

Right to Information Law

Lesson 11

KEY CONCEPTS

- Public Authority ■ Information ■ Request for obtaining Information ■ Chief Information Commissioner
- Information Commissioners ■ Competent Authority

Learning Objectives

To understand:

- Citizen's Right to Information
- Procedure for obtaining information under Right to Information Act (RTI Act)
- Authorities under RTI Act and their roles and responsibilities
- Information exempted from disclosure
- Powers of Information commission(s)
- Appellate authorities under RTI Act
- Role of Central/State Government

Lesson Outline

- Introduction
- Right to Know
- The Right to Information (RTI) Act, 2005
- Salient features of the Act
- Definitions
- Obligations of Public Authority
- Designation of Public Information Officers (PIO)
- Request for obtaining Information
- Duties of a PIO
- Exemption from disclosure
- Partial disclosure allowed
- Who is excluded?
- Information Commissions
- Powers of Information Commissions
- Appellate Authorities
- Penalties
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- Lesson Round-Up
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- Test Yourself
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The new criminal laws i.e. *Bharatiya Nyaya Sanhita 2023*, *Bharatiya Nagarik Suraksha Sanhita 2023* and *Bharatiya Sakshya Adhiniyam 2023* have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

The Right to Information Act, 2005 is an Act 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, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

REGULATORY FRAMEWORK

- The Right to Information Act, 2005

INTRODUCTION

Throughout the world, RTI is seen by many as the key to strengthening participatory democracy and ensuring more people-centred development. Nearly 70 countries around the world have now adopted comprehensive Freedom of Information Acts to facilitate access to records held by government bodies and another fifty have pending efforts. In India also, the Government enacted Right to Information (RTI) Act in 2005 which came into force w.e.f. October 12, 2005.

RIGHT TO KNOW

Before dwelling on the RTI Act, 2005, mention should be made that case *Reliance Petrochemicals Limited v. Indian Express Newspapers, 1989 AIR 90* in which the Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards global perspective in various fields including Human Rights, the expression “liberty” must receive an expanded meaning. The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. Article 21 confers on all persons a right to know which include a right to receive information.

It may be pointed out that the right to impart and receive information is a species of the right to freedom of speech and expression. Article 19(1) (a) of our Constitution guarantees to all citizens freedom of speech and expression. At the same time, Article 19(2) permits the State to make any law in so far as such law imposes reasonable restrictions on the exercise of the rights conferred by Article 19(1) (a) of the Constitution in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement of offence.

Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a). The State is not only under an obligation to respect the Fundamental Rights of the citizens, but it is equally under an obligation to ensure conditions under which these rights can meaningfully and effectively be enjoyed by one and all.

Right to freedom of speech and expression in Article 19 (1)(a) carries with it the right to propagate and circulate one’s views and opinions subject to reasonable restrictions as mentioned above. The prerequisite for enjoying this right is knowledge and information. Information adds something “new to our awareness and removes vagueness of our ideas”.

THE RIGHT TO INFORMATION (RTI) ACT, 2005

The Right to Information Act, 2005 provides an effective framework for effectuating the right to information recognized under Article 19 of the Constitution. It may be pointed out that the Right to Information Bill was passed by the Lok Sabha on May 11, 2005 and by the Rajya Sabha on May 12, 2005 and received the assent of the President on June 15, 2005. The Act considered as watershed legislation, is the most significant milestone in the history of Right to Information movement in India allowing transparency and autonomy and access to accountability.

SALIENT FEATURES OF THE ACT

The RTI Act extends to the whole of India

It provides a very definite day for its commencement i.e. 120 days from enactment

It shall apply to public authorities

All citizens shall have the right to information, subject to provisions of the Act

The Public Information Officers /Assistant Public Information Officers will be responsible to deal with the requests for information and also to assist persons seeking information

Fee will be payable by the applicant depending on the nature of information sought

Certain categories of information have been exempted from disclosure under section 8 and 9 of the Act

Intelligence and security agencies specified in Schedule 11 to the Act have been exempted from the ambit of the Act, subject to certain conditions

Objective

As stated above, the RTI Act confers on all citizens a right to information. The Act provides for setting out the practical regime of right to information for citizens to secure access to information held by public authorities to promote transparency and accountability in the working of every public authority.

