

“The Right to Information Act and Challenges”

by

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Constitution of India and the RTI

Article 21:

The right to Life and personal liberty.

Article 19 (1) (a):

The right to freedom of speech and expression.

The RTI Act, 2005:

Legislative Intent

- To foster transparency and accountability in governance.
- Bridge the gap between Information Provider and Information Seeker.
- Enhance efficiency in administration.

The RTI Act, 2005: Three Tier System

- **Asst Central Public Information Officer/Central Public Information Officer**
- **First Appellate Authority**
- **Apex Appellate Authority for Second Appeals/Complaints- CIC**

Role of Central Information Commission (CIC)

- **Registration of Public Authorities:**

All entities qualifying as Public Authority (PA) are registered by the concerned Ministries/Departments with CIC.

- **Submission of Quarterly Returns:**

Every PA is required to submit four quarterly returns for the annual assessment of their performance for the purpose of RTI Act.

- **Suo-Motu Disclosure and Transparency Audit**

Section 2 (f)

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

- Landmark Judgment of Supreme Court

C.B.S.E & Anr V. Aditya Bandopadhyay & Ors.

Khanpuram Gandaiah V. Administrative Officer & Ors.

Thalappalam Ser Coop Bank Ltd. & Ors. V. State of Kerala & Ors

Section 4: OBLIGATION OF PUBLIC AUTHORITY

- Section 4(1): Every public authority shall—
 - (a) maintain all its records duly catalogued, indexed and computerized
 - (b) publish within one hundred and twenty days from the enactment of this Act,—
 - Section 4(1)(b)(i) to Section 4(1)(b)(xvii)
 - Section 4(1)(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public.
 - Section 4(1)(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.
 - Section 4(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

Section 8: EXEMPTION FROM DISCLOSURE OF INFORMATION

- S-8(1)(a): Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relations with foreign State or lead to incitement of an offence.

- Landmark Judgment of Supreme Court

Reserve Bank of India V. Jayantilal N Mistry, Transferred case civil no. 91 of 2015.

Section 8(1)(b),(c) & (d)

- S-8(1)(b): 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;
- S-8(1)(c): information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- S-8(1)(d): information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

- **Landmark Judgments of Supreme Court.**

The ICAI V. Shaunak H Satya & Ors.

Ferani Hotels Pvt. Ltd. V. State Information Commissioner Greater Mumbai, Civil

Appeal no. 9064-9065 of 2018

Section 8(1)(e),(f) & (g)

- S-8(1)(e): 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;
- S-8(1)(f): information received in confidence from foreign Government;
- S-8(1)(g): information, the disclosure of which would endanger the life or physical safety of any person or physical safety of any person or identification the source of information or assistance given in confidence for law enforcement or security purposes;

- **Landmark Judgments of Supreme Court.**

C.B.S.E & Anr. V. Aditya Bandopadhyay & Ors.

The ICAI V. Shaunak H Satya & Ors

UPSC V. Gourhari Kamila. The ICAI V. Shaunak H Satya & Ors

Section 8(1)(h) & (i)

- S-8(1)(h): information which would impede the process of investigation or apprehension or prosecution of offenders;
- S-8(1)(i): 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.

Section 8(1)(j)

- S-8(1)(j): 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 CPIO or the State PIO or the appellate authority, as the case may be, is satisfied that 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;

- **Landmark Judgments of Supreme Court.**

Bihar Public Service Commission V. Saiyed Hussain Abbas Rizwi & Anr..

Canara Bank Rep by its Deputy Gen Manager V. C.S. Shyam & Anr. Civil Appeal no. 22 of 209

R.K.Jain V. UOI, Civil Appeal no. 3878 of 2013

SECTION 8 (2) & (3)

- S-8(1)(2): Notwithstanding anything in the Official Secrets Act, 1923 not 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;
- S-8(1)(3): 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 section 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.

Challenges associated with the RTI

- **Misuse of the RTI Act.**
- **Low Public Awareness.**
- **Huge Backlog and Delay in Disposal of Cases.**
- **Poor implementation and enforcement by the PAs.**
- **Non-compliance in proactive disclosure by PAs [sec 4(1)(b)].**
- **Secrecy.**
- **Pendency of Cases.**

Registration and Disposal of 2nd Appeals/Complaints

Year	No. of Second Appeals/Complaints registered	No. of Second Appeals/Complaints Disposed	No. of Second Appeals/Complaints Pending as on 1st April
2019-20	22243	16720	35178
2020-21	19183	17016	38116
2021-22	19604	28793	29213
2022-23	19014	29210	19233
2023-24 (Till 29-01-2024)	17098	13729	23066

Pending Second Appeals/Complaints of appellants, who have filed 10 or more Second Appeals/Complaints

Range	Number of Second Appeals	Number of Appellants
10 to 20	1796	135
21 to 30	632	25
31 to 40	197	6
41 to 50	221	5
51 to 100	343	6
101 to 200	793	6
201 to 1000	1211	1
Total	5193	184

Conclusion

The RTI Act was implemented to ensure social justice, transparency and to make governments accountable to its actions. As the Constitution of India has established democratic Republic and democracy requires an informed citizenry, transparency of information is vital which plays an important role to contain corruption and to hold Governments and their instrumentalities accountable to the citizens.

However, it has numerous limitations and drawbacks. Steps must be taken so that the RTI Act is strengthened as it plays a significant role in empowering citizens, holding government accountable and thereby ensuring good and citizen-centric governance .

Thank You!