



Importance and Scope of the Right to Information Act, 2005

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Abstract:

In a government of responsibility like India, where all the agents of the public must be responsible for their conduct, there can but only few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can have no impact on public security. Right to Information Act was enacted in order to ensure smoother, greater and more effective access to information and provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.

The decision to disclose the information has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Similarly, there may be cases where the disclosure has no

relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional

values under the Constitution of India.

Right to Information Act was enacted in order to ensure smoother, greater and more effective access to information and provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India. The Act aims -

1. To provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities.
2. To promote transparency and accountability in the working of every public authority.
3. To provide some safeguards to the public authorities as well as to the citizens of the nation.

Importance of Right to Information: Indian judiciary has explained the importance and value of this crucial right via various judgments. Few of such judicial view are as under.

1. In a government of responsibility like India, where all the agents of the public must be responsible for their conduct, there can but only few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for

transactions which can have no impact on public security.¹

2. In modern constitutional democracies, it is accepted 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. However, like all other rights, even this right has recognised limitations. Implicit in this assertion is the proposition that in transaction which has serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated².
3. To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Therefore, Democracy expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers is Government can have frightening side-effects.
4. The Court held that right of information is a facet of the freedom of “speech and expression” as contained in Article

¹ State of Uttar Pradesh v. Raj Narain - (1975) 4 SCC 428

² Khanapuram Gandaiah V/S Administrative Officer and Ors. AIR 2010 SC 615, JT 2010 (1) SC 66

19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions³.

5. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry, the popular sentiments, it will have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.⁴

Exceptions under the Act: The Act provides the certain exclusions by way of exemptions and exceptions (under Sections 8, 9 and 24) in regard to information held by public authorities:

- (i) Exemption of the several categories of information is enumerated in section 8(1) of the Act which no public authority is under an obligation to give to any citizen, notwithstanding anything contained in the Act. However, in regard to the information exempted under clauses (d) and (e), the competent authority, and in regard to the information excluded under clause (j), Central Public

Information Officer/State Public Information Officer/the Appellate Authority, may direct disclosure of information, if larger public interest warrants or justifies the disclosure. If any request for providing access to information involves an infringement of a copyright subsisting in a person other than the State, the Central/State Public Information Officer may reject the request under section 9 of RTI Act.

- (ii) Exclusion of the Act in entirety under section 24 to intelligence and security organizations specified in the Second Schedule even though they may be “public authorities”, (except in regard to information with reference to allegations of corruption and human rights violations).

The effect of the provisions and scheme of the RTI Act is to divide ‘information’ into the three categories i.e.

1. Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption (enumerated in clauses (b) and (c) of section 4 (1) of RTI Act).
2. Other information held by public authority (that is all information other than those falling under clauses (b) and (c) of section 4(1) of RTI Act).
3. Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.

³ People’s Union for Civil Liberties vs. Union of India - (2004) 2 SCC 476

⁴ Dinesh Trivedi v. Union of India (1997) 4 SCC 306

Information under the third category does not fall within the scope of RTI Act. Section 3 of RTI Act gives every citizen, the right to 'information' held by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category, there is also a special responsibility upon public authorities to suo-moto publish and disseminate such information so that they will be easily and readily accessible to the public without any need to access them by having recourse to section 6 of RTI Act. There is no such obligation to publish and disseminate the other information which falls under the second category.

Nature of information to be disclosed under the Act: It would be clear from the following points -

1. The Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act.
2. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not

cast an obligation upon the public authority, to collect or assemble such non-available information and then furnish it to an applicant.

3. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions.
4. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provided advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

Public Authorities covered under the Act:

The Act applies only to the bodies covered under the expression "public authority" as defined under Section 2(h), unless the context of the Act otherwise requires. This Section has used the expressions 'means' and 'includes'. When a word is defined to 'mean' something, the definition is prima facie restrictive and where the word is defined to 'include' some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned

there would exhaust themselves⁵.
Section 2(h) deals with:

- I. An authority or body or institution of self-government established by or under the Constitution.
- II. An authority or body or institution of self-government established or constituted by any other law made by the Parliament.
- III. An authority or body or institution of self-government established or constituted by any other law made by the State legislature.
- IV. An authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.
- V. A body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government.
- VI. Non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government.

Right to Information and the Right to Privacy:

‘Right to Information’ and ‘Right to Privacy’ are not absolute rights. Both the rights, one of which falls under Article 19(1)(a) and the other under Article 21 of the Constitution of India, can be regulated, restricted and curtailed in the larger public interest. Absolute or uncontrolled individual rights do not and cannot exist in any modern State. Citizens’ right to get information is statutorily recognized by the RTI Act, but at the same time limitations are also provided in the Act itself, which is discernible from

the Preamble and other provisions of the Act.

Fiduciary Relationship and Personal Information:

Section 8(1)(e) provides an exemption from furnishing of information, if the information available to a person is in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. In terms of Section 8(1)(g), the public authority is not obliged to furnish any such 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 and security purposes. If the concerned public authority holds the information in fiduciary relationship, then the obligation to furnish information is eliminated. But if the competent authority is still satisfied that in the larger public interest, despite such objection, the information should be furnished, it may so direct the public authority. The term ‘fiduciary’ refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term ‘fiduciary relationship’ is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions. Clause (e) of section 8(1) provides that there shall be no obligation on any public authority to give any citizen, information available to it in its fiduciary

⁵ Delhi Development Authority v. Bhola Nath Sharma (Dead) by LRs and others (2011) 2 SCC 54

relationship. This protection can be negated by the competent authority where larger public interest warrants the disclosure of such information, in which case, the authority is expected to record reasons for its satisfaction⁶.

Another very significant provision of the Act is 8(1)(j). It provides that an 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 would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information.

Public Interest:

It is very important concept as it is a ground to claim immunity from disclosure of information under the Act. The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. It also means the general welfare of the

⁶ Central Board of Secondary education & Anr V/s Aditya Bandopadhyay & Ors. (2011) 8 SCC 497

Dr. Suresh G. Santani

public that warrants recommendation and protection; something in which the public as a whole has a stake / interest⁷.

Conclusion:

The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest,

⁷ State of Bihar v. Kameshwar Singh (AIR 1952 SC 252)

particularly when both these rights emerge from the constitutional values under the Constitution of India.

Other References:

Right to Information Act, 2005

Constitution of India, 1950

Thalapalam Service Co-operative Bank Ltd. v. Union of India AIR 2010 Ker 6

S.S. Rana v. Registrar, Co-operative Societies and another (2006) 11 SCC 634

Delhi Development Authority v. Bhol Nath Sharma (Dead) by LRs and others (2011) 2 SCC 54

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