CASE LAW

In the case of *Anjali Bhardwaj and Others Vs. Union of India and Others in Writ Petition (Civil) No. 436 of 2018* Judgement dated February 15, 2019 the Hon'ble Supreme Court of India in Paragraph 18, 19 and 68 observed that there is a definite link between right to information and good governance. In fact, the RTI Act itself lays emphasis on good governance and recognises that it is one of the objective which the said Act seeks to achieve. The RTI Act would reveal that four major elements/objectives required to ensure good governance are:

- (i) greater transparency in functioning of public authorities;

- (ii) informed citizenry for promotion of partnership between citizens and the Government in decision making process;
- (iii) improvement in accountability and performance of the Government; and
- (iv) reduction in corruption in the Government departments.

The right to information, therefore, is not only a constitutional right of the citizens but there is now a legislation in the form of RTI Act which provides a legal regime for people to exercise their fundamental right to information and to access information from public authorities. The very preamble of the Act captures the importance of this democratic right which reads as “democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.”

This Act is enacted not only to sub-serve and ensure freedom of speech. On proper implementation, it has the potential to bring about good governance which is an integral part of any vibrant democracy. Attaining good governance is also one of the visions of the Constitution.

Question: Which of the given is provided with the Right to know under RTI Act, 2005?

Options: (A) Residents

(B) Peoples

(C) All persons having age of atleast 21 years

(D) Citizens

Answer: (D)

DEFINITIONS

The meaning of important terms has been incorporated under section 2 of the RTI Act. These have been discussed herein below:

Public Authority

“Public authority” means any authority or body or institution of self-government established or constituted –

- By or under the Constitution;
- By any other law made by Parliament;
- By and other law made by State Legislature;
- By notification issued or order made by the appropriate Government,

and includes any–

- body owned, controlled or substantially financed;
- non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government [Section 2(h)]

Record

“Record” includes—

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device; [Section 2(i)]

Information

“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. [Section 2(f)]

Right to Information

“Right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

- (i) taking notes, extracts, or certified copies of documents or records;
- (ii) inspection of work, documents, records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, 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; [Section 2(j)]

Section 3 of the Act provides that subject to the provisions of this Act, all citizens shall have the right to information.

Third Party

“Third party” means a person other than the citizen making a request for information and includes a public authority. [Section 2(n)]

OBLIGATIONS OF PUBLIC AUTHORITY

Every public authority under the Act has been entrusted with a duty to maintain records and publish manuals, rules, regulations, instructions, etc. in its possession as prescribed under the Act. [Section 4(1)(a)]

According to Section 4(1)(a), every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates 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.

As per Section 4(1)(b), every public authority has to publish within one hundred and twenty days of the enactment of this Act:

- The particulars of its organization, functions and duties;
- The powers and duties of its officers and employees;
- the procedure followed in its decision making process, including channels of supervision and accountability;
- the norms set by it for the discharge of its functions;

- the rules, regulations, instructions, manuals and records used by its employees for discharging its functions;
- a statement of the categories of the documents held by it or under its control;
- 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;
- 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;
- a directory of its officers and employees;
- the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- the manner of execution of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
- particulars of recipients of concessions, permits or authorizations granted by it;
- details of the information available to, or held by it, reduced in an electronic form;
- 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;
- the names, designations and other particulars of the Public Information Officers;
- Such other information as may be prescribed; and thereafter update the publications every year.

and thereafter update these publications every year.

According to section 2(1)(c) of the Act, every public authority shall publish all relevant facts while formulating important policies or announcing the decisions which affect public.

According to section 2(1)(d) of the Act, every public authority shall provide reasons for its administrative or quasi-judicial decisions to affected persons.

