18(4) of Act, Central Information Commission or State Information Commission, may examine any record to which Act applied and which was under control of public authority - However, under Section 18 of Act, Central Information Commission or State Information Commission had no power to provide access to information which had been requested for by any person but which had been denied to him - Only order, which could be passed by Central Information Commission or State Information Commission, under Section 18 of Act is order of penalty provided under Section 20 of Act - However, before such order was passed, Commissioner must be satisfied that conduct of Information Officer was not bona fide - Thus, Commissioner while entertaining complaint under Section 18 of Act had no jurisdiction to pass order providing for access to information . Chief Information Commr. and Anr. Vs. State of Manipur and Anr..*(AIR 2012 SC 864).*

5. Information Commission and Judicial review.

Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then the Supreme court of India. In terms of Article 141 of the Constitution, the judgments of the Supreme Court are law of the land and are binding on all Courts and tribunals. Thus, it is abundantly clear that the information Commission is bound by the law of the precendence, i.e judgments of the High Court and the Supreme Court of India. In order to maintain judicial discipline

and consistency in the functioning of the commission, we direct that commission shall give appropriate attention to the doctrine of precendence and

shall not overlook the judgments of the courts dealing with the subject and principles applicable in a given case.*(Namit Sharma Vs. Union of India, W.P.(C) No. 210 of 2012, Supreme Court of India).*

SECTION 19: APPEALS

1. **Matter shall be referred to constitutional bench when question involved interpretation of constitution**.

Information sought by Respondent raised questions of constitutional importance relating to position of Hon'ble Chief Justice of India under Constitution and independence of Judiciary in scheme of Constitution and fundamental right to freedom of speech and expression - Both questions were of great value and were required to be balanced .Thus, substantial question of law as to interpretation of Constitution was involved which was required to be heard by Constitution Bench - Therefore, Registry was directed to place matter before Hon'ble Chief Justice of India for constitution of Bench of appropriate strength**.** *Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agrawal.(W.P C. 288/2009).*

2. **Judicial Review in RTI Act.**

Under the scheme of the Act of 2005, it is clear that the orders of the commissions are subject to judicial review before the High Court and then before the Supreme Court of India. In terms of Article 141 of the constitution, the judgements of the Supreme court are law of the land and are binding on all courts and tribunals. Thus, it is abundantly clear that the Information Commission is bound by the law of precendence, i.e, judgements of the High Court and the Supreme Court of India. In order to maintain judicial discipline and consistency in the functioning of the Commission, we direct that Commission shall give appropriate attention to the doctrine of precedence and shall not overlook the judgements of the courts dealing with the subject and principles applicable, in a given case. [*Namit Sharma Vs. Union of India-WP(Civil)no. 210 of 2012 SCC]*.

3. **Section 19 and Section 7, a complete mechanism for redressal of an aggrieved person under RTI Act .Applicant not to hold hand of Section18 for the same.**

The procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. Therefore, Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by

refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the applicant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision because where statute provides for something to be done in a particular manner it is to be done in that manner alone and all other modes of performance are necessarily forbidden.*(Chief Information Commissioner and Anr Vs State of Manipur and Anr, Civil appeal Nos. 10787-10788 of 2011.)*

4. Hierarchy of Appeal .

Under the scheme of the Act of 2005, in terms of Section 5, every Public authority , both in the state and the centre, is required to nominate Public Information Officers to effectuate and make the right to information a more effective right by furnishing the information asked for under this Act. the information Officer can even refuse to provide such information, which order is appealable under section 19(1) to the nominated senior officer, who is required to hear the parties and decide the matter in accordance with law. This is Fist appeal. Against the order of this appellate authority, a second appeal lies with the Central Information Commission or the State Information Commission, as the case may be, in terms of Section 19(3) of the Act of 2005. The legislature in its wisdom has provided for two appeals. Higher the adjudicatory forum, greater is the requirement of adherence to the rule of judiciousness, fairness and to act in accordance with the procedure prescribed and in absence of any such prescribed procedure, to act in consonance with the principles of natural justice. Higher also is the public expectation from such tribunal. The Adjudicatory functions performed by these bodies are of serious nature. An order passed by the Commission is final and binding and can only be questioned before the High Court or the Supreme court or the Supreme Court in exercise of the Court's jurisdiction under Article 226 and/or Article 32 of the Constitutuion.*[Namit Sharma Vs. Union of India, Supreme Court of India W.P(C) No. 210 of 2012]*.

