



# The Indian Right to Information Act, 2005

**SUCSESSES AND FAILURES OVER THE LAST DECADE**



## INTRODUCTION – WHAT IS RTI?



- ❑ Right available to the general public to demand information from the duty-bound Government and/or private bodies.
  - + Provided to citizens through the Right to Information (RTI) Act 2005.
  - + Not constitutionally protected in direct expression, but has been read into various fundamental rights by the Supreme Court of India.
  - + Forms a crucial part of the Fundamental Right to Freedom of Speech and Expression, enshrined under Article 19(1)(a) of the Constitution of India.
- ❑ Finds place in various international conventions, including the Universal Declaration of Human Rights (UDHR).
- ❑ Has gained phenomenal importance as a tool for ensuring and promoting transparency and accountability on a widespread level.

# HISTORY AND DEVELOPMENT OF THE ACT

- ▣ First RTI law developed by Sweden in 1766.
  - + Followed after two decades by the US (1966), Norway (1970), France and Netherlands (1978), Australia, New Zealand and Canada (1982), Denmark (1985), Greece (1986), Austria (1987) and Italy (1990).
- ▣ Idea of RTI in India brainchild of former PM, V.P. Singh in 1990.
  - + First grassroots campaign for the introduction of RTI started by Mazdoor Kisan Shakti Sangathan (MKSS) in 1994.
  - + National Campaign for People's RTI – Formed in 1996; formulated initial draft of RTI law for the Government.
  - + Tamil Nadu became first Indian state to pass RTI law in 1997.
- ▣ Freedom of Information (FOI) Act, 2002 passed.
  - + Could not be implemented.
- ▣ Bill for current RTI Act passed on recommendations of National Advisory Council (NAC) in May 2005, and became fully operational on October 12, 2005.

## SALIENT FEATURES OF THE RTI ACT, 2005

- ❑ “Information” (§ 2(f)) – Any material in any form, including electronic form, accessible by a public authority under any law in force.
- ❑ Easy procedure for filing of RTI application to Public Information Officer (PIO) of the concerned public authority (§§ 6, 7).
  - + Duty of public authority to comply with specified time period for disclosure of information (§ 7(6)).
  - + Penalty for non-disclosure of information - ₹ 250 per day till application is received or information is furnished, maximum penalty being ₹ 25000 (§ 20(1)).
- ❑ Duties of public authorities:
  - + To maintain duly catalogued and indexed records relating to the requisite or concerned information, in computerised form within reasonable time (§ 4(1)(a)).
  - + Proactive disclosure of particular information of public authorities encouraged (§ 4(1)(b)).

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- ▣ Certain types of information exempted from disclosure by public authorities, including information relating to trade secrets, commercial confidence, national integrity and sovereignty, and third party incidents (§ 8(1)).
    - + Can be declared open for disclosure if the public interest outweighs the harm to the protected interests (§ 8(2)).
    - + Opportunity to be given to third party about request for information related to it, as well as any objection raised in this regard (§ 11(1)).
  - ▣ Appeals to be made first to First Appellate Authority (FAA), and subsequently, to the Central Information Commission (CIC) for central authorities, or State Information Commission (SIC) for State ones (§ 19).
  - ▣ Alternative remedy – Direct complaint to CIC/SIC if decision passed by the PIO relating to concerned information not satisfactorily.

## SUCCESS STORIES OF THE INDIAN RTI ACT

### Chandigarh – Smoke Free City

- \* Hemant Ghosh – Head of NGO called ‘Burning Brain Society’.
- \* Over 300 RTI queries sent to P&H Govt. relating to how the Cigarette and Other Tobacco Products Act, 2003 had been implemented in the shared capital of Chandigarh.
- \* In response, around 1800 warning boards appeared through the city in 2007, with Chandigarh becoming the first smoke-free city in India.

### Fair Price Shops in Kalol

- \* Kerosene supplied in Panchmahal district of Gujarat according to the whims and fancies of the ration-shop owners.
- \* Application filed by one Mohanbhai directly before the District Supply Officer (DSO), who dismissed the complaint on wrong grounds.
- \* Correct information gathered through answer to RTI application, with the amount of kerosene supplied getting increased, along with the time for distribution.