DESIGNATION OF PUBLIC INFORMATION OFFICERS (PIO)

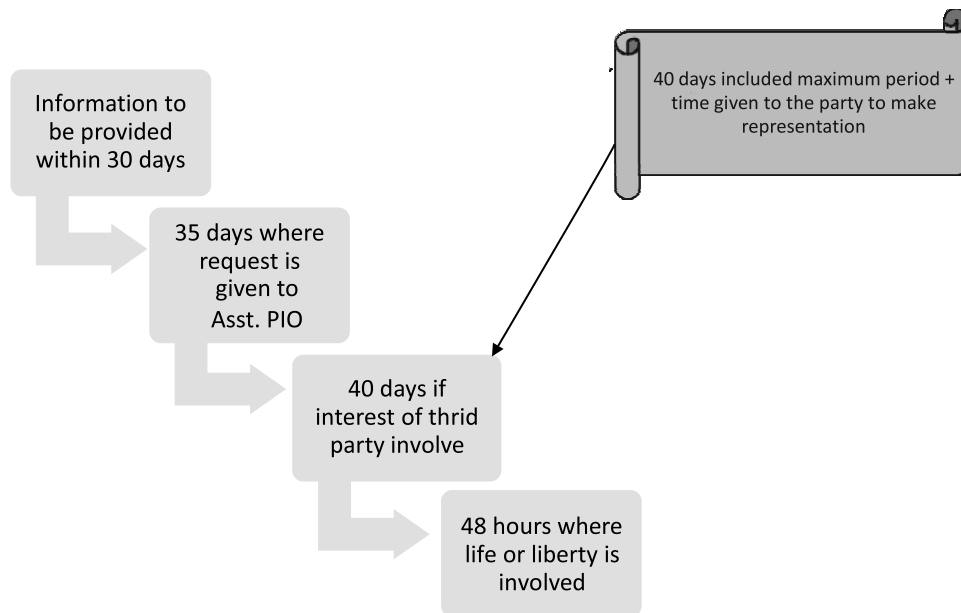
Every public authority has to–

- Designate in all administrative units or offices Central or State Public Information Officers to provide information to persons who have made a request for the information.
- Designate at each sub-divisional level or sub-district level Central Assistant or State Assistant Public Information Officers to receive the applications for information or appeals for forwarding the same to the Central or State Public Information Officers.
- No reason to be given by the person making request for information except those that may be necessary for contacting him. (Section 5)

REQUEST FOR OBTAINING INFORMATION

The Act specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.

Application is to be submitted in writing or electronically, with prescribed fee, to Public Information Officer (PIO).



Note:

- Time taken for calculation and intimation of fees excluded from the time frame.
- No action on application for 30 days is a deemed refusal.
- No fee for delayed response.

Example: A public authority received RTI application from H. The information sought for concerns the life or liberty of J. How much time is provided for providing information to this RTI application?

Answer: If the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

DUTIES OF A PIO

PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing. If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately.

PIO may seek the assistance of any other officer for the proper discharge of his/her duties. PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Section 8 or Section 9.

Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request.

Where a request has been rejected, the PIO shall communicate to the requester –

- (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.

PIO shall provide information 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. If allowing partial access, the PIO shall give a notice to the applicant, informing:

- that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
- the reasons for the decision, including any findings on any material question 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 calculated by him or her and the amount of fee which the applicant is required to deposit; and
- 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.

If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request.

Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice. (Sections 5,7,10 &11)

CASE LAW

Hon'ble Supreme Court of India in *Central Board of Secondary Education and Anr vs. Aditya Bandopadhyay and Ors.*, (Civil Appeal No.6454 of 2011, Judgment dated August 9, 2011) observed that "Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty.

Further, the Hon'ble Supreme Court of India observed that the RTI Act provides access to all information that is available and existing. 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. 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 collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. 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.

Furthermore, the Supreme Court inter alia has observed that the right to access information does not extend beyond the period during which the examining body is expected to retain the answer-books. In the case of CBSE, the answer-books are required to be maintained for a period of three months and thereafter they are liable to be disposed of/destroyed. Some other examining bodies are required to keep the answer-books for a period of six months. The fact that right to information is available in regard to answer-books does not mean that answer-books will have to be maintained for any longer period than required under the rules and regulations of the public authority. The obligation under the RTI Act is to make available or give access to existing information or information which is expected to be preserved or maintained. If the rules and regulations governing the

functioning of the respective public authority require preservation of the information for only a limited period, the applicant for information will be entitled to such information only if he seeks the information when it is available with the public authority.

