**Legal Aspect of Business**

**Unit-5**

**The Right to Information Act, 2005**

**Salient features**

**Right to information** is more or less a universal concept. The concept of Right to know and right to Information, and right to make a demand for certain documents with the public authorities had been dealt with, and have been appraised. The idea that governments withhold information for the public’s benefit has become outdated. During the last decade, many countries have enacted legislations on freedom of information, giving their citizens access to governmental information, and thus, opening way to true democracy.

In India, the Official Secrets Act 1923 was enacted to protect the official secrets. The new information law intend to disclose information, replacing the ‘culture of secrecy’ in administration. It will promote public accountability which is a part of governance. Where the accountability is exposed, the malpractice, mismanagement, abuse of discretion, bribery etc are trimmed down.

The right to Know flows directly from the guarantee of free speech and expression in Art 19(1)a of the Constitution of India. Yet, it requires fair and efficient procedures to make the freedom of information work.

The first and most well-known right to information movement in India was by the Mazdoor Kisan Shakti Sangathan(MKSS) in Rajasthan during the early 1990’s. MKSS’s struggle for the access to village accounts and transparency in administration is widely credited and sparked off the right to information movement in India.

The Right to Information Act, 2005 provides the procedure by which the public can make requests for information held by the public authorities. It also provides for the set up of Information Commissions to deal with complaints and appeals arising in the information system. The Act provides for the openness of the governmental activities and to publish regular information. The Act also provides minimal exceptions to the right to information where national security, public order, privacy etc are concerned.

The basic object of the Act is to provide access to information for the common man. And in order to exercise the freedom of speech and expression, a citizen should be informed. Informed citizenry which is the essence of RTI Act is the curator of democracy. The Act is also beneficial to the governments themselves as openness and transparency in the decision-making process assist in developing citizens’ trust in government actions and maintaining a civil and democratic society. The transparency and accountability in the public authority shall contain corruption and thus, the government and its various instrumentalities become accountable to the governed, i.e. the citizens.

**The Key Concepts**

* Transparency and accountability in the working of every public authority.
* The right of any citizen of India to request the access to information.
* The obligation of Public authorities to pro-actively make key information to all.
* A responsibility on all sections of life : Citizenry, NGOs, Media

**SALIENT FEATURES OF RIGHT TO INFORMATION ACT, 2005:**

* The term Information includes any mode of information in any form of record, document, e-mail, circular, press release, contract sample or electronic data etc.
* Any citizen (excluding the citizens within J&K) may request information from a ‘public authority’ (a body of Government or ‘instrumentality of State’) which is required to reply expeditiously or within thirty days.
* Citizens have a right to: request any information (as defined); take copies of documents; inspect documents, works and records; take certified samples of materials of work; and obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode.
* The Act relaxes the Official Secrets Act of 1889 which was amended in 1923 and various other special laws that restricted information disclosure in India. In other words, the Act explicitly overrides the Official Secrets Act and other laws in force as on 15 June 2005 to the extent of any inconsistency.
* Applicant can obtain Information within 30 days from the date of request in a normal case. In specific circumstances Information can be obtained within 48 hours from time of request. If it is a matter of life or liberty of a person.
* The Act also requires every public authority to computerise their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. The Act, in particular, requires every public authority to publish 16 categories of information. This includes the particulars of its organisation, functions and duties; powers and duties of its officers and employees; procedure followed in the decision making process; norms set for discharge of its functions; rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; etc.
* The Act enumerates the types of information(s) that are exempted from disclosure.[[7]](https://legaldesire.com/right-to-information-act-2005/%22%20%5Cl%20%22_ftn7)However, these exempted information(s) or those exempted under the Official Secrets Act can be disclosed if public interest in disclosure overweighs the harm to the protected interest.[[8]](https://legaldesire.com/right-to-information-act-2005/%22%20%5Cl%20%22_ftn8) Also, the exempted information(s) would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates.
* Penalty for refusal to receive an application for information or for not providing information is Rs. 250/- per day but the total amount of penalty should not exceed Rs. 25,000/-
* If an applicant is not supplied information within the prescribed time of 30 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. If still not satisfied the applicant may prefer a second appeal with the Central Information Commission (CIC)/State Information Commission (SIC) within 90 days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

# Obligation of Public Authority, Designation of Public Information officer

### ****It shall publish within one hundred and twenty days of the enactment:****

1. The particulars of its organization, functions and duties;
2. The powers and duties of its officers and employees;
3. The procedure followed in its decision making process, including channels of supervision and accountability;
4. The norms set by it for the discharge of its functions;
5. The rules, regulations, instructions, manuals and records used by its employees for discharging its functions;
6. A statement of the categories of the documents held by it or under its control;
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 policy or implementation thereof;
8. A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meetings of these are open to the public, or the minutes’ of such meetings are accessible to the public;
9. A directory of its officers and employees;
10. The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
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 and beneficiaries of such programmes;
13. Particulars of recipients of concessions, permits or authorizations granted by it;
14. Details of the information available to, or held by it, reduced in an electronic form;
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;
16. The names, designations and other particulars of the Public Information Officers.[S.4(1)(b)]

### ****Designation of Public Information officer****

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.

