



## Genesis and significance of right to information Act, 2005

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Date of Submission: 01-09-2024

Date of Acceptance: 10-09-2024

### I. Introduction

Traditionally man is inquisitive and from the time immemorial he has been busy in his mission of knowing and discovering the truth in whatever field his aptitude and imagination ventured. There is ample evidence in this context in our great Vedic erudition where it is written that Life is a perennial search for the truth. The restless soul is on the journey infinite to find the truth. Ancient India had a feudal culture and hierarchical social structure. The Maharajas, the Mughals and the British Rulers defended themselves behind ramparts of secrecy. The Britishers passed Official Secrets Act 1923, which was mainly a defense mechanism against the rising tide of nationalism. As Indians were distrusted by British Government, so nobody had any access to official information under this Act. The Indian Legal System, largely being a colonial vintage, stresses on secrecy laws and such provisions are contained in Official Secrets Act 1923, in the Indian Evidence Act 1872, the infamous Rowlatt Act 1919 and Bengal Criminal (Amendment) Act 1925 etc. After the birth of Republic, freedom of speech and expression became a fundamental right under Article 19(1)(a) of the Constitution.

The battle for appropriate legislation for the right to information in our country has been fought on two main planks, the first being a demand for amendment of the draconian colonial Official Secrets Act 1923 and the second in the form of a campaign for an early and effective law on right, to information. Very serious objections to Official Secrets Act were raised in 1948 when the Press Laws Enquiry Committee recommended certain amendments in it. In 1977, Working Group was formed to look into possibilities of amending thin Act to enable greater dissemination of information to the public. This group recommended that no change was required in the Act as it pertained only to protect national safety and not to prevent legitimate release of information to the public. In 1989, another committee was setup, which identified certain areas

where information could be bidden by government and all other spheres of it should lie open.

The right to information movement started in Rajasthan in the last phase of 19<sup>th</sup> century with the efforts of Mazdoor Kisan Shukti Sangathan (MKSS), a Non-Governmental Organization led by Meghse Awardee Aruna Rai. This movement led to the enactment of Right to Information laws in several states.

### STATE LAWSON RIGHT TO INFORMATION

Tamil Nadu was the first state to pass such legislation in 1996 and the states of Goa, Karnataka, Madhya Pradesh, Rajasthan and Delhi followed the suit. Uttar Pradesh passed executive orders for providing access to information. In 2001, similar laws ensuring access to information were passed in the states of Andhra Pradesh and Assam. Kerala and Orissa passed such laws in 2002. The *Punjab and Haryana Right to Information Rules, 2005* was passed to provide for freedom to every citizen of the State to secure access to information under the control of public authorities consistent with public interest and as a right to promote openness and transparency in administration and for matters connected therewith incidental thereto. The Maharashtra Right to Information Act, 2003 was passed by the State Legislature on the ground that the right to information has been recognized by the Supreme Court as a part of the fundamental right guaranteed to the citizen under Article 19(1) of the Constitution of India; and this right to information is the bed-rock of democracy and can pave the way for transparency, openness and accountability in governance of the affairs of the State and ensure effective participation of the people in a democratic society. In the year 2004, the Legislature of Jammu and Kashmir also passed the *J&K Right to Information Act, 2004*.



## THE FREEDOM OF INFORMATION ACT, 2002

The *Freedom of Information Act, 2002*, was enacted by the Government of India to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto. The Statement of Objects and Reasons appended to the *Freedom of Information Act, 2002* laid down that the Freedom of Information Bill sought to achieve the following objects:

- (i) The need to enact a law on right to information was recognized unanimously by the Chief Ministers Conference on 'Effective and Responsive Government.' The Parliamentary Standing Committee on Home Affairs recommended that the Government should take measure for the enactment of such legislation.
- (ii) In order to make the Government more transparent, and accountable to the public, the Government of India appointed a Working Group on the Right to Information and Promotion of Open and Transparent Government. The Working Group was asked to examine the feasibility and need for either full-fledged Right to Information Act or its introduction in a phased manner to meet the needs of open and responsive governance and also to examine the framework of rules with reference to the Civil Services (Conduct) Rules and Manual of Office Procedure. The said Working Group submitted its report in May 1997 along with a draft Freedom of Information Bill to the Government. The working group also recommended suitable amendments to the Civil Services (Conduct) Rules and Manual of Departmental Security instructions with a view to bring them in harmony with the proposed Bill.
- (iii) The draft Bill submitted by the Working Group was subsequently deliberated by the Group of Ministers constituted by the Central Government to ensure that free flow of information was available to the public, while *inter alia*, protecting the national interest, sovereignty and integrity of India, and friendly relations with foreign States.
- (iv) The proposed Bill is in accord with both Article 19 of the Constitution as well as Article 19 of the Universal Declaration of Human Rights, 1948.
- (v) In our present democracy, the Civil Services (Conduct) Rules, and Manual of Office Procedure framework, free flow of information for the citizen and Non Government institutions suffer from several

bottlenecks including the existing legal framework, lack of infrastructure at the grass root levels and an attitude of secrecy within the Civil Service as a result of the old framework of rules. The government proposes to deal with all these aspects in a phased manner so that the Freedom of Information Act becomes a reality consistent with the objective of having a stable, honest, transparent and efficient Government.

(vi) The proposed Bill will enable the citizen to have an access to information on the statutory basis. With a view to further this objective, clause 3 of the proposed Bill specifies that subject to the provisions of this Act, every citizen shall have right to freedom of information. Obligation is cast upon every public authority under clause 4 to provide information and to maintain all records consistent with its operational requirements duly catalogued, indexed and published at such intervals as may be prescribed by the appropriate Government or the competent authority.

The Bharatiya Janata Party led National Democratic Alliance reworked on the Shourie Draft to finalise the Freedom of Information Bill, 2000.<sup>37</sup> However, even after the Presidential assent, the Act could not be notified in the Official Gazette. Although, the Bill included new provisions like fixing the time-limit of forty eight hours for life and liberty related information, yet it suffered from a number of flaws.