EXEMPTION FROM DISCLOSURE

Certain categories of information have been exempted from disclosure under the Act. These are:

Disclosure Prejudicially affecting	Where disclosure prejudicially affects 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.
Expressly forbidden by court or tribunal	Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court.
Breach of privilege of Parliament or State Legislature	Where disclosure would cause a breach of privilege of Parliament or the State Legislature.
Harming competitive position	Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position of a third party, or available to a person in his fiduciary relationship, unless larger public interest so warrants.
Confidence from a third party	Information received in confidence from a foreign government.
Disclosure endangering life or physical safety	Information the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance.
Impede the process of investigation or apprehension or prosecution	Information that would impede the process of investigation or apprehension or prosecution of offenders.
Cabinet Papers	Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.
Personal Information	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 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;

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

Example

In case of a war or invasion, revealing or giving out information about strategically placed troops and related information, will be treated as information protected under section 8 of the Act. Such disclosure prejudicially affects the sovereignty and integrity of India.

Example

A, blows a whistle against sand corruption. His identity should be kept a secret since there is an increased risk to his safety and chances of violence against him increases. Such disclosure endangers his life and physical safety.

Example

A court while passing an order states that a particular information in that order shall not be disclosed. Such information shall fall under the disclosure by way of court order and would lead to contempt if not adhered to.

CASE LAW

Kayalvizhi vs. CPIO, Office of the Income Tax Officer, Ward-1 (19.10.2022 - CIC) : (2022)

In this case, the application was filed since the Appellant has sought income related details of her brother and her mother in response to averred RTI Application(s) which impinges on the privacy of the concerned third parties and therefore, the information has been denied to her under Section 8(1)(j) of RTI Act. Further, the other issue raised by the Appellant in the instant Appeal pertains to her family dispute which cannot be redressed from the RTI platform. The appeal was denied and it was observed that -

“...in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information.....”

“.....Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied.....”

Question: NCLT forbids an information to be shared under RTI Act, 2005.

Is the information exempted under Right to Information Act, 2005?

Answer: Yes, Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court are exempted.

Rejection of Request

The Public Information Officer has been empowered to reject a request for information where an infringement of a copyright subsisting in a person would be involved. (Section 9)

PARTIAL DISCLOSURE ALLOWED

Under Section 10 of the RTI Act, only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information, may be provided.

As per Section 10 of the Act if the request for access to information is rejected on the ground that it is in relation to the information which is exempt from disclosure, in that event access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can be reasonably severed from any part that contains exempt information.

CASE LAW

Chief Information Commissioner vs. High Court of Gujarat and Ors. (04.03.2020 - SC) : (2020)4SCC702

In this case, an appeal was filed with regards to the right of a third party to apply for certified copies to be obtained from the High Court by invoking the provisions of Right to Information Act without resorting to Gujarat High Court Rules prescribed by the High Court. Court observed that-

“We do not find any merit in the above submission and that such cumbersome procedure has to be adopted for furnishing the information/certified copies of the documents. When there is an effective machinery for having access to the information or obtaining certified copies which, in our view, is a very simple procedure i.e. filing of an application/affidavit with requisite court fee and stating the reasons for which the certified copies are required, we do not find any justification for invoking Section 11 of the RTI Act and adopt a cumbersome procedure. This would involve wastage of both time and fiscal resources which the preamble of the RTI Act itself intends to avoid.”

WHO IS EXCLUDED?

The Act excludes Central Intelligence and Security agencies specified in the Second Schedule like IB, R&AW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, the Crime Branch-CID- CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep Police. Agencies specified by the State Governments through a Notification will also be excluded.

The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation shall be given only with the approval of the Central Information Commission within forty- five days from the date of the receipt of request. (Section 24)

INFORMATION COMMISSIONS

The Act envisages constitution of Central Information Commission and the State information Commissions.

Central Information Commission

The Central Information Commission is to be constituted by the Central Government through a Gazette Notification. The Central Information Commission consists of the Chief Information Commissioner and Central Information Commissioners not exceeding 10. These shall be appointed by the President of India on the

recommendations of a committee consisting of Prime Minister who is the Chairman of the Committee; the leader of Opposition in the Lok Sabha; and a Union Cabinet Minister to be nominated by the Prime Minister.