## FAILURES OF THE ACT AND RECOMMENDATIONS

- ❑ Poor record-keeping practices.
- ❑ Lack of infrastructure.
- ❑ Dilution of supplementary laws such as those for whistle-blower protection.
- ❑ Extremely limited awareness among people.
- ❑ Recommendations and suggestions:
  - + Creation of RTI Implementation Cell by both Central and State Governments.
  - + Reduction in scope of the information exempted from disclosure under § 8 of the Act, both by the Parliament as well as the Courts, the Supreme Court in particular.
  - + Awareness of the availability as well as benefits of RTI to the public at large, through advertisements or mandatory trainings and workshops.

# Why Right to Information?

Information is Key



Democratic Process  
and Good Governance

Poverty Eradication  
and Human Development

Realisation of Human Rights





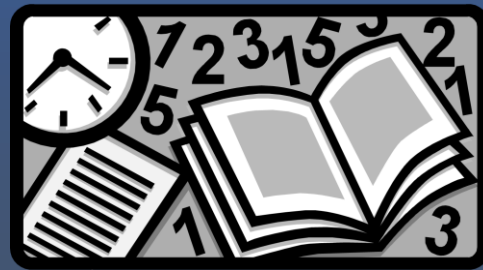
# Right to Information in India

- Right to Information is a Fundamental Right
- IT IS a part of the Fundamental Right to Freedom of Speech and Expression recognised in various Supreme Court decisions.
- IT IS directly linked to the Right to Life - the Supreme Court has widened the definition of Right to Life to include the right to food, health, education, liberty, etc. denial of information is a denial of these rights.



# Problems in accessing information

- Laws like the Official Secrets Act, Indian Evidence Act and the Civil Servants Code of Conduct Rules contain provisions that restrict the fundamental right to information
- Culture of secrecy prevalent in government
- Lack of accountability in public office
- People do not know where to go for information
- Illiteracy
- Badly maintained records



# Why do we need a Law on RTI

- ✓ Law is needed to make access to information a reality for every citizen
- ✓ A law will operationalise the fundamental right to information
- ✓ Legislation will help set up systems and mechanisms that facilitate peoples' easy access to information
- ✓ Law will promote transparency and accountability and enable people's participation in governance
- ✓ Law will help minimise corruption and inefficiency in public offices



# Basic Elements of RTI/FOI Law

- ✦ Minimal Exceptions
- ✦ Duty to Inform – Suo motto disclosures
- ✦ Accountability Provisions
- ✦ Provisions for setting up systems to maintain records and store information for easy retrieval
- ✦ Reasonable Fee Structure
- ✦ Time limits for providing information.
- ✦ Be applicable to private bodies too.
- ✦ Protection of Privacy
- ✦ Protection of Whistleblowers
- ✦ Publicity and Training

# The Progressive Indian States

- Tamilnadu (1997)
- Goa (1997)
- Rajasthan (2000)
- Karnataka (2000)-law come into effect in 2002
- New Delhi (2001)
- Maharashtra (2002)
- Madhya Pradesh (2003)
- Chattisgarh no law but executive orders in departments to make information available to people (Implementation of MP exec orders)
- Orissa (draft bill). Executive order with respect to Panchayat matters on FOI.

## Developments on Right to Information in India :-

- 1990 - Prime Minister V.P Singh heading the national front government stresses on the importance of Right to Information as a legislated right.
- 1994 - Mazdoor Kisan Shakti Sanghatan (MKSS) started a grassroots campaign for right to information – demanding information concerning development works in rural Rajasthan. This movement grew and the campaign resulted in the government of Rajasthan enacting a law on Right to Information in 2000.
- 1996 - Press Council of India under guidance of its Chairman Justice P.B Sawant drafted a law which was later updated and changed at a workshop and renamed “The Press Council –NIRD Freedom of Information Act, 1997.”

## **Developments on Right to Information in India :-**

- 1997 – The Working group appointed by the United Front Government under the Chairmanship of Mr H.D Shourie drafted a law called the Freedom of Information Bill, 1997.
- 1997- Tamilnadu became the first state in India to have passed a law on Right to Information.
- 1997 - The Madhya Pradesh Government issues executive orders to 36 departments to implement Right to Information (as of now the orders have been issued to more than 50 departments).
- 1997- Goa legislature enacts a law on Right to Information.
- 1998 – The Government of Madhya Pradesh tables a Bill on Right to Information which is passed by the legislature. The Bill is not enacted into Law because the Governor denied assent.