Primary amongst which was the fact that it reinforced the controlling role of the government officials who retained wide discretionary power to withhold information. Further, it conferred sweeping exemptions and there was neither a penalty provision nor any sort of provision for the constitution of Information Commission. Hence, it was found that even this Act did not fulfill the aspirations of the citizens of India.

Therefore, in order to ensure greater and more effective access to information, it was thought that the *Freedom of Information Act, 2002* must be made more progressive, participatory and meaningful. In view of the significant changes proposed in the existing Act, the government decided to repeal the Freedom of Information Act and another legislation was proposed to provide an effective framework for effectuating the right to information. Ultimately after a lot of discussion and deliberation, the *Right to Information Act, 2005*, was passed. It came into force in totality with effect from 12<sup>th</sup>



October, 2005 and came to be regarded as a milestone in the history of social legislation to impart information to citizens of India regarding working of the government and its corporations etc. to make them more transparent as a result of which corruption, if not eliminated at all, would be checked to a great extent.

*The Right to Information Act, 2005* repealed the *Freedom of Information Act, 2002*. The provisions of the Act have to be read in consonance and in harmony with the objects and reasons given in the Act which have been given widest meaning in order to ensure that unscrupulous persons do not get benefits of concealment of their illegal activities by being exempt under the Act and are able to hide nothing from the public. Therefore, from the perusal of the objects and reasons for enacting the *Right to*

*Information Act*, it is apparent that the government desired to establish a practical regime of right to information for citizens to have access to information under the control of public authorities, in order to promote transparency and accountability in their working.

### THE FREEDOM OF INFORMATION ACT, 2002 VERSUS THE RIGHT TO INFORMATION ACT, 2005

The *Freedom of Information Act, 2002*, was weak on many fronts that the *Right to Information Act* has improved upon. The first and biggest flaw with the *Freedom of Information Act* was that it came into force only on notification and not immediately. The absence of a time bound period for implementation resulted in the *Freedom of Information Act* remaining in executive abeyance for over eighteen months under the pretext that the rules for its implementation were being formulated. The *Right to Information Act* addresses this problem by ensuring that a few of its provisions come into effect immediately and the rest on the one hundredth and twentieth day of its enactment.

The second area where the *Freedom of Information Act* was weak and inadequate was its disclosure policy which has been improved to some extent in the *Right to Information Act*.<sup>50</sup> Under the *Freedom of Information Act*, only the particulars of an organisation; its functions, powers and the duties of its officers; norms, rules and regulations; list of records available to citizens; details of facilities to get information; facts related to any decision; reasons for its decision, and, projects schemes

were to be disclosed *suomoto*. The *Right to Information Act*, on the other hand, contains powers to review the Act's disclosure policy that are vested with an Information Commission.

The Commission has the authority to add to the list of information to be

disclosed *suomoto*. In addition, the *Right to Information Act* enables the publishing of more routine and detailed information at regular intervals. The *Freedom of Information Act* only required information to be maintained and indexed to meet operational requirements but was weak on a uniform documentation policy. Other than maintaining and indexing records, the *Right to Information Act* also requires public authorities to ensure that all records that are appropriate to be computerized and connected through a network all over the country so that access is facilitated. The third area where the *Freedom of Information Act* left much to improve upon was the number of specific, general and blanket exclusions that blocked a citizen's access to information. The exclusions under the *Right to Information Act* are fewer and more specific. The four general exemptions under *Freedom of Information Act* have been deleted in the *Right to Information Act*. While the blanket exclusion the *Freedom of Information Act* provided to intelligence and security agencies has been retained in the *Right to*

*Information Act*, information relating to human rights violations and corruption charges in these agencies is not exempt following the National Advisory Council recommendations to that effect. This is a major step towards making the exclusion to intelligence agencies compatible with the norms of transparency and good governance. The specific exemptions of the *Freedom of Information Act* have been retained in the

*Right to Information Act* with two exclusions. These are: (a) The exemption provided to matters affecting Centre-State relations has been removed in the *Right to Information Act* and the decision making process for any policy is privy only during deliberation but must be disclosed after the decision is taken and, (b) Information received from foreign governments and information which would constitute contempt of court on disclosure has been excluded under the *Right to Information Act*. Safeguards to protect privacy of individuals have been included in the *Right to Information Act*. Despite a

greater number of exemptions in the *Right to Information Act*, their brevity and preciseness serve it better than the *Freedom of Information Act*



Incidentally, none of the exemptions of the *Freedom of Information Act* were subject to the public interest override clause, which has been provided for in the *Right to Information Act*. For the information excluded currently, the de-classification period has also been reduced from 25 years in the *Freedom of Information Act* to 20 years in the *Right to Information Act*.

The fourth area where the *Right to Information Act* largely improves upon the *Freedom of Information Act* is the provision for penalising the officers who refuse

information or give incorrect information. Interestingly, such a provision does not exist in many similar laws of other countries, but the experience of the states' right to information laws and the general mindset of the Indian bureaucracy have made it an important aspect of the *Right to Information Act*. As a matter of fact, on almost every aspect, the *Right to Information Act* has improved upon the *Freedom of Information Act*, but the most crucial is the creation of the Information Commissions at the Center and States. This ensures that there is an apex authority to form rules, review and implement the *Right to Information Act* in India. This will also introduce a system of independent appeals to the Information Commission for each transaction under the *Right to Information Act*.

Non enforcement of Freedom of Information Act, 2002 caused very much resentment among people and they demanded an effective law in this respect. After years of struggle for the central legislation on right to information the civil society group emerged into the National Campaign for People's Right to Information (NCPRI) in 1996. Justice P B Sawant, and other prominent persons drafted a Bill for NCPRI, known as Press Council Draft.<sup>68</sup> This was the first major draft legislation on right to information in the country that was widely debated and generally welcomed and was

circulated by Press Council of India in 1996. The most detailed proposed Freedom of Information Bill was the one drafted by the Consumer Education Research Council (CERC).