The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. CIC/IC shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory. He shall not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

The general superintendence, direction and management of the affairs of the Commission vests in the Chief Information Commissioner who shall be assisted by the Information Commissioners. Commission shall have its Headquarters in Delhi. Other offices may be established in other parts of the country with the approval of the Central Government. Commission will exercise its powers without being subjected to directions by any other authority. (Section 12)

Term of office and conditions of service of Central Information Commission

- (1) The Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment:

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

- (2) Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in section 12:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

- (3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.
- (4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

- (5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government:

Provided that the salaries, allowances and other conditions of service of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after their appointment:

Provided further that the Chief Information Commissioner and the Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force.

- (6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of

their functions under this Act, and the salaries and allowances payable to, and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

State Information Commission

The State Information Commission will be constituted by the State Government through a Gazette notification. The State Information Commission consists of one State Chief Information Commissioner (SCIC) and not more than 10 State Information Commissioners (SIC). These shall be appointed by the Governor on the recommendations of a committee consisting of the Chief Minister who is the Chairman of the committee. Other members include the Leader of the Opposition in the Legislative Assembly and one Cabinet Minister nominated by the Chief Minister.

Term of office and conditions of service of State Information Commission

- (1) The State Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment:

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

- (2) Every State Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:

Provided that every State Information Commissioner shall, on vacating his office under this subsection, be eligible for appointment as the State Chief Information Commissioner in the manner specified in section 15(3):

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

- (3) The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.
- (4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.

- (5) The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government:

Provided that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment:

Provided further that the State Chief Information Commissioner and the State Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made there under as if the Right to Information (Amendment) Act, 2019 had not come into force.

- (6) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

POWERS OF INFORMATION COMMISSIONS

The Central Information Commission/State Information Commission has a duty to receive complaints from any person—

Non appointment of PIO	<ul style="list-style-type: none"> ● who has not been able to submit an information request because a PIO has not been appointed;
Refusal of Information	<ul style="list-style-type: none"> ● who has been refused information that was requested;
Breach of privilege of Parliament or State Legislature	<ul style="list-style-type: none"> ● where disclosure would cause a breach of privilege of Parliament or the State Legislature;
No response	<ul style="list-style-type: none"> ● who has received no response to his/her information request within the specified time limits;
Unreasonable Fees	<ul style="list-style-type: none"> ● who thinks the fees charged are unreasonable;
Incomplete or Misleading information	<ul style="list-style-type: none"> ● who thinks information given is incomplete or false or misleading; and
Any other matter	<ul style="list-style-type: none"> ● any other matter relating to obtaining information under this law.

If the Commission feels satisfied, an enquiry may be initiated and while initiating an enquiry the Commission has same powers as vested in a Civil Court.

The Central Information Commission or the State Information Commission during the inquiry of any complaint under this Act may examine any record which is under the control of the public authority, and no such record may be withheld from it on any grounds. (Section 18)

Example

'A' wants to seek the information pertaining to the functioning of a public welfare fund such as who is its head, appointment of such head, expenses incurred by that particular authority in last financial year. 'A' received a reply containing information about the functioning, the appointment of head and his name but not the expenses incurred without and reasonable explanation.

'A' shall have the right to make complaint against incomplete information given to him .

Example

'A' seeks the information pertaining the constitution of a committee. Such information was denied to him without any reasonable justifications.

'A' has right to file a complaint against such unreasonable and unjustified refusal of information.

CASE LAW***Central Information Commission v. D.D.A. & Anr. 2024 INSC 513 decided by Supreme Court on 10.07.2024***

The principle of purposive interpretation supports the view that the CIC's powers under Section 12(4) of the RTI Act include all necessary measures to manage and direct the Commission's affairs effectively.

Facts of the Case/Background

The present appeal challenges the judgment and order, passed by the High Court of Delhi. The High Court, by the impugned order, quashed the Central Information Commission (Management) Regulations, 2007 framed by the Chief Information Commissioner and held that the CIC has no power to constitute Benches of the Commission. This appeal is confined to the issue of the validity of the Regulations and the powers of the CIC under Section 12(4) of the Right to Information Act, 2005.

Key Issues/Allegations

Whether the CIC, under the provisions of Section 12(4) of the Right to Information Act, 2005 has the authority to constitute benches of the CIC and frame Regulations for the effective management and allocation of work within the Commission, including the issuance of orders and the formation of committees?