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.

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, 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.

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.

# Request for obtaining information

### ****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:
* The Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;
* 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.

1. 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.
2. Where an application is made to a public authority requesting for an 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, 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.

### ****Duties of a PIO****

1. If an information sought by anyone is regarding his life or liberty, such RTI is compulsory to be answered **within a time period of 48 hours** of the receipt of the request.
2. If out of various information sought, only a few are being answered by PIO then, it is the duty of Public Information Officer (PIO) to give a reason for not providing with the complete documents demanded and rights of the applicant with respect to review of the decision regarding non-disclosure of part of the information.
3. On access to information, **the RTI Act empowers citizen with the rights equivalent to a Member of Parliament.** The information which cannot be denied to any Member of Parliament or State legislature cannot be denied to any person seeking RTI.
4. It is the duty of PIO to suo motu (on its own) declare information such as mentioned in the exhaustive list of section 4 of RTI Act.

### ****Exemption from disclosure of information****

* Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen:
1. information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
2. information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
3. information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
4. 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;
5. information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
6. information received in confidence from foreign Government;
7. information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
8. information which would impede the process of investigation or apprehension or prosecution of offenders;
9. cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;
10. information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.
* Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
* Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under secton 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

### ****Partial disclosure of information****

You should remember that it is possible for information to be only partially withheld/released. This might happen where some of the information in the documents requested is sensitive and falls under an exemption, but the remainder is harmless. In such cases, the sensitive information should be removed or blacked out from the record, and the remainder of the information can still be released.

Section 10(1) of the Central Act permits partial disclosure of information. This makes good sense because public officials should only be able to withhold those pieces of information or portions of documents which are specifically covered by an exemption. If a 30 page document contains only 1 page of exempt information, it is not appropriate to withhold the entire document.

Section 10(2) of the Central Act specifies the content of decision notice where information is being only partially disclosed, requiring at a minimum that the requester is information:

* That only part of the record is being provided;
* The reasons for the decision, including any findings on any material questions of fact, referring to the material on which those findings were based;
* The name and designation of the person giving the decision;
* The details of the fees, including calculations;
* Right with respect to review of the decision regarding non-disclosure of part of the information, the amount of the fee or the form of access, including details of the “**appellate authority**“, time limits, the process and any forms.

**Information commissions, Powers of Information Commissions**

1. The Central Information Commission/State Information Commission has a duty to receive complaints from any person –
* Who has not been able to submit an information request because a PIO has not been appointed;
* Who has been refused information that was requested;
* Who has received no response to his/her information request within the specified time limits;
* Who thinks the fees charged are unreasonable;
* Who thinks information given is incomplete or false or misleading; and;
* Any other matter relating to obtaining information under this law.
1. Power to order inquiry if there are reasonable grounds.
2. CIC/SCIC will have powers of Civil Court such as –
* Summoning and enforcing attendance of persons, compelling them to give oral or written evidence on oath and to produce documents or things;
* Requiring the discovery and inspection of documents;
* Receiving evidence on affidavit;
* Requisitioning public records or copies from any court or office;
* Issuing summons for examination of witnesses or documents;
* Any other matter which may be prescribed.
1. All records covered by this law (including those covered by exemptions) must be given to CIC/SCIC during inquiry for examination.
2. Power to secure compliance of its decisions from the Public Authority includes-
3. Providing access to information in a particular form;
4. Directing the public authority to appoint a PIO/APIO where none exists;
5. Publishing information or categories of information;
6. Making necessary changes to the practices relating to management, Maintenance and destruction of records;
7. Enhancing training provision for officials on RTI;
8. Seeking an annual report from the public authority on compliance with this law;
9. Require it to compensate for any loss or other detriment suffered by the applicant;
10. Impose penalties under this law; or
11. Reject the application. (S.18 and S.19)

# Appellate Authorities, Penalties, Jurisdiction of courts

### ****Appellate Authorities****

1. **First Appeal:** First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).
2. **Second Appeal**: Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority. (delay may be condoned by the Commission if sufficient cause is shown).
3. **Third Party appeal** against PIO’s decision must be filed within 30 days before first Appellate Authority; and, within 90 days of the decision on the first appeal, before the appropriate Information Commission which is the second appellate authority.
4. Burden of proving that denial of Information was justified lies with the PIO.
5. First Appeal shall be disposed of within 30 days from the date of its receipt. Period extendable by 15 days if necessary. (S.19)

### ****Penalties****

1. Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that 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 has not furnished information within the time specified under sub-section (1) of section 7 or malafidely 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 in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

1. Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely 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 in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

### ****Jurisdiction of Courts****

Lower Courts are barred from entertaining suits or applications against any order made under this Act. (S.23) However, the writ jurisdiction of the Supreme Court and High Courts under Articles 32 and 225 of the Constitution remains unaffected.