The Government set up a National Advisory Council to supervise the implementation of its program which discussed Karnataka and Maharashtra Acts and tried to incorporate many amendments on the principal of maximum disclosure and minimum exemptions consistent with Constitutional provisions, independent appeal mechanisms, penalties for failure to provide information as per the law, effective mechanism for access to information and disclosure by authorities.<sup>71</sup> This led to the passing of Right to Information Act, 2005<sup>72</sup> with significant improvements.

#### TITLE AND SCHEME OF THE ACT

The title of an Act is a part and parcel of the Act itself the title of the present RTI Act is clearly worded and lays down that it relates to the right to information. The Supreme Court in *Commissioner of Income Tax, Bombay v. Ahmedbhai Umarbhai & Co., Bombay*<sup>73</sup> has held that the title of the statute is an important part of the Act and may be referred to for the purposes of ascertaining its general scope and for throwing light on its construction although it cannot override the clear meaning of the enactment. In the similar fashion the Apex Court in *M.P.V. Sundararamier & Co. v. State of Andhra Pradesh*,<sup>74</sup> has held that the title of a chapter cannot legitimately be used to restrict the plain terms of an enactment. The true nature of a law has, therefore, to be determined not on the label given to it in the statute but on its substance.

#### SPECIAL LAW-SOCIAL WELFARE LEGISLATION

The Right to Information Act, 2005 is a special law by providing the power to citizens for getting information. It is a social welfare legislation and is a special law<sup>75</sup> as far as the penalties provided under the Act are concerned<sup>76</sup>. The purpose of the Act is to ensure smoother and greater access to information by establishment of an appellate machinery with investigating powers to review decisions of Public Information Officers, provisions to ensure maximum disclosure and minimum exemptions consistent with constitutional provisions, effective mechanism for access to information and disclosure by authorities as well as penal provisions for failure to provide information as per the law.<sup>77</sup> In the case of *A.K. Ghosh v. A. Bose*<sup>78</sup>, The Supreme Court held that the title of the statute is an important part of the Act.

#### COMMENCEMENT OF THE ACT

The Right to Information Bill was introduced in the Lok Sabha in December 20th and was passed by both the Houses of Parliament with major amendments in May 2005. It received the assent of the President of India and then the Act was notified in Gazette of India. As per section 1(3) of the Act, the provisions of sub-section (1) of section 4 sub-sections (1) and (2) of section 5, sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment which means that all the provisions of the Act came into force w.e.f. 12th day of October 2005. This Act has repealed the Freedom of Information Act, 2002. The Act





extend to the whole of India except the State of Jammu & Kashmir. However, the State of Jammu & Kashmir has its own separate Act.

#### EXTENT OF THE ACT

The certain provisions of the Act<sup>83</sup> came into force at once, and the remaining provisions of this Act came into force on the one hundred and twentieth day of its enactment. Thus, all the provisions of the Act came into effect with effect from 12<sup>th</sup> October, 2005 in whole of India except the State of Jammu & Kashmir, which has its

own Act.

The Right to Information Act extends to:

- (a) All the States and Union territories in India;
- (b) Territorial waters of India;
- (c) Ships flying Indian flags; and
- (d) Air and aircrafts.

#### DEFINITIONS

It is well-settled principle of interpretation that when definition clause is added to an Act, the definitions of the words given therein merely define the meaning of the words to make the terms definite in the sense in which these are used in various sections of the Act.<sup>85</sup> If in the definition, the word 'means' is used, it implies the exhaustive definition and if word 'includes' is used, it implies that it include certain matters which ordinary definition of the word might not have included. It is at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of the Act. This rule of construction is only one element in deciding what the true import of the enactment is, to ascertain which, it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the Statute.<sup>88</sup> The Supreme Court in *Shamrao Vishnu Parulekar v. District Magistrate, Thane*,<sup>89</sup> held that the rule of statutory construction is only one element in deciding what the true import of the enactment is, and to ascertain the true import, it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the statute.

The presumption that the same words are used in the same meaning is, however, very slight, and it is proper if sufficient reasons can be assigned to construe a word in

one part of an Act in different sense from that what it bears in another part of an Act. The Right to Information Act 2005, implies that the definitions of various words and expressions given in this section should be followed generally; but if the context otherwise requires then the interpreter has the discretion to adopt such other meaning of the particular word or expression which is in harmony with the context of the expression and for this purpose sufficient flexibility is provided by the insertion of these words.

The Supreme Court in the case of *State of U.P. v. M.L. Srivastava*, held that the word 'shall' in a statute does not mean that in every case it shall have that effect, that unless the words of a statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid.

In the similar fashion, the Apex Court in *State of U.P. v. Jogen Singh*, the Apex Court held that the word 'may' does not mean must or shall in every case but in the light of context it may mean must or shall.

Following the trend the Supreme Court in *Kalyan Singh v. Gaiand Lai*,<sup>94</sup> observed that the frame of any definition, more often than not, is capable of being made flexible. However, the precision and certainty in law require that it should not be made loose and should be kept tight as far as possible. It is not correct to give as wide a meaning as possible to the terms used in a statute simply because the statute does not define an expression,

#### i) Appropriate Government

Appropriate Government<sup>95</sup> 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.

Therefore, 'appropriate Government' means the Central Government or the State Government. It is necessary for the government to make a list of such non-government/private organizations that are substantially financed by the Central or the State Government and the department which is controlling the finances for such organizations must advise such non-government/private organizations to set up information access system for the benefit of the



citizens of India and they should be advised to give all information as per the Act to citizens on payment of reasonable fee.<sup>96</sup> If any such non-government/private organization which is substantially financed by funds directly or indirectly by the Central or the State Government fails to supply the information to any citizen of India on request, the aggrieved person is competent to bring the matter to the notice of the higher authority in the department, which is financing such non-government/private organization and then second appeal would lie to the Central Information Commissioner or the State Information Commission, as the case may be<sup>97</sup>.