Observations, Findings and Decision

In the present case, the RTI Act should be interpreted purposively, taking into account the broader objectives of the legislation. The purpose of the RTI Act is to promote transparency and accountability in the functioning of public authorities, ensuring citizens' right to information. To achieve these objectives effectively, it is essential that the Central Information Commission operates efficiently and without undue procedural constraints. The principle of purposive interpretation supports the view that the CIC's powers under Section 12(4) of the RTI Act include all necessary measures to manage and direct the Commission's affairs effectively. This includes the ability to form benches to handle the increasing volume of cases. The formation of Benches allows for the efficient allocation of work and ensures the timely disposal of cases, which is crucial for upholding the right to information.

APPELLATE AUTHORITIES

Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file an appeal under the Act.

Officer senior in rank to the PIOs

- **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).

Central Information Commission or the State Information Commission

- **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).

Third Party appeal

- **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.

Burden of proving that denial of information was justified lies with the PIO. First Appeal shall be disposed of within 30 days from the date of its receipt or within such extended period not exceeding a total of forty-five days from the date of filing thereof, for reasons to be recorded in writing. Time period could be extended by 15 days if necessary. (Section 19)

Example

An application by B, seeking information regarding a particular matter was denied by PIO. B filed an appeal with the officer in rank to PIO regarding such rejection/denial of information. It is upon PIO to justify such non-disclosure.

CASE LAW

N.N. Dhumane vs. PIO, Department of Posts (10.04.2018 - CIC) 2018 SCC OnLine CIC 21

In this case, the appellant was told that her pension for month of March 2017 was held up for want of Aadhaar linking up along with 55 other pensioners who were former employees of this public authority; she filed RTI application about 'linking-up of Aadhaar number to pension accounts'; that they had no authority to link up the Aadhaar Card to her pension account all of sudden without any notice and stop payment for that reason. In the judgement, it was stated that:

"In the name of linking to Aadhaar or other such conditions, the public authority cannot delay the payment of pensions to the senior citizens and retired employees in view of their post retirement requirements. The pensioners might mainly depend upon the pension for their livelihood and delaying it will be inhumane and also amounts to denial of their fundamental right to life. Even if linking with Aadhaar is necessary, it should not result in delaying the payment of pension or denial of information regarding pension."

PENALTIES

Section 20 of the Act imposes stringent penalty on a Public Information Officer (PIO) for failing to provide information. Every PIO will be liable for fine of Rs.250 per day, up to a maximum of Rs.25,000/-, for -

- Not accepting an application;
- Delaying information release without reasonable cause;
- Malafidely denying information;
- Knowingly giving incomplete, incorrect, misleading information;
- Destroying information that has been requested; and
- Obstructing furnishing of information in any manner.

The Information Commission (IC) at the Centre and at the State levels will have the power to impose this penalty. They can also recommend disciplinary action for violation of the law against the PIO for persistently failing to provide information without any reasonable cause within the specified period.

JURISDICTION OF COURTS

As per Section 23, lower Courts are barred from entertaining suits or applications against any order made under this Act.

Role of Central/State Governments

Section 26 contemplates the Role of Central/State Governments. It authorizes the Central/State Governments to:

Develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;

Encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;

Promote timely and effective dissemination of accurate information by public authorities about their activities; and

Train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

CASE LAWS

HN Malviya vs. CPIO, Department of Personnel and Training on 31st October, 2022 (Central Information Commission)

The Appellant filed an RTI application dated 27.01.2021 seeking the information related to seniority of employees .

The Chief Information Commission in Second Appeal decided that the Commission based on a perusal of the facts on record observes that the information sought for in the RTI Application is in the form of mere conjecture and even futuristic query, neither of which conforms to Section 2(f) of the RTI Act, yet the CPIO & FAA have tried to facilitate the Appellant adequately in keeping with the spirit of the RTI Act. The Appellant shall note that outstretching the interpretation of Section 2(f) of the RTI Act to include deductions and inferences to be drawn by the CPIO is unwarranted as it casts immense pressure on the CPIOs to ensure that they provide the correct deduction/inference to avoid being subject to penal provisions under the RTI Act.

Mr. Raj Kumar vs. CPIO Guru Teg Bahadur Hospital dated 31st October, 2022 (Central Information Commission)

The Complainant vide his RTI application sought information relating to salary records and DA implementation.