5. Can CPIO appeal against First Appellate authority.

Central Information Commission has observed that Section 19 of the Act provides for an appeal by a person who is aggrieved with a decision of the CPIO.The first appeal is to be preferred to an officer senior in rank to the CPIO in the official hierarchy in the same public authority. Apparently, this right of appeal can be availed only by a citizen making an application seeking certain

information or by another person who is aggrieved with the decision of the CPIO concerning disclosure of information. Such an aggrieved person may be a third party. Section 19(2) makes an explicit mention of an appeal by the concerned third party. Technically speaking, even a Public Authority can also be aggrieved with the decision of PIO and can appeal against the decision of the CPIO as under section 2(n) of the RTI Act, third party includes Public Authority. Section 19(3) of the RTI Act reads as under: A second appeal against the decision under sub-section 2 shall lie within 90 days from the date on which the decision should have been made or was ctually received with the Central Information Commission or the State Information Commission, provided that the Central Information Commission or he State Information Commission, as the case may be, may admit the appeal after he expiry of the period of 90 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. From the above, it is clear that a second appeal is against the decision under sub-section 1 and any person who is aggrieved with this decision can approach the Commission and submit the appeal. This aggrieved person could be a PIO or a third party. The Act does not debar a second appeal either by the PIO or by a Public Authority.*(SH.V.R.Eliza, CPIO Vs. Board of Excise and Customs, Decision no CIC/AT/A/2008/00291).*

SECTION 20: PENALTIES.

1. Section 20…. A penal Provision.

Section 20 empowes the Central or the State Information Commission to impose penalty as well as to recommend disciplinary action against such Public Information Officers who, in its opinion, have committed any acts or omissions specified in this section, without any reasonable cause. The above provisions demonstrates that thye functioning of the Commission is not administrative simpliciter but is quasi-judicial in nature. It exercises powers and functions which are adjudicatory in character and legal in nature. Thus, the requirement of law, legal procedures, and the protections would apparently be essential. The finest exercise of quasi-judicial discretion by the commission is to ensure and effectuate the ight of information recognized under Article 19 of the constitution vis- vis the protections enshrined under Article 21 of the Constitution. *[Namit Sharma Vs. Union of India W.P(c) No. 210 of 2012 SC]*.

2. Opportunity of being heard not to be a formality of farcical exercise.

Provision of Section 20 (1) of Act provided that Central Public Information Officer or State Public Information Officer, shall be given reasonable opportunity of being heard before any penalty is imposed on him - By said proviso meaning would surely be imported that Authority was open to be convinced whether penalty should or should not be imposed. Had it been a pre-determined situation in law that the penalty shall be imposed as a matter of routine course, opportunity of hearing before penalty being imposed would not have been prescribed under the said proviso. Rather, the said proviso would not have been in place. *[Dr. Hedgewar Seva Samiti through Secretary, Public Infomation Officer, Chairman and Public Infomation Appellate OfficerVs. Purushottam and State of Maharashtra, Through State Information Commission. HIGH COURT OF BOMBAY (AURANGABAD BENCH)Writ Petition No. 4590 of 2011]*.

3. Complainant cannot claim audience in the penalty proceedings.

While deciding an appeal, the CIC is concerned with the merits of the claim to information. In penalty proceedings the CIC is concerned with the compliance by the information officers of the provisions of the Act. A discretion has been vested in this regard with the CIC. The Act does not provide for the CIC to hear the complainant or the appellant in the penalty proceedings, though there is no

bar also there against if the CIC so desires. However, the complainant cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring Information Officer. There is no provision in the Act for the payment of penalty or any part thereof if imposed, to the complainant. Regulation 21 of the Central Information Commission(Management) Regulations, 2007 though provides for the CIC awarding such costs or compensation as it may deem fit but does not provide for such compensation to be paid out of penalty if any imposed. The appellant cannot urge that it has a right to participate in the penalty proceedings for the said reason either.*(Ankur Mutreja Vs. Delhi University, HC of Delhi LPA 764/2011).*

4. Penalty not to be imposed in all cases.

The Court while considering a complaint about the Tribunal infracting its bounds has to be alive to the fact that primary discretion in such cases is with the Statutory Tribunal. At the same time, once it is established that the Tribunal, for no apparent reasons, either exceeded its jurisdiction or failed to exercise jurisdiction lawfully vested in it, the High Court would be justified in interfering with its order. Even though CIC recommended disciplinary action under Section 20(2), its denial of any penalty order under Section 20 cannot be upheld. *[Mujibur Rehman Vs. Central Information Commission , High Court of Delhi W.P.(C) 3845/2007]*.

5. No penalty if reasonable cause is there.

Section 20 says that if the Public Information Officer without any reasonable Cause, refuses to receive an application for information or has not furnished information within the time specified under section 7(1) or malafidely denied the request for information or knowingly give incorrect, incomplete or misleading information or destroyed information, then penalty of Rs 250 for each day may be imposed .