### ii) Central Information Commission

The Central Information Commission is the backbone of the Right to Information Act and is an independent and impartial statutory body which has to discharge its duties without being subjected to directions by any other authority. "Central Information Commission"<sup>98</sup> means the Central Information Commission constituted under sub-section (1) of section 12 of the Act. The Central Information Commission is statutory body constituted under section 12 of the Right to Information Act.

### iii) Central Public Information Officer

According to the Right to Information Act 2005, "Central Public Information Officer"<sup>99</sup> means an officer designated under subsection (1) of section 5 and includes a Central Assistant Public Information Officer designated as such under subsection (2) of section 5 of the Act. The Central Public Information Officer and the Central Assistant Public Information Officer are those officers, who are redesignated as such either by the public authorities; or the competent authorities in their respective administrative offices/units with the object to provide information to the citizens on their making request for the same under the Act.<sup>100</sup> The public authorities are duty bound to designate,<sup>101</sup> an Officer at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer which means they should have been designated as such on or before 23<sup>rd</sup> day of September 2005. The Public Information

Officer is the nodal officer in the public authority responsible for implementation of the Act.

### iv) Chief Information Commissioner and Information Commissioner

The Central Information Commission is the backbone of the Right to Information Act and is an

independent and impartial statutory body. It shall be headed by the Chief Information Commissioner to be assisted by the Central Information Commissioners.<sup>102</sup> The terms 'Chief Information Commissioner' and 'Information Commissioner'<sup>103</sup> have been defined in the Act, to mean the 'Chief Information Commissioner' and 'Information Commissioner' appointed under subsection (3) of section 12 of the Act. The Chief Information Commissioner and Central Information Commissioners shall be appointed by the President on the recommendation of a committee.<sup>104</sup>

### v) Competent Authority

The competent authority has been empowered with the power of delegated legislation to frame rules to carry out the provisions of this Act.<sup>105</sup> Competent Authority under section 2(e) of the Right to Information Act means, and include-

(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.

### vi) Information

The term 'Information' has been defined in the Act,<sup>106</sup> to mean 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 Delhi High Court in the case of *Union of India v. R.S. Khan*,<sup>107</sup> held that the definition of Information includes file notings during disciplinary proceedings which are in the form of views and comments expressed by various officials dealing with the files. In another case of *V. Madhar v. Tamil Nadu Information Commission*,<sup>108</sup>



the Madras High Court has held that the asset details of government servants filed before government though in sealed covers cannot be said to come in the definition of information that could not be assessed by government. Similarly in *Shekhar Chandra Vermav.State Information Commissioner*,<sup>109</sup> It was held that Right to Information Act, 2005, contemplates furnishing of information which is available on records, but it does not go so far as to require an authority to first carry out enquiry and thereby create information, which appears to be what the information seeker had required from the appellant,

**vii) Record**

The term "Record" under the Act<sup>110</sup> means and to include,-

- (i) any document, manuscript and file;
- (ii) any microfilm, microfiche and facsimile copy of a document;
- (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (iv) any other material produced by a computer or any other device.

**viii) Prescribed**

The term 'prescribed' has been defined under the Right to Information Act<sup>111</sup> to mean prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be. The Right to Information Rules framed by the Central Government has been incorporated in Part II, while the Right to Information Rules framed by various State Governments have been incorporated in Appendices of the book. It should be remembered that the use of the word 'prescribed' is the normal expression for conferring a power to make a rule.<sup>112</sup>

**ix) Public Authority**

The term 'Public Authority' has been defined under the Act,<sup>113</sup> to mean any authority by or under the Constitution or by any other law made by Parliament or State Legislature or by notification issued or order made by appropriate government and includes any-

1. Body owned, controlled or substantially financed.
2. Non Government Organisation substantially financed directly or indirectly by funds provided by

appropriate government.

The Madras High Court in *Karanthai Tamil Sangam v. R. Sivaprakasham*,<sup>114</sup> held that non government organisations receiving allocation or provision of funds has to be treated as public authority under Right to Information Act, 2005. Similarly in *Kamal Cooperative Sugar Mills Ltd. v. State Information Commissioner, Haryana*,<sup>115</sup> The Punjab and Haryana High Court held that definition of public authority includes cooperative sugar mill managed by a managing director who is a state civil service officer. In the case of *Shiksham Prasarak Mandal v. State Information Commissioner*<sup>116</sup>, The Bombay High Court held that schools, colleges receiving grants in and from state government to be treated as public authority. Similarly the Bombay High Court in *Public Information Officer v. Manohar Parrikar*,<sup>117</sup> held that the President of India and Governor of State are public authorities under section 2(h) of the Act.

Deviating from the trend, the Bombay High Court in *Bhaskarrao Shankarrao Kulkarni v. State Information Commissioner, Nagpur*,<sup>118</sup> has held that the public trust is not covered under the Act as to include in the definition of public authority.

**x) Right to Information**

The term 'right to information' has been defined, under the Act,<sup>119</sup> to mean the right to information accessible under this Act which is held by or under the control of any public authority i.e. any authority or body or institution of self-government established or constituted<sup>120</sup> - (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;<sup>121</sup> and (ii) Non Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government 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, floppy discs, 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.<sup>122</sup>

The Supreme Court in *Central Information Commission v. State of Manipur*,<sup>123</sup> held that the right to information is intrinsic part of fundamental right to free speech and expression guaranteed under Article 19(1)(a) of Constitution of India. But such right is subject to reasonable restrictions under article 19(2)<sup>124</sup>.

The Karnataka High Court in the case of *H.E. Rajashekarappa v. State Public Information Officer*,<sup>125</sup> has held that the personal information of officials working for public authorities is not within the ambit of section 2(f). Following the trend, the Madras High Court in *V. Madhav v. Tamil Nadu Information Commission*,<sup>126</sup> held that the personal information sought cannot be denied if authority concerned is satisfied that the larger public interest justifies disclosure of such information.