## Developments on Right to Information in India :-

- 1998 – The Prime Minister Shri Vajpayee announces that a Law on right to information shall be enacted soon.
- 2000 - Karnataka, Rajasthan, Maharashtra pass legislations on right to information and Uttar Pradesh introduces a Code of Access applicable to some government departments.
- 2000 - Freedom of Information Bill, 2000, tabled before Parliament – after some debate it was referred to the Parliamentary Standing Committee on Home Affairs for review.
- 2001- NCT Delhi assembly passes a law on Right to Information.
- 2002- In Sept. Maharashtra Govt. passes RTI Ordinance which overwrites the Maharashtra RTI Act 2000.
- 2003- Both Houses of the Parliament pass the FOI Act 2002 in Dec. 2002 and Act notified in Gazette in Jan 2003.
- 2003- On Jan 31<sup>st</sup> MP Govt. passes MP RTI Act.
- 2003- In Aug. Maharashtra converts its Ordinance into new RTI Act.



# A little comparison on salient features...

## EXEMPTIONS

- Most states have standard exemption clauses with T.N. leading the list with 22 exemptions.
- Goa, Maharashtra Delhi and Central Acts have varying degrees of public interest overrides.
- FOI Act gives a blanket exemption to 19 bodies.

### PUBLIC INTEREST OVERRIDE:

*This means that even if the information is exempted from disclosure under the law, if the disclosure is in the public interest, the information in question shall be disclosed.*

# SUO-MOTU DISCLOSURE

Tamil Nadu and Goa – No provision

Rajasthan- publication of information at the discretion of the authorities.

Maharashtra, Delhi, MP and FOI Act- fairly well worded provisions.

*Implementation of Suo-motu provisions far from satisfactory.*

# Inclusion of Private Bodies

- Only Goa & Maharashtra Acts bring private bodies under the purview of the Act to a limited extent.
- South Africa Legislation- A separate chapter devoted to inclusion of private bodies.

*Need for Information from Private Body is also growing with increase in privatization of public works.*

# Fee Structure

## High Fee Structure States- Delhi and Goa

- ⑩ Delhi- Application Fee Rs. 50/-(General Info.) Rs.500/- (Commercial Info)+Rs.5/- per page photocopy
- ⑩Goa- Application Fee Rs. 100/- + Photocopy charges
- ⑩Maharashtra – Application Fee Rs. 10/-+Rs 0.50/- per page photocopy.
- ⑩Karnataka- No Application Fee. Rs. 5/- per page photocopy.
- ⑩Rajasthan- Application Fee Rs.5/- + Rs. 2/- per page photocopy.
- ⑩M.P. & FOI Act – To be prescribed.
- ⑩Tamil Nadu – No provision for fees.



# Time Limits

30 days for all State Acts and FOI Act except...  
15 days for Maharashtra Act.

For urgent requests for info regarding life and liberty-

- Maharashtra (24 hrs)
- FOI Act and Goa (48 hrs)



*Other States- No provision for Urgent Requests.*

# Appeals

- FOI Act – One internal appeal and second to the government. (No independent appeal mechanism.)
- Delhi, M.P. & Goa - Only one appeal to an independent body.
- Maharashtra, Karnataka and Rajasthan – One internal appeal and second to an independent appellate authority.
- Tamil Nadu – One appeal to govt. or a notified authority.



# Penalties

FOI Act and Tamil Nadu– No penalties provisions at all.

Karnataka, Maharashtra & MP Acts – Penalties not exceeding Rs.2000/- & Maharashtra also has Rs.250/- for per day delay.

Delhi- Rs.1000/- + Rs.50/- for per day delay with maximum limit of Rs.500/-

Rajasthan- Disciplinary Action under service rules.



# Other Important Provisions

No provisions for regarding:

- Training & Orientation of Government Personnel
- Publicity of the Act

Only Goa, Delhi and Maharashtra RTI Acts have a provision for a State Council to act as an advisory body and monitor the working of the Act.



# To Sum It Up...

The State laws are generally more progressive than the Central FOI Act 2002.

FOI Act yet to be operational since Rules haven't been drafted.

There is still ambiguity about the applicability of the State RTI laws once the FOI Act is operationalised.

*Right to Information legislation is still in its infancy. There is an urgent need to build awareness on this issue and build demand for information.*

# Thank You

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