It is however clear that the words used are “without any reasonable cause”. It demonstrates that if for reasonable cause information could not be furnished within thirty days, then there is no question of imposition of fine.*(U.K. Joshi Vs. Chief Information Commissioner & Anr Writ petition No. 1759 of 2008, High Court of Uttarakhand at Nainital).*

***6.* CIC need not to record reasons while imposing penalty.**

The use of the word 'or' repeatedly in section 20 shows that the various situations/contingencies dealt with in section 20 are disjunctive. The PIO

concerned would invite penalties under section 20 of the Act upon the occurrence of any of the contingencies mentioned in Section 20. A recording that the CPIO has acted malafidely in denying the request for information is not the sole criterion for imposing penalty.SO, any submission that the CIC cannot impose penalty under Section 20 (1) of the Act without recording a finding as to the malafides on the part of the CPIO is entirely misconceived**.** A contrary position would render the entire statute meaningless, since the CPIO may then, according to his/her own whims and fancies regarding the maintainability of an RTI application, decide as to which application he/she wishes, or does not wish to, respond to. This is not what was intended by the legislature. Such a proposition strikes at the very heart and soul of the Act which was passed to secure access to information under the control of public authorities, which is vital for the functioning of a democracy.*(Prem Lata Vs.Central Information Commission and Ors, W.P. (C) 2458 of 2012 and C.M. Nos. 5272 and 5273 of 2012, High Court of Delhi).*

SECTION 22: ACT TO HAVE OVERRIDING EFFECT.

1. Act to prevail over specified Acts and even instruments.

There are many pre-requisites of vital significance in the functioning of the Commission. In terms os Section 22 of the Act, the provisions of the Act are to be given effect to, notwithstanding anything inconsistent contained in Officials Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. This Act is, therefore TO prevail over the specified Acts and even instruments. The same, however, is only to the extent of inconsistency between the two. Thus, where the provisions of any other law can be applied harmoniously, without any conflict, the question of repugnancy would not arise.*(Namit Sharma Vs. Union of India, W.P(C)No. 210 of 2012, Supreme Court of India.)*

SECTION 23: BAR OF JURISDICTION OF COURTS.

1. Section 23 of the Act cannot erode the jurisdiction given under Article 226 to the High Court and under 32 to the Supreme Court of India.

No court shall entertain any suit, application or other proceedings 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 provided under section 19 of the Act. In other words, the jurisdiction of the court has been ousted by express language. Nevertheless, it is a settled principle of law that despite such exclusions , the extraordinary jurisdiction of the High Court and the Supreme Court, interms of Article 226 and 32 of the constitution, respectively, cannot be divested. It is a jurisdiction incapable of being eroded or taken away by exercise of legislative power, being an important facet of the basic structure of the constitution. *[Namit Sharma Vs. Union of India, W.P.(C)No. 210 of 2012, Supreme Court of India.]*

SECTION 24:ACT NOT TO APPLY TO CERTAIN ORGANISATIONS.

1. CBI comes within the purview of Section 24.

RTI Act sets out the machinery of Right to Information for citizen 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 preamble further states that revelation of information in actual practice is likely to conflict with other public interest including efficient operation of Government, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. In the preamble it is further stated that it is necessary to harmonize these conflicting interest while preserving the paramountcy of democratic ideal. Therefore, the law makers were conscious of the fact that in actual practice while revealing information, there is a likely hood of conflict with other public interest which includes preservation of confidentiality of sensitive information.

Indisputably, CBI is dealing with so many cases of larger public interest and the disclosure of information shall have great impact not only within the country but abroad also, and it will jeopardise its works. Equally, the investigation done by CBI have a major impact on the political and economic life of the nation. There are sensitive cases being handled by the CBI which have direct nexus with the security of the nation, making CBI a security and intelligence organisation.*(S. Vijayalakshmi Vs. Union of India, Rep by its Secretary to Government, Ministry of Personal, PG and Pensions, North Block, New Delhi and Director Bureau of Investigation Lodhi Road, CGO Complex, New Delhi W.P.No.14788 of 2011 and M.P.No. 1 of 2011, High Court of Madras.)*

SECTION 28: POWER TO MAKE RULES BY COMPETENT AUTHORITY.

1. Rules to be in conformity with the basic rule of law.

It is an unquestionable proposition of law that the Commission is a 'judicial Tribunal' performing functions of judicial as well as 'quasi-judicial' nature and having the trappings of a Court. But besides being a tribunal, competent authorities shall frame only those rules to make working of the information commission effective which are in conformity with the basic rule of law. *[Namit Sharma v Union Of India(1993) 4 SCC 119]*.

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