In the case of *Sh. Priyavadan H Nanauati v. Institute of Chartered Accounts of India*<sup>127</sup> the applicant had requested for a copy of the complaint file against him before ICAI. Before this complaint could be registered the ICAI had returned the complaint to the complainant to rectify defects etc, preparatory to its registration for the enquiry to commence. Therefore the point to be established was whether the information which respondent has returned to the person who filed it can be said to be 'held' or be 'under the control of respondent' in terms of section 2(j) of the RTI Act. The expression 'held' or 'under the control of' used in the subsection 2(j) of the Act are significant. These expressions mean that information can be said to be under the control of a public authority only when such public authority holds that information authoritatively and legitimately. Information which a public authority might receive casually or, which it had returned to its point of origin for supplying omissions, will not qualify to be 'held' or 'under the control of the public authority. The present information solicited by the appellant falls in this category. Having been returned by the public authority the respondents herein, to its originator, the information cannot be said to be under the control of the respondents.





**(viii) State Information Commission**

The State Information Commission is a statutory body constituted under section

15(1) of the Act. The constitution and powers of State Information Commission can be summarized under<sup>129</sup>:-

(a) That the State Information Commission shall be constituted by the State Government through the gazette notification.

(b) That the State Information Commission shall consist of the Chief Information Commissioner (CIC) and such number of State Information Commissioners (CI) not exceeding ten, as may be deemed necessary, who shall be appointed by the Governor of State.<sup>130</sup>

**xii) The State Chief Information Commissioner and State Information Commissioner**

The State Chief Information Commissioner and the State Information Commissioner have been defined under the Right to Information Act<sup>131</sup> to mean the 'State Chief Information Commissioner' and 'State Information Commissioner' appointed under subsection (3) section 15 of the Act. The State Chief Information Commissioner and State Information Commissioners shall be appointed by the Governor on the recommendation of a committee.<sup>132</sup>

**xiii) State Public Information Officer**

According to the Right to Information Act<sup>133</sup> "State Public Information Officer" means the State Public Information Officer designated under section 5(1) and includes a State Assistant Public Information Officer designated as such under section 5(2)

of the Act. The State Public Information Officer and the State Assistant Public Information Officer are those officers, who are designated as such by the public authorities and the competent authorities in their respective administrative offices/units with the object to provide information to the citizens making request for the same under the Act.

The public authorities are duty bound to designate an officer,<sup>134</sup> at each Sub Divisional level as the State Assistant Public Information Officer. This means that the public authorities should have designated, Public Information Officer and Assistant Public Information Officer on or before 23<sup>rd</sup> day of September 2005. The Public Information Officer is the nodal officer in the Public Authority responsible for implementation of the Act. Further State Public Information Officer and the State Assistant Public Information officer may seek the assistance of any other officer as he or she

considers necessary for proper discharge of his/her duties and any such officer shall be treated as Public Information officer for the purposes of any contravention of the provisions of this Act.<sup>135</sup>

In the case of Shrihemant Goswami v. Administrator, U.T., Chandigarh.<sup>136</sup> the applicant had applied for info under RTI but he received reply as Administrator UT Chandigarh is not a Public Authority and accordingly no PIO has been appointed. It was held that Administrator Chandigarh is a Public Authority and it shall appoint PIOs and APIOs to provide information.

**RIGHT TO INFORMATION AND OBLIGATION OF PUBLIC AUTHORITIES**

Under the Act, all citizens have right to information which is a fundamental right and access to information is the rule<sup>137</sup>. India is a democratic country and it is blessed with the article 19(1)(a) of the Constitution which provides for the freedom of speech and expression.

And this provision hides the provision of right to information.<sup>138</sup> The Supreme Court in *Indian Express Newspapers (Bombay) Private Ltd, v. Union of India*,<sup>139</sup> held

that several unenumerated rights fall within the ambit of article 21 since personal liberty is of widest amplitude and from article 19 can derive many states of rights.<sup>140</sup>

Every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilities 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;<sup>141</sup> and to publish within one hundred and twenty days from the enactment of this Act,

1. the particular of its organisation, functions and duties;<sup>142</sup>
2. the powers and duties of its officers and employees;<sup>143</sup> Hi the procedure followed in the decision making process,
3. including channels of supervision and accountability;<sup>144</sup>
4. the norms set by it for the discharge of its functions;<sup>145</sup>
5. the rules, regulations, instructions, manuals



and records, held by it or under its control or used by its employees for discharging its functions;<sup>146</sup>

6. a statement of the categories of documents that are held by it or under its control;<sup>147</sup>

7. 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;<sup>148</sup>

8. 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;<sup>149</sup>

9. a directory of its officers and employees;<sup>150</sup>

10. the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;<sup>151</sup>

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

12. the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;<sup>153</sup>

13. particulars of recipients of concessions, permits or authorisations granted by it;<sup>154</sup>

14. details in respect of the information, available to or held by it, reduced in an electronic form;<sup>155</sup>

15. 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;<sup>156</sup> xvi the names, designations and other particulars of the Public Information Officers;<sup>157</sup>

16. such other information as may be prescribed, and thereafter update these publications every year;<sup>158</sup>

For making access to record it is pertinent to publish all relevant facts while formulating important policies or announcing the decisions which affect public;<sup>159</sup> and provide reasons for its administrative or quasi-judicial decisions to affected persons.<sup>160</sup>

It shall be a constant endeavor of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information as

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.<sup>161</sup> For the purpose of sub-section (1), very information shall be disseminated widely and in such form and manner which is easily accessible to the public,<sup>162</sup> 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.<sup>163</sup>

India being a welfare state, it is the duty of the Government to protect and enhance the welfare of the people.<sup>164</sup> It is obvious from the Constitution of India that we have adopted a democratic form of Government.<sup>165</sup> Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their government is doing.<sup>166</sup> The citizens have a right to decide by whom and by what rule they shall be governed and they are entitled to call on those who can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of government.<sup>167</sup> It is only if people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy.<sup>168</sup> "Knowledge", will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means for obtaining it, is but a prologue to farce or tragedy or perhaps both. The Supreme Court in *S.P. Gupta v. Union of India*,<sup>170</sup> held that the citizens right to know the facts the true facts about the administration of the country is

thus one of the pillars of a democratic State, And that is why the demand for openness in the government is increasingly growing in different parts of the world,<sup>171</sup> Under section 4 of the Act, obligations have been cast upon every public authority to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this