The CPIO furnished a pointwise reply to the Complainant. Dissatisfied with the reply received from the PIO, the Complainant filed a First Appeal, which was not adjudicated by the First Appellate Authority. Thereafter, the Complainant filed a Complaint before the Commission.

The Complainant remained absent during the hearing despite notice. The Respondent present during the hearing submitted that a suitable response in accordance with the provisions of the RTI Act, 2005, had already been furnished to the Complainant. The respondent further stated that the information sought in respect of point no. 01 will be furnished in due course.

The Central Information Commission decided that Keeping in view the facts of the case and the submissions made by the respondent and after perusal of the documents available on record, the Commission directs the Respondent to furnish complete and correct information to the Complainant, in accordance with the spirit of transparency and accountability as enshrined in the RTI Act, 2005 within a period of 21 days from the date of receipt of this order under the intimation to the Commission. The Commission cautions the then CPIO to be more careful in the future while dealing with the RTI application so that no such lapse would recur and the provisions of the RTI Act are complied with in letter and spirit.

LESSON ROUND-UP

- Right to know is a necessary ingredient of participatory democracy. The Government enacted Right to Information (RTI) Act, 2005 which came into force on October 12, 2005.
- The RTI Act provides for setting out the practical regime of right to information for citizens to secure access to information held by public authorities to promote transparency and accountability in the working of every public authority. Every public authority under the Act has been entrusted with a duty to maintain records and publish manuals, rules, regulations, instructions, etc. in its possession as prescribed under the Act. Further, it is obligatory on every public authority to publish the information about various particulars prescribed under the Act within one hundred and twenty days of the enactment of this Act.
- Every public authority has to designate in all administrative units or offices, Central or State Public Information Officers to provide information to persons who have made a request for the information. The Public Information Officers/Assistant Public Information Officers will be responsible to deal with the requests for information and also to assist persons seeking information.
- The Act specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.
- Certain categories of information have been exempted from disclosure under Section 8 and 9 of the Act.
- Intelligence and security agencies specified in Schedule II to the Act have been exempted from the ambit of the Act, subject to certain conditions.
- The Public Information Officer has been empowered to reject a request for information where an infringement of a copyright subsisting in a person would be involved.
- Only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information, may be provided.
- The Act envisages constitution of Central Information Commission and the State Information Commissions.
- The Central Information Commission is to be constituted by the Central Government through a Gazette Notification. The Central Information Commission consists of: (i) The Chief Information Commissioner; (ii) Central Information Commissioners not exceeding 10.
- The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

- CIC shall be appointed for a term of 5 years from date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier. CIC is not eligible for reappointment.
- The State Information Commission will be constituted by the State Government through a Gazette notification. The State Information Commission consists of: (i) One State Chief Information Commissioner (SCIC) and (ii) Not more than 10 State Information Commissioners (SIC).
- The Central /State Commission have been authorized to receive and enquire into a complaint from any person who has been denied information by the concerned authorities due to various reasons as specified under the Act. If the Commission feels satisfied, an enquiry may be initiated and while initiating an enquiry the Commission has same powers as vested in a Civil Court.
- Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file an appeal under the Act.
- Stringent penalty may be imposed on a Public Information Officer for failing to provide information. The Information Commission (IC) at the Centre and at the State levels will have the power to impose this penalty.
- The Act also stipulates the role of the Central/State Governments.

GLOSSARY

CIC : Central Information Commission means the Central Information Commission constituted under sub-section (1) of section 12.

SIC : State Information Commission means the State Information Commission constituted under sub-section (1) of section 15

CPIO : Central Public Information Officer means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. The right to impart and receive information is a species of the right to freedom of speech and expression. Discuss
2. The RTI Act confers on all citizens a right to information. Enumerate the salient features of the Act.
3. Describe the constitution and powers of the Central Information Commission under the Act.
4. Can a person who does not receive a decision within the specified time or is aggrieved by the decision of the PIO file an appeal under the Act?
5. Specify the categories of information that have been exempted from disclosure under the Act.
6. Explain the provisions of Section 20 of the Right to Information Act, 2005.
7. On what grounds can a complaint be filed with Central Information Commission/State Information Commission?
8. Write a short note on:
 - Central Information Commission (CIC)
 - State Information Commission (SIC)