Act and publish particulars of its organization etc. on or before 12th day of October 2005 and then at regular intervals.<sup>172</sup>

*The Supreme Court in Central Board of Secondary Education v. Aditya Bandopadhyay*,<sup>173</sup> held that the provisions of Right to Information Act, 2005 should be enforced strictly. Indiscriminate and impractical demand and direction would be counter productive. The Act of 2005 should not be allowed to be misused or abused. The Right to Information Act, 2005 is undoubtedly a progressive step towards the just and equitable environment. But it has been marred by some shortcomings which has impeded successful implementation of the Act and resulted in its underperformance,<sup>174</sup>

The mere information cannot get transformed into wisdom unless certain intermediate processes have been gone through.<sup>175</sup> Despite lots of publicity through various modes, the public awareness about significance of this Act, the *modus operandi* of getting the information, and the knowledge of names of PIO's/APIO's etc, is quite low. The efforts made by the public authorities and governments have not been adequate in generating mass awareness of the RTI Act. Educating the masses is absolutely essential in this regard,<sup>176</sup> Even after more than nine years, awareness levels are as low as twenty six percent in men and twelve percent in women. Obligations of public authorities as conceived by the Act in form of proactive disclosure of the information have not been carried out satisfactorily.<sup>177</sup> Various NGOs and public spirited citizens have raised easy disclosure of relevant information by the public authorities themselves, so that common people are saved from resorting to the statutory way for seeking the same.<sup>178</sup>

#### DESIGNATION OF PUBLIC INFORMATION OFFICERS

The Right to Information Act, 2005 casts an obligation on every public authority to designate<sup>179</sup> as many officers as Central Public Information Officer or State Public Information Officers, in all administrative units or offices under it as may be necessary to provide information to persons, requesting for the information under the Act. Every public authority shall designate an officer<sup>180</sup> at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant

Public Information Officer, to receive the applications for information or appeals under the Act and to forward the same to the Central Public Information Officer or the State

Public Information Officer or senior officer or the Central Information Commissioner or the State Information Commissioner<sup>181</sup>, Whenever, an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, then a period of five days shall be added in computing the period for response<sup>182</sup> as specified under the Act. 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, The Central Public Information Officer or State Public Information Officer, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties. The officer, whose assistance has been sought<sup>183</sup> shall render all assistance to the Central Public Information Officer or State Public Information Office, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act,<sup>184</sup> such other



officers shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

In the case of *Shri Bimal Kumar Khemani and Shri M.L. Sharma v. Northern Railway & North Eastern Railway*,<sup>185</sup> Appellant seeking information relating to the appointment of PIOs and APIOs at important Railway Junctions. The Commission still felt that arrangements could be made at Railway Junctions to declare a senior official like the Station Master or his immediate subordinate to act as an APIO to receive RTI- applications together with the fee and provide a receipt to the Applicant, and forward them to the concerned PIOs as suggested by the Applicants.

Similarly in the case of *Kanhya Lai v. Mrs. Indira Rani Singh, Public Information Officer/DDE(W-B), Directorate of Education, G Block, Vikaspuri, Delhi*,<sup>186</sup> The applicant filed a RTI application dated 19.12.2008 to the PIO seeking specific information for release of list of admission in all streams in Govt. Co-Ed School, B-4, Paschim Vihar, New Delhi for the year 2008-2009. However, no reply was given by the PIO to the Appellant. The issue involved is the responsibility of officers whose assistance has been sought for responding to RTI request. The Commission was of the opinion that all authorities and officers who hold information are duty bound to provide the information when a PIO seeks assistance under Section 5(4). Any public servant no matter how high, will have to provide the assistance so that the PIO can discharge his duty under the RTI act. Respondent was found guilty of not providing the requisite information to the Appellant within 30 days. The Commission thereby directed the deemed PIO Mrs. Sunita Kaushik RD (North) to provide the complete information to the Appellant.<sup>187</sup>

#### **Duty and Powers of Central Public Information Officer and State Public**

##### **Information Officer**

The powers and duties of the Central/State Public Information Officer and the Central/State Assistant Public Information Officer can be detailed as under:-

- (a) The Public Information Officer shall deal with the requests for obtaining information received from persons in writing.<sup>188</sup>
- (b) Where the person making the request is unable to make request in writing, Public Information Officer shall render reasonable assistance to the

person to reduce the request in writing.<sup>189</sup>

(c) In case the application made for an information relates to the subject matter, which is closely connected with the functions of any other public authority or which is held by another public authority, the Public Information Officer shall transfer the application or such part of the request to that public authority not later than five days from the receipt of the application and inform the applicant immediately about such transfer.<sup>190</sup>

(d) The Public Information Officer may seek the assistance of any other officer for the proper discharge of his/her duties,

(e) The Public Information Officer, on receipt of the request shall either provide the information on payment of such fee, as may be prescribed or reject the request

for any of the reasons specified in the Act<sup>192</sup> as expeditious as possible, but in any case within 30 days of the receipt of the request: provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request. Where application is given to State Assistant Public Information Officer a period of five days shall be added to the statutory period of 30 days.<sup>193</sup>

(f) In case the Public Information Officer fails to supply the information or

communicate refusal of the request within the specified period of 30 days/48 hours, as the case may be, he shall be deemed to have refused the request.<sup>194</sup>

(g) In case the request for obtaining information is rejected, the Public Information Officer shall communicate to the person making the request.<sup>195</sup>

(h) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question,<sup>196</sup>

(i) Where the decision is taken to provide the information on payment of any further fee, representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving<sup>197</sup>

1. the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed, requesting him to deposit that fees, and the period intervening the despatch of the said intimation and p





ayment of fees shall

be excluded for the purpose of calculating the statutory period of thirty days;<sup>198</sup>

2. information concerning his or her right with respect to review of the decision as to the amount of fees charged or the form of access provided; and

3. the particulars of the appellate authority, time limit, process and any other forms.<sup>199</sup>

(j) Where access is granted to a part of the record, the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing,<sup>200</sup>

1. that only part of the record requested, after severance of the record containing

information which is exempt from disclosure, is being provided;

2. the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;<sup>201</sup>

3. the name and designation of the person giving the decision;

4. the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

5. his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.<sup>202</sup>

(k) Where access to information sought is regarding information supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall give written notice to the third party regarding disclosure of said information or record, within five days of the receipt of the request, and invite the third party to make submissions in writing or orally whether the information should be disclosed and such submission of third party shall be kept in view while taking a decision about the disclosure of the information and in such a case the third party is at liberty to make the representation within ten days from the receipt of such notice.<sup>203</sup>

This period of ten days shall be added to statutory period of thirty days for supply of information and in such a case the information can be supplied within 40 days.<sup>204</sup> To conclude it can be said that the request for obtaining information shall be made by the person in writing or through electronic means in English or Hindi in the official language of the area with the prescribed fee to the Public Information Officer of the concerned public authority on which the decision has to be taken of the Public Information Officer

within the period of 30 days or 48 hours, as the case may be.<sup>205</sup> However where the application for information is given to a Central Assistant Public

Information or a State Assistant Public Information Officer, a period of five days shall be added to the statutory period of 30 days.<sup>206</sup>

The Act provides for appointment of Public Information Officers<sup>207</sup> in each of the public authority institutions at different levels, for free flow of information.

But there was delay in such appointments unfortunately even after the lapse of the time limit mandated by the Act. Moreover, sometimes there is no specific mention of the Public Information Officers and Assistant Public Information Officers by the departments thereby confusing the people about whom to address and serve request seeking the information.<sup>208</sup>

## REQUEST FOR OBTAINING INFORMATION

The first step for obtaining information under the Right to Information Act is to make a request for information to the Public Information Officer of the concerned public authority.<sup>209</sup> Under the Right to Information Act, 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 in the official language of the area in which the application is being made, specifying the particulars of the information sought by him or her, along with such fee, as may be prescribed in the rules, to:—

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

(b) The Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be.

The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution.<sup>210</sup> A citizen

has a fundamental right to use the best means of imparting and receiving information. In modern constitutional democracy, 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.<sup>211</sup> However, like all other rights, even this right has recognized limitations; it is, by no means, absolute.<sup>212</sup> The concept of an open Government is the direct emanation from the right to



know which seem to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy an exception.<sup>213</sup> The procedure for making request for information is given under the Right to Information Act 2005<sup>214</sup>, which can be summarized as under:

(a) Request for obtaining information shall be made in writing or through electronic media in English or Hindi in the official language of the area to the Central Public Information Officer or the State Public Information Officer or to the Assistant Public Information Officer,<sup>215</sup>

(b) The request must specify the particular of the information sought.

(c) Where such a request cannot be made in writing, the person making the request orally to reduce the same in writing. The prescribed fee as per the Rules framed under the Act has to be paid along with the request to obtain information.

(d) The applicant making the request shall not be required to give any reason for requesting the information. This means that any citizen can get information without mentioning the reason for which the information is required.

(e) Where the application relates to the information, which is held by another public authority or the subject matter of which is more closely connected with the

functions of another public authority, it shall be the duty of the public authority to which such application is made to transfer the application or part of it to that public authority as soon as practicable but in no case later than five days from the date of receipt of application under intimation to the applicant about such transfer.<sup>216</sup>

The Supreme Court in *Chief Information Commissioner v. State of Manipur*<sup>217</sup> held that section-3 of the RTI Act recognises right to receive information and section-6 either hand gives such right to any person. Hence section-6 is wider than section-3.

Following the trend, the Calcutta High Court in *Mrityunjay Ganguly v. State of West Bengal*<sup>218</sup> has held that whether decisions given by concerned authority on an application filed under section 6 of the Right to Information Act, 2005 is actually a decision or not is

to be examined by appellate authority under appeal. Such decisions as were held could not be held interfered with exercise of power under article 226 of the Constitution of India.

In the similar fashion, in *Yogendra Chandrekar v. State Information Commission*<sup>219</sup> it was held that request for obtaining information by stranger cannot be turned down for want of reasons or there is no quarrel that a person may make request in writing or through electronic means in English or Hindi to obtain information and information request cannot be turned down on the ground that he was stranger to the documents or he has not disclosed the reasons for the said information under the provisions of section 6 of Right to Information Act.

Following the trend, the Orissa High Court in *Public Service Commission Orrisav. Information Commissioner*<sup>220</sup> held that an examinee is eligible to



get the photocopies of answer sheets except name of chief examiner his initials and code number.

In the similar fashion in *Avishek Goenka v. Union of India*,<sup>221</sup> the petitioner is claiming to be an activist in the field of RTI has approached the Calcutta High Court by filing the writ petition with the prayer, that the authorities under the Act should not insist upon the detailed address of the applicant as and when any application is made under the Act. As by such Act there is threat to the life of activist and there had been past incidence of unnatural deaths of RTI activist. This mandate is provided u/s 6(2) of RTI Act 2005 and it clearly provides that an applicant making request for information shall not be required to give any reason for requesting such information or any other personal details except those that may be necessary for contacting him. It was held by the Court that the authority should not insist upon detailed whereabouts particularly when postbox number is provided for that purpose and that would establish contact with him and the authority. The Calcutta High Court dispose of this writ petition by making observation that the Secretary Ministry of Personnel should circulate the copy of this order to all concerned so that the authority cannot take appropriate measures to hide information with regard to personal details of the activist to avoid any harassment by the person having vested interest.<sup>222</sup>

In *S.C. Aggarwal v. Coal Ministry*,<sup>223</sup> Applicant seeking information about system of allocating coal blocks for the past 10 years. Role of Union Coal Minister in allocating coal blocks, file notings, correspondence, documents etc. in coal block allocation and other information relating to it. The Right to Information Act, 2005 cast an obligation on Information Officers to render all reasonable assistance to the person making the request for information.

But there are several problems which come in the way of filing applications and inspection of records. As per the mandate of the Act, the Appropriate Governments have not taken adequate steps to make the RTI process citizen-friendly.<sup>224</sup>

Most of the times the Citizens are not aware of the place where the application has to be filed or the authority (Appellate Authority or Information Commission) to whom they can approach in case their application is not entertained, rejected or inadequately replied.<sup>225</sup> The applicants are also not aware of the clause of inspection of records which can benefit them immensely and can also be cost effective and more meaningful.<sup>226</sup> There have been grievances of

the applicants that information is not provided to them in their regional language. This is against the statutory spirit contained in s. 6(1) of the Act which makes it clear that information is to be provided in Hindi or English or in the official language of the area in which the application is being made. It might be feasible, but the provision of taking fees for disclosing the information seems to be against the spirit of the right and the Act too. It is quite paradoxical that a person has to pay for availing information which is a fundamental human right, which has been consecrated even by the Constitution.<sup>227</sup> Being a legislation which is socially oriented, it strikes wrong chord at this place, by creating a hiatus between people on the economic basis. Information can be easily accessed by the affluent classes whereas same is not so comfortable for the students and lower strata of middle class.<sup>228</sup>

#### Disposal of Request

When the request has been made for supply of information to Central Public Information Officer or a State Public Information Officer (which term will include Assistant Public Information Officer also), it is the duty of the Public Information Officer to supply the information or give access to the record or part thereof and for

this purpose the Public Information Officer may seek assistance of any other officer for discharge of his/her duties.<sup>229</sup> The Public Information Officer on receipt of the request shall either provide the information on payment of such fee as may be prescribed, or reject the request for any of the reasons specified in the Act.<sup>230</sup> This information has to be provided ordinarily in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question,<sup>231</sup> However where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case maybe, shall send an intimation to the person making the request, giving:

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the



purpose of calculating the limitation period of thirty days;<sup>232</sup> and

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.<sup>233</sup>

Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central

Public Information Officer or State Public Information Officer, as the case may be, shall

provide assistance to enable access to the information, including providing such

assistance as may be appropriate for the inspection.<sup>234</sup>

Where access to information is to be provided in the printed or in any electronic format, the applicant shall, pay such fee as may be prescribed: provided that the fee prescribed shall be reasonable and no such fee shall be charged from the persons who are below poverty line as may be determined by the appropriate Government.<sup>235</sup> Moreover, the person making request for the Information shall be provided the information free of charge where a public authority fails to comply with the statutory time limits for supply of information.<sup>236</sup>

The Punjab and Haryana High Court in Sarpanch, Gram Panchayat, Silikalan Radaur (Yamunanagar) v, State Information Commission Haryana,<sup>237</sup> has ruled out that if there is failure to supply information whether time limit fixed by State Information

Commission, then State Information Commission has jurisdiction to direct state public information officer to supply information free of charge under section-7 of Right to

Information Act, 2005. Similarly the Jharkhand High Court in Rajendra Prasad v. State of Jharkhand,<sup>238</sup> also rules out that where Information Officer deliberately delays information, he can be penalized day wise.

#### Time Limit for Disposal of Request

The procedure for disposal of the request for supply of information has been given in the Act<sup>239</sup>, according to which the Central Public Information Officer or the State Public Information, as the case may be, shall provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in the Act<sup>240</sup> within the following time limit:

(i) Within 30 days from the date of application in ord

inary cases;

(ii) Within 48 hours where the information sought for concerns the life or liberty of a person;

(iii) if the notice is required to be given to the third party regarding disclosure of information under the Act, the period of ten days shall be added to the period within which the information is to be supplied, which period shall be given to the third party to make representation. Le. the time limit in such a case would be forty days;

(iv) where the application is given to the Central or the State Assistant Public Information Officer, a period of five days shall be added to the statutory period of 30 days in view of proviso to sub-section (2) of section 5 of the Act.

Moreover, Right to Information Act<sup>242</sup> provides that the Central Information Commission or the State Information Commission, as the case may be, at the time

of deciding any complaint or appeal shall impose a penalty of two hundred and fifty rupees

each day till application is received or information is furnished, but the total amount of such penalty shall not exceed twenty five thousand rupees; if it is of the opinion that-

(i) The Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information; or

(ii) Has not furnished information within the time specified under the Act;<sup>243</sup>

(iii) Malafidely denied the request for information; or

(iv) Knowingly given incorrect, incomplete or misleading information; or

(v) Has destroyed information which was the subject of the request; or

(vi) Has obstructed in any manner in furnishing the information.

In the case of *Ms. Neerja v. Delhi Development Authority (DDA)*<sup>244</sup> The appellant applied for the second appeal in connection with 07 days delay in providing information. The PIO, is however cautioned to adhere more closely to time limits in

addressing RTI applications. However, in light of PIO, statement before us that he as PIO is satisfied that Director, SFS has acted reasonably and diligently to supply the





information in time, which is the requirement of Proviso II of section 20(1), and because he was given less than the mandatory 30 days for obtaining the information sought, we take the delay of 7 days to have been with reasonable cause.<sup>245</sup>

### Communication of Reasons for Rejection of Request

- The grounds for rejection of the request for information may be
- (i) if the information is exempted from disclosure under the Act<sup>246</sup>; or
  - (ii) if it infringes the copyright of any person other than the State under the Act<sup>247</sup>; or
  - (iii) if it is third party information covered by the Act<sup>248</sup>; or
  - (iv) if the information relates to the intelligence and security organizations specified in the second schedule or intelligence and security organizations established by the state government by notification in the official gazette under section 24 of the Right to Information Act. Where a request has been rejected, the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,—
    - (i) the reasons for such rejection,
    - (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the appellate authority.

The Right to Information Act, 2005 casts an obligation on Information Officers to render reasonable assistance to applicants.<sup>249</sup> These Information officers are also required to provide assistance to the sensorily disabled to enable them to access information, including by inspection.<sup>250</sup> No reasons are required to be given for a

request and an innovative supporting rule provides that no personal.

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